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The Keeper shall notify the petitioner and the applicable State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program, of his decision. The State Historic Preservation Officer or Federal Preservation Officer transmitting the petition shall notify the petitioner, the owner(s), and the chief elected local official in writing of the decision. The Keeper will provide such notice for petitions from persons or local governments where there is no approved State Historic Preservation Program. The general notice may be used for properties with more than 50 owners. If the general notice is used it shall be published in one or more newspapers with general circulation in the area of the nomination.

(k) The Keeper may remove a property from the National Register on his own motion on the grounds established in paragraph (a) of this section, except for those properties listed in the National Register prior to December 13, 1980, which may only be removed from the National Register on the grounds established in paragraph (a)(1) of this section. In such cases, the Keeper will notify the nominating authority, the affected owner(s) and the applicable chief elected local official and provide them an opportunity to comment. Upon removal, the Keeper will notify the nominating authority of the basis for the removal. The State Historic Preservation Officer, Federal Preservation Officer, or person or local government which nominated the property shall notify the owner(s) and the chief elected local official of the removal.

(l) No person shall be considered to have exhausted administrative remedies with respect to removal of a property from the National Register until the Keeper has denied a petition for removal pursuant to this section.

PART 61—PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

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AUTHORITY: 16 U.S.C. 470 *et seq.*

SOURCE: 64 FR 11742, Mar. 9, 1999, unless otherwise noted.

§ 61.1 Authorization.

The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*):

(a) Requires the Secretary of the Interior (Secretary) to promulgate regulations for:

(1) Approving and overseeing State historic preservation programs;

(2) Certifying local governments to carry out the purposes of the Act;

(3) Ensuring that applicable State Historic Preservation Officers (SHPOs) allocate to certified local governments (CLGs) a share of grants that the SHPOs receive under the Act; and

(4) Assisting Indian tribes in preserving their particular "historic properties" (as defined by the Act);

(b) Directs the Secretary to administer a program of grants-in-aid to States and Indian tribes for historic preservation projects and programs that the Secretary has approved; and

(c) Requires the Secretary to make available information concerning professional standards, methods, and techniques for the preservation of "historic properties" (as defined by the Act) and the administration of historic preservation programs.

§ 61.2 Definitions.

As used in this part:

(a) All terms that the National Historic Preservation Act of 1966, as amended, defines have the same meaning in the regulations in this part that the statute provides; see especially sections 101(a)(1)(A), 101(b), 101(c)(4), 108, and 301.

(b) *Act* means the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 *et seq.*).

(c) *Chief elected local official* means the elected head of a local government.

(d) *The Secretary's Standards* means only the "Standards" portions and not the "Guidelines" portions of "the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation." The Secretary's Standards provide broad national principles of archeological and historic preservation practices and methods. "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" also contains "the Secretary's Guidelines" which provide broad national guidance on how to apply "the Secretary's Standards."

(e) *State historic preservation program* or *State program* means a State government organization or program meeting the requirements that section 101(b) of the Act specifies.

§61.3 Implementation of this part.

(a) *National Park Service policy of management by exception.* The National Park Service (NPS) will administer the regulations in this part in such a way (and where feasible) as to:

(1) Limit the use of direct Federal management review procedures to high risk situations, to new programs, or to activities that are appropriate for the Federal Government to oversee;

(2) Presume that State, tribal, and local government historic preservation officials manage their programs in an accountable way unless situations indicate the contrary; and

(3) Rely to the maximum extent feasible on State, tribal, and local government systems of financial and program management that meet Federal standards. At the discretion of the Secretary, each State, tribal, and local government may substitute its own fiscal audit and management systems for the Secretary's comparable fiscal audit and management requirements, so long as the State, tribal, or local government system establishes and maintains accounting standards substantially similar to Federal standards and provides for independent peer review.

(b) *The Secretary's Standards.* NPS will use the Secretary's Standards as technical performance standards for matters covered by this part. NPS may also use as technical performance standards (for matters covered by this part) additional guidance that NPS

identifies and provides from time to time after appropriate consultation and notice.

(c) Each State historic preservation program staff member, State Historic Preservation Review Board (Review Board) member, and certified local government (CLG) historic preservation review commission (Commission) member whom the Secretary has approved as meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" will retain that status, regardless of subsequent revisions to those Standards, until such time as that individual no longer works in that program, or serves on that Review Board, or serves on that Commission with which that individual was affiliated as of the date of that individual's approval.

(d) You may obtain publications and other information mentioned in this part by contacting: Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street NW (NC Suite 200), Washington, D.C. 20240 or via the National Park Service Home Page for cultural programs at <http://www.cr.nps.gov>.

