TO: Empire State Library Network (ESLN)

FROM: Stephanie A. Adams, Esq.

RE: Top Ten Risk Management Exercises For Governing Boards of

Libraries & Cultural Institutions During the 2025 Federal Shift

DATE: February 4, 2025

QUESTION

Early 2025 has brought changes to stability of certain federal programs, funding, and governance. This instability is creating concern about access to grants, federal programs, and legal frameworks. What can our board do to address this?

ANSWER

2025 has INDEED started off with a great deal of instability to federal programs, funding, and governance. In this answer, we'll call this phenomenon the "2025 Federal Shift."¹

During such times as the **2025 Federal Shift**, it is the role of a governing board to assess factors that could risk the achievement of an institution's mission and develop plans to address them. This is a process called "enterprise risk management."²

While confronting risk can be intimidating, it can also be empowering. And while not every risk can be avoided, it can often be mitigated.³

So, whether you're on the board of a small public library or helping to lead a library within a large institution, now is a good time to **inventory** newly emerging risks and develop a response plan.

While the array of risks may seem infinite, below please find a chart of risks created by the **2025 Federal Shift**. Following that is a chart of institution-specific risks.

¹ I am sure many of you have better and more florid names for this phenomenon. Mine is dull, but I'll always put it in **bold**.

² Technically, "enterprise risk management" is the act of doing this type of analysis at all times, but I'm borrowing the term for now.

³ There are three essential responses for risk: 1) simply accept it; 2) take active steps to mitigate it; 3) avoid it by discontinuing the activity that creates the exposure. There is also a fourth response, which is finding a way to convert it into an opportunity ("never waste a good crisis"). Any combination of these is available to your organization, although option #3 is not always on the table.

Neither chart lists everything facing your institution, but these charts are provided to inspire the start of an orderly, meaningful, and impactful risk management strategy to assist governing boards in performing their fiduciary duties to their institutions.

Top Ten Risk Management Exercises For Governing Boards of Libraries and Cultural Institutions During the 2025 Federal Shift

Risk to assess	How to assess it	How to respond
1. Risk that federal grant contracts and funding in motion will not be available as planned.	Appoint a sub-committee of trustees to inventory all current federal grants and funding and assess its stability. Create a "Federal Funding Summary" outlining the amounts and actions at stake. NOTE: Many organizations will ask the director to create this list and Summary. That is fine, but organizations must stay in touch with their employee leadership (director, executive director, president, etc.) to make sure they have enough capacity to perform routine work AND the work created by new pressures. While boards should not micromanage, this is a time for rolling up the board's sleeves.	If the amounts and programs identified in the Summary are significant enough AND there is an insufficient cash reserve to survive a disruption: A. Consult an attorney on developing a litigation plan for immediate relief; B. Consider if a line of credit or other temporary source of liquidity is available; or C. Do both of the above. If the amounts identified are within budgeted contingencies, resolve to be ready to pay out of reserve, while identifying a plan to pursue the amounts. If the amounts identified represent minimal disruption, develop a plan to track, but not take drastic action.

Risk to assess	How to assess it	How to respond
		Board minutes should reflect that the board undertook this exercise.
2. Risk that a critical partner's federal funding will not be available as planned.	This risk is different than the first, as it is due to the potential instability of critical partners, a risk which may be more difficult to assess (they should be doing the same exercise in #1).	If the amounts and/or actions identified are mission critical, immediately meet with the partner(s) to assess possible outcomes. In the event funding or
Examples: A. The partner is a primary awardee of a federal contract, and you are a subawardee;	Appoint a sub-committee to inventory all collaborative initiatives and create a "Critical Partner Federal Funding Summary" outlining the amounts and actions at stake and the	activity could be immediately interrupted, develop your own contingency plan and make sure the partner is aligned.
B. The partner has hired your organization, and the funding source is federal; C. Your organizations are in on a venture 50-50, and the partner org is 100% federally funded.	likelihood of disruption. Be ready to (diplomatically) approach partners for their assessment of funding stability.	Document any adjustments to the current arrangement in writing. Confirm with the partner that all statements (press releases, social media, etc.) on the impacts will be joint or at least issued only after mutual approval. Board minutes should reflect that the board undertook this exercise.
3. Risk that federal information services (websites, databases, offices, etc.)	Inventory critical federal information services that your organization particularly needs. Inventory critical resources your organization may be	It is important for a governing board to know that this risk may hit your organization's talent pool very hard, especially if it has the capacity to fill gaps for a served community.

