

(b) Section 110(c) of the HCDA of 1980 requires UDAG applicants to: (1) Identify all properties, if any, which are included in the National Register of Historic Places and which will be affected by the project for which the application is made; (2) identify all other properties, if any, which will be affected by such project and which, as determined by the applicant, may meet the Criteria established by the Secretary of the Interior for inclusion in the National Register (36 CFR 60.6); and (3) provide a description of the effect, as determined by the applicant, of the project on properties identified pursuant to (1) and (2). If the applicant determines that such properties are affected, the Act requires that the information developed by the applicant must be forwarded to the appropriate State Historic Preservation Officer (SHPO) for review and to the Secretary of the Interior for a determination as to whether the affected properties are eligible for inclusion in the National Register.

(c) Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), requires the head of any Federal agency with jurisdiction over a Federal, federally assisted or federally licensed undertaking that affects a property included in or eligible for inclusion in the National Register of Historic Places to take into account the effect of the undertaking on such property and afford the Council a reasonable opportunity to comment. Under the UDAG program, applicants assume the status of a Federal agency for purposes of complying with section 106.

§ 801.2 Definitions.

The terms defined in 36 CFR 800.2 shall be used in conjunction with this regulation. Furthermore, as used in these regulations:

(a) *Urban Development Action Grant (UDAG) Program* means the program of the Department of Housing and Urban Development (HUD) authorized by title I of the Housing and Community Development Act (HCDA) of 1977 (42 U.S.C. 5318) to assist revitalization efforts in distressed cities and urban counties which require increased public and private investment.

(b) *Applicant* means cities and urban counties or Pocket of Poverty Communities which meet the criteria at 24 CFR 570.453. Except as specifically provided below, applicants, rather than the Secretary of HUD, must comply with these regulations.

(c) *Project* means a commercial, industrial, and/or neighborhood project supported by the UDAG program of the Department of HUD, as defined in 24 CFR 570.451(g). A project includes the group of integrally related public and private activities described in the grant application which are to be carried out to meet the objectives of the action grant program and consists of all action grant funded activities together with all non-action grant funded activities. A project is an *undertaking* as defined in 36 CFR 800.2(c).

(d) *State Historic Preservation Officer Review Period* is a 45 day period provided to the appropriate State Historic Preservation Officer by section 110(c) of the Housing and Community Development Act (HCDA) of 1980 for comment on the formal submission by the applicant of data on properties listed in the National Register or which may meet the Criteria and which will be affected by the proposed UDAG project. This period does not include any period during which the applicant seeks information from the State Historic Preservation Officer to assist the applicant in identifying properties, determining whether a property meets the Criteria for listing in the National Register of Historic Places and determining whether such property is affected by the project.

(e) *Secretary of the Interior Determination Period* is a 45 day period provided by section 110(c) of the HCDA of 1980 for a determination as to whether the identified properties are eligible for inclusion in the National Register.

§ 801.3 Applicant responsibilities.

As early as possible before the applicant makes a final decision concerning a project and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the applicant should take the following steps to comply with the

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requirements of section 106 of the National Historic Preservation Act and section 110 of the HCDA of 1980.

In order to facilitate the commenting process the applicant should forward to the Council information on the proposed project at the earliest practicable time if it appears that National Register properties or properties which meet the Criteria for inclusion will be affected. This will allow the Council to assist the applicant in expeditiously meeting its historic preservation requirements and facilitate the development of the Council's comments.

(a) *Information required.* It is the primary responsibility of the applicant requesting Council comments to conduct the appropriate studies and to provide the information necessary for a review of the effect a proposed project may have on a National Register property or a property which meets the Criteria, as well as the information necessary for adequate consideration of modifications or alterations to the proposed project that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of the applicant to provide the information specified in § 801.7, to make an informed and reasonable evaluation of whether a property meets the National Register Criteria (36 CFR 60.6) and to determine the effect of a proposed undertaking on a National Register property or property which meets the Criteria.