§61.4 State programs.

(a) For a State to participate in the program that this part describes, the Governor must appoint and designate a State Historic Preservation Officer (SHPO) to administer the State historic preservation program.

(b) It is the responsibility of the SHPO to carry out the duties and activities that section 101 (b)(3) of the Act describes. In performing those duties and activities:

(1) The SHPO must carry out a historic preservation planning process that includes the development and implementation of a comprehensive statewide historic preservation plan that provides guidance for effective decision making about historic property preservation throughout the State.

(2) The SHPO, in addition to surveying and maintaining inventories of historic properties, may also obtain:

(i) Comparative data valuable in determining the National Register eligibility of properties;

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(ii) Information on properties that may become eligible for the National Register of Historic Places with the passage of time; and/or

(iii) Information on the absence of historic properties for use in planning for public and private development projects.

(3) The SHPO must provide for adequate public participation in the State historic preservation program as a whole.

(i) As part of the process of recommending a property to the National Register, the SHPO must comply with the consultation and notification procedures contained in 36 CFR part 60.

(ii) The SHPO may authorize other persons or entities to fulfill the notice requirements in 36 CFR part 60 pursuant to the Secretary's written guidance.

(iii) The SHPO also may authorize the historic preservation review commission (Commission) of a certified local government (CLG) to act in place of the State Historic Preservation Review Board (Review Board) for the purpose of considering National Register nominations within its jurisdiction, provided that the Commission both meets the professional qualifications required for the Review Board when considering such nominations and otherwise follows the Secretary's written guidance.

(iv) In accordance with the Secretary's written guidance and with the consent of both the property owners in a nomination and the chief elected local official, the Review Board (or the Commission acting in its place) may consider the nomination without a face-to-face meeting.

(4) The SHPO may carry out all or any part of his or her responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution, or otherwise pursuant to State law. However, the SHPO may not delegate the responsibility for compliance with the Act or with grant assistance terms and conditions.

(c) The Secretary will consider individual SHPO proposals for programs that, for a specified period, include fewer duties than those section 101(b)(3) of the Act specifies, if a dif-

ferent approach would better serve an appropriate balance of historic property, customer or constituent, and historic preservation needs.

(d) *Procedures for review and approval of State historic preservation programs.*

(1) In accordance with the Act, the Secretary will evaluate each State program for consistency with the Act periodically, but not less often than every four years. If the Secretary determines that it meets the program requirements of paragraphs (a), (b), (e) and (f) of this section, he or she will approve the State program as set forth in this section.

(2) The Secretary may use on-site and/or off-site inquiries to perform such evaluation. The Secretary will provide the SHPO with a timely report containing written findings and analyses that highlight the strengths and weaknesses of the State program.

(3) *Approval method.* (1) If the Secretary determines that a State program is consistent with the Act, the report will include notice that the State program's approved status continues.

(ii) If the Secretary determines that a State program has major aspects not consistent with the Act, the report will include notice of deficiencies along with required actions for correcting them. Unless circumstances warrant immediate action, the Secretary will provide a specified period to allow the SHPO either to correct the deficiencies or to present for Secretarial approval a justifiable plan and timetable for correcting the deficiencies. During this period, the SHPO has the opportunity to request that the Secretary reconsider any findings and required actions.

(iii) The Secretary will provide timely notice of continued approved State program status to a SHPO successfully resolving deficiencies. Once the Secretary renews a State program's approved status, he or she generally will not review the program until the next regular evaluation period. However, if the Secretary deems it necessary, he or she may conduct a review more often.

(iv) The Secretary will provide timely notice of the revocation of a program's approved status to any SHPO whose program has deficiencies that warrant immediate action or that remain uncorrected after the expiration

of the period specified pursuant to paragraph (d)(3)(ii) of this section. The Secretary will then initiate financial suspension and other actions in accordance with the Act, applicable regulatory requirements, and related guidance that the National Park Service issues.

(e) The SHPO must appoint or employ a professionally qualified staff.

(1) Except as approved pursuant to paragraph (e)(2) of this section, the staff must include at a minimum, one individual meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" for history, one individual meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" for historic or prehistoric archeology, and one individual meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" for architectural history. "The Secretary's (Historic Preservation) Professional Qualifications Standards" and related guidance are part of the larger "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation." The SHPO may determine that additional professional staff members representing the required or other disciplines are necessary to administer the State program in accordance with the Act.

(2) The Secretary will consider proposals from a SHPO for a minimum required staff composition that differs from the requirement that paragraph (e)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a staff position that paragraph (e)(1) of this section requires becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that appropriately qualified individuals address technical matters. A vacancy in a required position that persists for more than six months is cause for review, comment, and appropriate action by the Secretary.

