

## TITLE 20 - EDUCATION

### CHAPTER 72 - MUSEUM AND LIBRARY SERVICES

#### SUBCHAPTER II - LIBRARY SERVICES AND TECHNOLOGY

##### Part 1 - Basic Program Requirements

#### § 9134. State plans

##### (a) State plan required

###### (1) In general

In order to be eligible to receive a grant under this subchapter, a State library administrative agency shall submit a State plan to the Director once every 5 years, as determined by the Director.

###### (2) Duration

The State plan shall cover a period of 5 fiscal years.

###### (3) Revisions

If a State library administrative agency makes a substantive revision to its State plan, then the State library administrative agency shall submit to the Director an amendment to the State plan containing such revision not later than April 1 of the fiscal year preceding the fiscal year for which the amendment will be effective.

##### (b) Contents

The State plan shall—

(1) establish goals, and specify priorities, for the State consistent with the purposes of this subchapter;

(2) describe activities that are consistent with the goals and priorities established under paragraph (1), the purposes of this subchapter, and section 9141 of this title, that the State library administrative agency will carry out during such year using such grant;

(3) describe the procedures that such agency will use to carry out the activities described in paragraph (2);

(4) describe the methodology that such agency will use to evaluate the success of the activities established under paragraph (2) in achieving the goals and meeting the priorities described in paragraph (1);

(5) describe the procedures that such agency will use to involve libraries and library users throughout the State in policy decisions regarding implementation of this subchapter;

(6) provide assurances that the State will comply with subsection (f) of this section; and

(7) provide assurances satisfactory to the Director that such agency will make such reports, in such form and containing such information, as the Director may reasonably require to carry out this subchapter and to determine the extent to which funds provided under this subchapter have been effective in carrying out the purposes of this subchapter.

##### (c) Evaluation and report

Each State library administrative agency receiving a grant under this subchapter shall independently evaluate, and report to the Director regarding, the activities assisted under this subchapter, prior to the end of the 5-year plan.

##### (d) Information

Each library receiving assistance under this subchapter shall submit to the State library administrative agency such information as such agency may require to meet the requirements of subsection (c) of this section.

##### (e) Approval

###### (1) In general

The Director shall approve any State plan under this subchapter that meets the requirements of this subchapter and provides satisfactory assurances that the provisions of such plan will be carried out.

**(2) Public availability**

Each State library administrative agency receiving a grant under this subchapter shall make the State plan available to the public.

**(3) Administration**

If the Director determines that the State plan does not meet the requirements of this section, the Director shall—

- (A) immediately notify the State library administrative agency of such determination and the reasons for such determination;
- (B) offer the State library administrative agency the opportunity to revise its State plan;
- (C) provide technical assistance in order to assist the State library administrative agency in meeting the requirements of this section; and
- (D) provide the State library administrative agency the opportunity for a hearing.

**(f) Internet safety**

**(1) In general**

No funds made available under this subchapter for a library described in section 9122 (1)(A) or (B) of this title that does not receive services at discount rates under section 254 (h)(6) of title 47 may be used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, for such library unless—

- (A) such library—
  - (i) has in place a policy of Internet safety for minors that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—
    - (I) obscene;
    - (II) child pornography; or
    - (III) harmful to minors; and
  - (ii) is enforcing the operation of such technology protection measure during any use of such computers by minors; and
- (B) such library—
  - (i) has in place a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—
    - (I) obscene; or
    - (II) child pornography; and
  - (ii) is enforcing the operation of such technology protection measure during any use of such computers.

**(2) Access to other materials**

Nothing in this subsection shall be construed to prohibit a library from limiting Internet access to or otherwise protecting against materials other than those referred to in subclauses (I), (II), and (III) of paragraph (1)(A)(i).

**(3) Disabling during certain use**

An administrator, supervisor, or other authority may disable a technology protection measure under paragraph (1) to enable access for bona fide research or other lawful purposes.

**(4) Timing and applicability of implementation**

**(A) In general**

A library covered by paragraph (1) shall certify the compliance of such library with the requirements of paragraph (1) as part of the application process for the next program funding year under this subchapter following the effective date of this subsection, and for each subsequent program funding year thereafter.

**(B) Process**

(i) Libraries with Internet safety policies and technology protection measures in place

A library covered by paragraph (1) that has in place an Internet safety policy meeting the requirements of paragraph (1) shall certify its compliance with paragraph (1) during each annual program application cycle under this subchapter.

(ii) Libraries without Internet safety policies and technology protection measures in place

A library covered by paragraph (1) that does not have in place an Internet safety policy meeting the requirements of paragraph (1)—

(I) for the first program year after the effective date of this subsection in which the library applies for funds under this subchapter, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy that meets such requirements; and

(II) for the second program year after the effective date of this subsection in which the library applies for funds under this subchapter, shall certify that such library is in compliance with such requirements.

Any library covered by paragraph (1) that is unable to certify compliance with such requirements in such second program year shall be ineligible for all funding under this subchapter for such second program year and all subsequent program years until such time as such library comes into compliance with such requirements.

(iii) Waivers

Any library subject to a certification under clause (ii)(II) that cannot make the certification otherwise required by that clause may seek a waiver of that clause if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by that clause. The library shall notify the Director of the Institute of Museum and Library Services of the applicability of that clause to the library. Such notice shall certify that the library will comply with the requirements in paragraph (1) before the start of the third program year after the effective date of this subsection for which the library is applying for funds under this subchapter.

