



September 30, 2013

Mr. Edward Seidenberg
Interim Director and Librarian
Texas State Library & Archives Commission
1201 Brazos Street
P.O. Box 12927
Austin, TX 78711-2927

Re: LSTA Maintenance of Effort Requirement Waiver Request for FY 2014 Grants to States Allotment

Dear Mr. Seidenberg:

I am writing, on behalf of the Institute of Museum and Library Services, in response to a request from the Texas State Library & Archives Commission ("SLAA") for a waiver of the statutory Maintenance of Effort ("MOE") requirement for the Fiscal Year 2014 Grants to States allotment. We have reviewed your documentation dated June 25, 2013, and must unfortunately decline your MOE waiver request.

Under 20 U.S.C. § 9133(c)(1), a State Library Administrative Agency is required, as a condition of funding from IMLS's Grants to States Program, to maintain a certain level of State expenditures for library programs that are consistent with the purposes of the Library Services and Technology subchapter of 20 U.S.C. Chapter 72. This MOE requirement helps to ensure that Federal funds supplement, rather than replace, State funds in supporting library activities, and the Institute is required by law to reduce the allocation otherwise payable to a State if the State fails to maintain its expenditures.

However, there may be unusual circumstances that prevent a State from maintaining its level of library program support. In such circumstances, it may be appropriate for the Institute to waive the statutory requirement. As provided in 20 U.S.C. § 9133(c)(3):

The Director may waive the [MOE requirement] if the Director determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in financial resources of the State.

The Institute can only authorize a waiver if the State has provided sufficient evidence to establish that the circumstances supporting a particular request are "exceptional or uncontrollable." The Institute evaluates each request for a waiver individually to ensure that this statutory requirement is met.

Before issuing a waiver, the Institute must first determine that the circumstances serving as the basis of the request were "exceptional or uncontrollable." For a decline in financial resources to be considered as grounds for a waiver, a key factor to consider is whether the change in the financial resources of the State was "precipitous and unforeseen," and whether it could have been prevented or mitigated. Assuming that a State is able to demonstrate that the circumstances were "exceptional and uncontrollable," the Institute must also determine that it would be "equitable" to grant a waiver to the State from maintaining level library program support in light of the circumstances. An important element to assess is whether the state

library administrative agency's budget was proportionately or disproportionately reduced in comparison with the budgets of the other agencies within the State.

On the basis of your request and the supporting documentation, we have determined that it would not be equitable to grant a waiver of the MOE requirement. Although the SLAA has provided sufficient evidence to indicate that the State experienced a precipitous and unforeseen decline in its financial resources, we do not believe it would be "equitable" to grant a waiver as the evidence also demonstrates that State support for library services had been reduced disproportionately relative to other State agencies.

Discussion

The State has requested a waiver for the amount of \$11,530,835 in state financial support for library services for the FY 2011 grant period (October 1, 2010 – September 30, 2012). This represents a decrease of 67 percent in State financial support for library services in FY 2011 when compared with the average level (adjusted due to decrease in FY 2012 allotment) of State financial support reported for FY 2008, FY 2009, and FY 2010.

The SLAA did not provide a detailed analysis on the net effects of a reduction on library services or programs, but asserted that if it were to sustain a reduction in LSTA funds of 67.2 percent (the percentage by which it fell short of the FY 2011 MOE requirement), "it would significantly alter and/or eliminate programs at TSLAC" (p.7). LSTA-funded programs and services include: statewide interlibrary loan network and shared catalogs; subgrants to fund new and innovative programming in workforce development, and early childhood learning; digitization of special collections; support for public access technology such as adopting mobile technologies and creating websites for rural libraries; and the Talking Book Program (pp.7-8).

The SLAA noted that in 2011, the State projected budget shortfalls of \$4.3 billion for SFY2012. As a result, all State agencies and institutions of higher education were required to reduce general revenue (GR) spending by 5 percent in SFY2012 (p.2). In an effort to mitigate the anticipated revenue shortfall, the State required an additional across the board reduction of 2.5 percent in the GR appropriation (p.2). The SLAA indicated that in January 2011, the Texas Comptroller of Public Accounts "estimated the budget for SFY2012-2013 biennium would be about \$27 billion less than the estimated cost of continuing current services" (p.1). To meet the estimated shortfalls, the State took "unprecedented measures, such as reducing per pupil entitlements to school districts, underfunding Medicaid obligations [...] and stipulating deferral of several other key payments" (p.3). That same year, the legislature reduced appropriations in a number of areas including: formula/nonformula funding to institutions of higher education; student financial aid; the State's contribution to retired teacher and state employee retirement and healthcare programs; certain direct services provided by state agencies; capital purchases and agency administrative functions; and grants to local governmental entities and non-governmental organizations (p.3). The SLAA reported that the reductions in grants, in particular, eliminated funding for the Loan Star Libraries program which granted \$13.34 million in SFY2011 and constituted one-third of the agency's State appropriation (p.4).

