

AMENDMENT TO PROTOTYPE PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY, THE UTAH STATE ENERGY  
PROGRAM, THE UTAH DIVISION HOUSING AND COMMUNITY DEVELOPMENT, AND THE  
UTAH STATE HISTORIC PRESERVATION OFFICE REGARDING EECBG, SEP AND WAP  
UNDERTAKINGS

WHEREAS, on May 27, 2010, The United States Department of Energy (DOE), The Utah State Energy Program, and The Utah Division of Housing and Community Development, and The Utah State Historic Preservation Office entered into a Programmatic Agreement (Agreement) to fulfill the requirements of Section 106 of the National Historic Preservation Act for certain DOE-funded Undertakings in Utah.

WHEREAS, in 2010, as the result of unprecedented funding levels resulting from the implementation of the American Recovery and Reinvestment Act (Recovery Act), DOE, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) developed a first-of-its-kind [Prototype Programmatic Agreement](#) (Prototype PA) for National Historic Preservation Act Section 106 reviews;

WHEREAS, the intent of the Prototype PA was to provide DOE, recipients of financial assistance under DOE's Weatherization Assistance Program (WAP), State Energy Program (SEP), and Energy Efficiency Conservation Block Grant (EECBG) program, as applicable, and State Historic Preservation Offices (SHPOs) with a tailored method for complying with Section 106 of the National Historic Preservation Act. DOE, recipients, and SHPOs negotiated and executed subsequent programmatic agreements (subsequent PAs; i.e. this Agreement) in accordance with the Prototype PA;

WHEREAS, the Prototype PA originally provided that each subsequent PA would be valid for three years from the date of execution. As the result of ACHP's Program Comment dated March 11, 2013, however, all subsequent PAs, including this Agreement, were extended through December 31, 2020. (78 FR 16275, 16277);

WHEREAS, ACHP, NCSHPO, and DOE recognize the Prototype PA and subsequent PAs continue to provide great value to DOE, recipients, and SHPOs, notwithstanding expiration of most Recovery Act funding, this amendment extends the use of the Agreement for an additional 10 years; and

WHEREAS, DOE will send a copy of this executed amendment to the ACHP;

NOW, THEREFORE, in accordance with Stipulation XV of the Agreement, the signatories of this Amendment agree as follows:

1. Amend Stipulation XVI so it reads as follows:

This PA will be valid until December 31, 2030, as verified with DOE filing the PA with the ACHP.

2. Remove the term "Prototype" from the title of the Agreement.

This Amendment may be executed in counterparts, each of which when so executed shall be deemed an original, but all of which shall together constitute one and the same instrument, it being understood that all parties need not sign the same counterpart. This Amendment is not effective until each party executes the Amendment.

SIGNATORIES:

  
Jonathan Hardy (Oct 29, 2020 09:04 MDT)

10/29/2020

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Jonathan Hardy  
Director  
Department of Workforce Services - Housing and Community Development Division

Date

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Rob Simmons  
Energy Advisor, Executive Director  
Utah Office of Energy Development

Date

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Christopher Merritt, Ph.D.  
State Historic Preservation Officer  
Utah Division of State History

Date

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Derek G. Passarelli  
Director, Golden Field Office  
Office of Energy Efficiency and Renewable Energy  
United States Department of Energy

Date

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SIGNATORIES:

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| Jonathan Hardy<br>Director<br>Department of Workforce Services - Housing and Community Development Division | Date |
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***Robert Simmons***  
Robert Simmons (Nov 24, 2020 15:38 MST)

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| Rob Simmons<br>Energy Advisor, Executive Director<br>Utah Office of Energy Development | Date |
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| Christopher Merritt, Ph.D.<br>State Historic Preservation Officer<br>Utah Division of State History | Date |
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| Derek G. Passarelli<br>Director, Golden Field Office<br>Office of Energy Efficiency and Renewable Energy<br>United States Department of Energy | Date |
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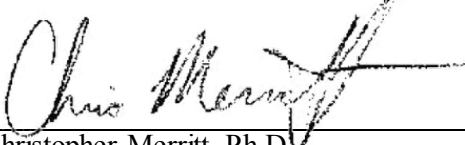
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| Jonathan Hardy                                                                | Date |
| Director                                                                      |      |
| Department of Workforce Services - Housing and Community Development Division |      |

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| Rob Simmons                        | Date |
| Energy Advisor, Executive Director |      |
| Utah Office of Energy Development  |      |

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|  | 10/29/2020 |
| Christopher Merritt, Ph.D.                                                         | Date       |
| State Historic Preservation Officer                                                |            |
| Utah Division of State History                                                     |            |

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| Derek G. Passarelli                              | Date |
| Director, Golden Field Office                    |      |
| Office of Energy Efficiency and Renewable Energy |      |
| United States Department of Energy               |      |

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| Jonathan Hardy                                                                | Date |
| Director                                                                      |      |
| Department of Workforce Services - Housing and Community Development Division |      |

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|------------------------------------|------|
| Rob Simmons                        | Date |
| Energy Advisor, Executive Director |      |
| Utah Office of Energy Development  |      |

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| Christopher Merritt, Ph.D.          | Date |
| State Historic Preservation Officer |      |
| Utah Division of State History      |      |

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| <i>Derek G. Passarelli</i>                       | November 27, 2020 |
| Derek G. Passarelli                              | Date              |
| Director, Golden Field Office                    |                   |
| Office of Energy Efficiency and Renewable Energy |                   |
| United States Department of Energy               |                   |

**PROTOTYPE PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY, THE UTAH STATE  
ENERGY PROGRAM, THE UTAH DIVISION OF HOUSING AND COMMUNITY  
DEVELOPMENT, AND THE UTAH STATE HISTORIC PRESERVATION OFFICE  
REGARDING EECBG, SEP AND WAP UNDERTAKINGS  
April 14, 2010**

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance programs: *the Energy Efficiency and Conservation Block Grant Program* under the Energy Independence and Securities Act of 2007 (EECBG); *the State Energy Program* under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEP); and *the Weatherization Assistance Program* (WAP) for Low-Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the "Programs";

WHEREAS, the unprecedented levels of funding available to the Programs, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies;

WHEREAS, the Utah State Historic Preservation Office (SHPO) is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including undertakings funded by the Programs;

WHEREAS, the Utah State Energy Program (USEP) and the Utah Division of Housing and Community Development (DHCD) (Recipient) are receiving financial assistance from DOE to carry out the Programs;

WHEREAS, the projects funded by the Programs are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C 470f (NHPA) and its implementing regulations at 36 CFR part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (undertakings);

