

## **APPENDIX F**

### **State Historic Preservation Office (“SHPO”) Letters**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-7000



ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

MEMORANDUM FOR: State Historic Preservation Officers (SHPOs)

FROM: Carol J. Galante, Acting Assistant Secretary for Housing –  
Federal Housing Commissioner, H

SUBJECT: Authorization of HUD Office of Multifamily Housing  
Programs' Low Income Housing Tax Credit Pilot  
Program Lenders to Initiate Section 106 Consultation

The Office of Multifamily Housing Programs is responsible for the overall management, development, direction and administration of HUD's Multifamily Housing Programs. The Office has recently launched the first phase of a Pilot Program (the Tax Credit Pilot or Pilot), mandated by the Housing and Economic Recovery Act of 2008, Public Law 110-289, in Subtitle B of Title VIII, cited as the Housing Tax Credit Coordination Act of 2008 (HERA), to streamline FHA mortgage insurance applications for projects with equity from the Low-Income Housing Tax Credit (LIHTC) program. This first phase of the Tax Credit Pilot provides permanent financing on transactions that are low risk so as to allow FHA to significantly streamline the review process and create efficiencies without increasing risk. It will permit applications for permanent financing processed for preservation and moderate rehabilitation of properties with Section 8 rental assistance or for older, stabilized tax credit properties through the syndication of new credits.

The Pilot Program 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 is responsible for completing environmental and Section 106 reviews under HUD's environmental regulations in 24 CFR Part 50. 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 the Pilot to initiate Section 106 consultation with State Historic Preservation Officers (SHPO) and other consulting parties.

Effective immediately, HUD authorizes all Tax Credit Pilot lenders and their authorized representatives<sup>1</sup> 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. When consulting with the SHPO and others, the lenders shall identify their project as a Tax Credit Pilot project and provide an appropriate contact person with their organization. Following their reviews, the applicants will submit Section 106 documentation to you for your review and concurrence. If you concur, the Section 106 process will be considered complete, unless any of the considerations below apply.

HUD will remain legally responsible for all findings and determinations. HUD will participate in the consultation process when:

- It is determined, in accordance with the *Criteria of Adverse Effect*, that there is an adverse effect on a historic property;
- There is a disagreement between the applicant or their authorized representatives and the SHPO regarding identification and evaluation of historic properties and/or assessment of effects;
- There is an objection from consulting parties or the public regarding assessment of effects, the implementation of agreed upon provisions, or their involvement in a Section 106 review;
- 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.

It is important that Section 106 reviews be conducted within the timeframes set forth in 36 CFR Part 800 and in the Tax Credit Pilot 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 Tax Credit Pilot lenders to carry out the process set forth in this Memorandum.

Questions about the Tax Credit Pilot should be directed to Neal Allen at (202) 402-2483, or by email at Neal.F.Allen@hud.gov. Questions about HUD's Historic Preservation program should be directed to Nancy Boone, Federal Preservation Officer, at (202) 402-5718, or by e-mail at Nancy.E.Boone@hud.gov.

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<sup>1</sup> When consulting with SHPOs, authorized representatives of HUD applicants should identify the organization they are representing, including an appropriate contact person within the organization, and the undertaking for which they have been hired to coordinate the Section 106 review.

## SAMPLE “NO HISTORIC PROPERTIES AFFECTED” LETTER

Grantee letterhead

Date

[SHPO/ mailing address]  
(see: [www.ncshpo.org](http://www.ncshpo.org))

RE: Project, Address  
HUD Multifamily Low Income Housing Tax Credit Pilot Program

Dear [SHPO]:

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800, we are providing information for your review and concurrence regarding the above-referenced project. In a memo to SHPOs dated [date of memo], the U.S. Department of Housing and Urban Development (HUD) authorized Lenders in the Multifamily Low income Housing Tax Credit Pilot Program to initiate consultation with SHPOs.

Based on our research of the property in [SHPO records, interviews, local government tax records, Planning & Zoning, etc.], performed by [professionally qualified preservation consultant, staff, etc.] in consultation with [the consulting parties, SHPO staff, Indian tribes, local historical groups, etc.], we have defined the Area of Potential Effect (APE) as [the boundary of the project property OR other boundary].

We have made a Finding of “No Historic Properties Affected” pursuant to 36 CFR 800.4(d)(1) based on the following:

[Briefly describe project and neighborhood. Note if it’s refinancing with or without rehabilitation and new construction. Note any significant ground disturbance expected, or the absence of ground disturbance.]