(b) *Identification of properties.* Section 110 of the HCDA of 1980 makes UDAG applicants responsible for the identification of National Register properties and properties which may meet the Criteria for listing in the National Register that may be affected by the project. An appendix to these regulations sets forth guidance to applicants in meeting their identification responsibilities but does not set a fixed or inflexible standard for such efforts. Meeting this responsibility requires the applicant to make an earnest effort to identify and evaluate potentially affected historic properties by:

(1) Consulting the National Register of Historic Places to determine whether the project's impact area includes such properties;

(2) Obtaining, prior to initiating the State Historic Preservation Officer Re-

view Period, relevant information that the State Historic Preservation Officer may have available concerning historic properties, if any are known, in the project's impact area;

(3) Utilizing local plans, surveys, and inventories of historic properties prepared by the locality or a recognized State or local historic authority;

(4) Utilizing other sources of information or advice the applicant deems appropriate;

(5) Conducting an on-the-ground inspection of the project's impact area by qualified personnel to identify properties which may meet the Criteria for evaluation taking into consideration the views of the State Historic Preservation Officer as to the need for and methodology of such inspections;

(6) Applying the Department of the Interior Criteria for Evaluation (36 CFR 60.6) to properties within the project's impact area.

(c) *Evaluation of effect.* Applicants are required by section 110(a) of the HCDA of 1980 to include in their applications a description of the effect of a proposed UDAG project on any National Register property and or any property which may meet the Criteria.

(1) *Criteria of Effect and Adverse Effect.* The following criteria, similar to those set forth in 36 CFR 800.3, shall be used to determine whether a project has an effect or an adverse effect.

(i) *Criteria of effect.* The effect of a project on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. A project shall be considered to have an effect whenever any condition of the project causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the Criteria of the National Register. An effect occurs when a project changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the National Register Criteria. An effect may be direct or indirect. Direct effects are caused by the project and occur at the same time and place. Indirect effects

include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects involve development of the project site around historic properties so as to affect the access to, use of, or significance of those properties.

(ii) *Criteria of adverse effect.* Adverse effects on National Register properties or properties which meet the Criteria may occur under conditions which include but are not limited to:

(A) Destruction or alteration of all or part of a property;

(B) Isolation from or alteration of the property's surrounding environment;

(C) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(D) Neglect of a property resulting in its deterioration or destruction;

(iii) *Special considerations.* If rehabilitation is a project activity, such components of the project may be considered to have no adverse effect and need not be referred to the Council if they are undertaken in accordance with the Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior, Heritage Conservation and Recreation Service, Washington, DC, 1979) and the State Historic Preservation Officer concurs in the proposed activity. Additionally, the following types of project components or elements will be considered to not normally adversely affect properties listed in the National Register or which meet the Criteria.

(A) Insulation (except for the use of granular or liquid injected foam insulation in exterior walls or other vertical surfaces);

(B) Caulking;

(C) Weatherstripping;

(D) Replacement of Heating, Ventilating and Air Conditioning (HVAC) equipment, provided that such equipment is not historic and that replacement equipment is screened from public view and that the State Historic Preservation Officer and the applicant agree the equipment will not affect those qualities of the property which qualify it to meet the 36 CFR 60.6 Criteria;

(E) In-kind refenestration (for example, replacement of deteriorated windows of a similar configuration, color and material);

(F) Lowering of ceilings, provided the ceilings will not be visible from outside of the building or from an interior public space and that the State Historic Preservation Officer and the applicant agree it will not affect a quality which qualified the building to meet the 36 CFR 60.6 Criteria;

(G) Replacement in-kind of substantially deteriorated material, provided that the State Historic Preservation Officer and the applicant agree;

(H) Installation of machinery, equipment, furnishings, fixtures, etc., in the interior of existing buildings, provided that the State Historic Preservation Officer and the applicant agree such installations will not affect a quality which qualified the building to meet the 36 CFR 60.6 Criteria.

