

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Division of Culture & History, Dept. of Education & Arts TITLE NUMBER: 82

CITE AUTHORITY: W. Va. Code §29-1-3(c) (2)

AMENDMENT TO AN EXISTING RULE: YES  NO

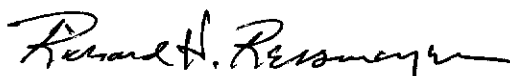
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 7

TITLE OF RULE BEING PROPOSED: Cultural Facilities and Capital Resources Grant Program  
Contact: Ricahrd H. Kessmeyer, Director of Arts  
WV Division Culture and History 304 558-0220, ext. 721

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

\$12.60



**WEST VIRGINIA DIVISION OF  
CULTURE AND HISTORY**

June 15, 2000

Ms. Debra Graham, Counsel  
Legislative Rule Making Review Committee  
Building 1, Room MB 49  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

Dear Ms. Graham:

The West Virginia Commission on the Arts, meeting at its published time and date and with a quorum present on Tuesday June 6, 2000 approved the attached proposed Legislative Rule for

Title 82, Series 7: Cultural Facilities and Capital Resources Grant Program. The Commission respectfully requests review of this Legislative Rule.

The Public Comment Period filed in the State Register May 5, 2000 ended Noon Monday, June 5, 2000.

The comments received were given full consideration and discussion. Three comments were received on the same subject: request to remove a requirement on matching funds for debt retirement grants [82-7-9.4 in the original submission May 5, 2000] were received from 1) Vivian Conly, Executive Director, Carnegie Hall, Lewisburg; 2) Dee Brown, Development Director, Greenbrier Valley Theatre, Lewisburg; and 3) Mark Payne, Executive Director, Museum in the Community, Hurricane.

One additional comment was received: William R. Haden, President, West Virginia Wesleyan College requested that the exclusion of colleges and universities from applications to the Cultural Facilities and Capital Resources Grant Program be removed.

The West Virginia Commission on the Arts considered resolutions, properly moved and seconded, to accept the request to remove the requirement on matching funds for debt retirement, and to deny the request to remove the exclusion of colleges and universities from the Cultural Facilities and Capital Resources Program. The change is reflected in the attached approved Legislative Rule and the filing with the Secretary of State for an Emergency Amendment to an Emergency Legislative Rule [a copy of which we have provided for the LRMRC].

The Commission will appreciate your expeditious handling of this request.

Sincerely,

Richard H. Ressmeyer  
Director Arts  
Secretary, West Virginia Commission on the Arts

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: June 16, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Culture and History  
1900 Kanawh Blvd., East  
Charleston, WV 25305-0300  
Att: Richard H. Ressmeyer, Director of Arts

LEGISLATIVE RULE TITLE: Cultural Facilities and Capital Resources Grant Program

1. Authorizing statute(s) citation W. Va. Code §29-1-3 (c) (2); S. B. 657

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
May 5, 2000

b. What other notice, including advertising, did you give of the hearing?  
Announcement was made on the WV Division of Culture and History WebPages at www.wvculture.org; written notification was mailed to all FY2000 applicants to grant programs approved by the West Virginia Commission on the Arts

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Noon Monday, June 5, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 16, 2000

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Richard H. Ressmeyer, Director of Arts  
WV Division of Culture and History  
1900 Kanawha Blvd., East  
~~Charleston, WV 25305-0300~~  
304 558-0220, ext. 721  
FAX 304 558-2779  
e-mail: richard.ressmeyer@wvculture.org

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- g. **IF DIFFERENT FROM ITEM 'F'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

SAME AS "f"

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- 3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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Summary of proposed rule: TITLE 82, LEGISLATIVE RULE;  
DIVISION OF CULTURE AND HISTORY; SERIES 7; CULTURAL  
FACILITIES AND CAPITAL RESOURCES GRANT PROGRAM.

This Legislative Rule provides the administrative procedures and requirements for application and grants under West Virginia Commission on the Arts' Cultural Facilities and Capital Resources Grant Program.

Renovation, construction or acquisition, including alteration needed to comply with Section 504 of the 1974 Rehabilitation Act or the 1990 Americans with Disabilities Act; durable equipment, including sound and lighting systems; furnishings which contribute to the artistic experience; and, capital purchases that enhance earned income of the arts organization are qualified projects activities under this rule.

The following projects will be given priority in awarding grants. They are projects that (a) increase or assure public access to the arts; (b) involve collaborations and partnerships that leverage additional public and private investment; and (c) projects that are supported by and serve more than one county. Additional weight will be given to: (a) Projects that contribute to economic development; (b) include requests from organizations that further cultural development in rural, under-served, or minority communities; (c) address known health and safety deficiencies; (d) create or improve access to facilities for working artists with disabilities; (e) improve, expand, or rehabilitate existing buildings to provide for handicapped accessibility; and, (f) reduce an organization's operating costs.

Written Correspondence to: Richard H. Ressmeyer, Director of Arts  
Division of Culture and History  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0300

304 558-0220, ext. 721

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Cultural Facilities and Capital Resources Grant Program

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV Division of Culture and History, Richard H. Ressmeyer, Director of Arts

Address: 1900 Kanawha Blvd., East  
Charleston, WV 25305-0300  
304 558-0220, ext. 721  
FAX: 304 558-2779  
e-mail: richard.ressmeyer@wvculture.org

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$1,100,000		\$1,100,000	\$1,600,000	\$1,600,000
<b>PERSONAL SERVICES</b>	NONE				
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>	\$900,000		\$900,000	\$1,200,000	\$1,400,000
<b>EQUIPMENT</b>	\$185,000		\$185,000	\$385,000	\$385,000
<b>OTHER</b>	\$15,000		\$15,000	\$15,000	\$15,000

2. Explanation of Above Estimates:

This is a new grant program of the West Virginia Commission on the Arts. West Virginia Video Lottery proceeds have been designated for this purpose [S.B. 657]. The program will offer grants through a competitive process for acquisition, construction, renovation, and durable equipment. There are no expenses for personal services.

3. Objectives of These Rules:

This legislative rule governs all application to the Cultural Facilities and Capital Resources Grant Program.

Rule Title: Cultural Facilities and Capital Resources Grant Program

4. Explanation of Overall Economic Impact of Proposed Rule:

- A. Economic Impact on State Government:  
Improvements to the capacity of arts organizations to present arts experiences to the people of West Virginia will generate employment, provide for the purchase of intra-state foods and services, and will expand opportunities for Cultural Tourism to attract visitors from other states.
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: West Virginia citizens participate in the arts in greater numbers each year. The need to have safe, efficient physical plant facilities in which to present quality arts programs has been a goal of many arts organizations across the state. Music, theatre, museums, dance programs and artists served by arts organizations will benefit West Virginia communities.
- C. Economic Impact on Citizens/Public at Large.  
Programs showcasing West Virginia culture and the arts by West Virginia artists and arts organizations stimulate pride in our state's accomplishments and contributes to economic development.

Date: June 16, 2000

Signature of Agency Head or Authorized Representative:

Richard H. Rissinger

TITLE 82  
LEGISLATIVE RULE  
DIVISION OF CULTURE AND HISTORY

FILED

JUN 16 12 50 PM '00

SERIES 7  
CULTURAL FACILITIES AND CAPITAL RESOURCES GRANT PROGRAM

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§82-7-1. General**

- 1.1. Scope. - This Legislative Rule provides the administrative procedures and requirements for application and grants under West Virginia Commission on the Arts' Cultural Facilities and Capital Resources Grant Program.
- 1.2. Authority. - W. Va. Code §29-1-3
- 1.3. Filing Date. -
- 1.4. Effective Date. -

**§82-7-2. Definitions**

- 2.1. "Checklist" means that portion of the Application Instructions which enumerates the required components of a complete application.
- 2.2. "Commission" means West Virginia Commission on the Arts established by W. Va. Code §29-1-3.
- 2.3. "Durable Equipment" means industrial products, including intermediate materials, which have a life of a year or more and that contribute significantly to an applicants ability to deliver services to the public through projects that fall within the priorities of this grant program.
- 2.4. "Feasibility Study" means, for new construction projects, a report which includes architectural, socioeconomic, construction contracting, cultural, marketing, and financial analysis; and, for renovation projects, a report to consist of a discussion of the applicant's ability to complete the project and to implement the proposed programs.

- 2.5. "Grant Period" means the twelve month period running from July 1 through June 30, during which all grant funds must be expended, normally the next fiscal year, following the approval of an award by the commission. Provided that: a request for an extension of not greater than one hundred twenty days may be made in writing to the director of arts and upon good cause shown, the director may grant the extension.
- 2.6. "Panel(s)" means one or more persons selected by the director of arts to read and review applications for grants and may include members of the commission and others with expertise in architecture, design, construction, and technical aspects of the arts disciplines.
- 2.7. "Required Attachments" means the required submissions detailed in §82-7-4.2, including audit, proof of undisturbed use, audit, feasibility study, compliance with Section 504 and ADA regulations, compliance with National Register of Historic Places regulations, reduction of current architectural plans, and list of local private and public persons and organizations in support of the project.
- 2.8. "Undisturbed Use" means that projects involving the purchase or renovation of real or personal property require either proof of ownership, an option to purchase, or a long term lease with an un-expired period required for the Project, provided that the minimum terms of undisturbed use for consideration of a grant are as follows: (a) for Equipment, capital fixture (not office furniture), 10 years; (b) for Building Renovation or Improvements 20 years; (c) for Increase of square footage 30 years; (d) for Building Construction (land is leased) 40 years. (For purposes of meeting this requirement, the period of a renewal option contained in the current lease will be considered, provided such renewal does not require landlord approval.)

### **§82-7-3. Priorities.**

- 3.1. The following projects will be given priority in awarding grants. They are projects that (a) increase or assure public access to the arts; (b) involve collaborations and partnerships that leverage additional public and private investment; and (c) projects that are supported by and serve more than one county.

- 3.2. Additional weight will be given to: (a) Projects that contribute to economic development; (b) include requests from organizations that further cultural development in rural, under-served, or minority communities; (c) address known health and safety deficiencies; (d) create or improve access to facilities for working artists with disabilities; (e) improve, expand, or rehabilitate existing buildings to provide for handicapped accessibility; and, (f) reduce an organization's operating costs.

