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Arts and Humanities: Funding and Reauthorization in the 105th Congress

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ABSTRACT

One of the primary vehicles for federal support of the arts and humanities is the National Foundation on the Arts and the Humanities, composed of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services. This report describes the issues and options raised in the 105th Congress with regard to both authorization and appropriations for support of the arts and humanities.

Arts and Humanities: Funding and Reauthorization in the 105th Congress

Summary

One of the primary vehicles for federal support of the arts and humanities is the National Foundation on the Arts and the Humanities (NFAH). The 105th Congress is considering both reauthorization and appropriations for the National Foundation on the Arts and the Humanities Act (NFAHA), which provides authority for the National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH), and the Institute of Museum Services (IMS) (now merged with a newly constituted Institute of Museum and Library Services (IMLS)). Some Members of Congress have proposed to abolish NEA. Other Members of the House and Senate want to restore funding and to reauthorize NFAHA.

On June 18, 1998 the House Interior Appropriations Subcommittee marked up the FY1999 Interior Appropriations bill, providing \$23 million for the IMLS Office of Museum Services, \$110 million for NEH and recommending “termination of \$98 million for the National Endowment for the Arts.” On June 25, 1998, the House appropriations Committee restored \$98 million for NEA (an amendment to restore funding offered by Representative Obey was adopted by a vote of 31-27) under the FY1999 Interior Appropriations bill. Also, on June 25, 1998, the Senate Appropriations Committee ordered reported the FY1999 Interior Appropriations, providing \$100.060 million for NEA, \$110.700 million for NEH and \$23.280 million for the Office of Museum Services, IMLS.

The last reauthorization for the National Foundation on the Arts and Humanities Act of 1965 took place in 1990 and expired in FY1993. The authority has been carried through appropriations language since that time. The 104th Congress considered but did not enact legislation to reauthorize NFAH. In the 105th Congress, the Senate Labor and Human Resources Committee reported S. 1020, a bill to reauthorize the NFAHA. Although there was no further action some of the reforms were placed in the FY1998 Interior appropriations law.

The Administration’s FY1999 budget request would have provided \$136 million each for NEA and NEH and \$26 million for the Office of Museum Services, within IMLS. The President’s Committee on the Arts released a publication, *Creative America*, that recommends that federal funding be restored for NEA, NEH, and IMLS to levels “adequate to fulfill their national roles” and to equal \$2.00 per person in the U.S. by the year 2000.

On June 25th, 1998 the Supreme Court reversed the federal appeals court decision for *NEA v. Finley* by a vote of 8 to 1, stating that the NEA can consider “general standards of decency” when judging grants for artistic merit, and that the decency provision does not “inherently interfere” with First Amendment rights. The debate over the appropriate federal role in the arts continues.

Contents

Legislative Status	1
Introduction	2
The National Foundation on the Arts and the Humanities (NFAH)	3
Arts and Humanities Funding	3
Private Giving and Business Support of the Arts	4
FY1997 Budget and FY1997 Interior Appropriations	4
FY1998 Budget and FY1998 Interior Appropriations	5
FY1999 Budget and FY1999 Interior Appropriations	6
NFAH Reauthorization in the 104th and 105th Congress	7
House Bill and Committee Mark-Up in the 104 th Congress	8
Senate Bill and Committee Mark-Up in the 104 th Congress	8
Senate Arts Reauthorization Bill in the 105 th Congress	8
NFAH Reauthorization Issues	9
Federal Role in Culture	9
Alternative Funding Mechanisms for the Arts	9
Block Grants	10
True Endowment	11
Cultural Trust Fund	11
Arts Funding through Royalties	12
Auction of Copyright	12
Tax Refund or Check-Off for the Arts	13
National Lottery	13
Merger of Endowments	14
NEA: Status and Management	14
NEH: Status and Management	16
IMS: Status and Management	17

List of Tables

Table 1. Selected FY1994-FY1998 Appropriations and FY1999 Budget Request for Selected Cultural Programs	18
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Arts and Humanities: Funding and Reauthorization in the 105th Congress

Legislative Status

The 105th Congress has considered both appropriations and authorization for the National Foundation on the Arts and the Humanities Act (NFAHA), the primary source of federal support for the arts, humanities, and museums. Some Members of Congress including the Conservative Action Team,¹ want to abolish the National Endowment for the Arts (NEA). Proposals to abolish the NEA (S. 48, H.R. 122) were introduced in the first session of the 105th Congress. During consideration of the Department of Interior and Related Agencies appropriations bill for FY1998, the House, through a point of order, had funding for NEA stricken from the language stating that since NEA's authorization had expired there could be **no** appropriation for NEA. On September 18, 1997 the Senate passed the Interior appropriations bill, FY1998 restoring funding for NEA. On September 30, 1997 the Interior appropriations conferees agreed on **\$98 million** for NEA with some reforms, \$110.7 million for NEH, and \$23.280 million for the Office of Museum Services (IMLS) (**H.Rept. 105-337**)(P.L. 105-83).

The Administration's FY1999 budget would have allowed \$136 million for NEA and the National Endowment for the Humanities (NEH) and \$26 million for the Office of Museum Services, within the Institute of Museum and Library Services (IMLS). (See later discussion.) Once again, elimination of the NEA is on a list of priorities for some House members.² In contrast the Congressional Member Organization for the Arts (CMO) testified in favor of full support for the arts at the FY1999 Administration budget request level.

On June 18, 1998 the House Interior Subcommittee marked up the FY1999 Interior Appropriations bill, with language to "terminate \$98 million for NEA." On June 25th, 1998 the House restored \$98 million for NEA through an amendment by Representative Obey adopted by a vote of 31-27.) The Senate Appropriations Committee reported S. 2237 providing \$100.060 million for NEA, \$110.7 million for NEH, and \$23.280 million for the Office of Museum Services, IMLS.

¹ The Members of Congress who constitute "The Conservative Action Team" held a press conference on the arts on April 10, 1997.

² Among the House Republican leadership a small group has been formed called the "values action team," headed by Representative Pitts to coordinate legislative action with conservative groups (e.g., Christian Coalition, Focus on the Family and the Family Research Council).

Introduction

One of the primary vehicles for federal support for the arts and humanities is the National Foundation on the Arts and the Humanities (NFAH). The 105th Congress is considering both funding and reauthorization of (NFAHA). Among the major questions Congress is debating is whether funding for the arts and humanities is an appropriate federal role and responsibility; whether funding should be continued in light of the budget constraints; what justification there is to maintain NFAHA as the vehicle for arts and humanities funding; and what would be the impact of abolishing or privatizing funding for the arts and the humanities.