(I) Site improvements such as sidewalk paving and landscaping, provided that the State Historic Preservation Officer and the applicant agree that the site improvement will not affect those qualities of the property which qualify it to meet the 36 CFR 60.6 Criteria.

(iv) *Special considerations for archeological sites.* Under certain conditions, alteration of land containing archeological resources in the project area may have no adverse effect on those resources. Procedures for determining whether such conditions exist were published by the Council in the FEDERAL REGISTER on November 26, 1980 (45 FR 78808), as part X of the "Executive Director's Procedures for Review of Proposals for Treatment of Archeological Properties." Because the identification of archeological sites in an urban context, and consideration of appropriate treatment methods, present special problems, further guidance is provided in Appendix 2.

(2) *Determinations of Effect.* Prior to submitting an application to HUD, the applicant shall apply the Criteria of Effect and Adverse Effect to all properties which are listed in the National

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Register or which may meet the Criteria in the area of the project's potential environmental impact. The determination of the Secretary of the Interior shall be final with respect to properties which are eligible for listing in the National Register. The Council will not comment on affected properties which are not either listed in or eligible for listing in the National Register. In order to facilitate the process, information to be requested from the State Historic Preservation Officer under § 801.3(b)(2) should include advice on applying the Criteria of Effect and Adverse Effect provided that this period shall not be included in the 45 day State Historic Preservation Officer Review Period. Special attention should be paid to indirect effects, such as changes in land use, traffic patterns, street activity, population density and growth rate. While some aspects of a project may have little potential to adversely affect the significant qualities of a historic property, other project components may meet the Criteria of Effect and Adverse Effect. If any aspect of the project results in an effect determination, further evaluation of the effect shall be undertaken in accordance with these regulations. The resulting determination regarding the effect shall be included in the application.

(i) *No effect.* If the applicant determines that the project will have no effect on any National Register property and/or property which meets the Criteria, the project requires no further review by the Council unless a timely objection is made by the Executive Director. An objection may be made by the Executive Director at any time during the UDAG application process prior to the expiration of the period for receiving objections to HUD's release of funds as specified in 24 CFR 58.31. The manner in which the Executive Director shall make an objection is set forth in § 801.4(a).

(ii) *Determinations of no adverse effect.* If the applicant finds there is an effect on the property but it is not adverse, the applicant after receiving the comments of the State Historic Preservation Officer during the State Historic Preservation Officer Review Period shall forward adequate documentation (see § 801.7(a)) of the Determination, in-

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cluding the written comments of the State Historic Preservation Officer, if available, to the Executive Director for review in accordance with § 801.4.

(iii) *Adverse effect determination.* If the applicant finds the effect to be adverse or if the Executive Director objects to an applicant's no adverse effect determination pursuant to § 801.4(a), the applicant shall proceed with the consultation process in accordance with § 801.4(b).

§ 801.4 Council comments.

The following subsections specify how the Council will respond to an applicant's request for the Council's comments required to satisfy the applicant's responsibilities under section 106 of the Act and section 110 of the HCDA of 1980. When appropriate, an applicant may waive the Council time periods specified in these regulations.

(a) *Executive Director's Objection to No Effect Determination.* If the Executive Director has reason to question an applicant's determination of no effect, he shall notify the applicant and HUD. If the Executive Director does not object within 15 days of such notification, the project may proceed. If the Executive Director objects, he shall specify whether or not the project will have an adverse effect on National Register property and/or property which meets the Criteria. Normally, the Executive Director will object to a determination of no effect when the record does not support the applicant's determination (see § 801.7(a)). The applicant must then comply with the provisions of subsection (b) if the Executive Director determines that the project will have no adverse effect or subsection (c) if the Executive Director has determined that the project will have an adverse effect.

(b) *Response to Determinations of No Adverse Effect.* (1) Upon receipt of a Determination of No Adverse Effect from an applicant, the Executive Director will review the Determination and supporting documentation required by § 801.7(a). Failure to provide the required information at the time the applicant requests Council comments will delay the process. The Executive Director will respond to the applicant within 15 days after receipt of the information