**§82-7-4. Eligibility Requirements.**

Organizations eligible for panel review must be able to meet the following requirements by the application deadline:

- 4.1. A grant applicant must be one of the following:

4.1.1 An agency of municipal or county government, including county school boards.

4.1.2 A not-for profit, tax-exempt West Virginia corporation as defined in 501(c)(3) and 501(c)(4) of the Federal Internal Revenue Code of 1954 and as designated in compliance with §170 of that code at the time of application and prior to the release of funds.

- 4.1.3 A grant applicant must also:

(a) Have received funding from the West Virginia Commission on the Arts (WVCA) in each of the previous three years. (Receipt of funding through a regranting program, including ORBI, a Mini Grant or Peer Assistance Network advisory does not qualify toward meeting this requirement.) The West Virginia Commission on the Arts will consider requests for exemption from this requirement submitted in writing thirty days prior to the grant application deadline. The request must demonstrate, to the satisfaction of the West Virginia Commission on the Arts, the capacity of the applicant organization to fulfill the arts and administrative purposes and requirements of the project;

(b) And have satisfied the administrative requirements, including final reports, of grants received from the Commission.

4.2. A grant applicant must submit:

- 4.2.1. A completed and signed Cultural Facilities and Capital Resources Grant Program Application Form, including any required attachments.
- 4.2.2. Either proof of ownership, option to purchase, or a long term lease with an un-expired period required for the Project Scope: Equipment, capital fixture (not office furniture), 10 years; Building Renovation--Improvements 20 years; Increase of square footage 30 years; Building Construction (land is leased) 40 years. (For purposes of meeting this requirement, the period of a renewal option contained in the current lease will be considered, provided such renewal does not require landlord approval.)
- 4.2.3. If the applicant is a not-for-Profit, tax-exempt West Virginia Corporation, a copy of the applicant organization's independent, certified audit or review for the most recent fiscal year.
- 4.2.4. If an applicant for a renovation or construction project, a feasibility study. New Construction projects must submit an independently prepared feasibility study with the original application, and an executive summary of the feasibility study with each of the application copies. The new construction study must be conducted by people or organizations possessing experience and expertise in architectural, socioeconomic, construction contracting, cultural, marketing, and financial analysis. The executive summary of the study should address information about the facility's use and projected programming including revenues, an analysis of operations, and a forecast budget analysis.
- 4.2.5. A feasibility study for renovation projects which may be conducted by the applicant and should consist of a discussion of the applicant's ability to complete the project and to implement the proposed programs for the completed project. The study should include the number and responsibilities of staff dedicated to the completion of the project and any new or expanded programs.

- 4.2.6. Proof that renovation and construction plans comply with Section 504 of the Federal Rehabilitation Act and the Americans with Disabilities Act (ADA) and regulations concerning access to public buildings for people with disabilities.
- 4.2.7. Proof that renovation and construction plans for facilities currently on the National Register of Historic Places comply with regulations governing renovation of historic places. Arts organizations planning renovation to buildings fifty years and older must consult with the West Virginia Historic Preservation Office.
- 4.2.8. An 8 1/2" x 11" reduction schematic of current architectural plans.
- 4.2.9. The names of public and private persons and organizations supporting the project.
- 4.3. The project must have a Project Team established to be considered for funding. The Project Team must include the names and addresses of the architect, engineer, design consultants, and general contractor. Certification forms confirming the project status are in the application. At least the architect or engineer must have been selected and must sign the form. If the Project Team is "in house," the form must be signed by the "in house" architect, designer, engineer, or contractor. If the project does not require an architect, the appropriate equivalent must sign the form.
- 4.4. A private individual or group or any for profit organization may not receive a grant under this program. In addition, public and private institutions of higher education are not eligible and any capital project receiving more than \$1 million from any agency or department of state government during the past five years is not eligible.

#### **§82-7-5. Application Review and Evaluation.**

- 5.1. The following criteria shall be used to evaluate each capital request: (a) Strength and quality of the organization's arts programs and administration; (b) the need for the proposed project; (c) the ability of the organization to raise the required matching funds and complete the project; (d) the degree to which the feasibility study for renovation and construction projects address artistic, technical, and financial aspects of the project; (e) the experience and

skills of the project consultants; and, (f) the ability of the organization to operate and maintain the facility after improvements are made.

- 5.2. Projects for acquisition, construction, renovation, and capital equipment including a request for \$50,000 or more may also be evaluated on-site prior to filing the application for a grant.
- 5.3. Eligible applications will be presented to a panel for examination and scoring. The panel for the Cultural Facilities and Capital Resources Grant Program will include Commission members and outside panelists with expertise in facilities planning, architecture, construction contracting, and arts disciplines.
- 5.4. The recommendations of the panel regarding any grant application will be reviewed, approved, amended, or rejected by the full Commission.

**§82-7-6. Appeals.**

- 6.1. General. -- Any applicant denied a grant under the provisions of this rule may appeal to the Commission by writing to the Director of Arts, requesting that the application be reconsidered. The letter of appeal must be received no later than sixty days after notice of denial.
- 6.2. Limited Consideration. -- Appeals will be considered only if the applicant can document specific examples that demonstrate that the application was misrepresented or improperly reviewed.
- 6.3. Appeal Process. -- The Director of Arts will review the letter of appeal and submit it with the original application to the Commission for consideration at their next regular meeting. The Commission will review the appeal and act on it during that meeting. The Director of Arts shall notify the applicant within ten days of the decision of the Commission.
- 6.4. New Materials and New Requests. -- If an applicant appeals a denial and submits new material or adds new purposes to the project which is the subject of the appeal, the request will be treated as a new application. New applications will be reviewed in the next grant cycle.

#### **§82-7-7. Qualified Project Activities.**

- 7.1. Qualified Project Activities. - Renovation, construction or acquisition, including alteration needed to comply with Section 504 of the 1974 Rehabilitation Act or the 1990 Americans with Disabilities Act; durable equipment, including sound and lighting systems; furnishings which contribute to the artistic experience; and, capital purchases that enhance earned income of the arts organization are qualified projects activities under this rule.
- 7.2. Disqualified Project Activities. -- Operating costs; office equipment such as typewriters and computers; bad debts; mortgage payments on a facility for construction or renovation which occurred prior to July 1, 1997; endowment campaigns; projects at public or private colleges or universities; projects which are restricted to private or exclusive participation, which shall include restricting access on the basis of sex, race, color, religion, national origin, disability, age, handicap, or marital status; and projects that take place outside West Virginia are not qualified project activities.
- 7.3. Effective with the new fiscal year beginning 2001-2002, grants are available only for project expenses which occur during the fiscal year grant period.

#### **§82-7-8. Grant Levels.**

- 8.1. Grant Levels. -- The amount of funds available for grants in the Cultural Facilities and Capital Resources category may vary from year to year. The Commission will determine the number and amount of grants to be awarded each year based on funds available. An applicant may be awarded a grant for a lesser amount than requested at the discretion of the Commission.
- 8.2. Phased Projects. -- Applicants with projects that include multi-year phases may apply for funding for up to three consecutive years. An applicant may not receive more than \$300,000, cumulative, for phased projects. Applicants (other than applicants for multi year, phased projects) receiving awards at the \$25,000 level or above will not be eligible to re-apply to the Cultural Facilities and Capital Resources Program for a period of two years following the end of the grant year in which they last received funding. Applicants (other than applicants for multi year, phased

projects) receiving awards at the \$50,000 level or above will not be eligible to re-apply for a period of three years following the end of the grant year in which they last received funding. Re-application may only be made for a new project which demonstrates significant public arts benefit beyond the achievements of the earlier project.

- 8.3. Grant Ranges. -- Eligible organizations may apply for grants for qualified projects at the following levels: (a) Level 1, \$10,000 to \$24,999; (b) Level 2, \$25,000 to \$49,999; (c) Level 3, \$50,000 to \$99,999; and, (d) Level 4, \$100,000 to \$200,000.

#### **§82-7-9. Matching Funds.**

- 9.1. General. -- Applicants are required to match grants on an equal dollar-for-dollar (1:1) match basis from federal, foundation, corporate, and local private contributions. No fund from any state government source may be counted toward the match amounts.
- 9.2. Cash Match. -- All funds used for this matching requirement must be in cash.
- 9.3. Limit on Request. -- An applicant may not request funds in excess of fifty percent (50%) of the total project costs.
- 9.4. Operational Funds. -- Any funds which are operational in nature or not designated to the project phase will not be allowed as matching funds.
- 9.5. Bond Issue Revenue. -- Revenue from bond issues that have not been passed at the time of application may not be used as matching funds. In addition, cash proceeds from bond issues must be expended by the end of the grant period in order to qualify as matching funds.
- 9.6. Fund Raising Costs. -- Fund raising costs are not acceptable as matching funds.
- 9.7. Matching Funds for Phased Projects. -- Matching funds will be designated only to the project phase presented in the application and may not be used in a previous or succeeding application, or in any other arts grant.

- 9.8. Expended Matching Funds. -- Matching funds, excluding those used for debt retirement, may have been expended prior to the start date of the grant award agreement if they: (a) are clearly a part of the project described; (b) can be documented upon request; and, (c) were not expended prior to July 1, 1997 or five years before the application date, whichever is the shorter period.
- 9.9. Mortgage Interest. -- The interest paid on the mortgage is considered to be the "cost of doing business," and may not be used as match.
- 9.10. Building or Land as Match. -- Unless owned by the applicant as set forth herein, the value of any building or land may not be used as matching funds. To be considered as matching funds, buildings or land owned by the applicant, must have been purchased or acquired within five years of the date of application; the buildings or land must have been intended for the grant purposes at the time of purchase or acquisition; and, only the purchase price or documented value at the date of acquisition, not the current market value, may be used as matching funds.
- 9.11. Loans. - Loan proceeds may not be counted as matching funds. Only unencumbered equity may be counted as matching funds.
- 9.12. State Government Funds. -- Any funds received from any agency of state government are not acceptable as matching funds.

#### **§82-7-10. Grant Payments.**

- 10.2. General. -- Payments on grant awards will be made in quarterly installments in accordance with the contract and invoice procedures of the Administration Section of the Division of Culture and History, consistent with requirements of the State Auditor.
- 10.2. Limits on Payments. -- Installment payments on grant awards will be limited to amounts for which both the expenses and matching funds have been confirmed.

