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**Monday
August 11, 1980**

Part XI

**Department of
Education**

Institute of Museum Services

Museum Services

DEPARTMENT OF EDUCATION**Institute of Museum Services****34 CFR Part 64****Museum Services Board**

AGENCY: Institute of Museum Services, ED.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations to implement the Government in the Sunshine Act as it applies to the Institute of Museum Services. These regulations govern meetings of the National Museum Services Board under the Government in the Sunshine Act. They include provisions regarding public announcements of Board meetings, standards for closing meetings and requirements applicable when meetings are closed.

EFFECTIVE DATE: These regulations take effect August 11, 1980.

FOR FURTHER INFORMATION CONTACT:

Mrs. Lee Kimche, Department of Education, Institute of Museum Services, 330 C Street, S.W. (Room 4008), Switzer Building, Washington, D.C. 20201. Telephone: (202) 245-8817.

SUPPLEMENTARY INFORMATION:**Structure of Institute of Museum Services**

The Museum Services Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The National Museum Services Board consists of 15 members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museums and curatorial, educational and cultural resources of the United States.

In addition to the members appointed by the President, the following serve as members of the Board: The Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Secretary of Education.

The Board has responsibility for establishing the general policies of the Institute.

The Director of the Institute is appointed by the President with the advice and consent of the Senate. The Director has responsibility for the

general administration of the Institute and is authorized, subject to the policy direction of the Board, to make grants to museums under the Act.

The Department of Education Organization Act (Pub. L. 96-88), transferred IMS to the Department of Education, effective May 4, 1980.

Applicability of the Government in the Sunshine Act

The Government in the Sunshine Act, Pub. L. 94-409 (1976), amended Title 5 of the United States Code by adding a new Section 552b. Section 552b of Title 5 U.S.C. provides in general that collegial bodies which head Federal agencies must, subject to specified exceptions, hold their meetings open to public observation. The Institute of Museum Services is subject to Section 552b.

Section 552b requires that each agency subject to its provisions issue implementing regulations, 5 U.S.C. § 552b(g). These regulations are designed to fulfill this requirement for the Institute of Museum Services.

Regulatory History

Proposed regulations appeared on page 45973 of the *Federal Register* of August 6, 1979. These regulations proposed to amend Part 64 of Title 45 of the Code of Federal Regulations by adding a new subpart. They were to govern meetings of the national Museum Services Board under the Government in the Sunshine Act. They included provisions regarding public announcements of Board meetings, standards for closing meetings and requirements applicable when meetings are closed.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations. No written objections were received. The following technical changes have been made to the regulations: This subpart will be Subpart G instead of Subpart B. Sections 64.21-64.39 will not be reserved, but will be used for other additions to IMS regulations. Former references to the Department of Health, Education, and Welfare are changed to the Department of Education. The reference in § 64.78 to internal review procedures is deleted. These regulations are codified in Title 34, which contains Education Department regulations.

Summary of Regulations

These regulations do not repeat or paraphrase all the provisions of Section 552b. (These provisions are fully applicable to the meetings of the National Museum Services Board and need not be repeated in regulations in

order to be made operational with respect to the Board.) Instead, these regulations are designed to highlight major provisions of Section 552b as they affect the public and to provide guidance to the public as to how the Board proposes to operate in accordance with the provisions of Section 552b. These regulations add a new Subpart G to Part 64 of Title 34 CFR, which contains the regulations of the Institute. The new subpart relates to meetings of the National Museum Services Board.

Provisions of the regulations—General

Section 64.70 of the regulations indicates that the provisions of 5 U.S.C. Section 552b apply to meetings of the National Museum Services Board. Section 64.71 of the regulations states the general rule that, unless properly closed, every portion of every meeting of the Board is open to public observation. Section 64.72 states the applicability of the regulations to meetings of committees of the Board. Since certain decisions under the regulations must be taken by record vote of the National Museum Services Board, § 64.73 describes the nature of a record vote. A majority vote of the entire membership of the Board is required to constitute a record vote.

Announcement of meetings

Sections 64.74-64.77 of the regulations relate to announcement of meetings. Section 64.74 requires a meeting to be publicly announced at least one week before the meeting takes place and specifies the matters which the announcement must cover. Paragraphs (b) and (c) of § 64.74 contain exceptions to this requirement.

Sections 64.75 and 64.76 state procedures to be followed when it is necessary to change the time, place or subject matter of a meeting. Under § 64.77 any public announcement required by the regulations must be published in the *Federal Register*.

Closing meetings

Sections 64.78-64.81 govern the closing of meetings. Section 64.78 provides that the National Museum Services Board may by record vote close a meeting if the Board determines that the meeting falls within one of the exceptions stated in Section 552b.

