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From NEA

QUESTIONS RAISED BY S. 1800Relating to the AFI

S. 1800 provides for amendments to the NFAH Act:

SEC 101 (a) amends Section 5 of the NFAH Act by adding subsection (1) which authorizes the Chairman to make grants to the AFI for the purposes described in subsection (c) of our Act.

Subsection (c) is the subsection which authorizes grants-in-aid and contracts to groups to carry out projects in a wide variety of categories.

Since grants and contracts are authorized under 5(c), is the Endowment authorized to make contracts with the AFI? They do not seem to be prohibited although SEC 101 (a) authorizes only grants.

- 1) Can the AFI sub-grant with Endowment grants, or accept flow-through funds, under this amendment? Presumably under the broad language of 5(c) the AFI is entitled to make sub-grants in order to "support...projects and productions" which meet the standards set down in 5(c), (1), (2), (3), and (4).
- 2) Would the Endowment then continue to contract with AFI to provide funds to Eastman House, M.O.M.A. and the Library of Congress?
- 3) Would it contract with AFI to fund and to administer the fellowship program?
- 4) If so, would these contracts be in addition to the funding required by S. 1800?
- 5) If not, would there be any assurance that the AFI itself, of its own volition, would continue these programs?

The Endowment, following its general procedures, could make its grant to the AFI for specified purposes including the Fellowship Program and the Archival/Preservation Program.

- 6) But, given the prohibition against intervention in the operation of grantees, could the Endowment set forth the sums within the grant which are to be passed on to fellowship winners or to other institutions?

SEC 101 (b) provides that the amendment made by SEC 101 (a) shall be effective in FY 1976 and succeeding years.

- 7) Since this provision cannot become law until FY 1976 is well under way, does this mean that FY 76 funding of AFI shall be adjusted to meet the terms set forth by S. 1800? (The bill provides that 4 percent of program funds shall be granted to AFI to carry out SEC 101 (a). This could amount to more or to less than the funds and contracts approved for FY 1976, depending on the appropriations granted to the Endowment.)

SEC 103 amends Section 11 of the NFAH Act to provide that 4 percent of the funds appropriated to carry out Section 5 of the Act shall be for the AFI.

- 8) Is the AFI to get 4 percent of the funds appropriated for program funds including those allotted in bloc grants to the state arts agencies?

Section 11 of the Act provides that \$ 113,500,000 may be appropriated for the purposes of carrying out 5(c) in Fiscal 1975 and that "not less than 20 per centum" of this total... "may be used only for the purpose of carrying out section 5(g)."

SEC 103 of S. 1800 provides that \$ 113,500,000 may be appropriated for FY 77 and 78 "for the purpose of carrying out section 5" and that "4 per centum shall be for carrying out section 5(1)." I read this to mean that the 4 percent allotted under S. 1800 to the AFI shall be 4 percent of the

total program funds appropriated, including those allotted to the bloc grants. (The total sum appropriated for section 5 in Fiscal Year 1975 is \$ 67,250,000. Four percent of this would be \$ 2,690,000.)

In introducing S. 1800 on May 21, Senator Pell stated:

"Creating a percentage set-aside for the American Film Institute...keeps the American Film Institute under the umbrella of the Endowment, but allows the American Film Institute a certain amount of independence and latitude in setting its own course of action."

In interpreting the responsibilities of the Endowment if S. 1800 is enacted in its present form the following points may be noted:

- a) The Endowment is responsible for seeing that grantees comply with federal regulations and more particularly with Fair Labor Standards and with Title VI of the Civil Rights Act of 1964.

The Endowment would presumably continue to bear this responsibility in relation to the AFI.

- b) Under the General Grant Provisions of the NFAH the Endowment is required to ensure that grantees will maintain accounts in accordance with generally accepted principles such that project expenditures can be clearly identified.

The Endowment would presumably continue to bear this responsibility in relation to the AFI.

- c) The Endowment under the NFAH Act supports identified projects of grantees. Accordingly, the Endowment is required to identify the projects which it will support; to separate those expenses which are properly chargeable to the project from those which are not; and to

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see to it that its funds are expended for the purposes for which they were given.

In applying this general procedure, the Endowment has identified an "allowable budget" consisting of those activities of the AFI for which support is given and disallowing all other activities. The AFI in furtherance of this procedure has maintained budgets in accordance with Endowment specifications and has set aside matching funds for those activities which are included in the "allowable budget".

Presumably most if not all of the activities carried on by the AFI can be included within the broad scope of Section 5(c), (1), (2), (3), (4), and (5) of the NFAH Act.