**West Virginia Commission on the Arts**  
**Cultural Facilities and Capital Resources Grant Program**  
**APPLICATION EXPLANATION AND INSTRUCTIONS**

**SECTION 1: The Application Form**

**PART A: Applicant Information**

1. **APPLICANT:** Legal name of the organization directly responsible for the project and having undisturbed use of the facility at the time of application. Make sure that the street address is included if using a post office box for mailing. (Note: at the time of application, undisturbed use does not apply to acquisition projects)
2. **APPLICANT'S FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Must be provided before funds will be released. This is not a State of West Virginia tax exemption number.
3. **RESIDENT COUNTY OF PROJECT:** The county in which the project is located.
4. **CONTACT PERSON:** Indicate the name and title of the person who will be responsible for supervision of the project and administration of the grant. All correspondence concerning this application will be addressed to the Contact Person and it is the responsibility of the applicant to notify the Director of Arts, West Virginia Division of Culture and History if there is a change.
5. **PROJECT TITLE:** Include the type of project proposed (for example: Construction of Education Room; Art Studio Renovation; or Control Board for Lighting System). If the applicant name is different than the facility name, the facility name should be added to the title. Do not repeat the applicant name in the project title.
6. **PROJECT LOCATION:** Physical address of project.
7. **PROJECT SCOPE:** Check only one category and indicate single or multiphase project.
8. **HISTORICAL SIGNIFICANCE:** a.) Answer whether the facility is on the National Register of Historic Places, and the age of the building. b.) Also indicate if the project has received or applied for funds from the West Virginia Historic Preservation Office. If yes, attach description of prior, current, or pending grants.
9. **FACILITY OWNERSHIP OR LEASE: WHO OWNS THE BUILDING?** The question of ownership of the facility to be renovated must be addressed here. If the facility is being leased, the lessor must be named and the length of the lease must be disclosed (remember, the lessor must be a not-for-profit entity). If the application is for the acquisition of a building, clearly indicate such and explain who is the present owner. Documentation of the intent to sell and the purchase price must be provided in the original application.
10. **INCORPORATION AND IRS STATUS:** Indicate the legal status of the applicant entity identified in Question 1.
11. **TYPE OF ORGANIZATION:** Check one type of organization or provide a short description if "other."
12. **PROJECT'S LEGISLATIVE DISTRICTS:** Provide both the House and Senate district information requested according to the location of the project.

13. OTHER NON-MATCHING STATE FUNDS: State the amount and source for other West Virginia public funds (cannot exceed \$1 million) that will be used for this project (remember, any other WV dollars are ineligible for the matching requirement).
14. Confirm here that **no** matching funds for this grant are also matching other WVCA Grants.
15. Record request, applicant funds, and total project cost. Prior to application, projects requesting \$50,000 or more may be evaluated on-site.

**PART B: Project Synopsis**

This will be a brief summary of the PROJECT NARRATIVE. Indicate how you intend to use the funds requested, describing the major work items involved, and what the end product will be. If the project is funded this description will be used in announcement materials.

**PART C: Certification of Information**

This is the signature page certifying that all information within the application and accompanying materials is true and correct. The signers must be those with official authority within the organization.

**PART D: Readiness**

**IMPORTANT** (for construction and renovation projects): If the architect (or equivalent) has not yet been selected, or no preliminary (schematic) plans have yet been drafted, then the project is NOT READY for funding consideration under this program. The panel will also consider the completion status of prior or current project phases. (use separate sheets as required with all **bold face** topics included in your narrative presentation)

**1. Feasibility:**

a)FOR NEW CONSTRUCTION: Submit one complete, independently prepared feasibility study with the original application, and an executive summary of the feasibility study with each of the application copies. The study shall be conducted by people or organizations who possess the experience and expertise in such areas as socioeconomic, cultural, marketing, and financial analysis, and shall be as specific as possible. The executive summary should address information about the facility's use and projected programming including revenues, analysis of operations, and forecast budget analysis.

b)FOR ALL OTHER APPLICANTS: The study may be conducted by the applicant. The study should consist of a discussion of the applicant's ability to complete the project or phase and to implement the proposed programs for the completed project. The study should include the number and responsibilities of staff dedicated to the completion of the project or phase, as well as the new or expanded programs.

## **2. Project Planning:**

Clearly indicate the status of architectural planning. Also, indicate when construction documents are expected to be completed. The project must be past the initial planning stage to be considered for funding. This is the Professional Certification letter.

## **3. Project Team:**

The project must have a Project Team established to be considered for funding. The Project Team shall include the names and addresses of the architect, engineer, design consultants, and general contractor. Certification forms confirming the project status are included in the application. At least the architect or engineer must have been selected and must sign the form. If the Project Team is "in house," the form must be signed by the "in house" architect, designer, engineer, or contractor. If the project does not require an architect, the appropriate equivalent must sign the form. Do not write "NA" on the form.

## **4. Prior Phases:**

Describe prior completed phases of this project. Be sure to include the completion date of each phase.

## **5. Current Phases:**

Describe any phases of this project which are in process and not complete at the time of application. Include the estimated schedule for completion, amount of the grant, how much match has been expended, and how the phase(s) relate to this application.

## **PART E: Scope**

### **1. Project Narrative:**

Describe your project. Include how the project will serve the city, county, or multi-county region, especially regarding new or improved arts programming and community services. Is the budget structured (adequate revenues and appropriate expenditures) for the completion of the project?

Note: If this is a phased project, describe how this phase fits into the overall project. ("Phased" means a project that will occur in stages. *This phase* relates to the proposed use of this grant and its matching funds.) (use the space below on this page and one additional page; narrative should not exceed two pages)

### **2. Project Budget Summary:**

Provide the project budget summary for expenses in either the a<sup>1</sup> or a<sup>2</sup> formats shown. Do not omit any items. Enter a "-0-" (zero) for any expenses or revenue items that do not apply to this project or phase. (See below for definitions.) Indicate the budget for this phase only. The itemizations should match the description given in Scope of Work. This budget refers only to the project for which this grant is requested. The categories used, beginning with General Requirements, are patterned after those found in Masterspec®; © 1998, American Institute of Architects. Note: If this budget reflects a "phased" project, you may wish to attach, under Other Support Materials, a budget detail of the entire (i.e., Multiphase) project.

**(a) Expenses:**

1) Land Acquisition. Amount paid by the applicant for purchasing land involved in the projects, or documented in-kind value of land donated for the project according to a certified property appraiser. Use the acquisition date value. Lease value is not eligible for match.

2) Building Acquisition. Amount paid by the applicant for purchasing building involved in the project, or documented in-kind value. Use the acquisition date value.

Note: The following restrictions apply:

- a) The time limit for claiming building or site acquisition as match (if cash was expended), shall be for an acquisition which occurred no earlier than July 1, 1997 or 5 years before the application deadline, whichever is the shorter period of elapsed time.
- b) Must be applicant-owned, or be acquired as part of the grant.
- c) Lease value not eligible for match

3) Architectural Services. Amount paid (or documented in-kind) for total services involved with project. These may include design work, schematics, design development, bidding and negotiation, consultant services, and contract administration by the architect. Remember, you may use grant dollars (WVCA approved grant funds) only for those line item expenses which are incurred after a contract with the WV Division of Culture and History has been signed by all parties.

4) General Requirements (Division 1). Cost may include the following contractor services; field engineering, shop drawing, allowances, construction photographs, quality control, and contract closeout.

5) Site Construction (Division 2). May include: building demolition, site clearing, sewerage and drainage, underground ducts and utility structures, termite control, irrigation systems, earthwork, and landscaping.

6) Concrete (Division 3). May include cast-in-place concrete, architectural cast-in-place concrete formwork, structural precast concrete, and special concrete toppings and finishes.

7) Masonry (Division 4). May include unit masonry; stone masonry veneer, restoration, and cleaning; and glass masonry assemblies.

8) Metals (Division 5). May include structural steel, metal fabrication, metal stairs, pipe and tube railings, gratings, and ornamental metalwork.

9) Wood and Plastic (Division 6). May include rough carpentry, finish carpentry, interior and exterior architectural woodwork, panelwork, and plastic fabrications.

10) Thermal and Moisture Protection (Division 7). May include waterproofing, fireproofing, shingles and roofing, siding, and sealants.

11) Doors and Windows (Division 8). May include steel, wood, glass, and aluminum doors; frames; automatic or revolving doors; steel, wood, glass, and aluminum windows; decorative or mirrored glass, and door and window hardware.

- 12) Finishes (Division 9). May include plaster, sheathing, ceramic tile, wood or brick flooring, carpet, painting, and wall coverings. Acoustical treatments such as panel or tile ceilings will apply only to theatres, performing art centers, and auditoriums.
- 13) Specialties (Division 10). May include louvers and vents, signs, lockers, metal storage shelving, partitions, and mobile storage units.
- 14) Equipment (Division 11). May include such items as theatre and stage equipment, stage curtains, and projector screens. Note: Do not include expenses for office equipment in the state column. Match funds which are spent of these items must be directly related to the project.
- 15) Furnishings (Division 12). May include casework, window treatment hardware, louver blinds, and theatre seating. Note: Do not include expenses for furniture in the state column. Match funds which are spent on these items must be directly related to the project.
- 16) Special Construction Division 13). May include metal building systems.
- 17) Conveying Systems (Division 14). May include elevators, moving walkways, wheelchair lifts, and vertical conveyors.
- 18) Mechanical (Division 15). May include pumps, motors, sprinkler systems, plumbing fixtures, water heaters, HVAC pumps and controls, boilers, furnaces, liquid coolers, and evaporators, air conditioning units, humidifiers, fans, metal ductwork, and air filters.
- 19) Electrical (Division 16). May include wires and cables, transformers and switchgear, panelboards, fuses, disconnect switches and circuit breakers, interior and exterior lighting (including theatrical lighting), fire alarm systems, and lighting control equipment.

**(b) Income:** Indicate Sources of Funds for the project.

- 1) CULTURAL FACILITIES PROGRAM (this grant request) Enter amount requested from the State on this line.
- 2) Private Support. (matching) Private donations, including foundation grants, given for this project, or a proportionate share of such grants allocated to this project, and cash donations.
- 3) Corporate Support. (matching) Cash support derived from contributions given for this project by businesses, corporations, and corporate foundations, or a proportionate share of such contributions allocated to this project.
- 4) Local Government. (matching) Cash support derived from grants or appropriations given for this project by city, county, or other local government agencies, or a proportionate share of such grants or appropriations allocated to this project.
- 5) Other State Government Support. (non-matching) Cash support derived from grants or appropriations given for this project by other state government agencies, or a proportionate share of such grants or appropriations allocated to this project.