Exceptions, as set forth in Section 552b, are listed in Appendix A to the regulations. Under § 64.78(b), the Board must consider whether the public interest merits keeping a meeting open although an exception applies. Section 64.79 deals with requests to close meetings submitted by persons who

believe that their interests may be directly affected by a meeting or a portion of a meeting. Section 64.80 describes the material which must be retained by the Board if it determines to close a meeting or a portion of a meeting. In general a transcript or recording of the meeting must be kept. Where meetings are closed pursuant to exceptions (8), (9)(i), or (10) (as listed in Appendix A), minutes of the meeting are adequate. Section 64.81 deals with the disposition of such recordings, transcripts or minutes and the circumstances under which they may or may not be made available to the public.

The National Museum Services Board and the Director of the Institute of Museum Services have approved these regulations.

(Catalog of Federal Domestic Assistance No. 13.923, Museum Services Program. Part I of OMB Circular A-95 does not apply.)

Dated: August 6, 1980.

Steven A. Minter,

Acting Secretary of Education.

Part 64 of Title 45 of the Code of Federal Regulations is transferred to Title 34 and amended as follows:

1. The table of contents for Part 64 is amended by adding the following:

Subpart A—Program Regulations

Sec.

64.1 Purpose of museum services program.

* * * * *

Subpart G—Meetings of the National Museum Services Board

General

64.70 Scope.

64.71 General rule.

64.72 Application to NMSB committees.

64.73 Record vote.

Announcement of Meetings

64.74 Public announcement of meetings.

64.75 Changes in time or place of meeting.

64.76 Changes in subject matter of meeting.

64.77 Publication of announcements.

Closing Meetings

64.78 Reasons and procedures for closing meetings.

64.79 Requests to close meetings.

64.80 Materials related to closed portions of meetings.

64.81 Opening of transcript or recording of closed meeting.

Authority: Pub. L. 94-482, Sections 201-210, 90 Stat. 1975, (20 U.S.C. 961-68); 5 U.S.C. 552b.

2. A new Subpart heading is added before § 64.1 to read as follows:

Subpart A—Program Regulations

* * * * *

Subpart G—Meetings of the National Museum Services Board

General

§ 64.70 Scope.

5 U.S.C. Section 552b, added to the United States Code by the Government in the Sunshine Act, Pub. L. 94-409 (1976), provides that collegial bodies which head Federal agencies must, with certain exceptions, hold their meetings in public. Section 552b applies to meetings of the National Museum Services Board ("NMSB"). The regulations in this document (Subpart G of Part 64, Title 34 CFR) set forth procedures for the conduct of meetings of the NMSB in accordance with Section 552b.

§ 64.71 General rule.

Unless properly closed under § 64.78, every portion of every meeting of the NMSB is open to public observation. For the purposes of this document a "meeting" means the deliberations of at least the number of members of the NMSB required to take action on behalf of the NMSB, where these deliberations determine, or result in the joint conduct or disposition of, official IMS business. (A "meeting" does not include deliberations required or permitted by subsections (d) or (e) of Section 552b.)

§ 64.72 Application to NMSB committees.

This document applies to committees of the NMSB when they are authorized to make final policy decisions on the NMSB's behalf. This document does not apply to committees or informal working groups of the NMSB which are authorized to make recommendations or reports to the NMSB or to perform technical or ministerial functions on its behalf.

§ 64.73 Record vote.

(a) Certain action of the NMSB with regard to meetings under these regulations may be taken only by "record vote." For purposes of this document, a vote of the NMSB is a "record vote" if—

(1) It carries by a majority of all those holding office as NMSB members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each member voting is recorded.

(b) Within one day of a record vote to close, or withhold information about, a meeting, or any record vote for this purpose that does not achieve the necessary majority, the NMSB makes available to the public a written record showing the vote of each member.

(c) The NMSB may take a vote with respect to matters governed by this part (without convening) by means of circulation of a written ballot, tally sheet, or other notation procedures.

Announcement of Meetings

§ 64.74 Public announcement of meetings.

(a) Except as stated in paragraphs (b) and (c) of this section, the NMSB makes a public announcement of each meeting at least one week before the meeting. The announcement covers:

(1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and phone number of the official designated to respond to requests for information on the meeting.

(b) The announcement may be made less than a week before the meeting if it announces or after the meeting only if (1) the NMSB by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) a public announcement is made at the earliest practicable time.

(c) All or any portion of the announcement of any meeting may be omitted if the NMSB by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 64.78.

§ 64.75 Changes in time or place of meeting.