Funding levels for NFAH (totaling \$231.9 million in FY1998), have been a perennial issue in the House and Senate Interior Appropriations Subcommittees; the shape of the institution, NFAH, is the concern of the authorizing committees of Congress, which are the House Committee on Education and the Workforce and the Senate Labor and Human Resources Committee.

In the 104th Congress, the House Committee on Economic and Educational Opportunities ordered reported **H.R. 1557** on May 10, 1995, (H.Rept. 104-170) a bill with a 3-year authorization with reduced authorization of appropriations levels for NEA and NEH that at the end of 3 years would have repealed NFAHA. The reported bill also would have provided 80% of the appropriation for NEA and NEH to the states. **S. 856** was introduced in the Senate on May 25, 1995, by Senator Jeffords (and Senators Simpson, Kassebaum, Kennedy, Pell, and Dodd) to reauthorize NEA and NEH for 5 years at gradually reduced funding levels. S. 856 also contained provisions for an Institute for Museum and Library Services which would have merged the current IMS with the Library Services and Construction Act programs currently administered by the Department of Education (ED). S. 856 was ordered reported by the Senate Labor and Human Resources Committee on July 19, 1995. The written report (S.Rept. 104-135) for S. 856 was ordered printed on August 30, 1995, with minority views included. Other bills previously introduced included proposals to immediately abolish the National Endowment for the Arts — NEA (H.R. 209, Representative Crane) and the National Endowment for Humanities — NEH (H.R. 579, Representative Hefley). H.R. 100 introduced by Representative Yates would have provided a 2-year extension for NFAHA. There was no further action on these reauthorization bills.

In the 105th Congress, Senators Jeffords, Kennedy and Chafee introduced a bill (**S. 1020**) to reauthorize for five years the National Foundation on the Arts and the Humanities Act of 1965, authorizing \$175 million each for NEA and NEH for FY1998 and “such sums” as necessary” for FY1999-FY2002. This reauthorization bill is similar to the bill (S. 856) that the Senate labor and Human Resources Committee reported in the 104th Congress. On July 23, 1997, the Senate Labor and Human Resources Committee reported S. 1020 with amendments, limiting the authorization level for NEA to \$105 million. There was no further action except that some of the reforms that became part of the FY1998 Interior Appropriations bill were similar to provisions in S. 1020.

The purpose of this report is to provide background information on the National Foundation on the Arts and the Humanities (NFAH), to describe congressional

legislative action on reauthorization for the NFAH and funding for some selected cultural programs.

The National Foundation on the Arts and the Humanities (NFAH)

The National Foundation on the Arts and the Humanities (NFAH) provides federal support for the arts, humanities, and museums. It is composed of the National Endowment for the Arts (NEA) and its National Council on the Arts, the National Endowment for the Humanities (NEH) and its National Council on the Humanities, the Institute of Museum Services (IMS) (now reconstituted as the Office of Museum Services within the Institute of Museum and Library Services (IMLS)), and the federal Council on the Arts and the Humanities. The federal Council is an advisory body that administers the Arts and Artifacts Indemnity Act that helps museums reduce the burden of cost for commercial insurance for international art exhibitions. The previous Chairperson of NEA was Jane Alexander and the new nomination is William Ivey; for NEH the previous chairperson was Sheldon Hackney and the new Chairperson is William Ferris; and for IMLS is Diane Frankel.

Arts and Humanities Funding. Appropriations have increased in current dollars overall for NEA, NEH, and IMS since their inception. However, when adjusted for inflation, both NEA (\$98 million) and NEH funds (\$110.7 million) now are significantly less than they were 10 years ago.

FY1999 Budget. The Administration's FY1999 budget request would allow \$136 million for NEA and NEH and \$26 million for the Office of Museum Services, within IMLS. **Table 1 on page 17** delineates FY1994-FY1998 appropriations and the FY1999 budget request for selected cultural activities.

Percent of Federal Budget. There are an estimated 200 arts and humanities programs or activities scattered throughout various departments and agencies of the federal government. Although it is relatively difficult to track all federal spending on the arts and humanities, it appears that the majority of arts and humanities funding is through the Department of the Interior appropriations, including the programs sponsored by NFAH and the Smithsonian.³ The total for arts and humanities-related spending in FY1997 (an estimated \$750.5 million to \$1.1 billion)⁴ was **less than .1%** (.05%-.07%) of the FY1997 federal appropriation (\$1.6529 trillion). The President's FY1998 budget request (\$1.7095 trillion) included a comparable percentage for arts and humanities programs, and funding for NEA and NEH specifically constituted approximately .02% of the FY1998 budget. The President's FY1999 budget request (\$1.751 trillion) includes approximately **.1%** for arts and humanities related spending and the NEA and NEH specifically constitute an estimated **.02%** of the FY1999 budget.

³ The federal government also provides support for the arts through **tax expenditures**, such as the deduction for charitable contributions to the arts, humanities, and culture on the income tax and on gift and estate taxes.

⁴ The lower total reflects programs primarily defined to be arts and humanities-related in the *Catalog of Federal Domestic Assistance* (CFDA). The higher total includes two additional programs, military bands and Fulbright exchanges.

Private Giving and Business Support of the Arts. According to *Giving USA* (1997), private giving to the arts, humanities and culture was estimated at \$10.92 billion (1996), an increase of approximately \$1 billion from \$9.96 billion (1995). State arts appropriations were estimated at \$275.4 million in FY1997, an increase of 5.02% over the aggregate 1996 arts appropriations of \$262.2 million. In 1997, it was reported by the National Assembly of State Arts agencies that state legislatures collectively appropriated over one dollar per person for the arts, the highest level of spending since 1991.

The Business Committee for the Arts: 1995 National Survey of Business Support to the Arts indicated that business support of the arts totaled \$875 million in 1994 as compared to \$518 million in 1991. Approximately 47% of businesses supported the arts in 1994 as compared with 37% in 1991. Businesses used 19% of their philanthropic budgets to support the arts.⁵

A recent study, *Looking Ahead: Private Sector Giving to the Arts and the Humanities*, released to the public by the President's Committee on the Arts and the Humanities indicated all private giving to nonprofit organizations for all causes totaled approximately \$130 billion in 1994 up 3.7 % from 1993, but a decrease in terms of "real economic growth."⁶ Individual giving composed 87.7% of that total, 7.6% from foundations and 4.7% from corporations. Of the 37,000 foundations, approximately 15% of their dollars were allocated to the arts and humanities. Individual giving to the arts has decreased in terms of the average size of donations to the arts.⁷

FY1997 Budget and FY1997 Interior Appropriations. President Clinton submitted the FY1997 budget priorities in February 1996 and released the detailed budget documents in March 1996. The FY1997 budget would have allowed increases for NEA, NEH, and IMS — \$136 million each for NEA and NEH and \$23 million for IMS.

