



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE 10-012
STATE ENERGY PROGRAM NOTICE 10-006
ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT NOTICE 10-006

EFFECTIVE DATE: FEBRUARY 11, 2010

SUBJECT: HISTORIC PRESERVATION IMPLEMENTATION

PURPOSE: To provide guidance regarding the National Historic Preservation Act (NHPA or “the Act”), 16 U.S.C. 470 et seq., as it relates to DOE Grantees of the Weatherization Assistance Program for Low-Income Persons (WAP), the State Energy Program (SEP), and the Energy Efficiency and Conservation Block Grant (EECBG).

SCOPE: The provisions of this guidance apply to States, units of local government or other entities named in the Notification of Grant Award as the recipient(s) of financial assistance under WAP, SEP or EECBG, including the recently added Territories (collectively referred to as “Grantees”).

LEGAL AUTHORITY: Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy (DOE) to administer the WAP. All grant awards made under this Program shall comply with applicable law including regulations contained in 10 C.F.R. Part 440 (issued February 1, 2002), the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, the American Recovery and Reinvestment Act of 2009 and other procedures as DOE may, from time-to-time, prescribe for the administration of financial assistance. DOE is authorized to administer the SEP under the Energy Policy and Conservation Act of 1975, the State Energy Efficiency Programs Improvement Act of 1990, and American Recovery and Reinvestment Act of 2009 and other procedures as DOE may, from time-to-time, prescribe for the administration of financial assistance. DOE is authorized to administer the EECBG under the Energy Independence and Securities Act of 2007, the American Recovery and Reinvestment Act of 2009 and other procedures as DOE may, from time-to-time, prescribe for the administration of financial assistance.

BACKGROUND: Prior to the expenditure of federal funds to alter any structure or site, the Grantee is required to comply with Section 106 of the NHPA. Section 106 applies to historic properties or sites that are listed on or eligible for listing on the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Grantee must contact the State Historic Preservation Officer (SHPO) to coordinate the Section 106 review as set forth in 36 C.F.R. Part 800 and consistent with DOE’s 2009 Letter of Delegation of Authority (see

Attachments 1 and 2). SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. The Grantee must also notify DOE in the event that consultation with a Tribal Historic Preservation Officer (THPO) may be necessary so that DOE may initiate any necessary tribal consultation. Indian tribes may agree to the delegation of DOE's consultation responsibilities to a Grantee.

GUIDANCE: DOE, in coordination with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), has developed a *Prototype Programmatic Agreement* to address historic preservation requirements for WAP, SEP and EECBG. DOE, ACHP and NCSHPO understood the heavy volume of activity anticipated under the American Recovery and Reinvestment Act ("Recovery Act") and worked together to create a manageable framework for streamlining compliance with the requirements of the Act while ensuring the protection of the Nation's historic properties. On February 5, 2010, ACHP released the prototype Programmatic Agreement (Prototype PA) for use by DOE, State Energy Office Grantees and individual SHPOs to address historic preservation requirements (see Attachment 3). The Prototype PA allows flexibility between States while recognizing that many States have already instituted effective consultation protocols that can be applied to DOE's programs.

In the event that the Grantee has already entered into an interagency agreement with the SHPO regarding activities exempt from further review (and/or protocols for consultation), the Grantee may proceed pursuant to the interagency agreement in lieu of the terms required by the Prototype PA provided that: the Grantee and SHPO had been negotiating the interagency agreement prior to February 5, 2010 and it is executed no later than February 19, 2010; the Grantee and the SHPO both agree through execution of the Prototype PA that the interagency agreement applies to the undertaking and provides a historic preservation review process that is similar to that provided under the Prototype PA; and DOE does not object to the use of the agreement to fulfill the requirements of Section 106 of the Act. (*See* Section III of the Prototype PA).

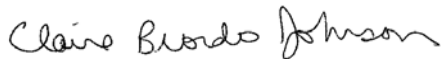
Through this Prototype PA, a categorical approach to streamline reviews and reduce the heavy burden placed on SHPOs should expedite the obligation of Recovery Act funds. The Prototype PA identifies activities that would not have an effect on an historic property; even assuming a historic property was present. Further, the terms of a PA that is executed by a State Energy Office Grantee will be made applicable to counties, municipalities and other local governments located in that State in order to ensure comprehensive coverage of DOE's program Grantees and Subgrantees. In the event that a county, municipality or other local government is a direct Grantee of DOE funds, DOE will incorporate the terms of an executed PA (and/or interagency agreement as applicable) into the direct Grantee's award. In the event that a county, municipality or other local government is a sub-grantee of DOE funds, the direct Grantee shall ensure that the terms of an executed PA (and/or interagency agreement as applicable) are made applicable to its sub-grantees in accordance with Section I(C) of the Prototype PA. The Prototype PA also recognizes the sovereignty of Tribal governments, while allowing them the option to participate in this comprehensive approach.

If the SHPO stipulates (through a written agreement such as the Prototype PA or an interagency agreement entered into in accordance with the Prototype PA) to the types of activities that would not have an effect on a historic property and the Grantee adheres to a scope of work in conformance with that agreement, then the Grantee need not perform any further Section 106 review. SHPOs and Grantees may agree to add other provisions to the Prototype PA, including amending the Appendices, as long as DOE agrees to the changes and the modifications do not substantially change the consultative roles given to other consulting parties.

DOE anticipates that the SHPOs and State Energy Office Grantees will promptly execute a PA, with modifications as necessary, and will return the signed PA to DOE for execution. DOE will then provide the executed PA to the Project Officers assigned to the applicable State(s). Please note that for those Grantees that may have already worked through the SHPO process in compliance with the Act nothing further is required and this Guidance and the Prototype PA should not be construed to create any new or additional historic preservation requirements.

CONCLUSION: If there are additional questions, Grantees should contact their PMC Project Officer, who will consult with DOE's Liaison at the Advisory Council for Historic Preservation. DOE will continue to provide updates through PMC Project Officers and through other Program notices. DOE will schedule teleconferences with the Grantees to clarify the approach to historic preservation consultation and answer any questions. In the interim, inquiries related to historic preservation may be emailed to historicpreservation@go.doe.gov

It is a pleasure to work with you on this important challenge. I look forward to the growth of our Program and our continued partnership.



Claire Broido Johnson
Acting Program Manager
Office of Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy

Attachment 1: *DOE Historic Preservation Memorandum Regarding Delegation of Authority from Assistant Secretary Cathy Zoi dated August 28, 2009*

Attachment 2: *36 C.F.R. Part 800 Protection of Historic Properties*

Attachment 3: *Prototype Programmatic Agreement between DOE, State Energy Offices and State Historic Preservation Offices dated February 5, 2010*

Attachment 4: *Letter from Advisory Council on Historic Preservation to DOE Secretary Chu February 5, 2010*