

GUIDANCE ON REQUESTING A WAIVER OF THE MAINTENANCE OF EFFORT (MOE) REQUIREMENT IN THE GRANTS TO STATES PROGRAM

Purpose of the Guidance:

The following guidance is intended to assist a State Library Administrative Agency (SLAA) with the preparation of a Maintenance of Effort (MOE) waiver request. In order for IMLS to make an informed and reasoned decision to grant a waiver, it is essential that the SLAA fully and clearly substantiate the basis for its request. IMLS grants waivers only when a State sufficiently demonstrates that it has experienced “exceptional or uncontrollable circumstances,” and fully supports its contention with grounds on which the agency can find that a waiver would be equitable. A SLAA can help satisfy this burden by providing the information described below.

Statutory Background:

When a Federal funding program includes a “maintenance of effort” (MOE) provision, a State is required, as a condition of eligibility, to maintain its financial contribution to a program at not less than the amount of its contribution for some prior time period. The IMLS MOE formula ensures that Federal assistance results in an increased level of library-related activity and that a State does not replace State dollars with Federal dollars over time.

In combination with State funding, IMLS Grants to States program assistance increases the overall amount of financial resources available to support critical library objectives. In order to receive full IMLS funding, a SLAA must comply with the MOE requirements found in 20 U.S.C. Chapter 72.

The basic MOE provision is as follows:

“The amount otherwise payable to a State for a fiscal year pursuant to an allotment . . . shall be reduced if the level of State expenditures . . . for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years preceding that previous fiscal year...” 20 U.S.C. § 9133(c)(1)(A).

The “level of State expenditures” referred to above includes:

“...all State dollars expended by the State library administrative agency for library programs that are consistent with the purposes of this subchapter. All funds included in the maintenance of effort calculation... shall be expended during the fiscal year for which the determination is made, and shall not include capital expenditures, special one-time project costs, or similar windfalls.” 20 U.S.C. § 9133(c)(2).

IMLS may waive a SLAA’s MOE requirements under the following circumstances:

“The Director may waive the requirements of paragraph (1) 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 the financial resources of the State.” 20 U.S.C § 9133(c)(3) (emphasis added).

As noted above, the MOE requirement is used to ensure that Federal assistance results in an increased level of library-related activity and that a State does not replace State dollars with Federal dollars over time. If a State does not meet its MOE requirements and is not granted an MOE waiver by IMLS, the amount of IMLS funding available to that State will be reduced.

Waiver Considerations:

In light of the discussion above, IMLS must adhere to the terms of the statute, which sets out the requirements a SLAA must meet in order for IMLS to exercise its authority to grant an equitable waiver of the MOE requirement.

The statute’s initial threshold condition for an equitable waiver primarily depends upon a SLAA’s ability to demonstrate that the circumstances underlying its need for a waiver are “exceptional or uncontrollable.” Stated another way, IMLS must first and foremost determine whether it would be “equitable” to grant a waiver to a SLAA from its statutory obligation to maintain level library program support. This decision is based upon whether the SLAA’s waiver request cites grounds that qualify as exceptional or uncontrollable circumstances.

IMLS is permitted only to make an exception for those SLAAs that can adequately show they cannot meet their MOE obligations because of exceptional, extraordinary circumstances. This standard reinforces the public policy purpose of the MOE requirements, that is: by only granting waivers in exceptional or uncontrollable circumstances when it is equitable to do so, the statute ensures that the States cannot leverage Federal funding to supplant State funding nor otherwise skirt MOE obligations they could actually meet.

To make a viable MOE waiver request, a SLAA must initially make a sufficient threshold showing of either exceptional or uncontrollable circumstances. The statute provides two examples that satisfy this requirement. First, the SLAA may make a sufficient showing that the State sustained a natural disaster that qualifies as either uncontrollable or exceptional. A sufficient showing of a natural disaster that qualifies as either uncontrollable or exceptional would include a showing of how the natural disaster impacted the State’s overall financial resources.

