

**DEPARTMENT OF STATE**  
**DIVISION OF THE ARTS**

Statutory Authority: 29 Delaware Code, Section 8729(c) (29 **Del.C.** §8729(c))

**FINAL**

**ORDER**

Proposed changes to the **Division of the Arts Assistance for the Development of the Arts Regulations** were published in the *Delaware Register of Regulations* on August 1, 2009. The comment period remained open until September 1, 2009. There was no public hearing on the proposed changes to the regulations. Public notice of the proposed changes was in conformity with Delaware law.

**Summary of Evidence and Information Submitted**

No comments were submitted by the public.

**Findings of Fact**

Based upon Delaware law and the record in this docket, I make the following findings of fact:

The purpose of these regulations is clarify the procedures used to evaluate and award grants for arts funding in the State of Delaware, as authorized pursuant to 29 **Del.C.** §8729(c) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. Pursuant to § 8729, the Director and the Delaware State Arts Council shall establish such rules and regulations as are necessary to determine the eligibility of any instrumentality, or agency or political subdivision, private or public nonprofit association for participation in contracts authorized by this section. A private or public nonprofit association shall submit a letter of exemption from the Internal Revenue Service as proof of nonprofit status.

The Division hereby adopts these regulations effective February 2, 2010.

**Text and Citation**

The text of the proposed regulations last appeared in the *Register of Regulations* Vol, 13, Issue 2, pages 231-235.

**IT IS SO ORDERED** this 2<sup>nd</sup> Day of February, 2010.

Paul Weagraff, Director  
Delaware Division for the Arts

**1001 Assistance for the Development of the Arts Regulations**

**1.0**    **Introduction**

These regulations are authorized pursuant to 29 **Del.C.** §8729(c) which established a special fund of the State of Delaware to encourage instrumentalities, agencies and political subdivisions of the State and private and public nonprofit associations in the development of the arts in the State and to enhance the appreciation of artistic expressions by citizens of the State. Arts Funding is dictated by the availability of State, Federal, and other funds, and necessarily changes on a year to year basis. Current available funding may be found at <http://www.artsdel.org/grants>.

**2.0**    **Grantee Categories**

2.1    Delaware Artists

To be eligible for funding as a Delaware artist, the applicant must:

- 2.1.1 Be at least 18 years of age.
- 2.1.2 Be a resident of Delaware for at least one year at the time of application. Individual artists shall submit a valid Delaware Driver's License or Delaware Motor Vehicle Identification Card as proof of residency.
- 2.1.3 Recipients must remain Delaware residents during the grant period.
- 2.1.4 Not be enrolled in degree or certificate-granting educational programs at the time of application or for the duration of the grant period.
- 2.1.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.
- 2.2 Delaware Arts Organizations
  - To be eligible for funding as an arts organization, the applicant must:
  - 2.2.1 Identify in their charter, incorporation papers, bylaws, and IRS nonprofit determination letter at least one of the following as a primary purpose of the organization: the promotion, presentation, production, or teaching of the arts. The Division of the Arts shall make all final determinations as to the primary purpose of the organization.
  - 2.2.2 Certify that the organization is based and chartered in Delaware as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954.
  - 2.2.3 Have a stable, functioning board of directors that meets at least quarterly.
  - 2.2.4 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.
- 2.3 Delaware Community Based Organizations
  - To be eligible for funding as a community-based organization, the applicant must:
  - 2.3.1 Identify in their charter, incorporation papers, bylaws, and IRS nonprofit determination letter a primary purpose of the organization other than the promotion, presentation, production, or teaching of the arts. The Division of the Arts shall make all final determinations as to the primary purpose of the organization. Such purpose may be, but is not limited to, libraries, civic groups, community/senior centers, festivals, parks/recreation programs, and universities and colleges.
  - 2.3.2 Be based and chartered in Delaware as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954. Organizations that have not received Delaware incorporation or IRS nonprofit designation are not eligible to apply for Project Support, and
  - 2.3.3 Have a stable, functioning board of directors that meets at least quarterly, or
  - 2.3.4 Be an established unit of municipal, county, or state government within Delaware.
  - 2.3.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.
- 2.4 Delaware Arts Education Providers
  - To be eligible for arts education funding, the applicant must be:
  - 2.4.1 Delaware public, private, or parochial school with an established arts curriculum and staff, pre-K through 12, or
  - 2.4.2 Delaware public school district and/or consortia of public schools, or
  - 2.4.3 Delaware arts organization with a demonstrated commitment to arts learning, that also meets the eligibility requirements for arts organization funding, or
  - 2.4.4 Professional arts service or arts education organization based and chartered in Delaware.
  - 2.4.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.
- 2.5 Regional/National Nonprofit Organizations

To be eligible for funding, the applicant must:

- 2.5.1 Be chartered as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954.
- 2.5.2 Provide the program(s) or service(s) funded by the grant directly to the Delaware Division of the Arts or to its constituents, on behalf of the Division, under written agreement with the Division of the Arts.
- 2.5.3 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.

### **3.0 Grant Award Process**

3.1 Organizational Grants. Organizational grants reviewed on an annual basis or for multi-year approval are reviewed by impartial peer review panels, (hereinafter "Grant Panels.") The decision to use private citizens on grant review Grant Panels reflects the importance of having diverse public and expert participation in the grant-making process.

#### 3.1.1 Grant panels: Composition:

Individuals who work or live in Delaware are eligible to serve on Grant Panels. Grant Panels are composed of artists, arts educators, arts and nonprofit organization administrators, corporate and fund raising managers, knowledgeable arts specialists, and interested community members. Panelists are chosen for their professional experience, expertise in an artistic discipline, knowledge of the community, and ability to objectively review grant materials. The Division convenes Grant Panels, mindful of Delaware's demographic and geographic diversity. Additional out-of-state panelists may be selected in order to incorporate regional or national perspective, to provide additional expertise and diversity, or to mitigate the potential for conflicts of interest.