On June 12, 1996 the House Appropriations Committee marked up the FY1997 Interior Appropriations bill with an amendment to restore \$5 million for NEH, providing a total of \$104.494 million for NEH. On June 20, 1996, the House passed the FY1997 Interior Appropriations bill (H.R. 3662) providing \$104.494 million for NEH, \$99.494 million for NEA and \$21 million for IMS, with the assumption that NEA would be terminated in 2 years and NEH in 3 years.

On July 16, 1996 the Senate Appropriations Committee reported the FY1997 Interior Appropriations bill (H.R. 3662) (S.Rept. 104-319) with some technical amendments including one to clarify language with regard to NEA subgrants to local arts agencies. The Senate Appropriations Committee's mark would have allowed

⁵ Business Committee for the Arts. *National Survey of Business Support to the Arts*, 1995.

⁶ Cobb, Nina Kressner. *Looking Ahead: Private Sector Giving to the Arts and the Humanities*. Rockefeller Foundation and Texaco Foundation. Released by the President's Committee on the Arts and the Humanities, 1996.

⁷ *Ibid.*, p. 4 and 9.

\$99.494 million each for NEA and NEH and \$21 million for IMS. The Senate Appropriations Committee expressed support for continued funding for NEA and NEH, but expected resolution by the House and Senate authorizing committees. On September 13 and September 19, 1996 the Senate considered H.R. 3662 with no further action. On September 30, 1996 the Omnibus Consolidated Appropriations Act of 1997 (P.L. 104-208) was enacted, providing \$99.494 million for NEA, \$110 million for NEH, and \$22 million for IMS.

FY1998 Budget and FY1998 Interior Appropriations. The Administration's 1998 budget would have provided \$136 million for NEA and NEH and \$26 million for the Office of Museum Services, within the Institute of Museum and Library Services.

On June 17th, 1997 the House Interior Appropriations Subcommittee reported out a bill to the full Appropriations Committee that would appropriate \$10 million to the NEA for FY1998, a decrease of \$89.494 million from the FY1997 appropriation. However, language was deleted that would have brought about an "orderly closure" of the NEA. The full House appropriations Committee retained \$10 million for NEA. An amendment to restore funding to the FY1997 level for NEA failed. For NEH, the Subcommittee would maintain the FY1997 funding level for FY1998 of \$110 million; and for the Office of Museum Services the Subcommittee would provide \$23.390 million for FY1998, an increase of \$1.390 million over the FY1997 appropriation. The full House appropriations Committee (H.Rept. 105-163) concurred in these amounts.

On July 10th, 1997 the House agreed to a rule by a vote of 217 to 216 that restricted any amendment from being introduced that would restore funding to the NEA. On July 11, 1997, during consideration of the Interior and Related Agencies Appropriations bill for FY1998, H.R. 2107, Representative Ehlers' amendment that sought to provide \$80 million in the form of a block grant for the arts to the states with grants to state arts councils and to school districts (Arts for Kids Act) was rejected by a recorded vote (roll no. 266) of 155 ayes to 272 noes. The language that provided \$10 million for the NEA was eliminated through a point of order stating that since NEA's authorization had expired in 1993, there could be no appropriation for NEA. On July 11, 1997 an amendment to eliminate \$110 million for NEH was introduced by Representative Chabot, and on July 15, 1997 the Chabot amendment failed (328-96). On July 15, 1997 the Department of Interior and Related Agencies appropriations bill (H.R. 2107) passed the House (238-192) with **\$0** for NEA, **\$110** million for NEH, and **\$23.390** million for the Office of Museum Services, IMLS.

On July 18, 1997 the Senate Subcommittee on Interior Appropriations Reported **\$100.060** million for the NEA, **\$110.7** million for NEH and **\$22.290** million for the Office of Museum Services within the IMLS. On July 22, 1997 the full Senate Appropriations Committee concurred with these amounts. It was alluded to that there would be a floor amendment that would increase NEH's appropriation by \$5 million for summer seminars for teachers. In addition, there was discussion and speculation that provisions of the proposed authorizing legislation for the NEA and NEH may be placed in the Interior appropriations bill when it was considered on the Senate floor.

On September 18, 1997, the Senate passed H.R. 2107, the Interior Appropriations bill for FY1998, providing \$100.060 million for the NEA, \$100.7 million for NEH and \$22.290 million for the Office of Museum Services within IMLS. Several amendments with impact on NEA were considered. An Ashcroft/Helms amendment (amdt. no. 1188) to eliminate funding for the NEA was defeated (77-23). An Abraham amendment (amdt. no.1206) to privatize the NEA was defeated 73-26. An amendment by Senator Hutchinson (AR) (amdt. no. 1187) was defeated that would have placed \$100 million in appropriations in state arts block grants (roll no. 245, 62 to 37.) An amendment by Senator Hutchison (TX) (amdt. no. 1186) was defeated (roll no. 246-39-61) that would have provided 75% of the arts appropriation in a block grant to the states. A Gorton (for Dewine) amendment (amdt. no. 1226) was agreed to that directed NEA funding priority to underserved populations. Finally, a sense of the Senate amendment (Senators Stevens and Dodd—amdt. no. 1219) passed by voice vote declaring that hearings should be conducted and legislation debated during this congress that would address Federal funding for the arts.