The time or place of a meeting of the NMSB that has been publicly announced as provided in § 64.74 may subsequently be changed. However, the change must be publicly announced at the earliest practicable time.

§ 64.76 Changes in subject matter of meeting.

The subject matter of any portion of any meeting of the NMSB that has been publicly announced as provided in § 64.74 (or the determination whether any portion of any meeting so publicly announced will be open or closed) may subsequently be changed if—

(a) The NMSB determines by record vote that agency business so requires and that no earlier announcement of change was possible; and

(b) The NMSB publicly announces the change and the vote of each member on the change at the earliest practicable time. (Deletion or postponement of agenda items are not subject to the requirements of this section.)

§ 64.77 Publication of announcements.

Promptly following a public announcement required by these regulations, the NMSB submits, for publication in the Federal Register, a notice containing information regarding the announcement as required by Section 552b.

Closed Meetings**§ 64.78 Reasons and procedures for closing meetings.**

(a) The NMSB may, by record vote in accordance with Section 552b, close any portion of a meeting if it determines that the portion falls within one of the exceptions stated in 5 U.S.C. Section 552(c). (These exceptions are listed in Appendix A.)

(b) In making a determination under paragraph (a) of this section, the NMSB considers whether the public interest merits keeping the meeting open although an exception applies.

(c) The Board addresses requests for the certification required by Section 552b to the General Counsel of the Department of Education.

(d) Within one day of a record vote closing a portion of a NMSB meeting, the NMSB makes available a full written explanation of the NMSB's action and a list of all persons it expects to attend the meeting and their affiliations.

§ 64.79 Requests to close meetings.

A person who believes his or her interests may be directly affected by a meeting or a portion of a meeting may request the NMSB to close it to the public for a reason cited in paragraphs (5), (6), or (7) of Appendix A. Such requests are handled under procedures established by the NMSB in accordance with Section 552b.

§ 64.80 Materials related to closed portions of meetings.

If a portion or portions of any meeting of the NMSB are closed to the public—

(a) The presiding officer of the meeting (usually the Chairman of the NMSB) furnishes a statement setting forth the time and place of the meeting and the persons present (including staff).

(b) Except where the Act authorizes minutes to be kept, the NMSB makes a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(c) The NMSB maintains the presiding officer's statement, the General Counsel's certificate as required by Section 552b, and the transcript, recording, or minutes of the meeting for at least two years after the meeting and at least one year after the NMSB completes consideration of any

proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 64.81 Opening of transcript or recording of closed meeting.

(a) Except as stated in paragraph (b) of this section, the NMSB makes available for inspection the transcript, electronic recording or minutes of every portion of every closed meeting on request to any member of the public. The transcript or recording is made available in an easily accessible place. The NMSB furnishes to any member of the public on request copies of the transcript (or of a transcription of the recording) disclosing the identity of each speaker. The NMSB charges for the copies or transcriptions no more than the actual cost of duplication or transcription.

(b) The NMSB withholds the transcripts or recording of the discussion of any agenda item if the Chairman of the NMSB (or a NMSB member designated by the Chairman) determines that the discussion contains information which should be withheld under the same standards which apply for closing meetings under § 64.78. The NMSB releases the transcript or recording so withheld when the Chairman (or the Chairman's designee) determines that the grounds for withholding no longer apply.

Appendix A

A meeting may be closed if:

(1) It is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) It is likely to relate solely to the internal personnel rules and practices of the IMS or another Federal agency;

(3) It is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) It is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) It is likely to involve accusing any person of a crime, or formally censuring any person;

(6) It is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) It is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(7);

(8) It is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) It is likely to disclose information, the premature disclosure of which (i) in the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) be likely to significantly frustrate implementation of a proposed IMS action unless the IMS has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) It is likely to specifically concern the IMS participation in a civil action or proceeding, or action in a foreign court or international tribunal, or an arbitration.

[FR Doc. 80-24135 Filed 8-9-80; 8:45 am]

BILLING CODE 4000-02-M

34 CFR Part 64**Museum Services Program**

AGENCY: Institute of Museum Services, ED.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues regulations governing grants under the Museum Services Program as authorized by the Museum Services Act, which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976. These regulations state eligibility conditions, application requirements and funding criteria and other rules for the administration of the program.

EFFECTIVE DATE: These regulations take effect August 11, 1980.

FOR FURTHER INFORMATION CONTACT:

Mrs. Lee Kimche, Department of Education, Institute of Museum Services 330 C. Street, SW., (Room 4008), Switzer Building, Washington, D.C. 20201. Telephone: (202) 245-8817.

SUPPLEMENTARY INFORMATION: *Nature of program.* The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, was enacted on October 8, 1976.