#### 3.1.2 Conflicts of Interests

Grant Panelists are screened for conflicts of interest, and where they exist, panelists are recused from discussion of the grant application or assigned to an alternate panel where a conflict does not exist. Such conflicts are determined by review of statements and/or applications filed by Arts Council members, Division Staff, panelists, and Grantees

#### 3.1.3 Nominations

Grant Panelist nominations are accepted and processed by the Division of the Arts year round.

#### 3.1.4 Grant Review Panel Meetings

Grant Panel meetings are public, posted and held in accordance with 29 Del.C. Ch. 100. Meetings are chaired by a member of the State Arts Council or Division of the Arts staff.

#### 3.1.5 Grant Review Process

Grant Panelists evaluate and rank applications according to grant specific criteria identified by Division staff, and published at <http://www.artsdel.org/grants> Grant Panel comments and rankness are incorporated into the funding recommendation process, and made available to applicants upon notification of the funding decision. At the conclusion of their review, the Grant Panel makes a recommendation to the State Arts Council.

#### 3.1.6 Grant Award

The State Arts Council, at a meeting open to the public consistent with 29 Del.C. Ch. 100, reviews the Grant Panel recommendations and rankings of applicants, to match them with available grant funds. At the conclusion of this review, the State Arts Council makes funding recommendations to the Division Director, who is responsible for all final funding decisions. The Division announces grant awards after the approval of the State's fiscal year budget.

### 3.2 Artist Fellowship Grants

Delaware's arts community is very close-knit, and individual artists tend to be very familiar with the work of other Delaware artists. The nature of artists' work is that it is inextricably linked to them as individuals. Because of that, it is difficult to find impartial judges to adjudicate Fellowship applications

for individual artists. Consequently, the Division of the Arts contracts with an out-of-state organization to facilitate the review of Artist Fellowship applications. Grant specific criteria are published at <http://www.artsdel.org/grants>.

**3.2.1** Grant panels: Composition:

The facilitating organization presents a list of potential judges to Division staff, who selects the judges whose expertise most clearly aligns with the applications submitted each year. Out-of-state judges are chosen for their professional experience, expertise in an artistic discipline, and ability to objectively review grant materials.

**3.2.2** Grant Review Process

Applications are submitted to the Division of the Arts. Upon review for completeness and accuracy, all materials are forwarded directly to the facilitating organization, which is responsible for distribution of the applications to the judges. Judges review the applications individually and submit their scores and comments to the facilitating organization. Scores and judges' comments are then forwarded to the Division staff. Division staff members present a list of funding recommendations, based on scores and available funds, to the State Arts Council for review at a public meeting.

**3.2.3** Grant Award

The State Arts Council conducts a public review of the recommendations from Division staff in accordance with 29 Del.C. Ch. 100. At the conclusion of the public review, the State Arts Council makes its funding recommendations to the Division Director, who is responsible for all final funding decisions. Fellowship awards are announced after public approval by the State Arts Council and Division Director.

**3.3** Short-term grants and Special Projects, and Interagency Partnerships

**3.3.1** Grant Panelist Selection-

Short-term (non-annual) grant applications, special project grant applications, and interagency partnership agreements are assigned by the Division Director to the program specialist whose purview includes the arts discipline or project category.

**3.3.2** Grant review process

Division staff review and evaluate short-term, special project grant applications according to criteria developed by Division staff and published with the grant guidelines. Staff recommendations are submitted to the Division Director for review.

**3.3.3** Grant Award

The Division Director reviews staff recommendations and makes final funding decisions. Notification letters are sent out within six weeks of the application submission deadline. Funding decisions are presented to the State Arts Council at their quarterly meetings.

**4.0** Appeals

**4.1** Applicants may appeal funding decisions only on the basis of procedural error or impropriety. Dissatisfaction with the amount of an award, or a decision not to fund a project, is not sufficient reason for appeal.

**4.2** Standard of Review:

Grant determinations may be reconsidered if the Division Director determines that the application was reviewed on the basis of criteria other than those appearing in the published guidelines for that grant category; that Grant Panelists or Council members were influenced by Council members who failed to disclose conflicts of interest, or that erroneous information was provided by staff, panelists, or Council members at the time of the application's review, and such erroneous information was relied upon by the Grant Panel, Council, or Division Director in making the grant determination.

**4.3** Procedure for Appeal

**4.3.1** Consultation

Prior to submitting an appeal, applicants should first consult with the staff member assigned to the application to review the panel comments and considerations.

4.3.2 Written Request for Appeal

After consulting with the assigned staff member, if the applicant wishes to pursue an appeal, the appeal must be sent in writing to the Division Director within 30 days of the date notifying the applicant of the funding decision. The letter should contain evidence to support one or more of the grounds for appeal noted in 4.1.

4.3.3 Review

The Director will notify the Chair of the State Arts Council of the appeal. The Director and Chair will review the appeal and, at their discretion, will make a ruling or submit the appeal to the full Council for review and recommendation.

4.3.4 Notification

The Director will notify the applicant in writing of the ruling on the appeal.

4.3.5 Arts Council Review

After reviewing the appeal letter determination, the applicant may request a public hearing with the Council, pursuant to 29 Del.C. Ch. 100. At the conclusion of the public hearing, the Council will reconsider the appeal and make a final ruling. A simple majority vote of the Council will determine the appeal outcome.