WHEREAS, DOE has determined that these undertakings may adversely affect properties that are listed in or eligible for listing in the National Register of Historic Places (National Register) and subject to the requirements of the National Historic Preservation Act (NHPA);

WHEREAS, in accordance with 36 CFR 800.14(b)(4), the Advisory Council on Historic Preservation (the ACHP) has designated this Agreement as a Prototype Programmatic Agreement (PA), which does not require the participation or signature of the ACHP;

WHEREAS, DOE, the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects;

WHEREAS, by memorandum dated August 28, 2009 (attached as Appendix C), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to grantees and sub-grantees of funding from the Programs (Recipients);

WHEREAS, according to the August 28, 2009 memorandum, the Recipients are authorized, to initiate Section 106 compliance in accordance with 36 CFR 800.2 (c)(4);

WHEREAS, the undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects, without the potential for adversely affecting historic properties, rather than complex undertakings with a greater potential to adversely affect historic properties, which would require completion of the typical Section 106 review process;

WHEREAS, DOE and the ACHP were guided by the principles set forth in the ACHP's Affordable Housing Policy statement, adopted on November 9, 2006, in negotiating this Programmatic Agreement upon which this PA is based;

NOW, THEREFORE, DOE, USEP, DHCD, and the SHPO agree that the Programs shall be administered in accordance with the following stipulations to satisfy DOE's Section 106 responsibilities for all individual undertakings of the Programs:

#### STIPULATIONS

DOE, the Recipient, and the SHPO shall ensure that the following stipulations are carried out:

##### I. Roles and Responsibilities

- A. DOE shall be responsible for providing oversight of the PA, executing the PA with the SHPO, participating in the resolution of disputes between the SHPO and the Recipient, and providing technical assistance and guidance as needed. DOE shall be responsible for government-to-government consultation with Indian tribes, unless the Indian tribe agrees to the delegation of this responsibility to a Recipient.
- B. The Recipient shall be responsible for consulting with consulting parties and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO and DOE, and maintaining records on undertakings. Undertakings that involve properties greater than fifty (50) years old and are not listed on either Appendices A or B shall be submitted to the SHPO for review in accordance with this agreement.
- C. Recipient shall ensure that the provisions of this PA apply to its sub-awards.
- D. The Recipient is encouraged to use qualified professionals in conducting their Section 106 requirements.
- E. The SHPO shall be responsible for reviewing project documentation and participation in consultation as set forth in this PA.
- F. The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of this PA.

##### II. Tribal Review

- A. Execution of this PA presumes that DOE will conduct its government-to-government responsibilities with federal recognized Indian tribes or its Section 106 consultation

requirements with Native Hawaiian Organizations (NHO) consistent with Federal laws and regulations. The Recipient shall not substitute for DOE in matters related to potential effects on historic properties of cultural and religious significance to Indian tribes, except with the concurrence of the Indian tribe or NHO.

- B. DOE acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance, and requires the Recipient to consult with them, as appropriate, in identifying historic properties listed in or eligible for listing in the Area of Potential Effect (APE) of program areas.
- C. If the Recipient notifies DOE that an undertaking may result in an adverse effect on cultural resources with tribal religious and cultural significance, DOE shall notify Indian tribes of individual undertakings that may result in an adverse effect on cultural resources with tribal religious and cultural significance and invite them to participate in consultations. Indian tribes and the Recipient may develop a bi-party agreement that outlines their review procedures for undertakings covered in a PA. Such agreements will be submitted to DOE for review and approval, and a copy sent to the ACHP for its records.

### III. State Interagency Agreements

The Recipient may review an undertaking in accordance with the terms of an interagency agreement, in lieu of the other terms of this PA, if:

- 1) The interagency agreement was in negotiations by the Recipient and SHPO on or before February 5, 2010, and will be executed no later than February 19, 2010;
- 2) The Recipient and SHPO both agree through execution of this PA that the interagency agreement applies to the undertaking and provides a historic preservation review process that is similar to that provided by the other terms of this PA; and
- 3) DOE does not object to the use of the interagency agreement to fulfill the requirements of Section 106 of the NHPA for the undertakings.

### IV. Exemptions from Section 106 review

- A. The Recipient shall not submit to the SHPO undertakings in accordance with Appendices A or B as they do not have the potential to cause effects on historic properties even when historic properties may be present. The Recipient will maintain file records with verification that undertakings were determined to be exemptions for a period of three (3) years from project completion and make them available for review if requested by DOE or the ACHP.
- B. If a property has been determined to be ineligible for inclusion in the National Register within the last five (5) years from the date the Recipient made its application for DOE financial assistance, then no further review is required under this PA.
- C. Recipients of any of the Programs may utilize either Appendix A or Appendix B in identifying exempt undertakings, regardless of whether the Exhibit on which the undertaking relates to another federally funded program.

### V. Review Procedures for Non-exempt Undertakings

- A. *For undertakings not exempted under Stipulation III or IV, if the Recipient has an executed Section 106 Agreement per 36 CFR part 800 for Community Development*



*Block Grants (CDBG) with the SHPO that 1) is still in effect; 2) covers the same undertakings as the DOE grant programs; and 3) is up to date with reporting to the SHPO, no separate Section 106 review is needed.*

- B. Otherwise, the Recipient shall review the undertaking in accordance with Stipulations VI through X below, or consistent with SHPO approved historic preservation protocols.

#### VI. Identification and Evaluation

- A. The Recipient shall establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.
- B. The Recipient shall complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys. In addition, the Recipient and SHPO may use or develop protocols that are consistent with 36 CFR Section 800.4 for the review of consensus determinations of eligibility.
- C. The Recipient shall consult with Indian tribes or NHOs to determine if there are historic properties of religious or cultural significance that were not previously identified or considered in surveys or related Section 106 reviews, as appropriate.
- D. Archaeology surveys are required only for new ground disturbing project undertakings and shall be limited in scope subject to the concurrence of Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO and THPOs or Indian tribes or NHOs concurrently for review.
- E. In order to avoid potential delays, prior to initiating undertakings the SHPO may review the Recipient's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipient's Programs and to implement the terms of this PA.
- F. The Recipient shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 800.4(e)(2).

#### VII. Treatment of Historic Properties

- A. When the Recipient and the SHPO concur that an undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*) (Standards), that undertaking will not be subject to further Section 106 review.
- B. The Recipient and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the Recipient and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipient will proceed in accordance with Stipulation VIII.