(f) Unless State law provides for a different method of appointment, the SHPO must appoint an adequate and

qualified State historic preservation Review Board (Review Board).

(1) All Review Board members must have demonstrated competence, interest, or knowledge in historic preservation. A majority of Review Board members must meet "the Secretary of the Interior's (Historic Preservation) Professional Qualifications Standards" which are part of the larger "Secretary's Standards and Guidelines for Archeology and Historic Preservation." The members meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" must include at a minimum, one individual meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" for history, one individual meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" for prehistoric archeology or historic archeology, and one individual meeting "the Secretary's (Historic Preservation) Professional Qualifications Standards" for architectural history. One person may meet the Standards for more than one required discipline. The other Review Board members, if any, who comprise the majority that meets "the Secretary's (Historic Preservation) Professional Qualifications Standards" may represent, subject to the SHPO's selection, any of the disciplines that those "Standards" describe.

(2) The Secretary will consider proposals from a SHPO for a minimum required Review Board composition that differs from the requirement that paragraph (f)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a required Review Board position becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that the Review Board has access to advice from appropriately qualified individuals. A lapse of more than one year in filling the vacancy is cause for review, comment, and appropriate action by the Secretary.

(4) The Review Board must meet as often as is necessary to complete its work in a timely fashion but no less often than once a year.

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(5) The Review Board must adopt written procedures governing its operations consistent with the provisions of this section and related guidance that the National Park Service issues.

(6) Review Board responsibilities include, but are not limited to, the following:

(i) Providing advice to the SHPO on the full range of Historic Preservation Fund-supported activities, that section 101 (b)(3) of the Act describes;

(ii) Reviewing and making recommendations on National Register nomination proposals;

(iii) Participating in the review of appeals to National Register nominations; and

(iv) Performing such other duties as may be appropriate.

§ 61.5 Grants to State programs.

(a) Each State with an approved State program is eligible for grants-in-aid from the Historic Preservation Fund (HPF).

(b) The National Park Service (NPS) will administer HPF matching grants-in-aid in accordance with the Act, OMB Circular A-133 and 43 CFR part 12, and related guidance that NPS issues. Failure by a State program to meet these requirements is cause for comment and appropriate action by the Secretary.

§ 61.6 Certified local government programs.

(a) Each approved State program must provide a mechanism for certification (by the State Historic Preservation Officer and the Secretary) of local governments to carry out the purposes of the Act.

(b) Each State Historic Preservation Officer (SHPO) must follow procedures that the Secretary approves for the certification of local governments. Each SHPO also must follow procedures for removal of certified local government (CLG) status for cause. A SHPO must submit any proposed amendment to its procedures to the Secretary for approval. The Secretary will act on each proposal in a timely fashion generally within 45 days of receipt.

(c) When a SHPO approves a local government certification request in accordance with the State program's Na-

tional Park Service (NPS)-approved certification process, the SHPO must prepare a written certification agreement between the SHPO and the local government. The certification agreement must list the specific responsibilities of the local government when certified. The SHPO must submit to the Secretary the written certification agreement and any additional information as is necessary for the Secretary to certify the local government pursuant to the Act and this part. If the Secretary does not disapprove the proposed certification within 15 working days of receipt, the Secretary has certified the local government.

(d) Beyond the minimum responsibilities set out in the Act for all CLGs, the SHPO may make additional delegations of responsibility to individual CLGs. However, these delegations may not include the SHPO's overall responsibility derived from the Act or where law or regulation specifies.

(e) The SHPO must ensure that each local government satisfies the following minimum requirements as conditions for certification. Each CLG must:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State procedures must define what constitutes appropriate legislation, as long as:

(i) Designation provisions in such legislation include the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of the local government;

(ii) Protection provisions in such legislation include a local review process under State or local law for proposed demolitions of, changes to, or other action that may affect historic properties as paragraph (e)(1)(i) of this section describes; and

(iii) The legislation otherwise is consistent with the Act.

(2) Establish by State or local law and maintain an adequate and qualified historic preservation review commission (Commission). All Commission members must have a demonstrated interest, competence, or knowledge in

historic preservation. Unless State or local legislation provides for a different method of appointment, the chief elected local official must appoint all Commission members.

(i) The State procedures must encourage certified local governments to include individuals who meet "the Secretary's (Historic Preservation) Professional Qualifications Standards" among the membership of the Commission, to the extent that such individuals are available in the community.