On September 30, 1997 the Interior appropriations conferees for the FY1998 Interior appropriations bill met and agreed upon **\$110.7 million** for NEH, **\$23.280 million** for the Office of Museum Services (IMLS) and **\$98 million** for NEA with several reform measures included in the language of the bill. These measures included an increase in the percentage of funding to states for basic state grants and for grants to underserved populations from the current 35% to 40%. In addition, the language making arts education a priority would be clarified and reemphasized. There would be a 15% cap on funds allocated to each state, exempting any grants with a National impact. Finally, it was recommended that there be three members of the House and three members of the Senate (as the Smithsonian Board of Regents has) that would serve as members of the National Council on the Arts, and that the size of the National Council be reduced to 20. Both NEA and NEH would be given specific authority to solicit funding and to invest those funds. As a stop-gap measure, the Continuing Resolution, H.J.Res. 94, was signed into law September 30, 1997, as P.L. 105-46, that would continue funding all programs through October 23, 1997 at the “current rate.” A second continuing resolution, H.J.Res. 97 was signed into law, P.L. 105-64, to carry the government forward through November 7. The Interior appropriations conference report (H.Rept. 105-337) was agreed to in the House on October 27 and in the Senate on October 28, 1997 and the bill was enacted as **P.L. 105-83** on November 14, 1997.

FY1999 Budget and FY1999 Interior Appropriations. The Administration’s FY1999 budget would provide \$136 million for NEA and NEH and \$26 million for the Office of Museum Services, with the Institute of Museum and Library Services. For the NEA this would include a \$15 million increase in State Partnership funds to allow NEA to work with state arts agencies by investing in arts education activities. For the NEH, \$5 million in start-up funds would support regional humanities centers as part of a new special initiative, *Rediscovering America: the Humanities and the Millennium*. For IMLS, the Office of Museum Services would receive \$17 million for General operating support to help museums improve the quality of their services to the public; although museums are already popular serving over 600 million visitors a year.

The President's Committee on the Arts recently released a publication, *Creative America* that recommends that federal funding be restored for NEA, NEH and IMLS to levels "adequate to fulfill their national roles." The goal expressed was for the appropriations to equal \$2.00 per person by the year 2000 for all agencies.

For the FY1999 appropriations process, elimination of NEA is on a list of priorities for some House members. The House Republican leadership announced the formation of a group called the "Values Action Team" that will coordinate legislative action with the agenda of conservative groups (e.g., the Christian coalition, Focus on the Family and the Family Research Council.) In contrast, on April 1, 1998 the Congressional Member Organization for the Arts (CMO) testified in support of the arts at House Interior Appropriations Subcommittee hearings.

On June 18, 1998 the House Interior Appropriations Subcommittee marked up the FY1999 Interior Appropriations bill, allowing \$23 million for the IMLS Office of Museum Services, \$110 million for NEH, and recommending "termination of \$98 million for the National Endowment for the Arts." On June 25, 1998, the House Appropriations Committee restored \$98 million for NEA (an amendment to restore funding offered by Representative Obey was adopted by a vote of 31-27) under the FY1999 Interior appropriations bill. Also, on June 25, 1998 the Senate Appropriations Committee ordered reported the FY1999 Interior Appropriations bill (S. 2237), providing \$100.060 million for NEA, \$110.7 million for NEH, and \$23.280 million for the Office of Museum Services, IMLS (S.Rept. 105-227)

NFAH Reauthorization in the 104th and 105th Congress

The National Foundation on the Arts and the Humanities Act (NFAHA) that established the NFAH, had been operating on temporary authority through appropriations law. Initially, House Rules would not have allowed appropriations for programs that were not authorized. NFAHA was last reauthorized in 1990 (P.L. 101-512) and technically expired at the end of FY1993. Reauthorization bills for the NFAHA were considered in the 104th Congress. (In the 103rd Congress, a 2-year extension bill, H.R. 2351, was approved by the House and a similar measure, S. 1218, was reported by the Senate, but action was not completed.) The 104th Congress reported an arts reauthorization bill in the House (H.R. 1557) and reported a bill (S. 856) in the Senate.

On October 11, 1995, the Senate agreed to an amendment (No. 2896/Senators Pell and Jeffords) in their version (S. 143) of the Workforce Development Act/CAREERS Act (H.R. 1617) that would have established IMLS (the basic plan of which was proposed in S. 856), and would have reauthorized the Arts and Artifacts Indemnity Act (also to be extended in S. 856) that insures eligible art exhibitions against loss or damage. H.R. 1617 was considered in conference on July 17, 1996. Provisions for IMLS were included in the Omnibus Consolidated Appropriations Act of 1997, P.L. 104-208. These provisions merged the current Institute of Museum Services with library resources programs. The museum services programs are being administered much as they were previously with a Museum Board advising the director on museum policy. The newly constituted Institute will continue to carry out its mandate for museums, providing grants to pay the federal share (50%) to encourage museums in their educational role, to assist museums in preserving and

maintaining collections, and to help ease the financial burden borne by museums as a result of their increased public use.

House Bill and Committee Mark-Up in the 104th Congress. The House Committee on Economic and Educational Opportunities bypassed hearings and Subcommittee mark-up and ordered reported H.R. 1557 (H.Rept. 104-170) on May 10, 1995. (H.R. 1557 was originally introduced on May 3rd by Representatives Goodling and Cunningham.) A Goodling amendment in the nature of a substitute was ordered reported. H.R. 1557 as reported would have authorized NEA, NEH, and IMS for 3 years after which time NEA and NEH would be eliminated and NFAHA would be repealed. The authorized appropriations levels for NEA would have been \$97.5 million for FY1996, \$58.5 million for FY1997 and \$46.8 million for FY1998. NEH would receive \$137.9 million for FY1996, \$110.340 million for FY1997, and \$88.270 million for FY1998. The IMS would have received \$28.770 million for FY1996, FY1997, and FY1998. The programs for NEA and NEH would have worked much like block grants to the states, in that 80% of the appropriation for each year would go directly to the states. An amendment by Representative Williams for a 2-year extension for NEA, NEH, and IMS, with the current programs intact, and “such sums as necessary” for authorized appropriations was defeated. An amendment by Representative Johnson to immediately repeal NFAHA was also defeated.