#### VIII. Resolution of Adverse Effects

- A. The Recipient shall consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipient will notify DOE of the pending consultation, and DOE will participate through its designated representative.
- B. The Recipient may use standard stipulations included in Attachment A of this PA, or as negotiated as part of this PA between the SHPO and the Recipient, or if the project warrants, use of an alternate PA due to the complexity of the project activity.
- C. Consultation shall be coordinated to be concluded in 45-days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE shall formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). Within seven (7) days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.
- D. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

#### IX. Emergency Situation Undertakings

- A. When an emergency undertaking is required for historic properties associated with the undertakings, the Recipient shall allow SHPO five (5) business days to respond, if feasible. Emergencies exist when there is a need to eliminate an imminent threat to health and safety of residents as identified by local or county building inspectors, fire department officials, or other local or county officials.
  - 1. The Recipient shall forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the address of the historic property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.
  - 2. The Recipient shall consider mitigation measures recommended by the SHPO and implement them, if feasible.

#### X. Public and Consulting Party Involvement

- A. The Recipient shall maintain a list of undertakings and shall make the documentation available to the public. The Recipient shall notify the SHPO if its notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.
- B. The Recipient, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulations VI, VII, and VIII.

#### XI. Administrative Coordination

- A. The Recipient, in consultation with the SHPO, may determine that an undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, then no further Section 106 review under this PA is required.
- B. The SHPO shall provide comments to the Recipient within thirty (30) days, unless

otherwise agreed upon by the SHPO and the Recipient, for reviews required under the terms of this PA with the exception of emergency undertakings. In the event that the SHPO fails to comment within the established period, the Recipient can assume the SHPO has concurred, and proceed.

- C. The Recipient shall advise sub-grantees in writing of the provisions in Section 110 (k) of the Act and will advise the sub-grantees that Section 106 reviews may be compromised when project undertakings are initiated prematurely.
- D. The SHPO and the Recipient shall make every effort to expedite Section 106 reviews for a period of less than the 30-day review when consistent with the terms of the DOE grant agreements and the Recipient intends to utilize the services of qualified professionals.
- E. For projects that will require either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), nothing contained in this PA shall prevent or limit the Recipient and DOE from utilizing the procedures set forth in 36 CFR 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.

## **XII. Discoveries**

If historic properties are discovered or unanticipated effects on historic properties located within a project's APE after the undertaking has been initiated, the Recipient will implement the following procedures:

- A. The Recipient shall immediately cease all operations for the portion of the undertaking with the potential to affect an historic property;
- B. The subgrantee shall advise the Recipient of the National Register eligibility of the historic property and the potential of the undertaking to impact its qualifying characteristics and an explanation of the whether the SHPO or Indian tribes and NHOs concur with proposed avoidance, treatment plan or mitigation plan;
- C. The Recipient or DOE shall notify Indian tribes or NHOs of any discoveries that have the potential to adversely affect sites or buildings of religious or cultural significance to them. After reviewing such discoveries, the Indian tribes or NHOs can request further consultation on the project by notifying DOE, ACHP, and the SHPO in writing.
- D. The Recipient or subgrantee shall implement the avoidance, treatment or mitigation plan and advise the Recipient and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete may resume the activities that were halted to address the discovery situation.

## **XIII. Dispute Resolution**

- A. Should the SHPO object within the time frames outlined in this PA to any project undertakings, the Recipient shall consult further with the SHPO to attempt to remove the basis for the SHPO's objection. In the event that the SHPO's objection is not withdrawn, then the Recipient shall refer the matter to DOE. The Recipient shall forward all documentation relevant to DOE, who will notify and consult with the ACHP.
- B. The ACHP will provide its recommendations, if any, within 21 days following receipt of relevant documentation. DOE will take into account the ACHP's recommendations

or formal comments in reaching a final decision regarding the dispute.

#### **XIV. Reporting and Monitoring**

- A. DOE, the ACHP, and the SHPO may monitor any undertakings carried out pursuant to this PA. The ACHP may review undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs.
- B. The Recipient shall adhere to DOE's established protocols for ARRA reporting program undertakings.
- C. DOE will submit annual reports to ACHP and NCSHPO commencing October 15, 2010 summarizing the Programs' undertakings, to include data on number of undertakings, the number of exempt undertakings, and reviews conducted under this PA.

#### **XV. Amendments**

DOE, the SHPO, or the Recipient may request that this PA be amended, whereupon DOE and the SHPO, and the ACHP, if involved, will consult to consider such an amendment. Any such amendments shall be developed and executed among DOE, the Recipient, and the SHPO in the same manner as the original PA, and pertain only to this State PA.

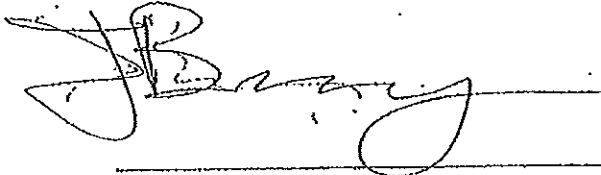
#### **XVI. Duration of Agreement**

This PA will be valid for three (3) years from the date of execution, as verified with DOE filing the PA with the ACHP.

#### **XVII. Termination of Agreement**

DOE, the SHPO, or the Recipient may terminate the PA, provided that the party proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least thirty (30) days to consult and seek alternatives to termination.

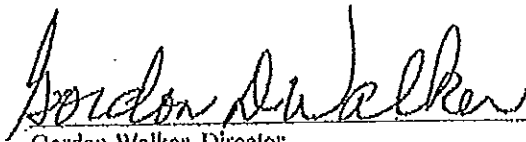
Signatories:

JB 

Jason Berry, Manager  
Utah State Energy Program

5/12/10

Date



Gordon Walker, Director  
Utah Division of Housing and Community Development

May 19, 2010

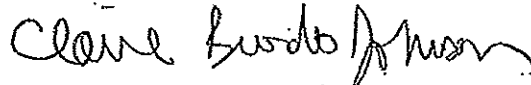
Date

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Wilson Martin, State Historic Preservation Officer  
Utah State Historic Preservation Office

May 20 - 2010

Date



United States Department of Energy, Director  
Office of Energy Efficiency and Renewable Energy Office  
of Weatherization and Intergovernmental Programs

5/27/10

Date

## APPENDIX A—WAP UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

All undertakings will be done in accordance with applicable local building codes or the International Building Code, where applicable. In accordance with 36 CFR 800.3(a)(1), the following undertakings have been determined to have no potential to cause effects on historic properties:

### A. Exterior Work

- 1) Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
- 2) Thermal insulation, such as non-toxic fiberglass and foil wrapped, in walls, floors, ceilings, attics, and foundations in a manner that does not harm or damage historic fabric.
- 3) Blown in wall insulation where no holes are drilled through exterior siding, or where holes have no permanent visible alteration to the structure.
- 4) Removable film on windows (if the film is transparent), solar screens, or window louvers, in a manner that does not harm or obscure historic windows or trim.
- 5) Reflective roof coating in a manner that closely resembles the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline, or where not on a primary roof elevation or visible from the public right-of-way.
- 6) Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
- 7) In-kind replacement or repair of windows, doors and door frames that closely resemble existing substrate and framing not visible from the public right-of-way.
- 8) Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs closely resemble existing surface composite.