Risk to assess	How to assess it	How to respond
needed to perform mission- critical functions are not available or reliable. NOTE: This is a risk to any type of business right now, but is uniquely acute to libraries, educators, and cultural organizations that are the custodians of history and our country's collective intellectual property.	PARTICULARLY able to supply to others. Establish a "Critical Federal Information Resources Continuity" sub-committee to work with the director or executive director and employees to assess how the gaps can be filled and if your institution can help fill them for others. The role of the committee is to help conduct the inventory and to assist with budgetary considerations. The role of the board is to review any final operational or budget adjustments and draw a firm line as to how much institutional energy should be used on this. The plan can also consider networking with aligned institutions to avoid redundant work.	The role of a governing board is to 1) be aware this may be a direct or collaborating agency need; and 2) help determine if contingency resources should be directed to this, including overtime and temporary re-allocation of duties or temporary additional assistance. This exercise (and many of the others) may put stress on your institution's talent pool. The work of the board should be to help distill what is needed and to make tough calls about what will be done (and how it will be funded) and where boundaries need to be drawn. Board minutes should reflect that the board undertook this exercise.
4. Risk of current workforce instability due to employees impacted by legal changes, heightened investigations, and enforcement related to	For a board's standing Personnel Committee, this is your chance to shine. For a board without such a standing committee, forming an ad hoc 2025 Federal Shift Personnel Impacts c Committee could be helpful.	This is a chance to develop short programs and actions that show employees and job candidates they are valued and that your institution respects them. This is simultaneously a retention tool, a morale-booster, and most likely also a productivity tool.

Risk to assess	How to assess it	How to respond
employee	The board committee should	•
personal	examine how the Shift is	Examples of such actions
factors.	affecting/could affect:	would be:
	A. Job applications and candidates B. Full-time employees generally C. Part-time employees generally D. Employees in the military and military spouses, including reservists E. Employees who are transgender F. Employees who are nonbinary G. Employees of color H. Employees leading and/or participating in DEI work I. Employees who live in poverty J. Employees from families with undocumented residents K. Employees legally in the U.S. but with factors that may still cause fear of wrongful arrest or deportation L. Employees fearing workplace violence M. Chilling impacts on programs and collection decisions ("self-censorship") Because your institution' workforce is unique, this list will vary. It should be based	1. Dusting off your institution's "Equal Opportunity Employer" statement (New font? Larger poster? Hey, it's still the law!) so job candidates are assured they will be welcome; 2. Bringing in an Employee Assistance ("EAP") Plan representative to showcase the supports they have for employees feeling stressed. For employers without an EAP, this is a good time to explore setting one up. 3. Working with the local bar association to provide access to lawyers who your workforce may need. Some firms may even agree to a one-time consultation for a set rate that could be paid for as part of an EAP.4 4. Reviewing your Code of Conduct and other rules to ensure your policies require that all employees are treated with respect by the public.

 4 Public institutions have to be careful with such initiatives, but if set up as a general employee benefit, they can be done. This is one to coordinate with your lawyer or HR team at your sponsoring municipality.