Senate Bill and Committee Mark-Up in the 104th Congress. On May 25, 1995, S. 856 was introduced by Senator Jeffords, Chair of the Labor and Human Resources Subcommittee on Education, Arts, and Humanities. The bill, cosponsored by Senators Simpson, Kassebaum, Kennedy, Pell, and Dodd, would reauthorize NEA and NEH for 5 years (FY1996-FY2000) at reduced funding levels. On July 19, 1995 the Senate Committee on Labor and Human Resources marked up S. 856 a substitute by Senator Jeffords and ordered the bill reported. For NEA, the total reauthorization would have decreased from \$153.9 in FY1996 to \$125.3 in FY2000. Similarly for NEH, the total reauthorization would have decreased from \$160.1 million in FY1996 to \$130.4 million in FY2000. S. 856 would have authorized four NEA grant categories — 40% of the NEA’s program budget for “partnership” grants to states, local and regional groups, 40% for “national significance” grants, 10% for direct grants to organizations and individuals, and 10% for arts education and underserved communities grants. S. 856 also would have established an Institute for Museum and Library Services which would merge the Institute of Museum Services (IMS) with the Library Services and Construction Act programs currently administered by the Department of ED. It would have authorized this new agency for 5 years at a funding level of \$28.7 million for the museum program and \$150 million for the library programs for FY1996. During Committee mark-up on July 19, 1995, an amendment by Senator Abraham to reduce the authorization by 20% and to privatize NEA and NEH was rejected, and an amendment by Senator Ashcroft to cut the authorization levels by 50% was rejected. An amendment by Senator Kennedy to restore categories of individual grant support was rejected. An amendment by Senator Dodd was adopted to authorize a feasibility study of establishing a “true endowment” that could augment funding of the two endowments, NEA and NEH. The written report for S. 856 (S.Rept. 104-135) was published August 30, 1995, together with minority views.

Senate Arts Reauthorization Bill in the 105th Congress

On July 15, 1997, S. 1020, the Arts and Humanities Amendments of 1997, was introduced by Senator Jeffords, Senator Kennedy, and Senator Chafee to reauthorize for five years the National Foundation on the Arts and the Humanities Act of 1965, authorizing \$175 million each for NEA and NEH for FY1998 and “such sums as necessary” for FY1999-FY2002. This reauthorization bill is similar to the bill (S. 856) (S.Rept. 104-135) that the Senate Labor and Human Resources Committee reported in the 104th Congress and would provide 40% of the grant money to the states. On July 23, 1997 the Senate Labor and Human Resources Committee marked up S. 1020 and with amendment ordered it reported. Amendments were agreed to that would specify arts education priorities; limit the authorization for NEA to \$105 million; cap the administrative cost for NEA at 12% after a year; and would assure that 1% of grant support would go to each state. There was no further action. However, certain provisions of the Senate bill (S. 1020), i.e. the 40% to states, were accepted as part of the conference version of the Department of Interior and Related Agencies appropriations bill, FY1998, P.L. 105-83. (See discussion under FY1998 appropriations.)

NFAH Reauthorization Issues

Federal Role in Culture. There are questions in the 105th Congress about the need for and proper role of federal involvement in the arts and humanities generally. In the past, proposals have been made that would have elevated the federal role in the arts and humanities through the creation of a cabinet level post. In contrast, the climate of budget constraints raises questions about the need for federal government support of the arts and humanities. Some have argued that NEA be abolished altogether, contending that the federal government should not be in the business of supporting the arts, and that it does not have a constitutional basis. Opponents argued that for a long period in our history the arts flourished on their own in the marketplace and through private support without federal government support. Proponents of federal support for arts and humanities argued that the federal government has a tradition of such support, beginning with President George Washington (1788), who stated that the “arts and sciences are essential to the prosperity of the state” In 1817 a congressional appropriation funded works of art for the U.S. Capitol. One of the first proposals for formal government support for an arts agency occurred in 1879 when Representative Samuel Cox of New York introduced a joint resolution in Congress to have “a council on arts matters” although no action was taken at that time. Opponents would argue that each time the matter of an arts agency came up for debate in Congress, it was struck down, until the 1960s.

Alternative Funding Mechanisms for the Arts. Several different approaches to arts funding are being discussed in the 105th Congress to either augment or replace funding for NEA and NEH. Some of the proposals for alternative kinds of continued support for NEA and NEH were actually introduced in the 104th Congress and include block grants, a “true endowment” concept, an arts trust fund, arts funding based on royalties, profit from extension of copyright, and tax refund or tax check-off for the arts, a lottery for the arts, and the merger of endowments.

Block Grants. Some Members of Congress have considered block grants for many programs, including the arts. Some assert that in place of NEA, a block grant⁸ is needed that would be provided directly to the states, with relatively few strings at the federal level, giving the states full responsibility and grantmaking power. Proponents of the alternative contend that a block grant would help to avoid congressional debate over federal rules restricting eligibility for grants. Opponents of block grants for the arts contend that state arts agencies have objected in the past to increased state responsibility for grant giving; both proponents and opponents assert that some form of accountability measure will be necessary. Opponents of a block grant also contend that NEA and NEH, in their current form, continue to be the proper vehicle for arts and humanities funding because they serve national purposes that would be eliminated in a block grant. In the case of NEA, over 22% of its grants provide support for projects that have **national impact** that would not be supported under a block grant. In response, proponents of a block grant contend that separate grants for national purposes would still be supported.

In the 104th Congress, the House bill, H.R. 1557, as reported (H.Rept. 104-170) contained an arts block grant to the states, authorizing 80% of the funds in a basic grant to each state. States would have used funds to make grants, but virtually without NEA's control from Washington. However, 20% of the funding would be reserved for "national" grants that follow the program pattern of previous Challenge Grants.⁹ In the 105th Congress, Representative Ehlers introduced an amendment to the Department of Interior and Related Agencies Appropriations bill for FY1998 that would have provided \$80 million in a block grant for the arts to the state arts councils and to school districts (Art for Kids Act). It was rejected by a vote of 155 to 272. Two Senate measures would have placed arts funding in a block grant to states. Senator Hutchinson's (AR) amendment to H.R. 2107 would have placed \$100 million into a block grant to the States. It was defeated 62 to 37. Senator Hutchison (TX) introduced an amendment to H.R.2107 that would have placed 75% of arts funding into a block grant to states. It was defeated by a vote of 39 to 61.

Block grant for Arts Education. During consideration of the Senate Labor-HHS and Ed Appropriations bill for FY1998 (S. 1061) an amendment introduced by Senator Gorton passed that would provide funding for selected elementary and secondary education funds through block grants to local educational agencies (LEAs) to support K-12 activities and programs. Arts in Education was among those programs identified as part of the block grant. It was **not** agreed to in the final FY1998 appropriation. (See CRS Report 97-203.)

⁸ For information on block grants, see *Education Block Grant Proposals: Possible Options and Issues*, CRS Report 95-164, by the Education Section.

⁹ The NEA Challenge Grants help to strengthen the institutional and fiscal capacity of organizations to sustain quality arts projects. These grants must be matched by at least three private dollars for every one federal dollar.