### B. Interior Work

*Special Note:* Undertakings to interior spaces where the work will not be visible from the public right of way; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; or no walls are leveled with furring or moved, should be automatically excluded from SHPO review. This work includes:

#### *1. Energy efficiency work within the building shell:*

- a. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations
- b. Blown in wall insulation where no decorative plaster is damaged.
- c. Plumbing work, including installation of water heaters
- d. Electrical work, including improving lamp efficiency
- e. Sealing air leaks using weather stripping, door sweeps, and caulk and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.
- f. Repair or replace water heaters
- g. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps
- h. Install insulation on water heater tanks and water heating pipes
- i. Install solar water heating systems, provided the structure is not visible from the public right of way
- j. Install waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy

- recovery equipment
- k. Repair or replace electric motors and motor controls like variable speed drives
- l. Incorporate other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming

**2. Work on heating and cooling systems:**

- a. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves
- b. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers
- c. Install insulation on ducts and heating pipes
- d. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers
- e. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems
- f. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems

**3. Energy efficiency work affecting the electric base load of the property:**

- a. Convert incandescent lighting to fluorescent
- b. Add reflectors, LBD exit signs, efficient HID fixtures; and occupancy (motion) sensors
- c. Replace refrigerators and other appliances

**4. Health and safety measures:**

- a. Installing fire, smoke or carbon dioxide detectors / alarms
- b. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gasses draft safely to outside
- c. Install mechanical ventilation, in a manner not visible from the public right of way, to ensure adequate indoor air quality if house is air-sealed to building tightness limit

## APPENDIX B – SEP AND EECBG UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

### A. Category 1 - No Consultation Required

In addition to the undertakings provided in *Exhibit A (WAP Undertakings exempt from Section 106 Review)*, DOE and the SHPO have concluded that the following undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

#### *1. General efficiency measures not affecting the exterior of the building:*

- a. Energy audits and feasibility studies
- b. Weatherization of mobile homes and trailers
- c. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
- d. Water conservation measures – like low flow faucets, toilets, shower heads, urinals – and distribution device controls
- e. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance
- f. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions
- g. Ventilating crawl spaces
- h. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way.
- i. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors and carbon monoxide detectors (wired or non-wired)
- j. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements.
- k. Adding variable speed drive motors
- l. Insulation of water heater tanks and pipes
- m. Furnace or hot water tank replacement that does not require a visible new supply or venting



*2. Insulation measures not affecting the exterior of the building:*

- a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation)
- b. Duct sealing, insulation, repair or replacement in unoccupied areas
- c. Attic insulation with proper ventilation; if under an effective R8 - add additional R-19 up to R-38 (fiberglass bat only)
- d. Band joist insulation - R-11 to R19 as applicable
- e. Water heater tank and pipe insulation

*3. Electric base load measures not affecting the exterior of the building:*

- a. Appliance replacement (upgrade to EnergyStar appliances)
- b. Compact fluorescent light bulbs
- c. Energy efficient light fixtures, including ballasts (Replacement)
- d. LED light fixtures and exit signs (Replacement)
- e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way

*4. Efficiency and repair measures:*

- a. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal)
- b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property
- c. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change the appearance of the interior or exterior of the building
- d. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change the appearance of the building.
- e. Integrated shingle-style or thin film solar systems on the rear roof of the structure, behind the parapet or not visible from the public right of way.
- f. Solar systems (including photovoltaic and solar thermal) not visible from the public right of way and if ground-mounted can be installed without ground disturbance, unless located on previously disturbed ground, and if roof-mounted will not require new building reinforcement.
- g. Wind system additions to existing wind power facilities that will not require ground disturbance, unless on previously disturbed ground, and if building mounted will not require building reinforcement.
- h. New lighting controls including photo-sensors and shading elements if not visible from the public right of way
- i. New metering devices in a manner that does not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure and is not visible from the public right of way
- j. New water efficient fixtures and fittings in a manner that does not permanently change the appearance of the interior or exterior of the building
- k. Streetlight upgrades

*5. Installation or repair of rooflog, siding, and ventilation:*

- a. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way
- b. Rainwater catches and/or gray water systems not viewable from the public right of way

- c. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground
- d. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way
- e. Installing foundation vents, if painted or finished to match the existing foundation material.

**6. Windows and doors:**

- a. Installing storm windows, storm doors or wood screen doors in a manner that does not harm or obscure historic windows, doors or trim
- b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way
- c. Window or glazing treatments that do not change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure

**B. Category 2 - No Consultation Required if SOI Standards are Adhered to and Verified by Qualified Staff**

**1. Efficiency and repair measures:**

- a. Lead-based paint abatement in accordance with the Standards and Preservation Brief #37
- b. Building cleaning in accordance with the Standards and Preservation Briefs #1, #6, and #10
- c. Repairing masonry, including re-pointing and rebuilding chimneys in accordance with the Standards and Preservation Brief #2

**2. Installation or repair of roofing, siding, and ventilation:**

- a. Repair or replacement of existing exterior siding provided that new siding closely resembles the existing siding in dimension, profile and texture
- b. Roof repair or replacement with materials that closely resemble the historic materials and form, or with replacement materials that are close to the original in color, texture, composition and form to restore the original feature based on historic evidence, and in a manner that does not alter the roofline

**APPENDIX C - AUGUST 28, 2009 DELEGATION MEMORANDUM**  
(next page)



Department of Energy  
Washington, DC 20585

August 28, 2009

MEMORANDUM

TO: State Historic Preservation Officers  
Tribal Historic Preservation Officers

FROM: Catherine R. Zoi  
Assistant Secretary  
Energy Efficiency and Renewable Energy

SUBJECT: Memorandum from EERE Regarding Delegation of Authority for Section 106 Review of Undertakings, Assisted by the U. S. Department of Energy, Office of Energy Efficiency and Renewable Energy

The Department of Energy (DOE), through the Office of Energy Efficiency and Renewable Energy (EERE), provides financial assistance to states, U.S. territories, units of local government, and Indian Tribes through the Energy Efficiency and Conservation Block Grant (EECBG) Program, Weatherization Assistance Program (Weatherization), and State Energy Program (SEP). Attached hereto is a one-page summary of the three programs. Additional program information is available at the following links:  
<http://www.eecbg.energy.gov/>; <http://apps1.eere.energy.gov/wlp/weatherization.cfm>;  
[http://apps1.eere.energy.gov/state\\_energy\\_program/](http://apps1.eere.energy.gov/state_energy_program/).