[Enclose maps identifying project location and photographs showing site and neighborhood.]

[Briefly describe why you believe that no historic properties will be affected by the proposed project. Include one of the following:

Research confirms that building(s) on the property is/are less than fifty years old and is/are not located within a district listed on or determined eligible for the National Register of Historic Places.

OR

Research confirms that [building(s) on the property] is/are more than 50 years old and is/are [listed on OR may be eligible for] the National Register of Historic Places [as an individual structure AND/OR as part of an historic district]. However, the project will have no effect on any historic resources on the property.]

[If the project involves significant ground disturbance, describe your efforts to identify potential archeological sites in the APE, including tribal consultation as appropriate, and your conclusion that no archeological resources exist in the APE.]

Attached for your review are copies of relevant documents supporting our finding, along with photographs and a map showing the location of the property. This documentation satisfies requirements set forth at §800.11(d).

In accordance with §800.4(d)(1)(i), your office has thirty days to object to this finding. Please respond within this timeframe, otherwise we will assume that you concur with our finding. If you concur, please sign on the line below and return a copy of this letter by fax or otherwise to [ ].

If you have questions regarding this finding, please direct them to [ ]. Thank you for your attention to this matter.

Sincerely,

Concurrence:

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State Historic Preservation Officer

Date

## SAMPLE “NO ADVERSE EFFECT” LETTER

Grantee letterhead

Date

[SHPO/ mailing address]  
(see: [www.ncshpo.org](http://www.ncshpo.org))

RE: Project, Address  
HUD Multifamily Low Income Housing Tax Credit Pilot Program

Dear [SHPO]:

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800, we are providing information for your review and concurrence regarding the above-referenced project. In a memo to SHPOs dated [date of memo], the U.S. Department of Housing and Urban Development (HUD) authorized Lenders in the Multifamily Low income Housing Tax Credit Pilot Program to initiate consultation with SHPOs.

Based on our research of the property in [SHPO records, interviews, local government tax records, Planning & Zoning, etc.], performed by [professionally qualified preservation consultant, staff, etc.] in consultation with [the consulting parties, SHPO staff, Indian tribes, local historical groups, etc.], we have defined the Area of Potential Effect (APE) as [the boundary of the project property OR other boundary].

We have determined that the project will have “No Adverse Effect” pursuant to 36 CFR 800.5 based on the following:

[Briefly describe project and neighborhood. Note if it’s refinancing with or without rehabilitation and new construction. Note any significant ground disturbance expected, or the absence of ground disturbance.]

[Enclose maps identifying project location and photographs showing site and neighborhood.]

[Briefly describe why you believe that the project will have no adverse effect on historic properties in the APE. Include the following as appropriate :

Research confirms that [building(s) on the property] is/are more than 50 years old and is/are [listed on OR may be eligible for] the National Register of Historic Places [as an individual structure AND/OR as part of an historic district].

[If the project involves significant ground disturbance, describe your efforts to identify potential archeological sites in the APE, including tribal consultation as appropriate, and your conclusion that potentially eligible archeological resources exist OR do not exist in the APE.]

Rehabilitation work on the historic buildings in the APE will meet the Secretary of the Interior's Standards for Rehabilitation. The work consists of: [ ]

We have reviewed the Criteria of Adverse Effect and have determined that none apply to the activities that will be carried out in this project.

The project will have No Adverse Effect provided that the following conditions are met:  
[ ] The [Lender] and HUD remain responsible for successful implementation of the required conditions.

Attached for your review are copies of relevant documents supporting our finding, including [Register OR survey] forms, [copies or summaries of] views provided by consulting parties and the public, photographs, and a map showing the location of the property. This documentation satisfies requirements set forth at §800.11(e).

In accordance with §800.5(c), your office has thirty days to object to this finding. Please respond within this timeframe, otherwise we will assume that you concur with our finding. If you concur, please sign on the line below and return a copy of this letter by fax or otherwise to [ ].

If you have questions regarding this finding, please direct them to [ ]. Thank you for your attention to this matter.

Sincerely,

Concurrence:

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State Historic Preservation Officer

Date

## SECTION 106 CHECKLIST

The Section 106 process, as described in 36 CFR Part 800, consists of four basic steps, with each step having a series of sub-steps. You may use this checklist to track the progress of your review. Remember that Section 106 needs to be completed “prior to the approval of the expenditure of any Federal funds.”