The purpose of the Act is stated in section 202 as follows:

"It is the purpose of this title to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific

heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public."

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director. IMS is an agency within the Department of Education. A more detailed description of the structure of the Institute and the provisions of the Act may be found in 43 FR 45166 (September 29, 1978).

Current program regulations. Following discussions of the National Museum Services Board meeting in public sessions and a subsequent opportunity for public participation, IMS issued regulations on September 29, 1978, governing the administration of the Museum Services Program under the Act. These regulations for the Museum Services Program were published at 43 FR 45166 and are now codified as part 64 of Title 34 Code of Federal Regulations. The program regulations provide rules regarding the definition of the term "museum" for purposes of the program; the eligibility of museums for assistance; the types of assistance available; the requirements which applicants must meet; and the criteria used to judge applications. The program regulations provide for assistance to museums for general operational support and for project support.

Need for changes. IMS has now applied the program regulations during two funding cycles. While the basic policy decisions reflected in the program regulations remain sound, experience with the regulations has indicated the need for certain substantive, clarifying and technical changes. These changes were made with the advice and consent of the National Museum Services Board meeting in public sessions. A number of these changes respond to specific problems or issues which IMS staff has faced in the administration of the program or to comments or concerns expressed by applicants. Other changes enable the program to be more responsive to the current needs of museums.

A number of conforming changes are necessitated by the development of a set of general administrative regulations for the Department of Education, of which IMS is a part. The administrative regulations are known as the Education Division General Administrative Regulations (EDGAR). They are published in final form at 45 FR 22494, April 3, 1980. The regulations published below invite further attention to EDGAR, make amendments to the museum services program regulations that would conform them to EDGAR,

and exclude the Museum Services Program from certain provisions of EDGAR.

Major changes made. On January 23, 1980, IMS published a proposed rule at 45 FR 5648 which proposed changes in the program regulations published on September 29, 1978. These final regulations reflect those changes.

The major changes in the program regulations are summarized in the following paragraphs of this preamble. These changes are applicable to the FY 1980 competition under the Museum Services Program.

1. Related institutions. A provision designed to state factors IMS uses in deciding whether two or more "related institutions" are separate museums is added as a new § 64.6. IMS has frequently confronted this problem in connection with eligibility for funding determinations and believes that the clarifying language will help to inform museums of the factors IMS will use in dealing with this problem.

2. Cooperative education projects. Funding of projects involving cooperation between museums and local educational agencies (school districts) to develop and carry out model museum education programs is given greater emphasis through an addition to § 64.8(a), which is the list of activities eligible for special project assistance (§ 64.8(a)(7)).

3. Planning projects. Museums may seek project assistance to develop in-depth, long range institutional plans as a result of language which is added as § 64.8(a)(9). Priority is given to such project applications in the fiscal year 1980 competition by language in § 64.12(b)(2).

4. Higher ceiling. The current program regulations inform applicants that individual museums should not expect an award in excess of \$25,000. IMS increases this ceiling from \$25,000 to \$35,000. This change reflects higher operating costs which museums face and makes the program more responsive to the current needs of museums.

5. IMS assistance in relation to total museum budget. Section 64.16 of the program regulations, which deals with the IMS share of the cost of a proposal, is revised to provide that IMS normally does not make general operational support grants for more than 30 percent of a museum's operating budget. It has been the experience of IMS, given current and anticipated funding levels, that awards in excess of this amount are unlikely and, in any event, would involve a degree of potential dependence on Federal funding which would run counter to the purposes of the Act.

6. Conforming regulations to EDGAR. Various amendments are made to conform these regulations to the Education Division General Administrative Regulations published in final form at 45 FR 22494 on April 3, 1980. In particular, § 100a.500 of EDGAR informs applicants that assistance under the program is subject to the following civil rights requirements—Title VI of the Civil Rights Act of 1964, (prohibiting discrimination on the basis of race, color, or national origin); Title IX of the Education Amendments of 1972 (prohibiting discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap); and the Age Discrimination Act (prohibiting discrimination on the basis of age). A summary and explanation of EDGAR is contained in that document.

Public Participation. Interested persons were given sixty days to comment on the notice of proposed rulemaking containing the above changes. During this period, several comments were received. The paragraphs below summarize these comments and the responses to them.

Comment. A commenter noted that Section 202 of the Museum Services Act provides that one of the Act's purposes is to assist museums in their educational role, in conjunction with formal systems of postsecondary education. This commenter felt that the priority in § 64.12(b)(2) of the proposed regulations on coordination with local school systems ignored a mandated responsibility for postsecondary education involvement.