Through this memorandum, DOE intends to formalize the role of the States and DOE's award recipients (Applicants) to assist DOE in carrying out its Section 106 compliance responsibilities. In order to streamline DOE's compliance with Section 106 and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), EERE is authorizing its Applicants under the EECBG, Weatherization, and SEP programs to initiate consultation pursuant to 36 CFR § 800.2(c) (4). Effective immediately, EERE Applicants and their authorized representatives may consult with the State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) to initiate the review process established under 36 CFR Part 800 and to carry out some of its steps. Specifically, EERE Applicants are authorized to gather information to identify and evaluate historic properties, and to work with consulting parties to assess effects. EERE retains responsibility to document its findings and determinations in order to appropriately conclude Section 106 review.

EERE also remains responsible for initiating government-to-government consultation with federally recognized Indian Tribes. EERE's responsibility to consult on a government-to-government basis with Indian Tribes as sovereign nations is established through specific authorities and is explicitly recognized in 36 CFR Part 800. Accordingly, EERE may not delegate this responsibility to a non-federal party without



the agreement of the Tribe to do so. Where no such agreement exists, EERE will initiate tribal consultation.

Authorized Applicants must notify EERE whenever:

- Either the EERE Applicant or the SHPO/THPO believes that the Criteria of Adverse Effect pursuant to 36 CFR § 800.5, apply to the proposal under consideration by EERE;
- There is a disagreement between an Applicant, or its authorized representative, and the SHPO/THPO about the scope of the area of potential effects, identification and evaluation of historic properties and/or the assessment of effects;
- There is an objection from a consulting party or the public regarding their involvement in the review process established by 36 CFR Part 800, Section 106 findings and determinations, or implementation of agreed upon measures; or
- There is the potential for a foreclosure situation or anticipatory demolition as defined under 36 CFR § 800.9(b) and 36 CFR § 800.9(c), respectively.

EERE will participate in the consultation when such circumstances arise.

EERE expects its Applicants that are so authorized, to involve consulting parties in Section 106 findings and determinations and to carry out the exchange of documentation and information in a respectful, consistent and predictable manner. Technical assistance is available to Applicants from EERE regarding the coordination of Section 106 reviews, if needed.

If you have any questions, please contact Dr. F. G. (Skip) Gosling, DOE Federal Preservation Officer/Chief Historian, Office of History and Heritage Resources, (202) 586-5241 or [skip.gosling@hq.doe.gov](mailto:skip.gosling@hq.doe.gov) or Steven P. Blazek, NEPA Compliance Officer, (303) 275-4723 or [steve.blazek@no.doe.gov](mailto:steve.blazek@no.doe.gov).

## ATTACHMENT A: STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The Recipient and the SHPO may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings determined to have an adverse effect on listed or eligible historic resources. The ACHP will not be a party to these Agreements. However, the Recipient must submit a copy of each signed Agreement to the SHPO, and the ACHP within 30 days after it is signed by the Recipient and the SHPO.

### 1. Recordation

The Recipient shall ensure that the historic property is recorded prior to its alteration in accordance with methods or standards established in consultation with the SHPO. The SHPO shall identify appropriate archive locations for the deposit of recordation materials and the Recipient shall be responsible for submitting required documentation to identified archive locations. The Recipient and the SHPO may mutually agree to waive the recordation requirement in situations where the integrity of the building has been compromised or other representative samples of a similar historic resources has been previously recorded.

### 2. Alternative Measures

The Recipient and the SHPO shall develop mitigation measures on an individual case basis if a building determined to be adversely affected has been previously recorded.

### 3. Rehabilitation

The Recipient shall ensure that the treatment of historic properties which the SHPO has determined does not meet the *Standard*, or SHPO approved design guidelines, is carried out in accordance with treatments agreed upon by the Recipient and the SHPO and are incorporated in the final plans and specifications. The final plans and specifications shall be approved by the SHPO prior to initiating the undertaking.

### 4. New Construction

The Recipient shall ensure that the design of new buildings, or additions, which the SHPO has determined does not meet the *Standards*, or SHPO approved design guidelines, is carried out in accordance with the final plans and specifications reviewed and approved by the SHPO prior to initiating the undertaking.

### 5. Archaeology

In cases where the undertaking will cause unavoidable adverse effects to National Register eligible archaeological properties, the Recipient shall consult with the SHPO to determine whether data recovery or some other treatment measure is in the public interest. If data recovery is the agreed upon treatment measure, the Recipient shall consult further with the SHPO to develop and implement a data recovery plan for those portions of the historic property that will be adversely affected. The data recovery plan shall:

- be based on firm background data, sound planning, and accepted archaeological methods;
- be consistent with applicable State laws and regulations;
- be accomplished in a thorough, efficient manner, using the most cost-effective techniques practicable;
- provide for appropriate curation of archaeological materials and records, and
- provide for reporting and interpretation of what has been learned in a format understandable and accessible to the public;
- be consistent with the National Park Service's *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (at: [http://www.nps.gov/history/local-law/arch\\_stnds\\_7.htm](http://www.nps.gov/history/local-law/arch_stnds_7.htm)), and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), ACHP Section 106 *Archeology Guidance* (at: <http://www.achp.gov/archguide/>), and any archaeological guidance issued by the SHPO.



**Bradley Carpenter** <blcarpenter@utah.gov>

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## Re: SHPO

1 message

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**Christopher Hansen** <clhansen@utah.gov>

Wed, May 8, 2013 at 9:08 AM

To: Bradley Carpenter <blcarpenter@utah.gov>

Cc: Bartly Mathews <bhmathews@utah.gov>

Good Morning, Brad,

Yes! The Advisory Council on Historic Preservation (ACHP) has approved and has issued what they call a Program Comment with the Department of Energy that formally extends the life of the weatherization/state energy agreements until 2020. I was waiting to receive an official notice before I contacted you, but I never received anything. However, the comment has been posted on the ACHP website. Here it is:

<http://www.achp.gov/docs/Federal%20Register%20Announcement%20of%20Issuance%20of%20DOE%20Program%20Comment%203-14-2013.pdf>

No further action is required on our part, the extension has been placed into effect.