(ii) The State procedures may specify the minimum number of Commission members who must meet "the Secretary's (Historic Preservation) Professional Qualifications Standards." The State procedures may also specify which, if any, disciplines the Commission's membership must include from among those disciplines that the Standards describe. Membership requirements set by the State procedures for Commissions must be cognizant of the needs and functions of Commissions in the State and subject to the availability of such professionals in the community concerned.

(iii) Provided that the Commission is otherwise adequate and qualified to carry out the responsibilities delegated to it, the SHPO may certify a local government without the minimum number or types of disciplines established in State procedures, if the local government can demonstrate that it has made a reasonable effort to fill those positions, or that an alternative composition of the Commission best meets the needs of the Commission and of the local government.

(iv) The SHPO must make available to each Commission orientation materials and training designed to provide a working knowledge of the roles and operations of Federal, State, and local historic preservation programs, and historic preservation in general.

(3) Maintain a system for the survey and inventory of historic properties. The SHPO must ensure that such systems and the data that they produce are capable of integration into and are compatible with statewide inventories and (when and as appropriate) with State and local planning processes.

(4) Provide for adequate public participation in the local historic preser-

vation program as a whole. The SHPO must provide each CLG with appropriate guidance on mechanisms to ensure adequate public participation in the local historic preservation program including the process for evaluating properties for nomination to the National Register of Historic Places.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. The SHPO must monitor and evaluate the performance of each CLG according to written standards and procedures that the SHPO establishes. If a SHPO's evaluation of a CLG's performance indicates that such performance is inadequate, the SHPO must suggest in writing ways to improve performance. If, after a period of time that the SHPO stipulates, the SHPO determines that the CLG has not improved its performance sufficiently, the SHPO may recommend that the Secretary decertify the local government. If the Secretary does not object within 30 working days of receipt, the Secretary has approved the decertification.

(f) Effects of certification include:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The SHPO may delegate to a CLG any of the responsibilities of the SHPO and the Review Board in processing National Register nominations as specified in 36 CFR part 60 (see also §61.4(b)(3)), except for the authority to nominate properties directly to the National Register. A CLG may make nominations directly to NPS only when the State does not have an approved program pursuant to §61.4.

(2) Eligibility to apply for a portion of the State's annual Historic Preservation Fund (HPF) grant award. Each State must transfer at least 10 percent of its annual HPF grant award to CLGs for historic preservation projects and programs in accordance with the Act and as §61.7 specifies.

(g) The District of Columbia is exempt from the requirements of this section because there are no subordinated local governments in the District. If any other jurisdiction that section 301(2) of the Act defines as a State believes that its political subdivisions lack authorities similar to those of

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local governments in other States, and hence cannot satisfy the requirements for local government certification, it may apply to the Secretary for exemption from the requirements of this section.

(h) *Procedures for direct certification by the Secretary where there is no approved State program pursuant to §61.4.* To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved State program.

(1) Where there is no approved State program, a local government wishing to become certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (e) of this section.

(3) The Secretary will review certification applications under this paragraph (h) and take action in a timely fashion generally within 90 days of receipt.

§61.7 Subgrants to certified local governments.

(a) Each SHPO must transfer at least 10 percent of its annual Historic Preservation Fund (HPF) grant award to CLGs as subgrants for historic preservation projects and programs in accordance with the Act. In any year that the annual HPF State grant appropriation exceeds \$65,000,000, SHPOs must transfer one half of the amount over \$65,000,000 to CLGs according to procedures that the Secretary will establish.

(b) Each CLG is eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. However, the SHPO need not award funds to all CLGs.

(c) Each SHPO must maintain and follow a procedure that the Secretary approves for the use and distribution of funds from the State's annual HPF grant award to CLGs to ensure that no CLG receives a disproportionate share of the allocation. The procedure will provide a clear basis for the funding decisions. The SHPO must submit any proposed amendment to its procedure to the Secretary for approval. The Secretary will respond to such a proposal

in a timely fashion generally within 45 days of receipt.

(d) Each SHPO must notify annually each CLG of its opportunity to apply for HPF funding as well as what is entailed in the application and project selection process.

(e) Each CLG receiving an HPF grant award from the CLG share is a subgrantee of the State. The SHPO must ensure that each CLG adheres to all applicable grant conditions and government-wide and program specific requirements that the National Park Service issues. The SHPO may require specific uses of funds subgranted to CLGs. CLGs may not apply subgranted HPF monies as matching share for any other Federal grant.

(f) Where there is no approved State program pursuant to §61.4, the Secretary will determine the method for allocating funds to CLGs in that State in accordance with the procedures set forth for the State in this section. To the extent feasible, the Secretary will ensure consistency and continuity in the funding allocation policy of the CLG program for a State that does not have an approved historic preservation program.