Response. No change is made in the regulations. Section 202 of the Museum Services Act states in part that "[i]t is the purpose of this title to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education. . . ." Coordination with systems of postsecondary education is thus one of several stated purposes of the Act. Section 64.12(b)(2) of the regulations states only that coordination with local school systems is a *priority* for project support funds; it does not in any way preclude consideration of applications involving cooperation with other levels of education, including postsecondary. IMS has not ignored postsecondary institutions in providing assistance. In 1979, of a total of 403 institutions given IMS assistance, 70 were university museums. There were none funded which were affiliated with local educational agencies. The priority is necessary to enable IMS to carry out its

role of encouraging cooperation between museums and local school systems.

Comment. One commenter suggested that § 64.12(b)(2) of the proposed regulation be changed to read: ". . . in-depth long range institutional planning and cooperative education projects between museums and local education agencies, or other appropriate non-profit groups" (emphasis supplied). The commenter felt that non-profit research and advocacy groups were a "neglected museum resource."

Response. No change is made in the regulations. Section 202 of the Museum Services Act provides for assistance to museums in their educational activities in conjunction with a number of organizations. Priority for cooperative projects between museums and local educational agencies is consistent with the purposes of the Act and the particular focus on these activities in the regulations is warranted by the experience of IMS in seeking to encourage such activities. Nothing in the regulations precludes a museum from engaging in a cooperative project with other non-profit groups.

Comment. A commenter felt that it appeared to be easier to get funding for new displays and exhibits than to upgrade old ones. This commenter wanted funding specifically enlarged so as to include improvement of old exhibits.

Response. No change is made in the regulations. The term "museum services" is defined in § 64.4 of the regulations as services provided by a museum including but not limited to preserving and maintaining its collections, exhibiting its collections to the public, and providing educational and other programs through the use of its collections and other resources. Sections 64.7 and 64.8 of the proposed regulations outline the types of programs presently provided by IMS. Such assistance is provided to ". . . maintain, increase, or improve museum services. . ." and is intended to help museums upgrade their existing services.

It should also be noted that § 64.10(b) specifically states that the costs of purchasing objects for a museum's collection are not allowed, except for library, literary, or archival material under either project support or general operating support grants.

Comment. A commenter wanted to know whether service organizations are eligible for IMS funding.

Response. Presently, service organizations are not eligible for funding under the Museum Services Act, which provides only for grants to "museums" as defined in that Act.

Comment. A commenter wanted to know whether a museum can apply for and receive funds in more than one category.

Response. An applicant may apply for one or more types of assistance under § 64.7, relating to general operational support, and § 64.8, relating to project support. For fiscal year 1980, a museum may normally receive no more than \$35,000.

Comment. A commenter wanted to know why specific reference was not made in the proposed regulations to compliance with the requirements of § 106 of the National Historic Preservation Act.

Response. Section 64.17(a) of the regulations state that Parts 100a and 100c of the Education Division General Administrative Regulations (EDGAR) apply to the award and administration of grants under the Museum Services Act. Section 100a.602 of EDGAR requires an applicant to describe the relationship of a project to, or its probable effect on, structures, objects, or sites which are included in the National Register of Historic Places. Applicants should consult EDGAR itself for the specific language of the section.

A more specific reference to the National Historic Preservation Act in the regulations is not needed in view of the above provision.

These regulations have been approved by the National Museum Services Board and the Director of the Institute of Museum Services.

(Catalog of Federal Domestic Assistance No. 13.923, Museum Services Program. Part I of OMB Circular A-95 does not apply.)

Dated: August 6, 1980.

Steven A. Minter,

Acting Secretary of Education.

Part 64 Subpart A of Title 34 of the Code of Federal Regulations is revised as to read as follows:

PART 64—INSTITUTE OF MUSEUM SERVICES

Subpart A—General

Sec.

- 64.1 Purpose of museum services program.
- 64.2 Scope of this document.
- 64.3 Definition of museum.
- 64.4 Other definitions.
- 64.5 Eligibility—Who may apply.
- 64.6 Related institutions.
- 64.7 General operational support.
- 64.8 Other types of assistance—project support.
- 64.9 Likely size of grants and allocation of funds among activities.
- 64.10 Allowable costs.
- 64.11 Basic requirements which a museum must meet to be considered for funding.
- 64.12 How applications are judged; priorities.

64.13 Criteria for evaluation of applications for general operational support.

64.14 Criteria for evaluation of applications for project support.

64.15 Duration of grant.

64.16 IMS share of the cost of a proposal.

64.17 Applicable grant administration provisions.

64.18 Reports.

Authority: Secs. 201–210, Pub. L. 94–462, 90 Stat. 1975, (20 U.S.C. 961–968); (5 U.S.C. 552b).