The SLAA also noted that in 2011, Texas experienced natural disasters that "had a significant, unanticipated effect on the state's economy" (p.3). Due to record heat and drought, the Texas A&M Agrilife Extension reported \$7.62 billion in agricultural losses. The Texas Forest Service documented 23,835 wildfires across the state that burned 3.8 million acres and destroyed 2,763 homes (p.3).

The SLAA's state GR-related funds were reduced by 1.49 percent in SFY2011, from \$20,626,445 to \$20,319,025 and 64.10 percent in SFY2012, from \$20,319,025 to \$7,293,688. In line with these reductions, the SLAA's MOE for SFY2012 (FY 2011) was reduced by 62.15 percent, from \$14,849,906 to \$5,621,403.

Based upon our review of the SLAA's request and supporting documentation, we have concluded that the SLAA's SFY2012 general fund appropriation was reduced disproportionately when compared to other State agencies.

We reviewed the budget reductions occurring in State agencies in the category "Culture Agencies." These agencies are functionally similar and, with the exception of the Commission on the Arts, have comparable budgets (+/- \$10 million in any given fiscal year). (Note: all percentages reflect comparisons of nominal values.)

We compared the percentage changes between total state appropriations (includes GR and GR Dedicated Funds) for SFY2012. In SFY2012, the SLAA's appropriation was reduced by 64 percent, from \$20,319,025 to \$7,293,688. This percentage reduction is significantly greater than any percentage change recorded in that SFY by other State Culture Agencies: the Commission on the Arts received a 0.10 percent increase (from \$2,690,694 to \$2,693,272); the Historical Commission received a 16 percent decrease (from \$16,297,292 to \$13,683,754); and the State Preservation Board received a 73.5 percent increase in funding (\$11,004,386 to \$19,093,911).

The SLAA provided the following explanation: "The limited amount of discretionary GR in the state budget meant that some agencies sustained greater reductions than other agencies, particularly those agencies situated similarly to TSLAC with grant-related programs, and some agencies experienced reductions earlier than TSLAC. Therefore, we do not believe TSLAC was singled out for significant reductions" (p.1).

Although the other State Culture Agencies sustained reductions in total state appropriations in SFY2011 that were significantly greater than the reduction in state appropriations for the SLAA in SFY2011, it must be noted that the other State Culture Agencies had received increases in total state appropriations in SFY2010 that were significantly greater than the 18.63 percent increase the SLAA saw in SFY2010 (from \$17,387,253 to \$20,626,445). For example, in SFY2010, the Commission on the Arts received a 191.98 percent increase (from \$2,782,005 to \$8,122,990) and the State Preservation Board received a 109.26 percent increase (from \$10,957,171 to \$22,928,792). In SFY2011, reductions were as follows: 66.88 percent for the Commission on the Arts and 52.01 percent for the State Preservation Board.

We also reviewed the percentage changes between total state appropriations in SFY2009 and SFY2012 for the State Culture Agencies. We found that since SFY2009, the SLAA's state appropriation was reduced by a total of 58 percent. This percentage reduction is significantly greater than any percentage change recorded by the other State Culture Agencies: the Commission on the Arts state appropriations were reduced by just 3.19 percent during this period; the Historical Commission state appropriations were reduced by 9.79 percent; and the State Preservation Board actually saw an increase in appropriations during this period of 74.26 percent.

In sum, the documentation provided by the SLAA reflects that the SLAA's budget was disproportionately reduced in comparison with other State agencies – both in SFY2012, as well as during the time period of SFY2009 through SFY2012.

For these reasons, and on the basis of the information and materials you provided, we are unable to provide the SLAA with a waiver of the MOE requirement for the Fiscal Year 2014 Grants to States allotment.

If you choose to appeal this decision, you may do so by filing a written notice, including any supporting documentation, no later than sixty (60) calendar days from the date of this letter. Any appeal must be addressed to Susan H. Hildreth, Director, Institute of Museum and Library Services, 1800 M Street N.W., 9th Floor, Washington, D.C., 20036.

We strongly encourage you to continue to monitor State funding for library services to ensure that Federal funds enhance and not replace State support.

While we are declining the request for an MOE waiver for the Fiscal Year 2014 Grants to States allotment, please know that the Institute acknowledges the Texas State Library and Archives Commission's commitment to providing quality library services to all of its citizens, and we look forward to continuing to work with you in carrying out library programs.

Sincerely,



Maura Marx
Deputy Director, Office of Library Services

cc: Susan H. Hildreth, Director
Laurie Brooks, Associate Deputy Director, State Programs