6) Federal Government Support. (matching) Cash support derived from grants or appropriations given for this project by agencies of the federal government, or a proportionate share of such grants or appropriations allocated to this project.

7) In-Kind Private Support. (non-matching) All documented non-cash contributions provided to the applicant by individuals and non-corporate, non-government parties. These contributions may be in the form of the fair market value of goods and services directly benefiting and specifically identifiable to the project or program.

8) In-Kind Corporate Support. (non-matching) All documented non-cash contributions provided to the applicant by corporate parties. These contributions may be in the form of the fair market value of goods and services directly benefiting and specifically identifiable to the project or program.

9) In-Kind Local Government Support. (non-matching) All documented non-cash contributions provided to the applicant by city, county, or other local government agencies. These contributions may be in the form of the fair market value of goods and services directly benefiting and specifically identifiable to the project or program.

10) In-Kind State Government Support. (non-matching) All documented non-cash contributions provided to the applicant by other state government agencies. These contributions may be in the form of the fair market value of goods and services directly benefiting and specifically identifiable to the project or program.

11) In-Kind Federal Government Support. (non-matching) All documented non-cash contributions provided to the applicant by units of the federal government. These contributions may be in the form of the fair market value of goods and services directly benefiting and specifically identifiable to the project or program.

12) Applicant Cash. (matching) This line item is often used to "balance the budget" when expenses exceed all other revenues listed. For the proposal budget, these are general funds the applicant will dedicate to the project.

13) TOTAL NON-MATCH. The sum of all cash and in-kind resources which are not eligible to be recognized as matching funds for the purposes of this project proposal.

14) TOTAL MATCH. The sum of all cash resources which are eligible to be recognized as matching funds for the purposes of this project proposal. (MUST be equal to or greater than the grant request amount.)

15) TOTAL PROJECT INCOME. The sum of all cash, contributions, in-kind resources, including this grant request amount dedicated to this project. Must be equal to total project expenses.

### **3. Matching Funds Statement**

Provide a statement here that addresses the availability of matching funds. The grant requires a 1:1 cash match, or one applicant cash dollar to every one state dollar requested. The cash match may be cash-on-hand or funds already expended on the same project at the time of application, or funds anticipated as part of the applicant's fund raising plan for the grant period. Installment payments made on approved grants will be only in amounts for which both the expenses and match have been confirmed. Note: Although you have

been asked to illustrate in-kind sources in the Budget Summary (which helps illustrate thoroughness of applicants fund raising effort and community response), only cash may be used for the required match.

**(a) Limitations on matching funds**

- i Funds which are operational in nature or not designated to the project phase will not be allowed.
- ii Revenue from bond issues which have not been passed at the time of application is not acceptable as match. Cash proceeds must be received and expended by the end of the grant period.
- iii Installment payments on grant awards will be only for amounts for which both the expenses and match have been confirmed.
- iv Fund raising costs are not acceptable as match.
- v Matching funds will be designated only to the project phase presented in the application and shall not be used in previous or succeeding application, or in any other WVCA grant.
- vi Matching funds may have been expended prior to the start date of the grant award agreement as long as they are clearly a part of the project described, can be documented upon request, and were not expended prior to July 1, 1997 or five years before the application date, whichever is the shorter period.
- vii The interest paid on the mortgage is considered to be the "cost of doing business," and may not be used at match.
- viii Loans may not be counted towards match. Only unencumbered equity may be counted as match.
- ix Match dollars shall not consist of state dollars from any source (Division of Culture and History or any other state agency).

**(b) Building or Land as Match:**

- i The value of building or land not owned by the applicant may not be used as match.
- ii The building or land must have been purchased or acquired within five years before the date of application.
- iii The building or land must have been intended for the grant purpose at the time of purchase or acquisition.
- iv Only the purchase price or documented acquisition date value, not current market value, may be used as a match.

**Part F: Organization and Program Description**

(use the space below on this page and four additional pages for Organization and Program Description—including HISTORY, PROGRAMS, PROFESSIONAL STAFF, and GRANT ADMINISTRATION; no more than five pages)

**1) HISTORY:** Provide a brief programming history of the applicant organization. Include the organization's origination date, mission and goals, and significant achievements.

**2) PROGRAMS:** Indicate the relation between the project, and the organization's programming activities and mission.

**3) PROFESSIONAL STAFF:** Provide a brief description of all full-time paid professional staff, or position descriptions, directly responsible for the organization's programming. Include organizational changes to be made upon project completion, if any.

**4) GRANT ADMINISTRATION:** List prior grant awards for the past three years from the Division of Cultural and History approved by the West Virginia Commission on the Arts. The West Virginia Commission on the Arts will consider requests for exemption from this requirement submitted in writing to the Director of Arts thirty days prior to grant application deadline. The request must demonstrate, to the satisfaction of the West Virginia Commission on the Arts, the capacity of the applicant organization to fulfill the arts and administrative purposes and requirements of the project.

**5) GOVERNANCE:** List the current governing board for the applicant organization, board of directors or trustees, including terms of office, address, and professional and/or community service affiliation.

#### **Part G: Project Impact**

**1) Impact Narrative:** Provide a brief narrative to explain the following points that pertain to the project. Do not write "NA"; briefly state why a certain point does not apply to the project scope or goals. (use the space below and no more than two additional sheets)

- (a) Provides opportunities for West Virginia artists and cultural presenters;
- (b) Expands educational opportunities;
- (c) Enhances community cultural planning;
- (d) Contributes to economic development;
- (e) Provides for increased access to arts activities by minority groups;
- (f) Improve access to facilities for working artists with disabilities;
- (g) Improves, and/or expands handicapped accessibility
- (h) Provides access to arts activities in rural communities;
- (i) Has state, multi-county region, county, or municipality impact;
- (j) Has historical or architectural significance;
- (k) Will be a multi-purpose facility serving more than one type of cultural organization;
- (l) Reflects energy efficient use in design and operation;
- (m) Results in combinations of community resources—artists, arts organizations, schools, other community service agencies
- (n) Enhances the public's understanding and appreciation of West Virginia's rich cultural traditions and contemporary expressions of the arts

**2) OTHER FACILITIES:** Provide information about similar facilities (or lack of facilities) operating within your geographic service area. How have you defined this area?

**3) LOCAL CULTURAL PLANS:** Please check with other local and regional arts organizations for the status of cultural action plans that have been completed or are underway. Remember to include cultural planning which has taken place within the context of economic development or tourism planning. Cite how this project relates to these plans.

#### **Part H: Fiscal Profile**

**1) FISCAL STABILITY:** This space is your opportunity to provide a statement on the organization's sustained fiscal stability. Explanations for all deficits, losses, or negative trends should also be provided. It is the responsibility of the applicant to demonstrate here why something that would normally be a cause for concern is not a problem for the applicant organization.

**2) OPERATING BUDGET FORECAST: NARRATIVE AND DETAIL:** Provide a NARRATIVE (1 page limit) description and a BUDGET DETAIL (1 page limit) of the organization's plans for maintenance and operation of the facility when completed, and for the next two years. Be as specific as possible and be sure to address funding and monitoring of maintenance and operational needs. The budget forecast should include detail, by line item, of the funds to be expended and the corresponding sources of revenues. It should be shown that the applicant has taken into account the operational financial impact the project will have on the organization's operations, maintenance, and programming.

#### **SECTION 2: OWNERSHIP OR LEASE OF PROPERTY/FACILITY**

Applicant organizations must document ownership or undisturbed use as follows:

**A. Legal proof of unrestricted ownership of property.** Unrestricted shall mean unqualified ownership and power of disposition. Property that does not meet the unrestricted ownership criterion will not be eligible for match. Documentation may include a deed, title, or copy of a recent tax statement. Provisional sales contracts, binders, or letters of intent are not acceptable documentation of ownership.

**OR**

**B. Undisturbed use of property for a specific period of time.** This specific period of time must begin no later than the deadline date for the application in which funding is requested, and must continue for the minimum period of time required according to the Project Scope.

Documentation must include an executed copy of a lease and a written explanation of any easements, covenant, or other conditions affecting the use of the site or facility, or both. Remember, the owner/lessor must be a not-for profit entity. \_

**Project Scope and minimum lease periods required of the applicant:**

<u>Project Scope</u>	<u>Minimum Lease</u>
Equipment, capital fixtures (not office furniture)	10 years
Building Renovation:	
Improvements	20 years
Increase of square footage	30 years
Building Construction (land is leased)	40 years

**C. For Acquisitions only**

Acquisition applicants will automatically be considered exempt from this ownership eligibility requirement. If the application is for an acquisition, the applicant must provide a description of the facility, purchase price and a letter of intent to sell signed by the seller.

**SECTION 3: AUDIT, REVIEW, OR ATTESTATION**

NOT-FOR-PROFIT, TAX-EXEMPT WEST VIRGINIA CORPORATIONS:

1. If the organization's budget is less than \$100,000, the organization must submit either an independent, certified financial audit or review for the organization's last completed fiscal year.
2. If the organization's budget is \$100,000 or greater, the organization must submit an independent, certified financial audit for the organization's last completed fiscal year.

Compilations are not acceptable.

**SECTION 4: ARCHITECTURAL DRAWINGS**

All applicants must submit an 8 1/2" x 11" reduction schematic of current architectural plans for the facility. A reduction must be included in the original application and in each of the application copies. DO NOT send full size architectural plans or drawing.

Note: Applicants for capital equipment grants must submit drawings if purchase requires customized installation, or illustrations of equipment to be purchased from manufacturer(s) or supplier(s).

**SECTION 5: LOCAL ENDORSEMENTS FOR PROJECT**

All applicants must submit a list of local public and private persons and organizations who are lending support to this project. Include the name of the person or official, title (if applicable), and signature. In lieu of signatures, you may submit support letters signed by the officials. Support letters must be included at the end of the application under Other Support Material. Do not send support letter under separate cover.

**West Virginia Commission on the Arts**  
**Cultural Facilities and Capital Resources Grant Program**  
**Application Checklist and Forms**

Attach this checklist to the front of the original application only.

Note: All correspondence concerning this application will be addressed to the Contact Person identified in this application. The applicant shall be responsible for notifying the Arts Section of the Division of Culture and History of any changes in address or Contact Person

Application pages and materials should be assembled in the order specified below. Label the one application with original signature as "original" with copies behind.