If you have any questions about this, please let me know.

Regards,

Chris

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Chris L. Hansen  
Preservation Planner/Deputy SHPO  
Division of State History  
Utah State Historic Preservation Office  
300 S. Rio Grande Street  
Salt Lake City, UT 84101  
Phone: 801/245-7239  
[clhansen@utah.gov](mailto:clhansen@utah.gov)



On Wed, May 8, 2013 at 8:09 AM, Bradley Carpenter <[blcarpenter@utah.gov](mailto:blcarpenter@utah.gov)> wrote:

Morning Chris,

In our staff meeting this week I was asked about the status of our SHPO Agreement.

When we communicated last you had mentioned some conversations with DOE and that there were some anticipated improvements to the document with extended dates this time.

Is there any progress or change on this? When should we expect to execute a new document? Naturally we are a bit concerned since the current document was signed by DOE on 27 May, so we are dangerously close to this expiring.

Please let me know your thoughts on this. Thanks.

--

Brad Carpenter  
Weatherization Program Specialist  
State of Utah  
[801-209-5764](tel:801-209-5764)



## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Extension of the Duration of Programmatic Agreements Based on the Department of Energy Prototype Programmatic Agreement for Its Weatherization Assistance Program, State Energy Program, and Energy Efficiency and Conservation Block Grant; Notice of Program Comment

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** The Advisory Council on Historic Preservation has issued a Program Comment for Extending the Duration of Programmatic Agreements based on the Department of Energy Prototype Programmatic Agreement for its Weatherization Assistance Program, State Energy Program, and Energy Efficiency and Conservation Block Grant.

**SUMMARY:** The Advisory Council on Historic Preservation (ACHP) issued a Program Comment at the request of the U.S. Department of Energy that allows its program of tailored compliance with Section 106 of the National Historic Preservation Act to continue under the prototype Programmatic Agreement (PA) for the Office of Weatherization and Intergovernmental Programs Weatherization Related Grant Programs: Weatherization Assistance Program (WAP), State Energy Program (SEP), and Energy Efficiency and Conservation Block Grant (EECBG).

**DATES:** The Program Comment was issued by the ACHP on March 11, 2013.

**ADDRESSES:** Address all comments concerning the Program Comment to Lee Webb, Liaison to the Department of Energy, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Suite 803, Washington, DC 20004. You may also submit comments via fax at (202) 606-8647 or via electronic mail at [lwebb@achp.gov](mailto:lwebb@achp.gov).

**FOR FURTHER INFORMATION CONTACT:** Lee Webb, (202) 606-8583, [lwebb@achp.gov](mailto:lwebb@achp.gov).

**SUPPLEMENTARY INFORMATION:** Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their undertakings on historic properties and to provide the ACHP a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the

ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of those undertakings by taking into account the ACHP's Program Comment and following the steps set forth in that comment.

### I. Background

The ACHP has issued a Program Comment to the U.S. Department of Energy (DOE) to extend the duration of agreements based on the DOE prototype PA for its WAP, SEP, and EECBG programs. The ACHP membership voted in favor of issuing the Program Comment via an unassembled vote that concluded on March 11, 2013.

The Program Comment extends the duration of the existing 44 agreements executed under the prototype PA until December 31, 2020, and provides the same duration period for any future agreements that may be executed under the prototype PA. Nothing in the Program Comment alters or modifies any other provisions of the prototype PA or the 44 agreements, including the ability of the parties to amend or terminate an executed agreement prior to the expiration date.

According to the requirements for obtaining a Program Comment, the DOE formally requested the ACHP comment on its continuing use of the prototype PA to tailor its Section 106 compliance for undertakings funded by WAP, SEP, and EECBG in each state in lieu of renegotiating and amending each executed agreement. The prototype PA provided a suggested duration clause of three years for each agreement from the date of final signature and filing with ACHP. As a result, DOE currently has 44 executed agreements based on the prototype PA, with various expiration dates dependent on their respective dates of execution. The first PAs will start expiring in mid-March of 2013 and, with these first expiration dates fast approaching, there is an immediate need to extend the expiration date of the PAs developed under the prototype PA. The use of the Program Comment to achieve this goal avoids the need to negotiate extensions to each of the 44 individual agreements. The ACHP has concluded that the use of a Program Comment to achieve this goal is the most efficient mechanism for doing so and the most expedient way to ensure that these successful agreements remain in force.

The Program Comment does not restrict the use and application of the prototype PA in states where they have not yet been developed by allowing any new agreements developed under the prototype to extend to 2020. This provides continuity in the Section 106 review for those undertakings covered by existing agreements and any new agreements executed under the prototype PA. By extending the duration of these agreements, the Program Comment provides the DOE, SHPOs, and state agency recipients with the option to continue operating under the prototype PA and the subsequently executed agreements. However, any party may amend or terminate an agreement in accordance with the amendment and termination provisions prior to December 31, 2020.

The ACHP received DOE's request for the Program Comment on January 31, 2013, and took steps to inform the public and stakeholders about the proposed Program Comment. Prior to receiving the formal request from DOE, ACHP hosted, with DOE's participation, listening sessions for State Historic Preservation Officers (SHPOs) to discuss the upcoming expiration of the agreements executed under the prototype PA and the possibility of developing a new program alternative. The ACHP and DOE then coordinated to develop the text of the Program Comment. The ACHP published a notice of the proposed Program Comment in the **Federal Register** on February 22, 2013, for a one-week comment period (78 FR 12336-12337).

In accordance with 36 CFR 800.14(e), the ACHP is responsible for obtaining the views of SHPOs and Tribal Historic Preservation Officers (THPOs) before reaching a decision on issuing a Program Comment. On February 22, 2013, the ACHP notified SHPOs and the Section 106 contacts for Indian tribes and Native Hawaiian organizations of the proposed Program Comment via electronic mail and asked for their review and comment. The DOE provided the draft Program Comment and brief background narrative to its state agency recipients for their review and comment. All comments on the draft Program Comment from SHPOs, THPOs, Indian tribes, Native Hawaiian organizations, DOE state agency recipients, and members of the public were due to ACHP staff on March 1, 2013.

Various substantive comments from stakeholders and the public were received and considered by the ACHP, as noted below. The majority of comments received were in support of



the Program Comment and did not require any revisions to the draft.

Two SHPO comments asked for clarification as to whether the Program Comment would apply to state level interagency agreements that were developed prior to the prototype PA. Under Stipulation III of the prototype PA, DOE can choose to recognize an interagency agreement if the agreement closely resembled the prototype PA in establishing review efficiencies and providing exemptions from review for routine activities. To recognize such an agreement under the prototype PA, DOE, the SHPO and the state agency receiving DOE funds would sign a cover agreement. In response to these comments, the Program Comment was revised to clarify that it would be applicable to agreements recognized via cover agreement under Stipulation III of the prototype PA.