§61.8 Tribal programs. [Reserved]

§61.9 Grants to tribal programs. [Reserved]

§61.10 Waiver.

The Secretary may waive any of the requirements of the rules in this part that are not mandated by statute or by other applicable regulations if the Secretary finds, in writing, that the historic preservation program would benefit from such waiver and the waiver would not compromise the purposes, conditions, and requirements of the National Historic Preservation Act of 1966, as amended.

§61.11 Information collection.

(a) The Office of Management and Budget (OMB) under 44 U.S.C. 3507 *et seq.*, has approved the collection of information contained in this part. OMB has assigned clearance number 1024-0038 to this collection of information. The National Park Service (NPS) collects this information as part of the process for reviewing the procedures

Chapter 3 - Basic Program Requirements for Historic Preservation Fund Grants

A. Purpose.

This Chapter sets forth the fundamental requirements governing annual programmatic Historic Preservation Fund (HPF) grants. (Also see Chapter 6, which describes the eligible activities, ineligible activities, and minimum requirements for conducting HPF grant-assisted activities.)

B. State Program Requirements.

1. Designation of the State Historic Preservation Officer.

The State Historic Preservation Officer (SHPO) is the appointed representative of the Chief Governing Official of the State and must be authorized to assume, on behalf of the State, the obligations imposed by the Act, by the applicable regulations implementing the Act, and by the terms and conditions of the grant. Designation of the State Historic Preservation Officer requires the following procedures:

- a. The State Governor or Chief Governing Official designates in writing a State Historic Preservation Officer with authority to represent the State and to be responsible for carrying out the purposes of the Act (see 36 CFR 61).

This written designation requirement is also met when a State Governor or Chief Governing Official appoints an individual to a position whose duties specified by law automatically include the position of State Historic Preservation Officer; e.g., in State X, the Chief of the Historic Preservation Division, Department of Housing is by State law automatically the SHPO.

- b. Whenever a new SHPO is designated, or appointed, or an incumbent reconfirmed by the Governor, notification by the Governor shall be mailed to the Associate Director, Cultural Resource Stewardship and Partnerships, National Park Service, Attention: Heritage Preservation Services Division (also see Section D.4., below, for signature authority to a subordinate). The notice of designation shall include, at a minimum, the following or substantially similar statement to make clear the State Historic Preservation Officer's authority and responsibilities:

In accordance with the National Historic Preservation Act, (16 U.S.C. 470a), as amended, I hereby designate [name, title, organization,] as the State Historic Preservation Officer. He/She has been delegated authority to represent the State in carrying out the responsibilities specified in the Act, and in the regulations and administrative requirements established for implementation of that Act.

2. Responsibilities of the State Historic Preservation Officer.

- a. The responsibilities of the State Historic Preservation Officer are specified in Section 101(b)(3) of the Act and include:

- 1) Directing and conducting a comprehensive survey of historic properties and maintaining inventories of such properties.
- 2) Nominating eligible properties to the National Register.
- 3) Preparing and implementing a Comprehensive Statewide Historic Preservation Plan.
- 4) Administering the program of Federal grant assistance for historic preservation within the State.
- 5) Advising and assisting Federal and State agencies and local governments in carrying out their historic preservation responsibilities.
- 6) Cooperating with the Secretary of the Interior, the Advisory Council on Historic Preservation, and other Federal, State, and local governments, organizations, and individuals to ensure that historic properties are taken into consideration at all levels of planning and development.
- 7) Providing public information, education, training, and technical assistance relating to historic preservation.
- 8) Cooperating with local governments in the development of local historic preservation programs, and certifying these programs, pursuant to the Act and related regulations. (See Chapter 9)
- 9) Consulting with the appropriate Federal agencies in accordance with the Act on: Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.
- 10) Provide advice and assistance in the evaluation of proposals for rehabilitation projects that may qualify for Federal preservation tax incentives.
 - b. Accountability. NPS considers the State Historic Preservation Officer to be the State official acting for the State's Governor and responsible for the professional, organizational, and fiscal conduct of the HPF grant program in the State. The transfer of funds to other agencies within the State, to Certified Local Governments, to public or private organizations, or to individuals for the purpose of carrying out grant-supported subgrants, cooperative agreements, or contracts shall not in any respect relieve the State Historic Preservation Officer of his/her responsibility to ensure that HPF funds are disbursed only for activities, programs, and projects which are accomplished in accordance with program standards, regulations, policies, terms, and conditions of grant awards; for ensuring that funds are accounted for in accordance with generally accepted accounting principles; and in keeping with the requirements of the Historic Preservation Fund Grants Manual.