If the amendments contained in S. 1800 are enacted, the following questions arise in connection with the grant to be made to the AFI:

- 9) Does the Endowment retain any power of selection among the activities carried on with its support?
- 10) If not, does the Endowment bear any responsibility for the ways in which its funds are expended by the AFI beyond assuring compliance with federal regulations and with the Fair Labor Standards and Civil Rights provisions of the Endowment's General Grant Provisions?
- 11) If the Endowment is not responsible for determining what activities are to be supported with federal funds and further for determining whether the funds allotted are expended for the approved activities, to whom, if anyone, is this responsibility transferred?
- 12) If the responsibility is transferred to the Congress, what means does the Congress have of reviewing the activities of the AFI and further

specifically trying to tie matching money to item #1 approved accounts receivable and expenses

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must be thought through

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of determining whether the grant awarded by the Congress under the "percentage set-aside" is expended in accordance with its intentions?

- 13) If the responsibility is not assumed by the Congress but is allowed to reside in the AFI itself, what provisions will be made to ensure that the AFI, now a private institution, will expend public funds in the manner required?

Senator Pell on May 21 spoke of the amendments contained in S. 1800 as a "middle-ground route" between legislation creating an independent agency and no legislation. To some extent then the additional language which may be added to the present amendments may follow the lines set forth in H.R. 17504, the bill introduced in the House on November 25, 1974, "to create the American Film Institute as an independent agency". This legislation provided for:

A Board of 21 consisting of nine ex officio members and twelve appointed by the AFI Board but confirmed by the House and Senate.

An annual report submitted to the Congress.

One third funding from private sources.

Audits by the General Accounting Office.

The addition of these provisions would make the AFI an autonomous organization within the NFAH, similar in structure to the National Gallery of Art, which is an autonomous organization within the Smithsonian Institution. The National Gallery is governed by its own Board of Trustees; it submits its own budget, first to the OMB and then to the Congress; it is responsible for its own finances; and it prepares its own annual report.

(It will be remembered that Nancy Hanks stated in November 1974 that she could support the bill on three conditions, the second being that the bill should not be an amendment to the NFAH Act. H.R. 17504 was in fact an amendment to the NFAH Act, but it was understood that this would not be its final form.)

If the amendments contained in S. 1800 are enacted, the division of functions between the AFI and the Public Media Program will once again need to be reviewed.

The basic understanding on which Nancy Hanks accepted H.R. 17504 was that the Endowment was a grant-making agency and the AFI was an operating agency. It followed that in the areas of mutual interest the Endowment would not engage in operations and the AFI would not make grants, save for those made on behalf of the Endowment.

The activities of the AFI were set forth under Section 103 of H.R. 17504. The activities supported by the Public Media Program were summarized in submissions to the Congress. The AFI agreed to support the activities of the Public Media Program; and Representative Quie noted in the course of the debate on H.R. 17504 that, "There will be an agreement reached between AFI and NEA in case there is any apparent duplication in order to prevent the duplication."

Presumably, if the amendments contained in S. 1800 are enacted, federal funds may and will be used to support activities such as the AFI Theatre which have not been accepted as part of the "allowable budget" until now. On the Filmmaker grants and the Preservation Film activities, study and discussion will be necessary.

- 14) Is it understood that the Filmmaker grants and the costs of administering these grants will be included in the "percentage set-aside"?

This would presumably be the Endowment's position. The Endowment, thus far, has committed up to \$ 2,199,239 in grants and contracts for the AFI in Fiscal 1976. If 4 percent is enacted as the "set-aside", the AFI would receive \$ 2,690,000 on the basis of the overall funding for the Endowment in Fiscal 1975. The Endowment might reasonably assume that the AFI, given this increase in its funding, would at least maintain the Filmmaker grants at their present level. Should the AFI reduce the scale of the Filmmaker grants (which it would be entitled to do), the Endowment would

Yes

presumably consider setting up its own program rather than supplementing the AFI's budget with its own program funds.

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- 15) Is it understood that the costs of the Film Preservation program would be included in the "percentage set-aside"?

This is a far more complicated question.

The Film Preservation contract for Fiscal 1976 provides for the following allocation of Endowment funds:

AFI costs and preservation activities.....	\$ 126,084
Sub-grants.....	280,000

The AFI will presumably continue its own preservation activities and will assert its leadership role in coordinating the preservation activities of other institutions. Since its funding will presumably be increased, it can be argued that it should continue the sub-grants out of its own future budgets. On the other hand, if the coordinating role is separated after Fiscal 1976 from the role of making grants to other institutions, is it logical to place the AFI in this grant-making role? It differs markedly from the role of awarding grants to independent filmmakers in that the preservation grants are made to large institutions on a continuing basis. If this point is persuasive,

- 16) would the Endowment be prepared to absorb the costs of the preservation grants (currently \$ 280,000) in the Public Media Budget?