Another SHPO comment asked for clarification as to whether the signatories on the executed PAs (DOE, SHPOs, and state agency recipients) were required to take any additional action to extend the PA, once the Program Comment was issued. To address this comment, the Program Comment was revised to include language that stated, "by the issuance of the Program Comment," the PAs based on the DOE prototype PA could extend through December 31, 2020. The ACHP and DOE will send follow-up guidance to the stakeholders as needed to clarify the Program Comment's applicability and use.

Another comment asked for clarification about how the prototype PA itself was developed and implemented and whether there was any tribal involvement in DOE projects in Washington and Oregon. The ACHP is preparing a written response to this commenter to explain the development of the prototype PA, and is coordinating with DOE to provide the additional information as requested. No revisions were made to the Program Comment as a result of this comment.

The remaining comments from state agencies and SHPOs expressed support for the Program Comment and did not require any revisions to the draft text.

## II. Final Text of the Program Comment

The following is the text of the issued Program Comment:

### Program Comment To Extend the Duration of Agreements Executed Under the Department of Energy's Prototype Programmatic Agreement

#### I. Introduction

The Department of Energy's (DOE) Office of Weatherization and

Intergovernmental Programs (OWIP) provides financial assistance to state agency applicants for three weatherization related grant programs: Weatherization Assistance Program (WAP), State Energy Program (SEP), and Energy Efficiency and Conservation Block Grant (EECBG). DOE has determined that activities carried out by these funded programs constitute undertakings with the potential to affect historic properties. Therefore, DOE must comply with Section 106 and its implementing regulations, 36 CFR Part 800, for these undertakings.

The Advisory Council on Historic Preservation (ACHP) and DOE began a partnership in August 2009 to explore possible program alternatives to tailor the Section 106 process for these undertakings in anticipation of the dramatic increase in project funding as a result of American Recovery and Reinvestment Act. DOE, in consultation with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO), developed a prototype Programmatic Agreement (PA) to cover three weatherization related grant programs and to create efficiencies in the administration of these OWIP grants: WAP, SEP, and EECBG. The prototype PA identifies a category of routine undertakings with limited potential to affect historic properties and exempts them from further review. The ACHP's Chairman designated the prototype PA on February 8, 2010. Under the terms of the prototype PA, DOE, the State Historic Preservation Officer (SHPO), and the relevant state agency receiving OWIP grants can execute subsequent agreements without ACHP involvement. Execution of an agreement pursuant to the prototype PA presumes that DOE will conduct its government-to-government consultation responsibilities with federal recognized Indian tribes and its Section 106 consultation requirements with Native Hawaiian organizations. If DOE is notified that a particular undertaking may result in an adverse effect on historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations, DOE must invite such Indian tribes or Native Hawaiian organizations to participate in consultation for the affected project.

Since its designation, DOE has used the prototype PA to successfully negotiate and execute 44 programmatic agreements with SHPOs and state agencies receiving DOE OWIP grants. DOE's direct recipients may use the executed state agreement developed under the prototype PA as well. The prototype PA initially proposed a three

year duration clause from the time of execution and filing with the ACHP. As a result, the 44 agreements executed under the prototype PA have different expiration dates. Several of the agreements will expire in mid-March 2013. It is now DOE's and the ACHP's intention that these agreements should extend beyond the three year term.

## II. Background

During the development of the prototype PA in 2009, the ACHP invited SHPOs, Indian tribes, and Native Hawaiian organizations to participate in a series of teleconferences to discuss the prototype PA and share information on which DOE programs would be covered by the new program alternative. The tribes that participated in the teleconferences noted that the vast majority of funding from the three programs did not relate to undertakings on or affecting historic properties on tribal lands, and were not interested in participating further in the process to develop the prototype PA. The SHPOs were generally supportive of DOE's intent to pursue a program alternative such as the prototype PA that would assist them in managing their workload by streamlining the review of certain undertakings. Further, the SHPOs liked the format of the prototype PA as they would be able to modify individual agreements under its terms to account for state-specific issues.

As a result of the partnership with ACHP and the development and the administration of the prototype PA, DOE established internal and external training; recognized best management practices; and utilized DOE guidance and directives to ensure that the DOE weatherization programs were properly implemented in compliance with Section 106. The prototype PA established review efficiencies and protocols which allowed for the grant programs to expedite the weatherization efforts of the homes of many low income individuals across the country, as well as assisted communities in funding energy efficiency, renewable energy, and weatherization projects for public buildings such as schools and courthouses. Due to the success of the prototype PA for DOE's weatherization programs, other departments within DOE have sought ACHP's and OWIP staff's guidance and direction for meeting their historic preservation compliance responsibilities.

In the past year, DOE and the ACHP have discussed how to extend and build upon the program established by the prototype PA. In December 2012, DOE and the ACHP held listening sessions with SHPOs. The discussions focused

on the effectiveness of the prototype PA and the feasibility of pursuing a new program alternative. The SHPOs that participated in those listening sessions were generally supportive of the development, implementation, and effectiveness of the prototype PA and expressed a preference to continue using the PAs to provide streamlining of reviews and other review efficiencies. Further, in developing the text of this Program Comment, the ACHP provided an opportunity for SHPOs, Indian tribes, Native Hawaiian organizations, and state agencies to comment on its applicability and terms.

This Program Comment extends the duration of the existing 44 agreements executed under the prototype PA until December 31, 2020, and provides the same duration period for any future agreements that may be executed under the prototype PA. Nothing in this Program Comment alters or modifies any other provisions of the prototype PA or the 44 agreements, including the ability of the parties to amend or terminate an executed agreement prior to the expiration date.

### III. Establishment and Authority

This Program Comment was issued by the ACHP on March 11, 2013 pursuant to 36 CFR 800.14(e).

### IV. Date of Effect

This Program Comment went into effect on March 11, 2013.