Original and five copies must be filed and must contain the following items for Application Eligibility:

- \_\_\_\_\_ 1. Completed application form and any required attachments.
- \_\_\_\_\_ 2. Market Feasibility Study  
FOR NEW CONSTRUCTION: one complete copy of the entire consultant's feasibility study should be included with the original application. Do not enclose a complete feasibility study with each of the application copies. A copy of the executive summary of the feasibility study should be included with the original application and with application copies.  
FOR RENOVATION APPLICATIONS: the study for renovation projects may be conducted by the applicant and should consist of a discussion of the applicant's ability to complete the project and to implement the proposed programs for the completed project. The study should include the number and responsibilities of staff dedicated to the completion of the project, as well as the new or expanded programs. Do not enclose a complete feasibility study with each of the application copies. A copy of the executive summary of the feasibility study should be included with the original application and with application copies.  
FOR ALL OTHER APPLICATIONS: attach a copy of the Project Narrative Synopsis at the front of the application, behind this checklist on the original, and at front of the copies.
- \_\_\_\_\_ 3. Legal proof of ownership or copy of current lease of land or facility.
- \_\_\_\_\_ 4. Independent certified audit for organization's last completed fiscal year.
- \_\_\_\_\_ 5. An 8 1/2" by 11" reduction schematic of current architectural plans.
- \_\_\_\_\_ 6. A list of local supporters of the project.

Applications must be complete when submitted. Materials will not be accepted after the application deadline unless specifically requested by the Director of Arts.

**West Virginia Division of Culture and History  
West Virginia Commission on the Arts**

**FY 2001 Cultural Facilities and Capital Resources Grant Program Application Form**

**Arts Office use only: Application No. \_\_\_\_\_ Date Received \_\_\_\_\_**

[application must be typed or completed and printed from WVCA Web Page]

**SECTION 1: PART A: APPLICANT INFORMATION**

**1. Applicant** (legal name of organization as shown on IRS 501 C (3) letter)

Applicant Name continued (d.b.a., dept., etc.) \_\_\_\_\_

Address (mailing):  
Zip Code \_\_\_\_\_

Address (street):  
Zip Code \_\_\_\_\_

City: \_\_\_\_\_ Telephone: Area code/Number ( ) - \_\_\_\_\_ FAX# ( ) - \_\_\_\_\_

**2. FEID:** \_\_\_\_\_ **3. Resident County of Project** \_\_\_\_\_

**4. Contact Person: First:** \_\_\_\_\_ **Last:** \_\_\_\_\_  
(check one): Mr. Mrs. Miss Ms. Dr. Title: \_\_\_\_\_

**5. Project Title:** \_\_\_\_\_

**6. Project location:** Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**7. Project Scope:** (Check one)

a. Acquisition \_\_\_\_\_

b. Renovation \_\_\_\_\_ for: Improvements; Increase of square footage

c. New Construction \_\_\_\_\_

d. Capital Equipment \_\_\_\_\_

Single Phase \_\_\_\_\_ Multiphase \_\_\_\_\_

**8.A. Historical Significance:** On National Register? \_\_\_\_\_ How old is the building? \_\_\_\_\_

**8.B. Funding from WV Historic Preservation Office:** Has the applicant organization applied for or received funding from the WV Historic Preservation Office for this project? No \_\_\_\_\_  
Yes \_\_\_\_\_ (if yes, attach description of Prior, Current and Pending Historic Preservation Grants)

**9. Facility Ownership / Lease: Who owns the building?**

If building is leased to applicant, what is the length of the lease?

**10. Incorporation and IRS Status: (must be "a" or "b<sup>1</sup> and b<sup>2</sup>" to be eligible)**

**a.** Is the applicant organization an agency of city or county government?

No \_\_\_\_\_ Yes \_\_\_\_\_

**b<sup>1</sup>.** Is the applicant organization incorporated or authorized as a not-for-profit corporation, in good standing, pursuant to West Virginia statutes?

(Arts Staff will verify status) No \_\_\_\_\_ Yes \_\_\_\_\_

**b<sup>2</sup>.** Is the applicant organization designated as a tax-exempt corporation as defined in Section 501©(3) or (4) of the Internal Revenue Code of 1954, and designated as being in compliance with s.170 of the Internal Revenue Code of 1954, at the time of application?

No \_\_\_\_\_ Yes \_\_\_\_\_

**11. Type of Organization:**  Multiple Mission Arts Organization  Arts Council  
 Museum  Theatre  Dance Company  
 Musical Performing/Presenting Organization  Other \_\_\_\_\_

**12. West Virginia Legislative District:**

Senate: (Name and District#) \_\_\_\_\_

House: (Name and District#) \_\_\_\_\_

**13. What other non-matching state dollars will go into the project?**

Amount: \$ \_\_\_\_\_ Source: \_\_\_\_\_

**14. Are matching funds in the grant application being used to match any other WVCA grant? No \_\_\_\_\_ Yes \_\_\_\_\_ Answer must be "NO."**

**15. Total Amount Requested from the State (this grant program) \$ \_\_\_\_\_**  
Applicant funds for this project (match & non-match): \$ \_\_\_\_\_  
**TOTAL PROJECT COST (this application): \$ \_\_\_\_\_**

**Note: Projects requesting \$50,000 or more may be required to accept on-site evaluation.**

**PART B: PROJECT NARRATIVE SYNOPSIS:** In the space below and no more than one additional sheet, provide a concise synopsis of the project describing specifically the work to be accomplished with the funds requested, the major work items involved, and what the end product will be.

**PART C: CERTIFICATION OF INFORMATION AND COMPLIANCE**

We certify that all the information contained within this application, attachments, and subsequent submissions are true and correct to the best of our knowledge, and that the project for which the application is made is in compliance with the Americans with Disabilities Act of 1990. If a grant is awarded, the organization agrees to comply with all of the conditions of the grant award agreement.

<b>1. OFFICIAL WITH AUTHORITY TO CONTRACT FOR THE APPLICANT</b>
Signature:
Typed Name:
Title:
Date:
Phone Number: (Area Code) Number ( ) -

<b>2. CHIEF FISCAL OFFICER FOR THE APPLICANT</b>
Signature:
Typed Name:
Title:
Date:
Phone Number: (Area Code) Number ( ) -

<b>3. CONTACT PERSON AS LISTED ON THE FIRST PAGE OF APPLICATION</b>
Signature:
Typed Name:
Title:
Date:
Phone Number: (Area Code) Number ( ) -

## Part D: Readiness

(use separate sheets as required with all **bold face** topics included in your narrative presentation)

### **FEASIBILITY:**

a) **FOR NEW CONSTRUCTION:** Submit one complete, independently prepared feasibility study with the original application, and an executive summary of the feasibility study with each of the application copies. The study shall be conducted by people or organizations who possess the experience and expertise in such areas as socioeconomic, cultural, marketing, and financial analysis, and shall be as specific as possible. Submit a copy of the executive summary of the study with each copy of the application. This summary should address information about the facility's use and project programming including revenues, analysis of operations, and forecast budget analysis.

b) **FOR ALL OTHER APPLICANTS:** The study may be conducted by the applicant. The study should consist of a discussion of the applicant's ability to complete that project or specific phase of the project and to implement the proposed programs for the completed project. The study should include the number of staff and their responsibilities assigned for the to the completion of the project or phase, as well as any new or expanded programs.

**2. Project Planning:** Clearly indicate the status of architectural planning. Also, indicate when construction documents are expected to be completed. The project must be past the initial planning stage to be considered for funding. This is the Professional Certification letter.

**3. Project Team:** The project must have a Project Team established to be considered for funding. The Project Team shall include the names and addresses of the architect, engineer, design consultants, and general contractor. Certification forms confirming the project status follow in the application. At least the architect or engineer must have been selected and must sign the form. If the Project Team is "in house," the form must be signed by the "in house" architect, designer, engineer, or contractor. If the project does not require an architect, the appropriate equivalent must sign the form. Do not write "NA" on the form.

**4. Prior Phases:** Describe prior completed phases of this project. Be sure to include the completion date of each phase.

**5. Current Phases:** Describe any phases of this project that are in process and not complete at the time of application. Include the estimated schedule for completion, amount of the grant requested, how much match has been expended, and how the phase(s) relate to this application.

---

**PROFESSIONAL CERTIFICATION  
PROJECT ARCHITECT / ENGINEER**

NAME AND ADDRESS OF PROJECT ARCHITECT / ENGINEER:

APPLICANT NAME AND PROJECT TITLE:

The following preparatory documents for Project Planning have been completed:

- Preliminary and schematic drawings completed
- Design and development documents completed
- Construction documents completed

I certify that I have reviewed this application and that the technical project information is correct as cited.

\_\_\_\_\_  
Signature of Architect / Engineer

\_\_\_\_\_  
Date

---

**PROFESSIONAL CERTIFICATION  
PROJECT CONTRACTOR**

NAME AND ADDRESS OF PROJECT ARCHITECT / ENGINEER:

APPLICANT NAME AND PROJECT TITLE:

The following preparatory documents for Project Planning have been completed:

- Preliminary and schematic drawings completed
- Design and development documents completed
- Construction documents completed

I certify that I have reviewed this application and that the technical project information is correct as cited.

\_\_\_\_\_  
Signature of Project Contractor

\_\_\_\_\_  
Date



## **Part E: Scope**

**1. Project Narrative:** Describe your project. Include information on how the project will serve the municipality, county, or multi-county area, especially regarding new or improved arts programming and community services. Note: If this is a phased project, describe how this phase fits into the overall project. (use the space below on this page and one additional page; narrative should not exceed two pages)

## 2. Project Budget Summary

Provide the project budget summary in the format shown. [The expenses may be illustrated in format A<sup>1</sup>. or A<sup>2</sup>. Do not omit any items. Enter a “-0-“ (zero) for any expenses or revenue items that do not apply to this project or phase. (See Instructions for definitions.) Indicate the budget for this phase only. The itemizations should match the description given in Scope of Work. This budget refers only to the project for which this grant is requested. The categories used below, beginning with General Requirements, are patterned after those found in Masterspec®; © 1998, American Institute of Architects. Note: If this budget reflects a “phased” project, you may wish to attach a budget detail of the entire project.

