

Appendix 9B

Section 106 Delegation Memo

MEMORANDUM FOR: State Historic Preservation Officers (SHPO) and Tribal Historic Preservation Officers (THPO), MAP- and OHP-approved Lenders

FROM: Danielle Schopp, Director, Office of Environment and Energy
Department Environmental Clearance Officer

SUBJECT: Authorization of MAP- and OHP-approved Lenders and Their Authorized Representatives to Initiate Section 106 Consultation For HUD Office of Housing Programs

EFFECTIVE DATE:

The Office of Housing at the U.S. Department of Housing and Urban Development (HUD) operates the Federal Housing Administration (FHA), providing mortgage insurance on mortgages for Single Family homes, Multifamily properties, and Healthcare facilities. Within Housing, the Office of Multifamily Housing Programs is responsible for the overall management, development, direction and administration of HUD's Multifamily Housing Programs, and the Office of Health Care Programs is responsible for the administration of HUD's Residential Care programs and Hospital Programs. HUD's FHA Programs are identified by section of the National Housing Act. (The Act.) Sections 220, 221(d)(4), 231, 213 and 241(a) of the Act provide FHA multifamily mortgage insurance for the new construction or substantial rehabilitation of multifamily rental housing. Sections 232 and 242 provide FHA mortgage insurance for new construction or substantial rehabilitation of healthcare facilities and hospitals. The Section 207/223(f) program insures mortgages for the purchase or refinancing of existing rental housing or healthcare facilities which may have been financed originally with conventional mortgages or equity. The Section 223(a)(7) program provides for streamlined refinancing of currently insured FHA loans.

All Housing FHA programs (except single family, 1-4 unit properties, which are generally categorically excluded from review under the National Environmental Policy Act (NEPA), not subject to related laws and authorities specified in HUD's environmental regulations) must comply with provisions of Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800. In these projects, HUD receives applications from lenders and is responsible for completing environmental and Section 106 reviews under HUD's environmental regulations in 24 CFR Part 50 as part of its underwriting process. Early consideration of Section 106 is necessary to meet program timelines which often overlap with other funding and tax credit deadlines. In order to facilitate the review process, HUD has determined that it is consistent with 36 CFR 800.2(c)(4) for the lenders applying for mortgage insurance under these Programs to initiate Section 106 consultation with State Historic Preservation Officers (SHPO) and other consulting parties, except for Indian Tribes. HUD must conduct consultation with Indian Tribes. For the purposes of this Memorandum, Section 106 consultation may begin once HUD has issued an FHA number.

Effective immediately, the Department authorizes MAP- and OHP-approved lenders and their authorized representatives to act on behalf of HUD to consult with SHPOs to initiate the Section 106 review process, identify and evaluate historic properties, and assess effects. Lenders using this option must include a copy of this Memorandum with their submission to SHPO.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

If a project involves demolition of a building over 45 years old, new construction in or adjacent to a historic district, substantial ground disturbance¹, or exterior rehabilitation of a building more than 45 years old, lenders must retain a Qualified Historic Preservation Professional² in the discipline relevant to the project activities to prepare submissions to SHPO and manage consultation with interested parties and the public, as well as coordinate with HUD on HUD's consultation with Indian Tribes.

When consulting with the SHPO and others, the lenders or authorized representatives shall identify their project by the HUD program followed by the section of the Act and provide an appropriate contact person at both the lender's organization and the authorized representative hired to coordinate the review. Lenders and authorized representatives must consider timely comments received by HUD from Indian Tribes before reaching final determinations of effect.

The lender or authorized representative shall prepare documentation that meets 36 CFR 800.11 (d) or (e) and submit to SHPO for review and concurrence. If SHPO concurs with the finding of effect, the lender may enter the concurrence and supporting documentation into HUD's Environmental Review Online System (HEROS) and consider Section 106 complete, unless any of the considerations below apply.

HUD Office of Housing will remain legally responsible for all findings and determinations. HUD Office of Housing will participate in and complete the Section 106 review when:

- It is determined during review that, in accordance with the *Criteria of Adverse Effect*, there may be an adverse effect on a historic property;
- There is a disagreement between the lender or their authorized representatives and the SHPO and/or THPO regarding identification and evaluation of historic properties and/or assessment of effects;
- There is an objection from tribes, consulting parties or the public regarding their involvement in the review process, recommended Section 106 findings and determinations, or the implementation of agreed upon provisions;
- There is the potential for a foreclosure situation per 36 CFR 800.9(b) or anticipatory demolition as specified in Section 110(k) of the National Historic Preservation Act; or
- There is government-to-government consultation with Indian tribes, or
- HUD deems the consultation record inadequate.

It is important that Section 106 reviews be conducted within the timeframes set forth in 36 CFR Part 800 and in the Housing Multifamily and Healthcare FHA programs and that the exchange of documentation and consultations between the consulting parties be carried out in a consistent and predictable manner. To this end, HUD will coordinate with its MAP- and OHP-approved lenders to carry out the process set forth in this memorandum. HUD will provide guidance and periodic training on the implementation of the authorization. HUD will also

¹ Does not include minor ground disturbance for installing posts for a fence, deck, ramp, handrail, etc.; routine landscaping; or repaving a parking lot or sidewalk.

² A Qualified Historic Preservation Professional is one who meets the Secretary of the Interior's Professional Qualifications Standards for Archeology, History, Architectural History, Architecture, or Historic Architecture and has substantial experience in conducting Section 106 reviews of historic properties. Detailed information found at https://www.nps.gov/history/local-law/arch_stnds_9.htm

monitor compliance with the authorization and prepare an annual report that summarizes the activities conducted under this authorization and make it publicly available on the HUD website.

If you have any questions regarding compliance with this Memorandum, please contact Sara Jensen, Multifamily Housing Program Environmental Clearance Officer, at sara.jensen@hud.gov or 206-220-5226. If you have any questions regarding HUD's Historic Preservation Program, please contact Nancy Boone, Federal Preservation Officer at Nancy.E.Boone@hud.gov or (202) 402-5718.

Affirmed by _____ Date _____
Brian D. Montgomery
Assistant Secretary of Housing and FHA Commissioner