

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 substantiate the basis for its request. IMLS grants waivers only when a State convincingly demonstrates that it has experienced “exceptional or uncontrollable circumstances,” and fully supports its contention that a waiver would be equitable. An 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, an 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).

The MOE requirements may be waived by IMLS 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.” (emphasis added). 20 U.S.C § 9133(c)(3).

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:

The specific facts leading to a waiver request are unique. IMLS takes a variety of considerations into account in determining whether “exceptional or uncontrollable circumstances” existed and whether it would be equitable to grant a waiver of the MOE. For example, if the waiver request is based on a State’s financial resources, these considerations generally include: whether the decline in the resources of the State was precipitous and unforeseen; whether it could have been prevented or mitigated; whether the decline was statewide; and whether the SLAA’s budget reduction was proportionately or disproportionately reduced in comparison to the budgets of other State agencies. In the case of a natural disaster, IMLS would consider the severity and extent of damages incurred. In each instance, the impact the circumstances have had upon those who are served by the SLAA’s program is an important factor. The SLAA should therefore clearly articulate, with supporting details, the basis for its waiver request.

What to Include in an MOE Waiver Request:

Include the information set forth in (a) through (g) below. Please note that the total number of pages submitted for (a) through (g) should not exceed ten (10). The total number of pages submitted for (h) should not exceed ten. The corresponding budget tables are not included in the page count.

- (a) A detailed discussion, with supporting evidence, of the “exceptional or uncontrollable circumstances such as a natural disaster or a precipitous or unforeseen decline in the financial resources of the State” that resulted in a reduced MOE and form the basis of the waiver request.
- (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 review the relevant examples in “Budget Table and Examples” set forth in the Appendix.

- (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 and LSTA funds. Please review the relevant examples in "Budget Table and Examples" set forth in the Appendix.
- (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 2013 – June 2014) 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 review the relevant examples in "Budget Table and Examples" set forth in the Appendix.
- (e) A detailed explanation of how a reduction to the SLAA's LSTA allotment would impact the SLAA's capacity to provide library services and programs in comparison to previous fiscal years.
- (f) 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 (i.e. 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 review the relevant examples in "Budget Table and Examples" set forth in the Appendix.
- (g) 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.
- (h) 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. You should remember to limit the number of pages for this section (h) to no more than ten (10).

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:

The decision by a State to request a waiver of the MOE is a serious one, as is the decision by IMLS to grant or not grant 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 (h) above, by June 30, 2017.

Your program officer can offer advice about preparing your request and can provide informal comments on preliminary drafts if they are submitted by May 26, 2017. 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 in the order of the requirements ((a) through (h)). The total number of pages submitted for (a) through (g) should not exceed ten (10) pages; the total number of pages submitted for (h) should not exceed ten (10) pages. The corresponding budget tables are not included in the page count.

One (1) hardcopy request should be **postmarked no later than June 30, 2017** and addressed to:

Dr. Kathryn K. Matthew
Director
Institute of Museum and Library Services
955 L'Enfant Plaza North, SW, Suite 4000
Washington, DC 20024-2135

One (1) corresponding electronic copy should be emailed to Robin L. Dale, Acting Deputy Director, rdale@imls.gov.

Appendix:

Budget Table and Examples

Issued: May 1, 2017