### Step 1: Initiate Consultation (§800.3)

- \_\_\_ Yes/No - Project meets the definition of an “undertaking”\*
  - \_\_\_ Yes/No - “Undertaking” has potential to cause effects to historic properties\*
  - \_\_\_ Yes/No - Review of “undertaking” subject to a Programmatic Agreement (PA)\*\*
  - \_\_\_ Consider integrating Section 106 review with other reviews (NEPA), as appropriate
  - \_\_\_ Identify appropriate State/Tribal Historic Preservation Office (SHPO/THPO) and federally-recognized Indian tribes/Native Hawaiian organizations, as appropriate
  - \_\_\_ Plan to involve the public (may use existing agency public participation procedures)
  - \_\_\_ Identify other consulting parties
- \*If no, then Section 106 review is complete. These sub-steps do not require consultation with SHPO/THPO. Check 24 CFR 58.34 (exempt activities) and 58.35(b) (categorical exclusions not subject to related laws).
- \*\*If yes, then Section 106 review is complete. Implement undertaking in accordance with the PA.

### Step 2: Identify and Evaluate Historic Properties (§800.4)

- \_\_\_ Define the Area of Potential Effects (APE)
  - \_\_\_ Review existing information regarding the APE
  - \_\_\_ Seek information from consulting parties to identify issues related to the undertaking’s potential effects
  - \_\_\_ Gather information from federally-recognized Indian tribes, as appropriate
  - \_\_\_ Identify any known National Register (NR)-eligible or -listed properties
  - \_\_\_ Evaluate all other properties in APE for NR eligibility, regardless of age
  - \_\_\_ Submit finding and supporting documentation of “no historic properties affected” \*\*\* or “historic properties affected” to SHPO/THPO for 30-day review
  - \_\_\_ Notify all consulting parties of finding and provide supporting documentation
  - \_\_\_ Make finding/documentation available for public review before approving the undertaking (NOI/RROF)
  - \_\_\_ If historic properties affected, proceed to Step 3
- \*\*\*If SHPO/THPO (or ACHP) does not object, then Section 106 review is complete. If there are objections, you may contact your HUD Field Environmental Officer for further assistance.

## SECTION 106 CHECKLIST

### Step 3: Assess Effects (§800.5)

- \_\_\_ Apply criteria of adverse effect, in consultation with SHPO/THPO and tribes
- \_\_\_ Consider modifications to the project or agree to conditions that avoid adverse effects
- \_\_\_ Submit finding and supporting documentation of “no adverse effect”\*\*\*\* or “adverse effect” to all consulting parties for 30-day review
- \_\_\_ If no objections, maintain a record of the finding and implement the undertaking as proposed
- \_\_\_ If adverse effect finding, proceed to Step 4

\*\*\*\*If there are no objections, then Section 106 review is complete. If there are objections, you may contact your HUD Field Environmental Officer for further assistance.

### Step 4: Resolve Adverse Effects (§800.6)

- \_\_\_ Notify the ACHP of the adverse effect finding and provide documentation outlined in §800.11(e)
- \_\_\_ Invite ACHP to participate 1) if you want to, 2) if the project adversely affects an NHL, or 3) if you are developing a PA
- \_\_\_ Continue consultation with consulting parties to consider ways to avoid, minimize, or mitigate adverse effects
- \_\_\_ Draw up agreed upon terms in a Memorandum of Agreement (MOA)/PA\*\*\*\*\*
- \_\_\_ Sign MOA/PA and distribute copies to all consulting parties (invite signatories and concurring parties as appropriate)
- \_\_\_ File a copy of the signed MOA/PA with ACHP before approving the undertaking
- \_\_\_ Implement undertaking in accordance with MOA/PA

\*\*\*\*\*If consultation does not produce agreement, you must seek ACHP participation. Should ACHP participation not result in agreement, you may consider terminating consultation. Contact your HUD Field Environmental Officer for further assistance.

PER 24 CFR §58.47 AND 36 CFR §800.8(c)(5), IF PROJECT PLANS CHANGE AFTER COMPLETION OF THE SECTION 106 REVIEW, YOU MUST NOTIFY THE ACHP AND CONSULTING PARTIES AND REEVALUATE YOUR FINDINGS.