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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Endowment for the Arts—Awarding of Grants

File: B-322479

Date: September 25, 2012

DIGEST

The National Endowment for the Arts (NEA) has established a program under 20 U.S.C. § 954(g) to award grants to states to support projects and productions in the arts. A plan approved by the NEA Chairperson is a prerequisite to receiving a grant. In the event any particular state does not have a plan that has been approved by the Chairperson, NEA may use appropriations that might otherwise have been used for a grant to that state to provide grant funding to other states or regional groups in accordance with the order of priorities set forth in section 954(g).

DECISION

The General Counsel of the National Endowment for the Arts (NEA) requested our decision interpreting 20 U.S.C. § 954(g). Letter from General Counsel, NEA, to General Counsel, GAO (Sept. 13, 2011), *as modified by* e-mail from General Counsel, NEA, to Assistant General Counsel, GAO (Mar. 12, 2012) (Request Letter). Section 954(g), enacted as part of the National Foundation on the Arts and Humanities Act of 1965,¹ as amended, authorizes NEA to make a grant of at least \$200,000 to each state that has submitted a grant application as well as a state plan that has been approved by the NEA Chairperson. A prerequisite to a grant under this section is an approved plan. NEA has asked whether the Chairperson, in the event any particular state does not have a plan that has been approved by the Chairperson, may use appropriations that might otherwise have been used for a grant to that state to provide additional grant funding to other states or regional groups that, in fact, do have plans approved by the Chairperson. As we explain below, section 954(g) establishes an order of priority for sums made available for

¹ Pub. L. No. 89-209, 79 Stat. 845 (Sept. 29, 1965), *codified as amended at* 20 U.S.C. §§ 951–960.

section 954(g) grants. In our view, NEA may use amounts in excess of that necessary to fund \$200,000 grants for each eligible state to provide additional funds to eligible states and regional groups.

Our practice when rendering legal decisions is to obtain the views of the relevant agency to establish a factual record and to elicit the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. The record in this case consists of the Request Letter. NEA described the issue here as “a question of first impression,” and, for that reason, has not taken a legal position.

BACKGROUND

NEA was established as part of the National Foundation on the Arts and Humanities Act in 1965 to develop and promote a national policy for the humanities and the arts. 20 U.S.C. § 953. NEA is headed by a Chairperson, who, with the advice of the National Council on the Arts, is authorized to establish grant programs in support of the advancement of the arts. See 20 U.S.C. § 954(g). For fiscal year 2012, NEA received a lump-sum appropriation “for the support of projects and productions in the arts, . . . through assistance to organizations and individuals pursuant to [20 U.S.C. § 954], for program support, and for administering the functions of the Act, to remain available until expended.”²

Section 954(g) authorizes NEA to establish a grant program to assist states in supporting projects and productions in the arts. In order to receive assistance under this subsection in any fiscal year, a state must submit an application with a plan that must be approved by the Chairperson. 20 U.S.C. § 954(g)(2). A state that elects not to submit an application or submits a plan that is not approved by the Chairperson is ineligible for a grant award under section 954(g).

The agency applies a formula set forth in subparagraph (3) of section 954(g) to allot, or set aside, funds for grants to state applicants that have an approved plan, *i.e.*, eligible states. NEA is required to allot a minimum of \$200,000 to each eligible state. *Id.* at § 954(g)(3). Section 954(g) provides that in a situation where sufficient amounts are not available to provide each state with \$200,000, NEA is required to divide the total amounts available equally among states with approved plans. If the amount available exceeds the amount necessary for the aggregate minimum allotment, section 954(g) establishes an order of priorities for the excess amount. First, the Chairperson may utilize up to 25 percent of such excess to award grants to

² See, *e.g.*, Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, div. E, title III, 125 Stat. 786, 1034 (Dec. 23, 2011). The act also included grant guidelines for NEA, such as a reservation of funds for grants to underserved population and a preference to fund productions with a national impact. 125 Stat. at 1044–45.

states and regional groups.³ 20 U.S.C. § 954(g)(3)(A). Second, any remaining excess beyond this 25 percent must be allotted equally among the eligible states. *Id.* at § 954(g)(3)(A).

DISCUSSION

At issue here is the disposition of funds made available to carry out section 954(g) when a state does not have a plan that is approved by the Chairperson. We address this issue by analyzing the statutory order of priorities of section 954(g).

As with any question involving the interpretation of statutes, the analysis begins with the plain language of the statute. *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). This is because the “starting point in discerning congressional intent is the existing statutory text.” *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004). When the language of a statute is “clear and unambiguous on its face, it is the plain meaning of that language that controls.” B-307720, Sept. 27, 2007; B-306975, Feb. 27, 2006.

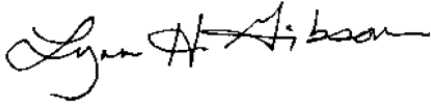
Here, section 954(g) clearly establishes an order of priorities for the distribution of funds available to carry out the grant program. As explained above, section 954(g)(3) provides that “each State which has a plan approved by the Chairperson shall be allotted at least \$200,000.” A prerequisite to the grant is an approved plan.

Section 954(g) provides next that if there are amounts available in excess of the amount needed for this purpose, an amount “no greater than 25 [percent] of the sums available to carry out [20 U.S.C. § 954(g)] for any fiscal year shall be available only to the Chairperson for making grants under this subsection to States and regional groups.” 20 U.S.C. § 954(g)(3)(A). The statute imposes two requirements on the Chairperson’s use of this 25 percent set-aside; that is, that such amount is “for making grants under [20 U.S.C. § 954(g)]” and that the grants must be made to “States and regional groups.” In the event that additional amounts remain available for section 954(g)(3) grants after “reserving in full” such 25 percent, the statute provides that the Chairperson “shall” allot the remaining amounts “among the States which have plans approved by the Chairperson in equal amounts.” 20 U.S.C. § 954(g)(3)(B).

³ Regional groups can be “any multi-state group, whether or not representative of contiguous States.” 20 U.S.C. § 954(g)(4)(D).

CONCLUSION

Section 954(g) sets forth an order of priorities for the distribution of funds available to carry out the grant program. That order prescribes the manner in which NEA may award grants to eligible states and other organizations when a state fails to produce a plan approved by the Chairperson.

A handwritten signature in black ink, appearing to read "Lynn H. Gibson". The signature is fluid and cursive, with the first name "Lynn" being the most prominent.

Lynn H. Gibson
General Counsel