True Endowment. Another alternative to continued support for the NEA discussed is the concept of a “true endowment.”¹⁰ NEA would be privatized through creation of a permanent “endowment” that would replace either immediately or eventually the NEA and possibly the NEH. This endowment would be built from private funds with an initial federal investment, and after a set number of years (one proposal suggests 7 years), would be maintained on its own without further federal involvement. A small percentage of interest income generated from investments from the corpus (the central income base) of the endowment would be used for arts grants. Proponents asserted that the federal government would no longer have to choose what grants to make. This could arguably reduce the controversy surrounding some grants that may have actually deterred giving by the private sector. It is not yet clear what would be the source of income, resources, and investments for the endowment. (See later discussion about copyright royalties and Screen Actors Guild (SAG) contributions.) Opponents of the endowment concept argued that setting up such an endowment would require \$3 to \$8 billion that the private sector could not commit¹¹ and the federal government would not spend. Opponents of the endowment concept also stated that a true endowment would not do as well at generating private giving as the current NEA/NEH matching provisions. NEA funds have helped to generate over \$4 billion in private sector funds for the arts, to a large extent through the Challenge Grant program that requires at least a three-to-one (three private dollars raised for every federal dollar) match. NEH funds generated over \$1.3 billion in gift funds primarily through its own Challenge Grant program. Critics of the “endowment concept” also asserted that it is NEA’s and NEH’s “imprimatur” or “validating” of a grant that brings in private support. Some critics suggested that the endowment concept could act as a supplement to NEA/NEH funds, rather than supplanting federal funds. Proponents contended that a true endowment could be one of the few viable alternatives if it appeared that NEH and NEA, in particular, were to be abolished altogether. In the 105th Congress, during consideration of H.R.2107, the FY1998 Interior appropriations bill, Senator Abraham introduced an amendment to privatize the NEA. The amendment number 1206 was defeated by a vote of 73 to 26.

The FY1998 Interior Appropriations act added reforms for NEA. One of these reforms gives both NEA and NEH specific authority to “solicit funding” and to invest those funds. Previously, both NEA and NEH were prohibited from soliciting funds and could only “accept” but not seek gifts.

Cultural Trust Fund. In the 104th Congress, Representative Williams introduced H.R. 1520 on April 7, 1995, the “1% for Culture Act of 1995.” This bill would have amended the National Foundation on the Arts and the Humanities Act

¹⁰ The concept of “endowment” is under discussion and has not been formally defined as yet in any arts legislative proposals. Senator Dodd added a feasibility study of a true endowment to S. 856 in the 104th Congress.

¹¹ U.S. Congress. Senate. Committee on Labor and Human Resources. Subcommittee Education, Arts and Humanities. Hearings. *Reauthorization of the National Foundation on the Arts and the Humanities Act*. Washington, February 23, 1995.

of 1995 by establishing an American Cultural Trust Fund.¹² The trust would have been funded by federal appropriations equal to 1% of the total federal outlays for 1 year, approximately \$23 billion (not counting outlays to pay interest on the national debt). The trust would have been invested in government securities, and income from those investments would, in Representative Williams' view, be enough to fund the operations of NEA, NEH, IMS, and Corporation for Public Broadcasting without additional appropriations. Opponents to this concept argue that if the Congress could not commit more than \$98 million to NEA, it was unlikely that Congress would commit to such a large one-time expenditure. Others contend that if this approach was meant to privatize these agencies, then a one-time expenditure might be worthwhile.

Arts Funding through Royalties. In the 104th Congress, Representative Calvert introduced H.Con.Res. 70, on May 18, 1995, the (Oscar Act-Opportunity for Successful Career Actors to Reinvest) a resolution that expressed the sense of Congress that the Screen Actors Guild (SAG) should request that those of its members with annual individual incomes over \$1 million place 10% of such income in an endowment for the arts, to be administered by a privatized NEA when \$1 billion has accumulated in such a fund. The record in the past for those who have made blockbuster movies and hit Broadway shows indicates no return of the profits to NEA, even if their success was due in part to an NEA grant. (There is no obligation currently that any "profit" be returned to NEA, although some individuals have voluntarily contributed to NEA and NEH after having received grants.) Also, some object to SAG members being singled out when there are many other successful ventures that have received grants from NEA. Proponents feel that a "Sense of Congress resolution" would be a good thing because it would at least encourage SAG members to give to the arts.

In a press conference, Representative Gingrich remarked that if those "who come to lobby (for arts funding) who are famous and rich would dedicate 1% of their gross income to an American Endowment for the Arts, they would find a bigger system than the NEA."

Auction of Copyright. In the 104th Congress, several Members of Congress considered the prospects of using proceeds from auctioning 20-year copyright extensions when they are due to become part of the public domain. The revenue from these auctions would accumulate in a trust fund or endowment for the benefit of the arts. Opponents argued that it may not be ethical for the government to sell monopoly rights to a work created by another. In addition, an extended copyright could interfere with the public use of the copyright, making it more difficult for individuals to have access to the work without incurring significant expense. On the other hand, some contended that a single copyright holder may make access to the work easier. There were several unknown variables including what portion of the sale the endowment would have received and how much income could be derived from this. The potential revenue was not estimated for works ready to become part

¹² The "trust" is defined as a revolving fund set up in the Treasury.

of the public domain. Literary works and motion pictures appeared to have the highest revenue potential.¹³

Tax Refund or Check-Off for the Arts. Several alternative approaches have been discussed related to a tax check-off for the arts. In fact, proposals have been introduced in previous Congresses related to tax check-offs for the arts.¹⁴ One idea being discussed is a check-off similar to that for the presidential election campaign, which basically allows taxpayers to designate a certain amount from tax liability to the campaign fund. If something similar were done for the arts it would require a change in the tax form and there could be substantial administrative costs associated with that change. Another proposal would use a designated amount from an overpayment of income tax/refund to make a contribution to the arts such as the bills in previous Congresses would have provided. This also would require a change in the tax form. Since many organizations have tried to have a tax check-off box or to have an income tax refund amount paid to their cause this could generate competition among groups. A final possibility would be simply to make reference in the tax instructions that a separate check could be enclosed for the arts, such as is done for the Public Debt Reduction fund.¹⁵

National Lottery. Britain has a national lottery whereby 5% of the revenue from the new lottery goes to British arts organizations, including some of the primary arts institutions, such as the Covent Garden Opera House. If the United States were to implement this, some economists assert that it would draw billions of dollars in revenue which might be used to support the arts. On the other hand, the states now dependent upon state lottery revenues may feel the national lottery is usurping their territory. Many groups oppose legal gambling. Finally, still others indicate that there would be great competition among charities and other causes; and a lottery might have the effect of reducing or curtailing private giving. There is currently no formal proposal for a national lottery to benefit the arts in the United States.¹⁶

Also in Britain there is a proposal to create a National Endowment for Science and the Arts that would give grants to the arts annually for approximately 100 million pounds a year. Part of the endowment would be raised by using lottery money after the millennium celebration. Other money would come from leaders in the arts and science communities who choose to assign copyright and patent royalties to the fund.