<b>A<sup>1</sup>. EXPENSES</b>	<b><u>NON-GRANT</u></b>	<b><u>GRANT</u></b>
1) LAND ACQUISITION	_____	_____
2) BUILDING ACQUISITION	_____	_____
3) ARCHITECTURAL SERVICES	_____	_____
4) GENERAL REQUIREMENTS	_____	_____
5) SITE CONSTRUCTION	_____	_____
6) CONCRETE	_____	_____
7) MASONRY	_____	_____
8) METALS	_____	_____
9) WOOD AND PLASTIC	_____	_____
10) THERMAL/MOISTURE PROTECTION	_____	_____
11) DOORS AND WINDOWS	_____	_____
12) FINISHES	_____	_____
13) SPECIALTIES	_____	_____
14) EQUIPMENT	_____	_____
15) FURNISHINGS	_____	_____
		(may not include office furniture)
16) SPECIAL CONSTRUCTION	_____	_____
17) CONVEYING SYSTEMS	_____	_____
18) MECHANICAL	_____	_____
19) ELECTRICAL	_____	_____
<b>SUBTOTALS OF EXPENSES</b>	_____	_____
CONTINGENCY (not part of match)	_____	_____
<b>TOTAL PROJECT EXPENDITURES=NON-GRANT + GRANT</b>	_____	_____
<b>(SHOULD EQUAL THE TOTAL PROJECT INCOME IN B.)</b>	_____	_____

<b>A<sup>2</sup> EXPENSES</b>	<b><u>NON-GRANT</u></b>	<b><u>GRANT</u></b>
(a) LAND ACQUISITION	_____	_____
(b) BUILDING ACQUISITION	_____	_____
(c) ARCHITECTURAL SERVICES	_____	_____
(d) GENERAL REQUIREMENTS	_____	_____
(e) SITE CONSTRUCTION	_____	_____
(f) BUILDING CONSTRUCTION	_____	_____
(g) FURNISHINGS & EQUIPMENT	_____	_____
		(may not include office furniture)
<b>SUBTOTALS OF EXPENSES</b>	_____	_____
CONTINGENCY (not part of match)	_____	_____
<b>TOTAL PROJECT EXPENDITURES=NON-GRANT + GRANT</b>		
<b>(SHOULD EQUAL THE TOTAL PROJECT INCOME IN B.)</b>		_____

**B. INCOME**

**SOURCES OF FUNDS**

1) **Cultural Facilities and Capital Resources Program** (this grant) \_\_\_\_\_

NON-MATCH

MATCH

2) Private Support (Cash) \_\_\_\_\_

3) Corporate Support (Cash) \_\_\_\_\_

4) Local Government Support (Cash) \_\_\_\_\_

5) Other State Government Support (Cash) \_\_\_\_\_

6) Federal Government Support (Cash) \_\_\_\_\_

7) In-Kind Private Support \_\_\_\_\_

8) In-Kind Corporate Support \_\_\_\_\_

9) In-Kind Local Government Support \_\_\_\_\_

10) In-Kind State Government Support \_\_\_\_\_

11) In-Kind Federal Government Support \_\_\_\_\_

12) Applicant Cash \_\_\_\_\_

13) TOTAL NON-MATCH \_\_\_\_\_

14) TOTAL MATCH (MUST EQUAL OR BE GREATER THAN GRANT REQUEST)  
\_\_\_\_\_

15) TOTAL PROJECT INCOME (ALL FUNDS, CASH, IN-KIND, GRANT)  
(MUST EQUAL EXPENSES) \$

### **3. Matching Funds Statement**

Provide a statement below that addresses the availability of matching funds. The grant requires a 1:1 cash match, or one applicant cash dollar to every one state dollar requested. The cash match may be cash-on-hand or funds already expended on the same project at the time of application as allowed under the rule, or funds anticipated as part of the applicant's fund raising plan for the grant period. Installment payments made on approved grants will be in amounts for which both the expenses and match have been confirmed. Note: Although you have been asked to illustrate in-kind sources in the Budget Summary (which helps illustrate thoroughness of fund raising effort and community response), only cash may be used for the required match. (use no more than the space allowed on this page for the matching funds statement)

## **PART F: ORGANIZATION AND PROGRAM DESCRIPTION**

(use the space below on this page and no more than four additional pages for Applicant and Program Description—including HISTORY, PROGRAMS, PROFESSIONAL STAFF, and GRANT ADMINISTRATION; no more than five pages)

- 1) **HISTORY:** Provide a brief programming history of the applicant. Include the applicant's origination date, mission and goals, and significant achievements.
- 2) **PROGRAMS:** Indicate the relation between the project, and the applicant's programming activities and mission.
- 3) **PROFESSIONAL STAFF:** Provide a brief description of all full-time paid professional staff, or position descriptions, directly responsible for the applicant's programming. Include organizational changes to be made upon completion of the project, if any.
- 4) **GRANT ADMINISTRATION:** List grant awards for the past three years received from the Division of Cultural and History as approved by the West Virginia Commission on the Arts. The West Virginia Commission on the Arts will consider requests for exemption from this requirement submitted in writing thirty days prior to grant application deadline. The request must demonstrate, to the satisfaction of the West Virginia Commission on the Arts, the capacity of the applicant organization to fulfill the arts and administrative purposes and requirements of the project.
- 5) **GOVERNANCE:** List the current governing board for the applicant organization, board of directors or trustees, including terms of office, address, and professional and/or community service affiliation.

## **PART G: PROJECT IMPACT**

**1) Impact Narrative:** Provide a brief narrative to explain the following points that pertain to the project. Do not write "NA"; briefly state why a certain point does not apply to the project scope or goals. (use the space below and no more than two additional sheets)

- (a) Provides opportunities for West Virginia artists and cultural presenters;
- (b) Expands educational opportunities;
- (c) Enhances community cultural planning;
- (d) Contributes to economic development;
- (e) Provides for increased access to arts activities by minority groups;
- (f) Improve access to facilities for working artists with disabilities;
- (g) Improves, and/or expands handicapped accessibility
- (h) Provides access to arts activities in rural communities;
- (i) Has state, multi-county region, county, or municipality impact;
- (j) Has historical or architectural significance;
- (k) Will be a multi-purpose facility serving more than one type of cultural organization;
- (l) Reflects energy efficient use in design and operation;
- (m) Results in combinations of community resources—artists, arts organizations, schools, other community service agencies
- (n) Enhances the public's understanding and appreciation of West Virginia's rich cultural traditions and contemporary expressions of the arts

**2) Other Facilities:**

Provide information about similar facilities (or lack of facilities) operating within your geographic service area. How have you defined this area? (limit the response to the space provided on this page)

**3) Local Cultural Plans:** Please check with other local and regional arts organizations for the status of cultural action plans that have been completed or are underway. Remember to include cultural planning which has taken place within the context of economic development or tourism planning. Cite how this project relates to these plans. (limit the response to the space provided on this page)

## **Part H: Fiscal Profile**

**1) FISCAL STABILITY:** This space is your opportunity to provide a statement on the organization's sustained fiscal stability. Explanations for all deficits, losses, or negative trends should also be provided. It is the responsibility of the applicant to demonstrate here why something that would normally be a cause for concern is not a problem for the applicant organization. (use the space provided on this page)

**2) OPERATING BUDGET FORECAST: NARRATIVE AND DETAIL:** Provide a **NARRATIVE** (1 page limit) description and a **BUDGET DETAIL** (1 page limit) of the organization's plans for maintenance and operation of the facility when completed, and for the next two years. Be as specific as possible and be sure to address funding and monitoring of maintenance and operational needs. The budget forecast should include detail, by line item, of the funds to be expended and the corresponding sources of revenues. It should be shown that the applicant has taken into account the operational financial impact the project will have on the organization's operations, maintenance, and programming.

## SECTION 2: OWNERSHIP OR LEASE OF PROPERTY/FACILITY

Applicant organizations must document ownership or undisturbed use as follows:

- A. **Legal proof of unrestricted ownership of property.** Unrestricted shall mean unqualified ownership and power of disposition. Property that does not meet the unrestricted ownership criterion will not be eligible for match. Documentation may include a deed, title, or copy of a recent tax statement. Provisional sales contracts, binders, or letters of intent are not acceptable documentation of ownership.

**OR**

- B. **Undisturbed use of property for a specific period of time.** This specific period of time must begin no later than the deadline date for the application in which funding is requested, and must continue for the minimum period of time required according to the Project Scope.

Documentation must include an executed copy of a lease and a written explanation of any easements, covenant, or other conditions affecting the use of the site or facility, or both. The owner lessor may be a not-for profit entity. \_\_

### **Project Scope and minimum lease periods required of the applicant:**

<u>Project Scope</u>	<u>Minimum Lease</u>
Equipment, capital fixtures (not office furniture)	10 years
Building Renovation:	
Improvements	20 years
Increase of square footage	30 years
Building Construction (land is leased)	40 years

- C. **For Acquisitions only**  
Acquisition applicants will automatically be considered exempt from this ownership eligibility requirement. If the application is for an acquisition, the applicant must provide a description of the facility, purchase price and a letter of intent to sell signed by the seller.

### **SECTION 3: AUDIT, REVIEW, OR ATTESTATION**

NOT-FOR-PROFIT, TAX-EXEMPT WEST VIRGINIA CORPORATIONS:

1. If the organization's budget is less than \$100,000, the organization must submit either an independent, certified financial audit or review for the organization's last completed fiscal year.
2. If the organization's budget is \$100,000 or greater, the organization must submit an independent, certified financial audit for the organization's last completed fiscal year.

Compilations are not acceptable. (include following this page)

### **SECTION 4: ARCHITECTURAL DRAWINGS**

All applicants must submit an 8 1/2" x 11" reduction schematic of current architectural plans for the facility. A reduction schematic must be included in the original application and in each of the application copies. DO NOT send full size architectural plans or drawing.

Note: Applicants for capital equipment grants must submit drawings if purchase requires customized installation, or illustrations of equipment to be purchased from manufacturer(s) or supplier(s). (include following this page)







TO: West Virginia Commission on the Arts  
FROM: Vivian Conly, executive director  
President, Arts Advocacy West Virginia  
DATE: June 1, 2000  
RE: Response to Public Rule 82 - Legislative Ruling, Division of Culture & History Series 7, Cultural Facilities and Capital Resources Grant Program

In reference to 82-7-9.4, we are requesting that the West Virginia Commission on the Arts remove the requirement that matching funds for debt retirement grants be from current contributions made during the grant period.