Subpart A—General

§ 64.1 Purpose of museum services program.

The purpose of this program of Federal financial assistance is to ease the financial burden borne by museums as a result of their increasing use by the public and to encourage and assist them to carry out their educational and conservation roles as well as other functions and to modernize their methods and facilities.

§ 64.2 Scope of this document.

This document establishes rules for the award of grants to museums from funds appropriated under the Museum Services Act including rules governing the eligibility of applicant institutions, the type of assistance which may be provided, requirements which applicants must meet and criteria to be used in judging applications.

§ 64.3 Definition of museum.

For the purpose of this part:

(a) "Museum" means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff—

- (1) Owns or uses tangible objects, whether animate or inanimate;
- (2) Cares for these objects; and
- (3) Exhibits them to the public on a regular basis.

(b) "Museum" includes (but is not limited to) the following institutions if they satisfy the provisions of this section:

- (1) Aquariums and zoological parks;
- (2) Botanical gardens and arboretums;
- (3) Museums relating to art, history (including historic building museums), natural history, science and technology; and
- (4) Planetariums.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution. The Institute encourages museums to use paid professional staff.

(d) An institution does not exhibit objects to the public for the purposes of this section if the display or use of the objects is secondary to its overall purpose.

(e) For the purposes of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

§ 64.4 Other definitions.

The following other definitions apply in this document:

"Act" means the Museum Services Act, Title II of the Arts, Humanities and Cultural Affairs Act of 1976, Pub. L. 94-462. (20 U.S.C. 961-968).

"Applicant" means an institution which is eligible and applies for assistance under the Act and this document.

"Board" means the National Museum Services Board established under Section 204 of the Act.

"Collection" includes objects owned, used or loaned by a museum as well as literary, archival and documentary resources required for the study and interpretation of these objects.

"Conservation" includes, but is not limited to, the following functions, as applied to animate as well as inanimate objects: Technical examination of materials, techniques, and conditions; provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, nurturing and transportation of objects; the physical treatment of objects for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and compensation for losses; the systematizing of collections and development of effective data retrieval processes; research and training in conservation; and establishment of the facilities to do research in or practice conservation.

"Department" means the Department of Education.

"Director" means the Director of the Institute of Museum Services.

"Grantee" means the recipient of a grant under the Act.

"Institute" means the Institute of Museum Services ("IMS") established under Section 203 of the Act.

"Museum services" means services provided by a museum including but not limited to preserving and maintaining its collections, exhibiting its collections to the public, and providing educational and other programs to the public through the use of its collections and other resources.

§ 64.5 Eligibility—Who may apply.

(a)(1) A museum located in the fifty States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may apply for a grant under the Act. (2) A public or private nonprofit agency, such as a State or municipal agency or an institution of higher education, which is responsible for the operation of a museum may apply on behalf of the museum. (3) A museum operated by a department or agency of the Federal Government may apply only to the extent authorized by general principles of law applicable to the receipt of Federal assistance by these departments or agencies.

(b) An applicant has the burden of establishing that it is eligible for assistance under this part.

§ 64.6 Related Institutions.

(a) If two or more institutions under the common control of one agency or institution or otherwise organizationally related apply for assistance under the Act, the Secretary determines, under all the relevant circumstances, whether they are separate museums for the purposes of establishing eligibility for assistance under this document. See §§ 64.5; 64.9.

(b) IMS regards the following factors as showing that a related institution is a separate museum:

- (1) The institution has its own governing body;
- (2) The institution has budgetary autonomy; and
- (3) The institution has administrative autonomy.

§ 64.7 General operational support.

In order to maintain, increase or improve museum services, a museum may apply for a grant under the Act to meet its administrative, staff and operating costs.

§ 64.8 Other types of assistance—project support.

(a) In order to increase or improve museum services through exemplary projects which are additional to its operating program, a museum may apply for a grant to:

- (1) Develop training programs for its staff;
- (2) Obtain technical assistance to carry out its functions or provide technical assistance to other museums;
- (3) Develop or demonstrate methods of conservation;
- (4) Develop and carry out museum programs for specific segments of the public, such as persons in urban

neighborhoods, rural areas, Indian reservations, penal and other State institutions, senior citizens, handicapped persons and educationally deprived or economically disadvantaged persons;

(5) Develop and carry out educational programs;

(6) Cooperate with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan;

(7) Cooperate with local educational agencies to develop and carry out model museum education programs;

(8) Modernize or preserve its facilities or structures (except in fiscal years 1978, 1979, and 1980); and

(9) Develop in-depth, long range institutional plans.