**(5) Noncompliance**

**(A) Use of General Education Provisions Act remedies**

Whenever the Director of the Institute of Museum and Library Services has reason to believe that any recipient of funds this<sup>1</sup> subchapter is failing to comply substantially with the requirements of this subsection, the Director may—

(i) withhold further payments to the recipient under this subchapter,

(ii) issue a complaint to compel compliance of the recipient through a cease and desist order, or

(iii) enter into a compliance agreement with a recipient to bring it into compliance with such requirements.

**(B) Recovery of funds prohibited**

The actions authorized by subparagraph (A) are the exclusive remedies available with respect to the failure of a library to comply substantially with a provision of this subsection, and the Director shall not seek a recovery of funds from the recipient for such failure.

**(C) Recommencement of payments**

Whenever the Director determines (whether by certification or other appropriate evidence) that a recipient of funds who is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Director shall cease the withholding of payments to the recipient under that subparagraph.

**(6) Separability**

If any provision of this subsection is held invalid, the remainder of this subsection shall not be affected thereby.

**(7) Definitions**

In this subsection:

**(A) Child pornography**

The term “child pornography” has the meaning given such term in section 2256 of title 18.

**(B) Harmful to minors**

The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that—

- (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
- (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
- (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

**(C) Minor**

The term “minor” means an individual who has not attained the age of 17.

**(D) Obscene**

The term “obscene” has the meaning applicable to such term in section 1460 of title 18.

**(E) Sexual act; sexual contact**

The terms “sexual act” and “sexual contact” have the meanings given such terms in section 2246 of title 18.

**Footnotes**

<sup>1</sup> So in original. Probably should be preceded by “under”.

(Pub. L. 94–462, title II, § 224, as added Pub. L. 104–208, div. A, title I, § 101(e) [title VII, § 702], Sept. 30, 1996, 110 Stat. 3009–233, 3009–300; amended Pub. L. 106–554, § 1(a)(4) [div. B, title XVII, § 1712(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–340; Pub. L. 108–81, title II, § 205, title V, § 504(f), Sept. 25, 2003, 117 Stat. 999, 1004.)

**References in Text**

For the effective date of this subsection, referred to in subsec. (f)(4), as 120 days after Dec. 21, 2000, see § 1(a)(4) [div. B, title XVII, § 1712(b)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note below.

The General Education Provisions Act, referred to in subsec. (f)(5)(A), is title IV of Pub. L. 90–247, Jan. 2, 1968, 81 Stat. 814, as amended, which is classified generally to chapter 31 (§ 1221 et seq.) of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

**Amendments**

2003—Subsec. (a)(1). Pub. L. 108–81, § 205(1), substituted “once every 5 years, as determined by the Director.” for “not later than April 1, 1997.”

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

Subsec. (b)(5). Pub. L. 108–81, § 504(f), struck out “and” at end.

Subsec. (f). Pub. L. 108–81, § 205(2)(A), substituted “this subchapter” for “this chapter” wherever appearing.

Subsec. (f)(1). Pub. L. 108–81, § 205(2)(B), substituted “section 9122 (1)(A) or (B)” for “9122(2)(A) or (B)” and made technical amendment to reference in original act which appears in text as reference to section 254 (h)(6) of title 47.

Subsec. (f)(7). Pub. L. 108–81, § 205(2)(C)(i), substituted “subsection:” for “section:” in introductory provisions.

Subsec. (f)(7)(D). Pub. L. 108–81, § 205(2)(C)(ii), substituted “applicable to” for “given”.

2000—Subsec. (b)(6), (7). Pub. L. 106–554, § 1(a)(4) [div. B, title XVII, § 1712(a)(1)], added par. (6) and redesignated former par. (6) as (7).

Subsec. (f). Pub. L. 106–554, § 1(a)(4) [div. B, title XVII, § 1712(a)(2)], added subsec. (f).

### **Effective Date of 2000 Amendment**

Pub. L. 106–554, § 1(a)(4) [div. B, title XVII, § 1712(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–343, provided that: “The amendment made by this section [amending this section] shall take effect 120 days after the date of the enactment of this Act [Dec. 21, 2000].”

### **Availability of Certain Funds for Acquisition of Technology Protection Measures**

Pub. L. 106–554, § 1(a)(4) [div. B, title XVII, § 1721(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–350, provided that:

“(1) In general.—Notwithstanding any other provision of law, funds available under section 3134 [former 20 U.S.C. 6844] or part A of title VI of the Elementary and Secondary Education Act of 1965 [former 20 U.S.C. 7311 et seq.], or under section 231 of the Library Services and Technology Act [20 U.S.C. 9141], may be used for the purchase or acquisition of technology protection measures that are necessary to meet the requirements of this title [see Short Title of 2000 Amendments note set out under section 6301 of this title] and the amendments made by this title. No other sources of funds for the purchase or acquisition of such measures are authorized by this title, or the amendments made by this title.

“(2) Technology protection measure defined.—In this section, the term ‘technology protection measure’ has the meaning given that term in section 1703 [set out as a note under section 902 of Title 47, Telegraphs, Telephones, and Radiotelegraphs].”