To date Carnegie Hall has raised more than \$2.6M (or nearly 84%) towards its *Renaissance Campaign* goal of \$3.1M. Our supporters include local, state, regional and national public and private foundations (including Hollowell, Daywood, Benedum, National Endowment for the Arts, National Trust for Historic Preservation, among others); corporations (including Westvaco, The Greenbrier, IBM, CSX, Exxon, RBS Corporation, The Travelers, City Bank, First National Bank, e.g.); and individuals all across America. Gifts range in size from \$50 to \$350,000 and donors number more than 500 people of all ages and interests. Often the last piece of a capital campaign is the most difficult, therefore it would seem reasonable to consider monies already raised as at least part of the required match for this grant.

We have aggressively sought funding for and applied all monies raised to our debt in order to minimize interest and in so doing save thousands of dollars that could far better be spent on programming and maintenance of our newly restored facility. We are very hopeful that with help from Senator Craigo's outstanding grant program and the Commission on the Arts we can retire our note completely far ahead of schedule.

Greenbrier Valley Theatre  
P. O. Box 494  
Lewisburg, WV 24901  
304-645-3838  
www.gvtheatre.org

June 5, 2000

Mr. Richard H. Ressmeyer  
Director of Arts  
West Virginia Division of Culture and History  
The Cultural Center  
1900 Kanawha Boulevard, E  
Charleston, WV 25305

RE: Title 82, Legislative Rule, Division of Culture and History,  
Series 7, Cultural Facilities and Capital Resources Grant Program

Dear Director Ressmeyer:

In reference to 82-7-9.4, Greenbrier Valley Theatre requests that the West Virginia Commission on the Arts remove the requirement that funds for debt retirement grants be from current contributions made during the grant period.

The project currently underway at GVT is a multi-faceted renovation project. We are currently in the second year of a five-year capital campaign to fund our physical plant improvements. Within the campaign goal of \$2.4 million we have also included the organization's five-year operational and programming expense budget.

We have diligently and successfully pursued raising funds over the course of this project from a variety of sources. To date we have gifts and/or pledges toward our goal totaling \$1.4 mil. Over 400 individuals have pledged their support to our project for a total 36% of the dollars raised (\$512,000); 37% of our pledges and gifts have come from private foundations (\$525,000); area business contributions have totaled \$147,000 or 10% of the amount; various government sources make up 15% (\$217,000) of the total; and, local service and community clubs have contributed over \$26,000 or 2%.

With the assistance of four local area banks working in partnership, we were able to obtain a construction loan for our project when we reached the \$800,000 pledge/gift level. This enabled us to pursue our project on a "fast track." Financially this was of utmost importance to our organization, for it allowed us to be in our new facility for this 2000 Summer Season rather than incur the expense of required maintenance on The Barn while assuming the expense of renovating our downtown location.

Mr. Richard Rasmeyer  
June 5, 2000  
Page Two

The plans for raising funds for GVT are ongoing and steady. We fully understand the importance and implications of paying down our debt as quickly as possible as well as broadening our base. Within the over \$1.4 million in pledges/gifts raised to date, only \$20,000 required finding matching funds. We met that challenge. We urge the Commission to grant us the ability to use funds raised within this past 18 months of our Campaign toward the programs required match should we be successful in our quest for funding from the Cultural Facilities and Capital Resources Grant Program.

We want you to be aware that while this vigorous funding campaign, which began in December 1998, has been going on we have just as vigorously pursued fulfilling our artistic mission and our commitment to serve our community. We have had 65 days of performance of live theatre on our main stage, 15 days of performance by our youth; 5 days of performance for our youth; 8 days of our Readings for Adults Program; 108 days of classes for our Youth Drama Program; and, 12 days of 1999 Summer Drama Camp. This does not include the countless hours required in preparation for these productions nor the days involved in preparation, planning and travel with our successful GVTeens as they participated in the 1999 and 2000 WV Thespian Conferences and the Southeastern Theatre Conferences.

Thank you for this opportunity to comment of the Legislative Rule governing the procedures and requirements for the Cultural Facilities and Capital Resources Grant Program. We also thank you for the support and nurture you and the staff of the Commission have given us through the years. We are euphoric with our new facility; our community and region are proud of what we have done and our promise for the future. We ask for your continued support as we produce quality live theatre and enrich the life of our area.

Sincerely

Dee Brown



# Museum in the Community

June 3, 2000

Richard Ressmeyer, Director of Arts  
West Virginia Commission on the Arts  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0300

Dear Richard:

I am writing on behalf of Museum in the Community to request a change in the Legislative Rule governing procedures and requirements for the Cultural Facilities and Capital Resources Grant Program.

The specific language referencing the portion we request to be changed is:

Re: Title 82, Legislative Rule, Division of Culture and History, Series 7, Cultural Facilities and Capital Resources Grant Program

**In reference to 82-7-9.4, we respectfully request that the West Virginia Commission on the Arts remove the requirement that funds for debt retirement grants be from current contributions made during the grant period.**

Museum in the Community has raised over \$800,000 toward the total cost of \$1.9 million for our new facility. Our construction and fund raising effort has been phased in order to allow us to proceed with opening the facility and to begin programming.

Sources of raised funds for capital costs have come from private and community foundations, corporate and individual contributions, and local, county and state government allocations. Current plans call for establishment of an endowment to assist with debt retirement and support annual operating budget. The next phase for the museum will then be facility expansion with performance space.

Mailing:  
P.O. Box 423  
Hurricane, WV 25526

Location:  
#3 Valley Park Drive  
Hurricane, WV 25526

Phone: (304) 562-0484  
Fax: (304) 562-4733  
E-mail: [mite@newwave.net](mailto:mite@newwave.net)

In addition to our funds raised for capital expenses and construction, since opening to the public in May 1998 we have raised our operating budget from \$238,000 in FY1998-99 to \$335,000 for FY1999-00. Operating budget for FY2000-01 we project will be in line with the current fiscal year. Funds for operations come from corporate sponsorships, contributions, memberships, admissions, foundations, local, county and state government.

We hope the Commission will recognize our past fundraising as evidence of support for our facility and programs and allow the use of non-state funds as a match for our request for the Capital Facilities and Resources Grant Program. This would be of enormous assistance to our organization and help of us enter in to the next phase of our fundraising efforts. It will also help us as we work toward our continued long-term operational and organizational stability. Thank you in advance for your consideration.

Cordially,

A handwritten signature in cursive script that reads "Mark Payne". The signature is written in dark ink and is positioned above the printed name and title.

Mark Payne  
Executive Director



MAY 31 2000

Office of the President

26 May 2000

Mr. Richard H. Ressmeyer  
Director of Arts  
WV Division of Culture and History  
Secretary, WV Commission on the Arts  
The Cultural Center  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0300

Dear Mr. Ressmeyer:

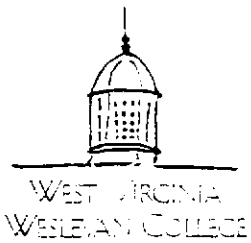
I have reviewed the guidelines for the Commission's new Capital Projects Grant Program, and was disappointed to discover the prohibition against the participation of institutions of higher education. I find such a stipulation to be counter to our College's and the Commission's mutual mission of sharing our cultural resources with the people of West Virginia.

In small, rural counties, such as Upshur and those surrounding it, local colleges serve as the cultural center for the entire region. We are grateful to the Commission for funding that has enabled West Virginia Wesleyan College to provide our community with varied, professional programming in the visual and performing arts. Many individuals, from school-aged children to senior citizens, have benefited from exposure to performances and exhibits that are not generally available in our part of the state.

Professional performers and talented students require state-of-the-art performance facilities. Community organizations and audiences deserve accessible, comfortable performance space. But such contemporary facilities are unattainable on the budgets of small colleges such as Wesleyan. We must rely on outside funders to assist with such projects; unfortunately, the sources of support for capital projects are extremely rare.

BUCKHANNON  
WEST VIRGINIA  
26201

304-473-8000



This is why access to the Commission's new Capital Projects Grant Program is so crucial to us. To preserve and enhance our goal of bringing the arts to our rural area, we need financial support to assist in our capital campaign initiative of constructing a new performing arts facility.

I urge you to encourage the removal of the prohibition against the participation of institutions of higher education in the Commission's capital grant competition. If you would like to discuss this issue with me further, please do not hesitate to contact me at the phone number below or via e-mail at [haden@wwvc.edu](mailto:haden@wwvc.edu).

Sincerely,

William R. Haden  
President

BUCKHANNON  
WEST VIRGINIA  
26201

304-473-8000

21. Remand

Office of Federal Contract Compliance Programs (OFCCP) could reopen proceedings to take new evidence on whether work on a federal contract was actually done at one of employer's plants and whether an epileptic job applicant would have been employed to "carry out" such work, for purposes of determining whether there was a violation of Rehabilitation

Act when employer failed to hire epileptic after regulation upon which OFCCP relied was determined by reviewing court to be invalid; accordingly, it was impermissible for district court to refuse to remand action to the Department of Labor on ground that it would have been unfair to the employer. PPG Industries, Inc. v. U.S., C.A.D.C. 1995, 32 F.3d 363, 373, U.S.App.D.C. 214.

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 706(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1973. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 3801 of Title 20) system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

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## 16 VOCATIONAL REHABILITATION

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entry which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

**(c) Significant structural alterations by small providers**

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

**(d) Standards used in determining violation of section**

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

(Pub.L. 93-112, Title V, § 504, Sept. 26, 1973, 87 Stat. 394; Pub.L. 95-602, Title I, §§ 119, 122(d)(2), Nov. 6, 1978, 92 Stat. 2982, 2987; Pub.L. 99-506, Title I, § 103(d)(2)(B), Title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1310, 1344; Pub.L. 100-259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub.L. 100-630, Title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title I, § 102(p)(32), Title V, § 506, Oct. 29, 1992, 106 Stat. 4360, 4428; Pub.L. 103-382, Title III, § 394(i)(2), Oct. 20, 1994, 108 Stat. 4029; Pub.L. 105-220, Title IV, § 408(a)(3), Aug. 7, 1998, 112 Stat. 1203.)

So in original. Probably should be "section 705(20)".

### HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports**

1973 Acts. Senate Report No. 93-318  
House Conference Report No. 93-500, see 1973 U.S. Code Cong. and Adm. News, p. 2076.

1978 Acts. House Report No. 95-1149  
and House Conference Report No. 95-1730, see 1978 U.S. Code Cong. and Adm. News, p. 7312.