The State Historic Preservation Officer shall ensure that the State Historic Preservation Office has adequate internal program and accounting controls, personnel standards, property management standards, evaluation procedures, availability of in-service training

and technical assistance programs, and other policies as may be required by the terms of the grant, the Historic Preservation Fund Grants Manual, or other NPS regulations, that are necessary for program efficiency and effective, proper use of HPF funds.

- c. Grant monitoring by grantees and NPS. Grantees must employ sound management practices to ensure that HPF program regulations and grant objectives are met, whether conducted by staff or by subgrantees or subcontractors, and that grant funds are expended for eligible activities under proper fiscal, professional, and management controls. To the extent possible, NPS places reliance on the policies and management controls established by grantees. NPS monitors grantees' performance to ensure accountability for HPF grant funds and conformance with the Secretary's "Standards" and other legislative and administrative requirements and standards. NPS also monitors grantee performance to identify and respond to major grantee technical assistance needs. The following provisions place maximum reliance on grantee responsibility and accountability for program and project level decisions, while grantees work with NPS to attain national program results.

Responsibility in certain areas extends beyond the term of a particular grant award, whether or not NPS continues to provide active grant support. This includes the continuing grantee obligation to account for property or equipment acquired as part of an NPS-assisted program or project (Chapter 19) and to monitor preservation covenant requirements (Chapter 6, Section M).

The principal means of ongoing NPS monitoring are the State Program Review process, the Comprehensive Statewide Historic Preservation Plan (see Chapter 6, Section G), grant applications (see Chapter 7), Project Notifications (see Chapter 8, Section F), the End-of-Year Report (see Chapter 25), and Final Project Reports (see Chapter Exhibit 8-E). Ineligible or improper payments issued by a grantee will not be paid by NPS. Disallowances based upon audits of grantees' (or subgrantees') financial records must be repaid to NPS. See Chapter 23, Section O and P.

3. State Professional Staff and State Review Board.

State Staff. The SHPO is responsible for maintaining a staff that meets the professional qualifications requirements of 36 CFR 61. At a minimum, a State must have full-time access to a historian, architectural historian, and archeologist who meet these professional qualifications.

State Review Board. Each State shall maintain a State Review Board whose qualifications, responsibilities in the administration of the program, and composition are in accordance with those defined in 36 CFR 61. In accordance with 36 CFR 61, the SHPO shall designate members of the State Review Board unless otherwise provided for by State law. Where State law establishes entities, such as a State Historical Commission, that do not or cannot assume all of the Review Board responsibilities specified in 36 CFR 61, a separate complementary State Review Board must be established. The roles and responsibilities of each entity should be clearly delineated to prevent duplication. See Chapter 6, Subsections C.4 through C.6, for responsibilities of professional staff.

The maximum number of Review Board members is not prescribed, but each Review Board must contain at least 5 members. The majority of members must meet the professional qualification requirements described in the Secretary of the Interior's Historic Preservation Professional Qualification Standards. At a minimum, the Review Board must contain an historian, archeologist, and architectural historian.

- a. Meetings and Rules of Procedure. The State Review Board shall meet at least once a year and must adopt written procedures governing its operation consistent with the provisions of 36 CFR 61, and the Historic Preservation Fund Grants Manual, particularly conflict of interest (see Section C.4., below). The Review Board may make some decisions without face-to-face meetings when there is unanimous agreement on a particular nomination.
- b. Waivers, Alternative Review Board or Staffing Solutions, and Equivalency. In exceptional cases, NPS may extend a waiver or alternative solution to a State not having a fully qualified Staff or Review Board in conformance with 36 CFR 61. If the State does not have a qualified Staff or Review Board, it must request a waiver or an alternative solution pursuant to 36 CFR 61. Waivers (rather than alternative solutions) should be requested whenever the standard Staff or Review Board requirement of 36 CFR 61 is appropriate to the range of cultural resources of the State, but there is some temporary circumstance which prevents the requirement from being met. This is the usual situation when there is a Review Board vacancy. NPS approval of Alternative Solutions should be sought only if the standard Staff or Review Board composition does not meet the State's cultural resource needs on a long-term basis. Equivalency should be sought only in exceptional circumstances.
 - 1) Waivers. Waiver requests are made in writing to NPS and signed by the SHPO or his/her designee. The written request for a waiver shall specify the special circumstances that exist and explain why the waiver is in the best interest of the State program. Waivers, when granted by NPS, shall be in writing and shall extend for as short a time as is reasonable in the circumstances, but in no case longer than the end of the following fiscal year. If a State needs to renew a waiver, it must send a written request that documents efforts to remedy the circumstances and justifies the need for continuing the waiver.
 - 2) Alternative Solutions. NPS will consider proposals for alternative staffing or Review Board solutions pursuant to 36 CFR 61 only for States with resources and needs which cannot be served or met by the standard Staff or Review Board requirements. Such solutions must ensure access to adequate professional expertise comparable to that required by 36 CFR 61. These proposals should be sent, in writing, to NPS. Proposals will be responded to in writing and, if approved, will remain in effect until they are reviewed at NPS' discretion or at the request of the State.
 - 3) Equivalency. Professional qualification standards were established by NPS so that individuals meeting them would have the expertise necessary to carry out historic preservation activities in accordance with professional standards. In rare instances, NPS will certify that an individual has expertise equivalent to the Secretary's Professional Qualification Standards (and thus fulfills the purpose of the Professional Qualification Standards) though the individual does not meet the technical requirements. States should send requests for certification of equivalency to NPS. Requests will be