Risk to assess	How to assess it	How to respond
	on the overall goal of assuring employees that they are valued, respected, and important members of the team. NOTE: Boards should bear in mind that living in fear is very de-stabilizing, even if the fear is, from a different point of view, not based in reality or on something likely to occur.	 5. Review your Workplace Violence Prevention Plan and ensure it is up to date. 6. Review your collection management policies and ensure they are clear and current. Board minutes should reflect that the board undertook this exercise on an ongoing basis until all identified concerns are addressed.
5. Risk of retribution, or negative impact due to fear of retribution, for past and current diversity, equity and inclusion (DEI) initiatives.	The anti-DEI rhetoric in the 2025 Federal Shift is clear. ⁵ Any governing board concerned that past and current DEI-type initiatives could bring retribution (or even legal action) should inventory those programs so they can be systematically, tactically, and deliberately assessed for both success, ongoing viability, and legal compliance. NOTE: For institutions subject to FOIL, ⁶ carefully conducting this legal analysis with your attorney will keep portions of the review attorney-client privileged.	The good news is that DEI initiatives should ALWAYS be routinely reviewed for compliance and to measure outcomes. So, if not assessed before, now may be the time. When your inventory of programs is ready, review it with an attorney experienced in civil rights law (state and federal). For institutions worried that your inventory will be "discoverable" or otherwise used as evidence against you with careful attention to the details, the "discovery" of your final

⁵ Ask the Lawyer received a question asking if DEI initiatives should be discontinued. You can view our answer at https://wnylrc.org/raq/evaluating-dei-internship-programs.

⁶ Institutions that must follow the Freedom of Information Law (public schools/colleges/universities, public libraries (not association libraries), other quasi-governmental or "public agency" organizations).

Risk to assess	How to assess it	How to respond
		analysis should be a strength. "DEI," although not a static concept, is generally not illegal. ⁷ Board minutes should
		reflect that the board undertook this exercise.
6. Risk of losing normal sense of confidence due to changes and strife among federal entities.8	Americans are used to a certain type of stability: Niagara Falls keeps flowing, the Buffalo Bills keep losing, and the federal government, while occasionally irksome, keeps on going. The 2025 Federal Shift is different. For generations, most drastic federal changes have been due to expansion, rather than the sudden possibility that the government will markedly ocontract, leaving the country with less regulation, less centrally distributed resources, and less federal oversight. Regardless of where you fall on the political spectrum, the 2025 Federal Shift is manifesting that type of	If not done before, this is the time to ensure that your institution has positive and well- established local relationships with: A. First responders (take your pick: police, sheriff, state troopers, ambulance, fire, etc.) B. Local government C. County government D. State government representatives Written cooperation agreements with or simple letters from these parties are good to have. Boards, this exercise calls for a delicate balance with your director (or executive director). Although they are

⁷ See footnote 5.

 $^{^8}$ Wow, did I put "risk of federal disruption due to the current stress test on civil service and executive authority" delicately.

 $^{^{9}}$ Sorry, but I am based in Buffalo. Our team put it all out there this season. It's GONNA happen for us next year.

¹⁰ I appreciate that our country has made marked cuts in the federal government before (recall the cutting room floor of the Reagan Administration). That said, any student of history will admit the current tactics being used to effectuate such reductions are both novel and larger (perhaps because, from a certain point of view, there is more to cut).

Risk to assess	How to assess it	How to respond
	drastic change, creating strife in the federal government, and creating fear among members of the public. When fear is impacting one source of stability, it is wise to confirm stability in other places.	generally the primary public representatives of your organizations, if your relationships need work, it might be good for the board to (carefully) provide some backup. This should be very carefully planned. Board minutes should reflect that the board maintains these relationships on an ongoing and cyclical basis.
7. Risk of institutional mission, vision and strategic plan being perceived as out of step	Regardless of what type of organization you lead, it exists to serve a defined community. During the past few decades, many institutions have adjusted their mission, vision and	If the spirit of the times calls for examination of your institution's mission, vision, or strategic plan, carefully design the process of evaluation.
with the expectations of the times; corollary risk of sudden changes to mission, vision, and strategic plan	strategic plan to contain commitments to serving their entire communities, and as part of that, to intentional efforts to counter the impact of past harms to parts of their communities.	Generally, this is at least a year's long process, with assessment, input from the community, and other carefully measured factors considered prior to any changes being made.
being criticized as bowing to external pressures.	It is the task of your board to continually assess your institution's mission, vision, and strategic plan. A mission that is out-of-step is a risk; a mission that is changed on a whim is also a risk.	A quick change to mission, vision, or a strategic plan based on political climate is a risk. A thoughtful evolution, informed by defined factors and based in a careful analysis, is wise.
	Any changes to mission, vision, and strategic planning should be done on a	Such a process should only be via a board resolution approving a fully