Alternatively, the SLAA may make a sufficient showing of “exceptional or uncontrollable” circumstances by demonstrating that its State’s overall financial resources underwent a decline which was precipitous and unforeseen and which could have been neither prevented nor mitigated.

What to Include in an MOE Waiver Request:

In its MOE waiver request, the SLAA should clearly articulate, with supporting details, the basis for its request.

A waiver request should include the information described in (a) through (g) below. Please note that the total number of pages submitted for (a), (f), and (g) should not exceed ten (10). The corresponding budget tables (b) through (e) are considered appendices and are not included in this page count.

- (a) A detailed discussion, with supporting evidence, of the “exceptional or uncontrollable circumstances” which prompted the SLAA to submit its MOE waiver request – such as a natural disaster or “a precipitous and unforeseen decline in the financial resources of the State”
- (b) The State’s total actual appropriations in the year for which a waiver is sought compared to prior years. If the SLAA calculates MOE using multiple State fiscal years, include the total actual budget for each State fiscal year. Report only State funds, excluding any Federal, local, and/or private funds. Please fill in the Appendix tab labeled “State Appropriations” based on the example in that tab.
- (c) The SLAA’s total actual appropriations in the year for which a waiver is sought compared to prior years. If the SLAA calculates MOE using multiple State fiscal years, include the total actual appropriation for each State fiscal year. Report only State funds. Please fill in the Appendix tab labeled “SLAA Appropriations” based on the example in that tab.
- (d) An itemized report of the SLAA’s actual expenditures calculated in the MOE in the year for which a waiver is sought and prior years. Please indicate the reporting period(s) (e.g. July 2020 – June 2021) used in your calculation. The total MOE amount reported should match the amount indicated on past Financial Status Reports. If there is a discrepancy, please explain. If the percentage of the SLAA's expenditures provided through State funding and applied to the LSTA purposes has decreased, explain the circumstances surrounding such reductions. Please fill in the Appendix tab labeled “MOE Expenditures” based on the examples in that tab.
- (e) The actual appropriations for other State agencies in the year for which a waiver is sought compared to prior years. If the SLAA is an independent agency, include the State’s actual appropriation for other agencies by functional category (e.g., Education in its entirety, and also itemized by higher education, K-12, etc.). Please provide an organizational chart(s) indicating the SLAA’s location in the State’s Government. Report only State funds, excluding any Federal, local, and/or private funds. Please fill in the Appendix tab labeled “Other Appropriations” based on the examples in that tab.
- (f) Other sources of revenue used by the State for library services and programs. While these funds are not considered in the calculation of MOE, the existence of these funds may help mitigate the effects of a State’s reduced MOE.
- (g) Any other relevant information pertaining to the request. The SLAA may want to include applicable State budget requests, Governor’s reports, press releases, newspaper and periodical articles, or other supporting evidence for IMLS to consider.

In order for IMLS to make an informed and reasoned decision on whether to grant a waiver, it is essential that the SLAA fully substantiate the basis for the request.

Timeline for Requesting a Waiver:

Should a State decide to make such a request, it should submit the request to the IMLS Director, including the documentation described in (a) through (g) above, by June 30, 2023.

Your program officer can offer advice about preparing your request and can provide informal comments on preliminary drafts if they are submitted by May 12, 2023. These comments are not part of the formal review process and have no bearing on the final outcome of the request, but States have found them helpful in preparing their materials. All final waiver requests are considered solely on their own merits during the agency's formal consideration process.

Format of Final MOE Waiver Request:

The request should be organized according to the above requirements ((a) through (g)). The total number of pages submitted for (a), (f), and (g) should not exceed ten (10) pages. The corresponding budget tables (b) through (e) are considered appendices and are not included in this page count.

One (1) set of electronic materials should be **sent through eGMS Reach as an attachment to a message on your current award no later than June 30, 2023.** Any cover letter materials should be addressed to:

Crosby Kemper
Director
Institute of Museum and Library Services
955 L'Enfant Plaza North, SW, Suite 4000
Washington, DC 20024-2135

Please use the subject line: MOE waiver request for 2021 requirement

Appendix:

Budget Table and Examples

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