### V. Use of This Program Comment To Extend the Duration of the Existing Agreements Executed Under the DOE Prototype PA and for New Agreements Executed Pursuant to the Prototype PA

By the issuance of this Program Comment, the DOE may continue, through December 31, 2020, complying with its responsibilities under Section 106 of the National Historic Preservation Act for its WAP, SEP, and EECBG in the relevant States using the 44 agreements currently executed, including those agreements that were recognized by Stipulation III, and those to be executed, under the "Prototype Programmatic Agreement between the United States Department of Energy, the State Energy Office and the State Historic Preservation Office regarding EECBG, SEP and WAP Undertakings," designated by the ACHP on February 8, 2010, regardless of the duration clause of those agreements. However, if any of those agreements is terminated under its own terms, DOE may no longer use it to comply with its Section 106 responsibilities in the relevant State. This will provide continuity in the Section 106 review for those

undertakings covered by the existing and any new agreements executed under the prototype PA. This Program Comment does not alter or modify any provisions of the prototype PA or the 44 executed agreements other than their duration clauses.

### VI. Amendment

The ACHP may amend this Program Comment after consulting with DOE, NCSHPO, and other parties as appropriate, and publishing notice in the **Federal Register** to that effect.

### VII. Sunset Clause

This Program Comment will terminate on December 31, 2020, unless it is amended to extend the period in which it is in effect.

### VIII. Termination

The ACHP may terminate this Program Comment by publication of a notice in the **Federal Register** thirty (30) days before the termination takes effect.

**Authority:** 36 CFR 800.14(e).

Dated: March 11, 2013.

**John M. Fowler,**  
Executive Director.

[FR Doc. 2013-05917 Filed 3-13-13; 8:45 am]

**BILLING CODE 4310-K6-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5683-N-23]

### Notice of Submission of Proposed Information Collection to OMB: Low Income Housing Tax Credit Database

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

Section 2835(d) of the Housing and Economic Recovery Act, or HERA, (Pub. L. 110-289, approved July 30, 2008) amends Title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act) to add a new section 36 (to be codified as 42 U.S.C. 1437z-8) that requires each state agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (low-income housing tax credits or LIHTC) to furnish HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under

section 8(o) of the U.S. Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. New section 36 requires HUD to establish standards and definitions for the information to be collected by state agencies and to provide states with technical assistance in establishing systems to compile and submit such information and, in coordination with other federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs. In 2010, OMB approved the first collection instrument used for the collection of LIHTC household information (OMB Approval No. 2528-0165, expiration date 05/31/2013). HUD used the previously approved form to collect data on LIHTC tenants in 2009, 2010 and 2011. Renewal of this form is required for HUD to remain in compliance with the statute.

**DATES:** Comments Due Date: April 15, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528-0165) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) fax: 202-395-5806.

### FOR FURTHER INFORMATION CONTACT:

Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone (202) 402-3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of



# THE NAVAJO NATION

**Ben Shelly**  
PRESIDENT

**Rex Lee Jim**  
VICE-PRESIDENT

July 26, 2013

Matt Turner, Program Manager  
Utah WAP  
140 E. 300 S Third Floor  
Salt Lake City, Utah 84111

Re: Utah Weatherization Assistance Program (WAP) within the Exterior Boundaries of the Navajo Nation, located within the State of Utah.

Dear Mr. Carpenter :

The Cultural Resource Compliance Section of the Navajo Nation Historic Preservation Department (NNHPD) has received and reviewed a letter dated January 14, 2013. The letter requests that NNHPD "certify compliance with historical preservation requirements". Based on the scope of work provided which limits the work to residences that are ; " Private residences, made from modern construction materials, are manufactured, modular, or mobile homes, does not adversely affect the appearance of the residence, typically falls under the areas noted in Appendix A ( attached).

Based on the provided scope of work and Appendix A WAP undertakings exempt from Section 106 Review, the Navajo Nation Historic Preservation Department concurs with Appendix A. The NNHPD has made a determination of "no Historic Properties Affected" and it is our determination that no further work is warranted. Accordingly, we recommend that the proposed undertaking be authorized to proceed.

As agent of the Bureau of Indian Affairs (pursuant to Public Law 93-638, Archaeological Service Contract), the NNHPD, with this letter, hereby documents compliance with the Navajo Nation Cultural Resource Protection Act (19 NNC 1021) and Consultation with the Navajo Nation Historic Preservation Officer pursuant to Sections 101(a & d), 106(a & d) and 110(a), 2(e)ii of the National Historic Preservation Act.

Should you have any questions or concerns please contact me at 928-871-7147 or by email at [ronpmaldonado@navajo-nsn.org](mailto:ronpmaldonado@navajo-nsn.org)

Sincerely,

Ronald P. Maldonado  
Tribal Historic Preservation Officer  
Navajo Nation Historic Preservation Department

## APPENDIX A—WAP UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

### A. Exterior Work

- a. Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
- b. Thermal insulation, such as non-toxic fiberglass and foil wrapped, in walls, floors, ceilings, attics, and foundations in a manner that does not harm or damage historic fabric.
- c. Blown in wall insulation where no holes are drilled through exterior siding, or where holes have no permanent visible alteration to the structure
- d. Removable film on windows (if the film is transparent), solar screens, or window louvers, in a manner that does not harm or obscure historic windows or trim.
- e. Reflective roof coating in a manner that closely resembles the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline, or where not on a primary roof elevation or visible from the public right-of-way.
- f. Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
- g. In-kind replacement or repair of primary windows, doors and door frames that closely resemble existing substrate and framing
- h. Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs closely resemble existing surface composite

### B. Interior Work

Special Note: Undertakings to interior spaces where the work will not be visible from the public right of way; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; or no walls are leveled with furring or moved, should be automatically excluded from SHPO review. This work includes:

1. Energy efficiency work within the building shell:
  - a. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations
  - b. Blown in wall insulation where no decorative plaster is damaged.
  - c. Plumbing work, including installation of water heaters
  - d. Electrical work, including improving lamp efficiency
  - e. Sealing air leaks using weather stripping, door sweeps, and caulk and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.
  - f. Repair or replace water heaters
  - g. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps

- h. Install insulation on water heater tanks and water heating pipes
- i. Install solar water heating systems, provided the structure is not visible from the public right of way
- j. Install waste heat recovery devices, including water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment
- k. Repair or replace electric motors and motor controls like variable speed drives
- l. Incorporate other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming

2. Work on heating and cooling systems:

- a. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves
- b. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers
- c. Install insulation on ducts and heating pipes
- d. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers
- e. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems
- f. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems

3. Energy efficiency work affecting the electric base load of the property:

- a. Convert incandescent lighting to fluorescent
- b. Add reflectors, LED exist signs, efficient HID fixtures, and occupancy (motion) sensors
- c. Replace refrigerators and other appliances

4. Health and safety measures:

- a. Installing fire, smoke or carbon dioxide detectors / alarms
- b. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gasses draft safely to outside
- c. Install mechanical ventilation, in a manner not visible from the public right of way, to ensure adequate indoor air quality if house is air-sealed to building tightness limit