responded to in writing and, if approved, will remain in effect as long as the individual holds his/her position or until the certification is reviewed at NPS' discretion or at the request of the State.

- c. Continuation or Extension Provision (State staff, State Review Board members and CLG commission members). Whenever the mandatory historic preservation professional qualification standards change, an individual officially qualified under the former Standards and still serving on a State's staff, a State Review Board, or a CLG commission may be considered to be professionally qualified as long as he/she continues to hold that position.

C. Conflict of Interest.

1. Policy.

No person (see definition in subsection 2.a., below) shall participate in the selection, award, or administration of any HPF-assisted program activity, subgrant, contract, or subcontract if a conflict of interest, real or apparent, exists. Nor shall any person participate through approval, disapproval, recommendation, or other decision concerning any Federal Preservation Tax Incentive Certification, National Register Nomination, or Review and Compliance case if such a conflict, real or apparent, exists.

No person shall engage in outside employment or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities for administration of the HPF program. Employees or agents (i.e., persons authorized to represent the SHPO organization, or to perform any official capacity for it) shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors, potential contractors, or parties to potential or actual HPF grant awards.

2. Definitions.

a. "Person" means:

- 1) The State Historic Preservation Officer,
- 2) State Historic Preservation Office staff,
- 3) President of the National Trust for Historic Preservation,
- 4) Staff of the National Trust for Historic Preservation,
- 5) Trustees and Advisory Board Members of the National Trust for Historic Preservation,
- 6) Subgrantees or contractors paid in whole or part, by HPF funds or whose time or salaries are used as allowable matching share,
- 7) Members of a State Review Board(s) and/or separate Commission(s) which share 36 CFR 61 or HPF grant oversight responsibilities,

- 8) CLG commission members, agents, or staff, and
 - 9) Employees, agents, partners, associates, or family members of those cited in this definition.
- b. A "conflict of interest" exists when a person may benefit (either through financial or personal gain) from the position he/she holds with respect to the HPF-assisted program or may be unable to make impartial decisions or render impartial advice due to outside relationships or other activities with other persons as defined above. This applies to those persons who participate in or influence the grant award decision-making process, gain information not available to the general public, or provide oversight or administration of any aspect of the HPF grant program.
 - c. An "apparent conflict of interest" exists whenever circumstances are such that a person may appear to be in a position to benefit (either through financial or personal gain) from the position he/she holds with respect to the HPF-assisted program or may be unable to make impartial decisions or render impartial advice due to outside relationships or other activities with other persons as defined above. This applies to those persons who participate in or influence the grant award decision-making process, gain information not available to the general public, or provide oversight or administration of any aspect of the HPF grant program whether or not such a conflict actually exists. An apparent conflict of interest also exists when a person may appear to have an unfair competitive advantage because of his/her relationship with the SHPO organization. Accordingly, Review Board members should not be included on any lists of qualified consultants distributed to the public by the SHPO.
3. Declaring and Resolving Conflict of Interest.
- a. Nonvoting. When any person, as defined in subsection 2.a., above, is involved in nonvoting situations such as Tax Act Certification or Review and Compliance decisions, and a real or apparent conflict of interest situation exists, the person involved must disclose the possible conflict and physically absent and recuse himself/herself from the decision-making process. The conflict shall be declared and documented in writing (by providing the name, date, and nature of the conflict) as soon as the situation becomes apparent but, at a minimum, before the issue or action for which the conflict exists is acted upon or brought to resolution. Those in a position to make a decision must be fully informed as to the possible interest of the persons involved. See Subsection 4.i., below, regarding persons with a pattern of conflicts.
 - b. Voting (Review Board/Commission Meetings). When a real or apparent conflict of interest situation arises in the context of a voting situation, the person must disclose the possible conflict and physically absent and recuse himself/herself from the decision-making process (including presentations and discussion) and neither vote directly, in absentia, nor by proxy in that matter. The recusal and the reasons therefore must be recorded in the meeting minutes. Those in a position to make a decision must be fully informed as to the possible interest of the person abstaining and recusing him/her self. See Subsection 9., below, regarding persons with a pattern of conflicts.
4. Written Procedures (Code of Conduct).
Each SHPO organization and the National Trust must maintain a written code with standards of conduct governing the performance of their employees engaged in the award and administration of

contracts. This code must, at a minimum, comply with the requirements of this section, and is binding on all persons listed in subsection 2.a., above.