¹³ For further related general information see *Proposed U.S. Copyright Term Extension*, CRS Report 95-799, by Dorothy Schrader.

¹⁴ Representative Richmond introduced H.R. 1042 in the 96th Congress (January 18, 1979) (and comparable bills in other Congresses) to permit taxpayers to designate on their income tax returns whether they wish to contribute any portion of their income tax refund or make any additional contribution to the support of either the arts or the humanities. No hearings were held and no action was taken.

¹⁵ See for general information: *Public Debt Reduction Fund*, CRS Report 94-482, by Louis Talley.

¹⁶ Passell, Peter. Lottery for the Arts: Over the Rainbow or Under a Cloud? *New York Times*. October 24, 1995.

An example suggested by the media was that of Sir Andrew Lloyd Webber could give the royalties for one of his musicals.¹⁷

Merger of Endowments. In the 104th Congress, Senator Bennett and Senator Hutchison introduced S. 1071, the National Endowment Restructuring Act of 1995. The bill would establish a single endowment with one director, and three deputy directors — one for the arts, one for the humanities, and one for museum services. With an authorization of \$370 million, the bill would have provided 9% for administration, and after administrative funds are reserved, 8% would have been for museum services. Of the remaining funds, 60% would be for state block grants with emphasis on underserved communities, and 40% would be for national grants for nationally prominent groups, institutions, and scholars in the arts and the humanities. There was no further action.

NEA: Status and Management

Past controversies involving charges of obscenity concerning a small number of NEA grants are cited in the 105th Congress although attempts have been made to resolve these problems through statutory provisions. P.L. 101-512 (Arts, Humanities, and Museums Amendments of 1990) contained provisions to improve the grant process and to recover NEA funds if the funded work was considered obscene “in the final judgment of a court.” P.L. 102-154 (Department of Interior and Related Agencies Appropriations Act, 1992) reemphasized the clause added to the authorizing statute that all new grant applications must follow regulations that take into consideration “general standards of decency and respect for the diverse beliefs and values of the American public.” On June 9, 1992, a California federal court (Judge Tashima) ruled the “decency provision” unconstitutional. On November 5, 1996, a federal appeals court upheld the earlier decision and ruled that the federal government could not require the NEA to consider “standards of decency” in making grants. The ruling found that the decency standards were “vague” and “potentially arbitrary” and were therefore “unconstitutional” and restricted freedom of speech. NEA had already eliminated grants to individuals by arts discipline except to maintain Literature fellowships, Jazz Masters and National Heritage fellowships in the Folk and Traditional Arts. On June 25, 1998 the Supreme Court reversed the federal appeals court decision for *NEA v Finley* by a vote of 8 to 1, stating that the NEA can consider “general standards of decency” when judging grants for artistic merit, and that the decency provision does not “inherently interfere with First amendment rights nor violate constitutional vagueness principles.”

To date, no NEA projects have been judged obscene by the courts. Some of the more controversial past grants were subgrants to artists not directly chosen by NEA, or were part of operational support grants to larger institutions for a given season. Some critics have called for greater oversight of NEA grants, including a special oversight committee. NEA argued that the peer review process worked well with thousands of grants using lay people and wider geographic representation.

¹⁷ Reynolds, Nigel. Left Bank Plan to Reward Talent. *London Daily Telegraph*. February 4, 1997.

In response to the FY1995 appropriations cuts, NEA announced, in October 1994, that it would streamline management. Initially, seven categories of grant support were eliminated from Music, Media Arts, and Presenting and Commissioning programs that support arts organizations which subsequently “regrant” to other organizations and individuals. Museum and Visual Arts programs had one director as did the Music, Opera-Musical theater and Presenting programs.

On October 17, 1995, NEA announced plans to eliminate 89 staff positions. The reorganization was prompted in part by the 40% budget reduction in the FY1996 appropriation. NEA no longer provided grants to individuals by arts discipline with a few exceptions. According to the new guidelines, there were new categories of grants to organizations and institutions through “heritage and preservation,” “creation and presentation,” “education and access,” and “planning and stabilization” for arts organizations.

On March 13, 1996, the House Subcommittee on Interior Appropriations held hearings on NEA and reiterated the potential phaseout of NEA after FY1997. NEA Chairperson Jane Alexander emphasized the detrimental effects of NEA budget cuts on access to the arts, particularly in smaller states. Given the budget climate, both NEA and NEH responded by creating new special offices called “enterprise” offices to solicit money from private sources.

On December 16, 1996, NEA announced the first funding round under its new structure. NEA awarded 300 grants totaling \$18 million under its new divisions, “heritage and preservation” and “education and access.”

On March 13, 1997, NEA Chairperson Jane Alexander testified before the House Subcommittee on Interior and Related Agencies Appropriations. She indicated difficulty in keeping NEA intact considering its loss of 39% of its funding and 45% of its staff. In spite of this, she reiterated that the NEA is “still the largest single source of funding for the non-commercial arts in the country” and that the NEA “is the engine that drives other public and private investment in the arts, and ... not a drain on the economy by any standard of measurement.”

On April 10, 1997, the NEA announced the remaining grants (736 new grants totaling \$67 million) for the first funding cycle under the new structure of the endowment. The grants were awarded under the new categories “Creation and Presentation,” “Planning and Stabilization,” “Leadership,” and “Partnership.” Thirty million dollars is to be distributed to communities in all states and U.S. territories through “partnership agreements” with state and regional organizations. The remaining funding will support “Leadership” initiatives with programs of national impact and literary fellowships in poetry and translation.

On December 10, 1997 the NEA announced its first round of 1998 grants, more than 400 grants totaling \$14.5 million. The first round of grants to be awarded covers the categories of Heritage and Preservation and Education and access and also includes Creative Writing fellowships in prose. According to NEA these grants will increase “access to the arts” through multi-state tours of dance and theater, national radio and television broadcasts.