(b) By notice published in the Federal Register and applicable to a particular fiscal year, IMS may limit the types of activities to be funded under this section.

(c) An applicant may apply for one or more types of assistance under § 64.7 and this section.

§ 64.9 Likely size of grants and allocation of funds among activities.

(a) In view of limited funds, it is anticipated that no museum will receive more than \$35,000 under the Act for fiscal year 1980 and that most museums which are funded will receive a smaller amount. For future fiscal years, similar limitations may be specified by notice published in the Federal Register.

(b) Not less than 75 percent of the funds available under the Act for grants in a fiscal year will be reserved for grants under § 64.7 (general operational support).

§ 64.10 Allowable costs.

(a) Determination of costs allowable under a grant are made in accordance with government wide cost principles in Appendix C to 34 CFR Part 74, 45 FR 30876 (May 9, 1980), (in the case of applicants which are State or local government agencies), Appendix D (in the case of applicants which are institutions of postsecondary education), and Appendix F (in the case of applicants which are other nonprofit institutions).

(b) Costs of purchasing objects to be included in the collection of a museum are not allowable (except library, literary, or archival material incident to an activity under §§ 64.7 or 64.8).

§ 64.11 Basic requirements which a museum must meet to be considered for funding.

(a) *Application.* To apply for a grant, a museum must submit the designated

application form containing the information requested in the form. Instructions as to application contents are generally contained in the application notice published in the *Federal Register* when applications are invited. An application generally requires a museum to demonstrate that it meets the requirements described in this section and other applicable application requirements in the Education Division General Administrative Regulations (EDGAR).

(b) *IRS letter.* A museum applying as a private, nonprofit institution must supply a letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the Internal Revenue Code of 1954.

(c) *Financial statements.* Each applicant museum must supply its financial statement for its most recent completed fiscal year for which information is available. IMS prefers an audited statement. If the applicant has previously received an IMS award, IMS requires that the statement be audited. If the Director finds that a museum cannot meet this requirement because it customarily does not receive audited financial statements separate from those of its parent organization, and if the applicant is periodically audited, the Director may waive or modify the requirement with respect to that museum.

(d) *Long-range plan.* Each applicant museum must include long-range plans for program and financial development.

(e) *Maintenance of effort.* Each applicant museum must assure that it will maintain its fiscal effort for museum services. An applicant complies with this assurance if its aggregate expenditures for museum services (exclusive of Federal assistance) for the grant period are at least equal to those expenditures for the equivalent preceding period.

§ 64.12 How applications are judged; priorities.

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in §§ 64.13 and 64.14. Normally, these applications are first evaluated by readers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b)(1) Priority is given to museums which have been providing museum services for at least 2 years prior to applying to IMS.

(2) In the case of applications under § 64.8 for fiscal year 1980, priority is given to applications for in-depth long

range institutional planning and cooperative education projects between museums and local educational agencies.

(c) To achieve diversity in the distribution of assistance, the Institute considers the location, size, and discipline of the applicant in addition to the criteria in §§ 64.13 and 64.14.

(d)(1) When the Director finds the circumstances described in 45 CFR 100a.219(a) of the Education Division General Administrative Regulations (relating to emergencies and other special circumstances), the Director may make a grant to a museum under the procedures described in 45 CFR 100a.220. The Director intends to invoke this authority only in emergency situations. The selection procedures in paragraph (a) of this section do not apply to the making of such a grant.

(2) A grant to a museum under this paragraph may not exceed \$10,000 in a fiscal year.

(3) Grants under this paragraph may not exceed (in the aggregate) \$300,000 in a fiscal year.

(4) The Director may not make a grant under this paragraph unless the Board (or a subcommittee of the Board) approves it.

§ 64.13 Criteria for evaluation of applications for general operational support.

The following criteria apply to the evaluation of all applications for general operational support submitted in fiscal year 1979 and succeeding fiscal years. In applying these criteria, the total operation of the applicant museum is assessed, especially the museum's operation as it would be if the general operational support is granted. This assessment is based primarily on the information supplied in the museum's application. A positive answer to the questions below favors the applicant.

(a) *Museum services.* Are the applicant's museum services of high quality? How will their quality be improved or maintained if the general operational support requested?

(b) *Collection and exhibits.* Are the museum's collections and exhibits of high quality and importance? How will the conservation of the collections be enhanced or maintained if the general operational support is granted?

(c) *Accessibility.* How accessible to the public are the museum's services, collections, and exhibits? How accessible will they be if the general operational support is granted?

(d) *Population served.* To what extent does the museum serve persons who otherwise have limited access to the type of services which it provides?

(e) *Financial management.* What is the quality of the financial management of the museum?