Risk to assess	How to assess it	How to respond
	carefully planned and thoughtfully paced basis.	developed plan for assessment of the mission, vision, and/or strategic plan.
8. Risk of not channeling volunteers optimally	During stressful times, many people seek comfort in volunteering at a place they see as a positive asset to their community. Your institution is likely such a place. Ironically, being able to accept volunteers takes a LOT of work. On the flip side, having to deny volunteers due to lack of preparation lets an opportunity for community engagement and service pass by. As a board, ensuring your institution is ready to accept volunteers in an orderly way mitigates the risk of not being ready to accept them.	Adopt a volunteer policy; Always use a volunteer letter or sign-up sheet that confirms the terms of the volunteer service; Confine volunteering to certain well-articulated activities and ensure your institution's insurance covers volunteers performing those activities; Develop mission-aligned group activities for volunteers to help with. 11
9. Risk of missed opportunity: not hiring talent ¹² made available due to federal	This one is pretty grim, but I have to put it in here: unquestionably, there is going to be a wave of new talent available.	After assessment: Isolate, create, and post the opportunities at your institution;

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¹¹ Your director and workforce will likely come up with great ideas for this. They know what the people want. Asking for this input is also a way to channel positive energy in destabilizing times (so long as there is follow-through).

¹² I realize that for many, it will sound cold that there is a risk your organization could miss out on hiring talent made available due to federal employees leaving their employer. However, "risk" also includes failing to identify an opportunity, so I feel obligated to mention this.

Risk to assess	How to assess it	How to respond
reduction-in-		And, at the same time:
force efforts;	If your organization has been	Isolate, articulate and
corollary risk of	lacking in applicants or has	reach out with supports
not supporting	been considering a workforce	that can be provided by
community	expansion, now may be the	your institution to
members	time. The 2025 Federal	displaced workers.
impacted by	Shift is going to impact	_
reduction-in-	many workers, and their	Board minutes need not
force and	strengths and talents may be	reflect that the board
program	just what your institution	undertook this exercise, but
elimination	needs.	certain actions (for
efforts.		instance, a needs
	Assessing this will require a	assessment, budgeting for a
	deep review by the board (or	new position or support
	a committee) and the	initiative, etc.) will be
	director/leadership. Is there a	confirmed by resolution.
	gap or project that suddenly	, and the second
	available talent could fill?	
	At the same time, your	
	community may be impacted	
	by people harmed by the	
	federal reductions in force	
	and program eliminations.	
	These people may need	
	supports that are part of the	
	mission of your institution to	
	provide.	
	provide.	
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10. Risk of operating	The reasoning, planning, and	To ensure 2025 Federal
under the feeling of	tactics of the 2025 Federal	Shift factors cannot
an overall	Shift are causing some	coalesce into an overall
Existential Threat	educational and cultural	Existential Threat, it is
	institutions to worry about a	important to:
	threat to their very existence.	
		1. Remain connected to
	It can be very easy to	your institution's
	succumb to an overall feeling	served community
	of dread. However, just like	and workforce;
	the preceding nine risks, an	
	overall concern of, "Is this the	2. Commit to preserving
	end?" must be broken down	intellectual freedom,

Risk to assess	How to assess it	How to respond
Risk to assess	How to assess it into "HOW would this be the end?" Every institution has unique bedrocks, but in this environment, the three essential elements of strength are: A. People (community and workers); B. Intellectual freedom; 13 and C. Funding.	which is a backbone of any library, educational institution, or cultural organization; and 3. Track your funding, and ensure it comes from a diversity of stable sources. Relying on ONE funding source is never a good idea; using a diverse array of funders and building an
	For this reason, actively planning to offer missionaligned services to your community, promoting intellectual freedom, and fiscal planning to secure diverse funding are the antidotes to fear of an overall Existential Threat.	appropriate fund balance ¹⁴ is the way to stay calm in the face of threats and rapid change.