The FY1999 budget for NEA of \$136 million would include a \$15 million increase in State partnership funds to allow NEA to work with state arts agencies by investing in arts education activities. NEA plans to expand a program called “ArtsREACH”, a program established in FY1998 for direct grants to communities in targeted states to help create or implement community cultural plans.

On May 13, 1998 the Senate Labor and Human Resources Committee voted to send to the Senate floor the nomination of William Ivey as the next chairman of the NEA. He was confirmed by the Senate on May 21, 1998.

NEH: Status and Management

In the past, the appropriations level for NEH had generally been maintained, which has been considered a reaffirmation of Congress’ support for NEH. However, NEH is now more vulnerable to controversy than in the past. Issues include the chairperson’s broad power over the grant process, expenditure of the special chairperson’s discretionary fund, agency appointments, the National Council’s role and the need for greater public accountability.

Chairperson of NEH, Sheldon Hackney, reinstated in 1995 a separate Office of Challenge Grants (those awarded grants must be matched on a three or four private dollars to one federal dollar basis) and moved the Division of State Programs into the chairperson’s office, which allows state Humanities Councils to compete and receive more NEH money. Opponents of the plan contended that it might take money from high quality university research and that state Humanities Councils might be used as a political buffer to criticism.

On October 17, 1995, Chairperson of NEH, Sheldon Hackney indicated that the current programs would be reduced and consolidated into three divisions. In anticipation of the reduced appropriations level for FY1996, NEH focused on activities with national impact and those that “strengthen the institutional base of the humanities, and that reach broad sectors of the American public.” Grants were still supporting original scholarship, preservation of artifacts in museums and archives, teachers’ summer programs, and humanities access through exhibitions, discussion, and radio and television.

On October 21, 1996, the Mellon Foundation announced a new partnership with NEH that would award grants totaling \$4.8 million to centers for fellowships at independent research institutions.

On December 19, 1996, NEH announced \$15.2 million in new grant support. Twenty-six of the grants were “Challenge Grants” (generally a three to one match with awards ranging from \$100,000 to \$625,000) which would provide long-term support for humanities programs. The remaining grants were for teaching fellowships, providing research opportunities for humanities professors; and high school and college-level curriculum development projects.

In submitting the FY1998 Administration budget, requesting \$136 million, NEH indicated that the cumulative effect of the 37% reduction in previous funding caused a reduction in grant awards to about two-thirds of the regular number. NEH

contended that because so many grants cause a “ripple effect” (e.g., a grant for humanities research may be documented in film and become scholarship in a textbook), the full impact of the reduction in NEH grants for the past 2 years would not be known for many years.

The FY1999 Budget request for NEH of \$136 million includes \$100.2 million for national grant programs in support of education, research, preservation and public projects. NEH projects that \$5 million in start-up funds would support regional humanities centers as part of a new special initiative, *Rediscovering America: the Humanities and the Millennium*.

IMS: Status and Management

There have been no major controversies regarding IMS. Museums have been popular, attracting 600 million visitors annually. The major concern is that many of the Nation’s museums must compete for a relatively small amount of funding in terms of general operating support. IMS is reorganizing, as a result of its merger into a new Institute of Museum and Library Services (IMLS) established in the Omnibus Consolidated Appropriations Act of 1997, P.L. 104-208.

The Director of the Institute of Museum and Library Services, Diane Frankel, (previously the Director of IMS) announced on September 5, 1997, General Operating Support grants totaling \$15 million to 202 museums, including a wide range of museum disciplines from zoos to art, history, science and children’s museums. In addition, approximately \$2.3 million was awarded for 1997 museum conservation project support, \$256,000 for museum-community partnerships, \$674,000 for professional museum association services, and \$445,000 for the museum assessment program providing grants to 223 museums.

The IMS has merged with and is now newly constituted as the Office of Museum Services within IMLS. The FY1999 budget request for the Office of Museum Services within IMLS is \$26 million; the FY1998 appropriation is \$23.280 million. The federal role for the Office of Museum Services is in keeping with its previous role under IMS., i.e., to provide an educational role, to help museums of all sizes, and to leverage support for museums. Every federal dollar is matched by approximately 17 private dollars.

Table 1. Selected FY1994-FY1998 Appropriations and FY1999 Budget Request for Selected Cultural Programs

	FY1994 appropriation	FY1995 appropriation	FY1996 appropriation	FY1997 appropriation	FY1998 appropriation	FY1999 budget request
National Endowment for the Arts (NEA)	\$170,228,000	\$162,358,000	\$99,494,000	\$99,494,000	\$98,000,000	\$136,000,000
National Endowment for the Humanities (NEH)	177,491,000	172,044,000	110,000,000	110,000,000	110,700,000	136,000,000
Institute of Museum Services (IMS)	28,777,000	28,715,000	21,000,000	22,000,000	23,280,000	26,000,000
Smithsonian	302,349,000	313,853,000	311,188,000	318,492,000	333,408,000	357,300,000
Kennedy Center	20,629,000	19,306,000	19,306,000	24,875,000	20,375,000	33,000,000
National Gallery of Art	54,739,000	56,820,000	58,286,000	60,223,000	62,029,000	64,249,000
Commission of Fine Arts	805,000	834,000	834,000	867,000	907,000	898,000
Institute of American Indian, and Alaska Native Culture and Arts Development	12,563,000	11,213,000	5,500,000	5,500,000	4,250,000	3,188,000
Holocaust Memorial Council	21,679,000	26,609,000	28,707,000	31,707,000	31,707,000	32,607,000
Arts in Education	8,944,000	10,500,000	9,000,000	9,000,000	10,500,000	10,500,000

Notes: Smithsonian and Commission of Fine Arts funds listed are salaries and expenses only.

The Kennedy Center figures include operations, repair, and construction.

Figures for the National Gallery of Art include salaries and expenses and amounts for repair, restoration, and renovation.

The Arts in Education program, Section 1564, Elementary and Secondary Education Act of 1965, as amended is contained in the Labor, Health and Human Services and Education appropriations. During consideration of the Senate Labor-HHS and Ed Appropriation bill for FY1998 (S. 1061) an amendment introduced by Senator Gorton passed that would provide funding for selected elementary and secondary education funds through block grants to local educational agencies (LEAs) to support K-12 activities and programs, and **Arts in Education was among those programs identified as part of the block grant.** (For further information see CRS Report 97-203, *Appropriations for FY1998: Labor, Health and Human Services, and Education*, by Paul Irwin.)