(f) *Long range plans.* What is the quality of the museum's long range plans for financial and program development?

(g) *Community commitment.* How committed to the museum are its users and supporters? Does the museum have a substantial base of non-Federal support?

(h) *Use of IMS funds (when applicable).* Has the museum used effectively its IMS funds, if it has received any?

§ 64.14 Criteria for evaluation of applications for project support.

The following criteria apply to the evaluation of all applications for project support. Criteria (a)-(e) of this section are based on EDGAR 45 CFR 100a.202-100a.206.

(a) *Plan of operation.* (Based on EDGAR 45 CFR 100a.202). What is the quality of the plan of operation for the project? In applying this criterion, IMS looks for information that shows:

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (Based on EDGAR 45 CFR 100a.203). What is the quality of the key personnel the applicant plans to use on the project? In applying this criterion, IMS looks for information that shows:

(1) The qualifications of the project director (if any);

(2) The qualifications of each of the other key personnel used in the project;

(3) The time that each person referred to in paragraphs (b)(1)(2) of this section plans to commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) *Budget and cost effectiveness.* (Based on EDGAR 45 CFR 100a.204). Does the project have an adequate budget and is the project cost effective? In applying this criterion, IMS looks for information that shows:

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Based on EDGAR 45 CFR 100a.205). What is the quality of the evaluation plan for the project? In applying this criterion IMS looks for information that shows an objective, quantifiable method of evaluation under 45 CFR 100a.590.

(e) *Adequacy of resources.* (Based on EDGAR 45 CFR 100a.206). Does the applicant plan to devote adequate resources to the project?

In applying this criterion, IMS looks for information that show:

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(f) *General applicability.* To what extent does the application address a problem which is general to a number of museums but has not been adequately addressed?

(g) *Model or exemplary project.* To what extent does the project represent a model or exemplary approach to the problem addressed? To what extent may this approach, if successful, be replicated?

(h) *Other Federal support.* Does the applicant lack alternative sources of Federal support for the project?

(i) *Dissemination.* Has the applicant made satisfactory provision for disseminating the results of the project to other interested persons?

§ 64.15 Duration of grant.

Grants under the Act normally permit the grantee to use the funds for a period of up to 12 months from the start of the grant period. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If, in the case of a grant under § 64.8, the grantee needs additional time to complete the grant project, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

§ 64.16 IMS share of the cost of a proposal.

(a) Subject to § 64.9(a) and the applicable requirements in 34 CFR Part 74 relating to allowable costs, a museum may receive a grant for up to 50 percent of its proposed operating or activity budget for museum services in the case of a grant under § 64.7, or up to 50 percent of its approved project costs, in the case of a grant under § 64.8. However, IMS normally does not make

grants for more than 30 percent of a museum's operating or activity budget in the case of a grant under § 64.7.

(b) An applicant requesting general operational support under § 64.7 may submit a total operating budget, including volunteer and other contributed services, which shows that the applicant will satisfy the requirements of paragraph (a) of this section, (relating to cost sharing) but which need not identify the particular operating costs for which IMS funds will be used. An applicant which receives general operational support on this basis must be prepared to show that its actual operation conformed to the operating proposal on which its application was judged.

§ 64.17 Applicable grant administration provisions.

(a) Except as stated in paragraph (b) of this section, the provisions of the Education Division General Administrative Regulations (EDGAR), 45 CFR Parts 100a and 100c, apply to the award and administration of grants under the Act. EDGAR contains general administrative and fiscal requirements related to grant programs administered by the Department of Education of which IMS is a part. Part 45 CFR 100a contains regulations covering how to apply for a grant, information that must be included in applications, general criteria for the selection of applications, grant conditions, administrative responsibilities of those who receive a grant, and compliance procedures. Part 45 CFR 100c contains general definitions which apply to all Education Division programs. EDGAR also makes applicable to the Museum Services Program certain other general regulations including 34 CFR Part 74 (Departmental grant administration provisions) and provisions prohibiting discrimination on the basis of race, sex, handicap or age. Applicants should consult EDGAR and other applicable regulations which EDGAR cross references.

(b) The following provisions of EDGAR 45 CFR Part 100a do not apply to general operational support grants under this document:

(1) Sections 100a.201-100a.206 (selection criteria);

(2) Sections 100a.111-100a.116 (application contents); and

(3) Sections 100a.560-100a.568 (indirect cost rates).

§ 64.18 Reports.

In its final report a grantee shall briefly describe how the performance of the grant has satisfied the objectives of the recipient museum as stated in its

application and how assistance under the Act has served the purpose of the Act as reflected in the applicable evaluation criteria.

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