## DOJ and EEOC: ADA and Sec. 504 Joint Procedural Regulations

*Following is the text of procedural regulations issued jointly by the Department of Justice and the EEOC for coordinating the processing of complaints of employment discrimination based on disability under Title I of the ADA and Section 504 of the 1973 Rehabilitation Act. The regulations were published in the Aug. 4, 1994, Federal Register (59 FR 39897) and became effective on that date. The EEOC regulations are codified at 29 CFR Part 1640, while the Justice Department regulations are codified at 28 CFR Part 37. In the material below, the section numbers referring to the EEOC codification are given in brackets.*

### DEPARTMENT OF JUSTICE

28 CFR Part 37

[A.G. Order No. 1899-94]

RIN 1190-AA29

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1640

RIN 3046-AA42

#### Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973

**AGENCIES:** Department of Justice and Equal Employment Opportunity Commission.

**ACTION:** Joint final rule.

**SUMMARY:** Section 107(b) of the Americans with Disabilities Act of 1990 (ADA) requires that the Department of Justice (the Department), the Equal Employment Opportunity Commission (the Commission or the EEOC), and the Department of Labor's Office of Federal Contract Compliance Programs issue regulations setting forth procedures to coordinate the processing of complaints that fall within the overlapping jurisdiction of title I of the ADA and the Rehabilitation Act of 1973, to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Pursuant to this mandate, the Department of Justice and the EEOC are publishing a joint final rule implementing section 107(b) as it pertains to title I of the ADA and section 504 of the Rehabilitation Act of 1973. In addition,

this regulation describes the existing procedures for processing: Employment complaints that fall within the overlapping jurisdiction of title II of the ADA and either title I or section 504 of the Rehabilitation Act, or both; and employment complaints that arise solely under title I or section 504. A joint final rule developed by the EEOC and the Department of Labor implementing section 107(b) as it pertains to title I and section 503 of the Rehabilitation Act has been published separately in the Federal Register of January 24, 1992.

**EFFECTIVE DATE:** August 4, 1994.

**FOR FURTHER INFORMATION CONTACT:** Merrily A. Friedlander, Acting Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118. She can also be contacted through the Division's ADA Information Line at (202) 514-0301 or (800) 514-0301 (voice), or (202) 514-0383 or (800) 514-0383 (TDD).

Eilizabeth M. Thornton, Deputy Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507, (202) 663-4638 (voice), (202) 663-7026 (TDD). Only the 800 numbers listed above are toll-free numbers.

Copies of this rule are available in the following alternate formats: large print, Braille, electronic file or computer disk, and audio tape. Copies may be obtained by calling (800) 669-3362 (voice) or (800) 800-3302 (TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

Title I of the ADA, 42 U.S.C. 12111-12117, prohibits discrimination against

qualified individuals with disabilities in all aspects of employment. Title I of the ADA became effective on July 26, 1992, with respect to employers with 25 or more employees. 42 U.S.C. 12111(5)(A). On July 26, 1994, this coverage will be extended to employers with 15 or more employees. Id. The EEOC is authorized to investigate and attempt to resolve charges of employment discrimination under title I.

Subtitle A of title II of the ADA, 42 U.S.C. 12131-12134, prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governmental entities in their services, programs, and activities, including employment. As of January 26, 1992, the effective date of title II, all State and local governmental entities, regardless of the number of persons they employ, were prohibited from discriminating on the basis of disability in employment. The Department of Justice has issued a regulation implementing title II, which provides that eight designated Federal agencies shall investigate and attempt to resolve complaints of discrimination under title II. Complaints that arise solely under title II are investigated by the designated agency most closely related to the functions exercised by the governmental component against which the complaint is lodged. See 28 CFR part 35 (56 FR 35694, July 26, 1991).

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibits discrimination on the basis of disability (formerly, "handicap") in programs and activities receiving Federal financial assistance or conducted by any Executive agency. The nondiscrimination requirements of section 504 are applicable to employment in Federally-assisted programs. Each Federal agency that extends Federal

financial assistance is responsible for compliance with section 504 in the programs it funds. More than twenty-five Federal agencies have issued regulations implementing section 504 for their Federally-assisted programs. These agencies are referred to in this rule as section 504 agencies.

The substantive prohibitions and coverage of title I, title II, and section 504 overlap to a significant extent. There is, therefore, a potential for duplicative efforts by the many Federal agencies responsible for ensuring compliance with these laws in their processing of complaints. Thus, pursuant to section 107(b) of the ADA, the Department and the Commission are promulgating this joint final rule to establish procedures for coordinating the processing of complaints that fall within the overlapping jurisdiction of section 504 and title I of the ADA. For convenience and clarity in processing complaints, this rule also incorporates the provisions established by the Department's title II rule at 28 CFR 35.171(b)(2)-(3) for coordinating the processing of complaints against public entities: (i) that fall within the jurisdiction of title II and title I (but are not covered by section 504); and (ii) that are covered by title II, but not title I (whether or not they are also covered by section 504). This reiteration of title II procedures does not amend or change the title II regulation as previously published. The Commission does not express an opinion on the title II procedures set forth herein, since they merely repeat a previously published regulation over which the Commission has no direct authority. The Commission and the Department of Labor also have published joint rules implementing section 107(b) of the ADA as it pertains to title I and section 503 of the Rehabilitation Act. See 29 CFR part 1641, 41 CFR part 60-742 (57 FR 2960, January 24, 1992).

## Analysis of Comments and Revisions

### Overview

The Commission received ten comments in response to a notice of proposed rulemaking (NPRM) published jointly with the Department of Justice on April 21, 1992, 57 FR 14630. In addition, the Commission received comments from various affected Federal agencies on both the proposed regulation and on the draft final regulation, pursuant to interagency coordination under Executive Order 12067.

The Commission and the Department of Justice have carefully considered all of the comments and made various revisions in response to them. A number of commenters expressed reservations about the feasibility of the procedures set forth in the NPRM and suggested various alternative procedures. Several commenters strongly urged that procedures similar to those set forth in the regulation promulgated to coordinate processing of complaints of employment discrimination filed against recipients of federal financial assistance be adopted. See 28 CFR part 42; 29 CFR part 1691 (hereinafter, the title VI/title VII regulation). The title VI/title VII regulation established procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance subject to title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the State and Local Fiscal Assistance Act of 1972, as amended, and other provisions of Federal law that prohibit discrimination on grounds of race, color, religion, sex, or national origin, in programs or activities receiving Federal financial assistance, when there is overlapping jurisdiction under title VII of the Civil Rights Act of 1964.

Under the NPRM's "first filed approach," the EEOC and any section 504 agency with jurisdiction over a charge or complaint would process those charges or complaints that were actually filed with it, pursuant to title I of the ADA or section 504, respectively. In the case of a charge or complaint that was physically filed with both the EEOC and a section 504 agency with jurisdiction, the agency that first received the complaint or charge would process it, absent special circumstances, while the second agency would defer processing pending the conclusion of the first agency's investigation. Numerous section 504 agencies expressed concern about the practical difficulties inherent in the NPRM's approach, including ascertaining which agency actually received a charge or complaint first in the case of a charge or complaint filed with both the EEOC and a section 504 agency. Accordingly, as suggested by a number of commenters, the final regulation adopts an approach similar to that of the title VI/title VII regulation. Under the final rule, a complaint solely alleging employment discrimination against a single individual (hereinafter, an individual complaint) that is filed with a section 504 agency

with jurisdiction over the complaint will ordinarily be transferred to the EEOC for processing, unless the complainant specifically requests processing by the section 504 agency. Section 504 agencies, however, will retain for processing any complaints that allege: (i) a pattern or practice of discrimination in employment; or (ii) discrimination both in employment and in other services or practices of a respondent that are covered by section 504. For a comprehensive analysis of the new procedures, see the discussion of Sec.[1640].6, below.

The NPRM presented two options regarding the legal standard to be applied by section 504 agencies, and the preamble to the NPRM discussed the rationale for each option. Although numerous comments on these options were received in response to the NPRM, recent amendments to the Rehabilitation Act have resolved this issue. See section 506 of the Rehabilitation Act Amendments of 1992, Pub. L. 102-569, 106 Stat. 4344. Therefore, as provided in that amendment, the final regulation directs section 504 agencies to apply the standards of title I of the ADA. See the discussion of Sec. [1640].12, below.

Commenters also requested that time frames for the processing of complaints be added to the final regulation. Because, in certain cases, individual agencies may have requirements that preclude meeting fixed time frames for certain stages of the complaint investigation process, this suggestion has not been adopted. For example, when disclosure of the complainant's identity is necessary for the investigation of a section 504 or title II complaint, the Department requires receipt of a signed consent form from the complainant prior to notifying a respondent that the Department has received a complaint of discrimination. Therefore, the final regulation retains the more general requirement that agencies act promptly and in accordance with applicable law.

Various commenters also noted the inefficiency of the requirement that a section 504 agency refer a complaint to the Civil Rights Division for a determination of jurisdiction when the agency does not have section 504 jurisdiction, but does have title II jurisdiction. In response, the regulation has been revised to require that a complaint be referred to the Civil Rights Division only when the section 504 agency that initially receives the com-



WEST VIRGINIA DIVISION OF  
CULTURE AND HISTORY

May 2, 2000

David Ice, Secretary  
West Virginia Department of  
Education and the Arts  
State Capital Building #5, Room 205  
1900 Kanawha Blvd., East  
Charleston, WV 25305

Dear Secretary Ice:

The West Virginia Commission on the Arts, in response to provisions in S.B. 657, passed by both houses of the West Virginia Legislature, and signed by Governor Underwood on April 4, 2000, is proposing a Legislative Rule; Title 82, Series 7 for the Cultural Facilities and Capital Resources Grant Program.

The director of arts, Richard H. Ressmeyer, has prepared, at the Commission's direction, the Legislative Rule, and referenced materials (Application Explanation and Instructions and Application Checklist and Forms) to advance this process to the Secretary of State and the Legislative Rule Making Review Committee.

This letter should serve as a transmittal request to the West Virginia Department of Education and the Arts to endorse our proposal for this new Legislative Rule.

The next steps in the process are to arrange a Public Comment Period and request approval by the Secretary of State's Administrative Law Office and the Legislative Rule Making Review of an Emergency Legislative Rule for this program. Mr. Ressmeyer has prepared all the appropriate forms for this purpose. Mr. Perry Pauley in your office has these materials from Mr. Ressmeyer.

Your attention to this request is very much appreciated.

Sincerely,

William Maxwell Davis, Chairman  
West Virginia Commission on the Arts



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