In addition to the above, below is a chart of specific considerations of the **2025 Federal Shift** for library entities:

Type of Library	Particular risk or impacts
Higher Education Libraries	Academic libraries may feel the stress on students and the workforce related to sweeping immigration enforcement. A resource for this is here: https://wnylrc.org/raq/responding-leo-others-requests-library-user-information .

¹³ Or "academic freedom," "information access," or any of a number of concepts that mean providing access to intellectual content without fear or bias. As many out there know, this topic can be fraught. Ensuring your board has adopted and reviewed a code of ethics that addresses your institution's commitment to this value can be helpful.

¹⁴ A resource on building a fund balance for a public library is here: https://wnylrc.org/raq/can-library-surplus-funds-be-added-municipal-general-fund.

Type of Library	Particular risk or impacts
	Academic libraries may feel the stress on students and the workforce related to efforts to reset gender and sex definitions that govern legal rights. Guidance from institutional legal counsel and HR regarding legal protections in New York State may be helpful.
	Academic libraries will feel the impacts of changes to U.S. Department of Education oversight (impacts FAFSA, FERPA, OCR, Clery Act compliance, VAWA compliance, and the related NCAA oversight of gender equity in sports.
	Academic libraries will feel the impacts of federal action that "changes" information (place names, federal definitions, etc.).
	Critically, academic libraries face a risk of tangential treatment during institutional assessment of risks listed in the chart above; directors, this is a good time to work closely with your provost/functional officer.
Prison libraries	Resumption of use of privately owned prisons (see <u>Executive</u> Order 14148)
	Prison libraries of all types will see impacts related to sweeping immigration enforcement.
	Prison librarians, particularly those in federal prisons, will feel the stresses related to federal efforts to reset gender and sex definitions that govern legal rights.
Law Libraries (Federal, State, and local)	Federal law librarians will feel the impacts of the federal worker/civil service overhaul from the 2025 Federal Shift .
and room)	All law librarians in New York State will see an uptick in requests for information related to conflicts between federal and state laws.
Government Archives	Federal archives are already experiencing the impacts of the federal worker/civil service overhaul from the 2025 Federal
	Shift.
(Federal, State and local)	Federal archives will be stress-tested for how information is preserved.

Type of Library	Particular risk or impacts
	All government archives will see an uptick in requests for information related to the status of federal records at particular times. If your board oversees, works with, or relies on the services of a government archive, now is the time to
	solidify connections and pay attention to the stability and reliability of the critical resources it provides.
Municipal Libraries	Your local government (city, town, village) may be impacted by the first nine factors in the chart above. 15
(and libraries serving municipal areas, i.e., all your local public libraries)	Even if your library doesn't directly receive federal funding, your library should stay engaged in how the 2025 Federal Shift is impacting your community. When your mission, capacity, and budget allow, be ready to step into the breach if there is a reduction in services.
	Don't forget to check in with your county government, which administers public health and other community-serving programs.
School District Public Libraries	Your school district may be taking numerous steps to address impacts developing due to changes in the U.S. Department of Education as well as other impacts. Even if your library is completely uncoupled from its district, awareness is important.
Cooperative Library Systems	As member libraries are impacted, it is wise to continually measure the effects on 1) library workers and served communities; 2) intellectual freedom; and 3) funding. This can be done by something as simple as a shared form or document where members are asked to describe impacts.
	If there are negative funding impacts, assisting with risk management efforts to bridge the gap and/or fight for funding continuity can be critical. Access to expert advice (government agencies, advocacy organizations, grant

 $^{^{\}rm 15}$ And possibly the tenth, especially if you are a known "sanctuary" jurisdiction.

Type of Library	Particular risk or impacts
	specialists, lawyers, financial planners, employee wellness, union leadership, etc.) will be essential.
Confederated and Consolidated Library Systems	The added pressure on county and municipal budgets—and the political dynamics in your region—will require continuous monitoring in addition to the factors to be considered by cooperative library systems.
Public School Libraries and Public School Library Systems	As public school boards address conflicting federal and state definitions and the impact of immigration enforcement tactics, working with school district's board, legal counsel, and administration to keep the library a safe and steady presence is important. The school library, and the obligation to maintain the confidentiality of school library records, should be emphasized whenever possible. For more on that, see an forthcoming <i>Ask the Lawyer</i> submission regarding union rep advocacy for public school librarians.
Genealogical and Historical Society Libraries Preservation and Landmark Society Libraries	In recent years, many genealogical and historical societies have worked to ensure their mission is accessible to indigenous, Black diaspora, and newer immigrant people in their served communities. They have also focused on archival materials related to the history of women and LGBTQ+ people. Meanwhile, historic preservation and landmark groups have worked to ensure they are protecting properties related to these communities.
	Because of the important roles such organizations play in a community's sense of self, there may be more pressure to reassess current commitments. For this reason, the assessments in 5 and 7 in the chart above are particularly important.
Museum Library	A museum may feel the same pressure as that directed at historical societies, etc. In addition, museums dedicated to a particular purpose (science, art, heritage, etc.) may feel the tension created by different federal and state definitions and protections. For this reason, attention to mission, vision, and strategic plans as outlined in the chart above may be of critical importance; the library within the organization should be ready to provide materials for that analysis.

Type of Library	Particular risk or impacts
Symphony or Philharmonic Library or Archive	A library within a music organization may feel the impact of immigration enforcement and may be able to help put the current times in context by sharing materials from past performances during turbulent times.
Hospital Libraries	It is reported that at least one hospital in New York has already denied medical treatment due to the recent executive order pertaining to care for transgender youth. Hospital librarians should be ready to connect physicians and administrators with the latest information. It might also be a good time to hang out with your buddy, the local law librarian.
Religious (mosque, church, temple, etc.) libraries and archives	Leadership of religious organizations will need to assess their response to federal action related to immigration, LGBTQ+ employees and members, and the risk to collaborative initiatives. Libraries and archives within religious organizations should be there to assist leaders in appreciating how past leadership addressed times of change.
Regulatory Agency Library (State and Federal) Librarians	State and federal regulatory agency libraries (EPA, NYS DEC, etc.) perform a critical role providing access to laws, regulations, rules, policies, guidance, and investigations. As of this writing, at the federal level, these records are being removed at an unprecedented rate. State agencies who depend on and coordinate with federal regulators will need to coordinate a response; librarians and other critical record-keepers should be prepared to assist.

If you are leading a board and thinking: THIS IS JUST TOO MUCH, don't worry. Pick the most important one and start there. Then your board can work its way through the others it deems most important.

As leaders, yours is a task of discernment and prioritization. You cannot do it all, but you can do what needs to be done.

Finally, for boards embarking on this type of risk management, a word of caution...

 16 See: $\underline{\text{https://www.nytimes.com/2025/02/01/nyregion/nyu-langone-hospital-trans-care-youth.html}$. As of this writing, the New York State Attorney General has $\underline{\text{issued guidance}}$ that such an action is contrary to state law.

Talking about risk means having a frank discussion about worst-case scenarios. That is not something everyone is comfortable with.¹⁷

For that reason, it is wise for a board to **carefully plan** and put in place **rules** before engaging in the risk management process. Examples of such rules are: set and keep an agenda, set and keep time limits, carefully define what is being discussed, stay on topic, stay solution-oriented, and by the end of the meeting, identify clear actions to take based on your analysis.

In addition, it is wise to consider the possible toll on the humans participating in and potentially impacted by the exercise. To do that, as part of the plan, a board may want to appoint a person (not a board member or the director, nor an employee) to serve as an "human impact observer." This is a person responsible for noting and then reciting, before the end of the meeting, the human impacts that were raised but not finalized during the discussion, so they can be addressed. This is a way to get things done in "efficiency mode," while making sure your board can still place a priority on your library's workers and served community.

And with that, I wish your board good courage, a stout heart, and clear heads for the work to come. Thank you for your service.

¹⁷ As a lawyer, talking about risk *comforts* me. That said, for many people, talking about risk is... well... risky. Since a good governing board will include an array of different people, there is a strong chance that not everyone on the board will relish talking about risk. For that reason, it is wise to put a few guardrails on the process.