The grantee may adopt more stringent requirements than those specified by NPS. The standards established in this section shall be considered the minimum. In those situations where existing State procedures are more stringent, those shall apply. However, in situations where State-wide conflict of interest requirements are less stringent (e.g., may not apply to the Review Board or a separate Commission), the standards in this section shall apply for administration of the HPF program in its entirety.

5. Procurement.

Contract awards shall not be made to any person or firm who has developed or has drafted bid specifications, requirements, a statement of work, an invitation for bids, and/or a request for proposals for a particular grant-related procurement.

6. Nepotism.

State grantees will follow State laws and administering regulations governing nepotism in relation to employment, contracting, and the award of HPF grant assistance.

7. Officials Not to Benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of a grant, or to any financial benefit that may arise therefrom; but this provision shall not be construed to extend to a grant if made with a corporation for its general benefit.

8. Corrupt Practices.

The award and administration of NPS grants and of sub-agreements awarded by State grantees under those grants must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for the prevention, detection, and cooperation in prosecution of any such conduct. Federal administrative or other legally available remedies will be pursued to the extent appropriate.

No person, agency, or other organization may be employed or retained to solicit or secure a grant or contract upon agreement or understanding for commission, percentage, brokerage, or contingent fee. For breach or violation of this prohibition the Federal Government shall have the right to annul the grant without liability or, at its discretion, to deduct from the grant or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as may be legally available.

9. Enforcement.

The grantee organization must enforce and document that it enforces its conflict of interest procedures or code of conduct whenever applicable. At a minimum, there must be written records of abstentions from the decision-making process in conflict of interest situations. The records of abstentions and recusals shall, at a minimum, document who was absent from the decision and for what reason.

Individuals who have a pattern of conflicts of interest and consequent abstentions, ought to be removed from the Board, commission, etc., or assigned other responsibilities because their function of

offering advice cannot be fulfilled. In addition, the grantee organization must ensure that those on whom these procedures are binding (subsection 2.a., above) are fully knowledgeable of these conflict of interest requirements and agree to abide by them in the execution of their HPF program responsibilities. Documentation of these requirements is fulfilled by a signed and dated statement from each person attesting to that fact.

State Ethics officers are authorized to determine the applicability of these requirements to individual situations in regard to State employees and to resolve employee conflict of interest situations (see also subsection 11., below).

10. Conflict of Interest Involving Current or Former Federal Employees.

The grantee will not use any Federal funds or funds from other sources applied as matching share to pay a fee to, or travel expense of, current employees of the Federal Government for consultant services, lectures, attending program functions, including HABS/HAER/HALS participation, or any other activities in connection with the grant or any subagreement awarded under this grant. Grantees are to consult with NPS when the appearance of such conflicts of interest arise. This prohibition is in accordance with 18 U.S.C. 209 which stipulates that Federal employees whose employment has not terminated shall not receive supplemental compensation for their services in their capacity as Federal Government employees. (However, see exception for temporary limited employees in Chapter 6, Section E.7).

It is NPS policy that personal or organizational conflict of interest, or the appearance of conflict of interest, be prevented in the award and implementation of grants, including subgrants and subcontracts or other subagreements which involve former and current Federal employees in the award and implementation of grants. A conflict of interest will appear to exist when grant assistance is awarded to or by a grantee and a current or former NPS employee participated in the pre-award and award process and benefits financially from the grant. Specific details are contained in 43 CFR 20.

11. Violations.

When there is a suspected violation of the conflict of interest policy or requirements, the SHPO organization must advise NPS of the matter, pursue available State or local legal and administrative remedies, take appropriate remedial action with respect to any allegations or evidence coming to its attention, and advise NPS of the ultimate disposition of any matter. Such violations may result in cost disallowances or other sanctions.

D. Special Requirements.

This section highlights requirements with which grantees must comply for Historic Preservation Fund grant assistance. Also see Chapter 5, Section B., for the General Conditions Governing Grants.

1. Federal Administrative Requirements.

The provisions of Office of Management and Budget Circulars A-87 and A-102, incorporated through 43 CFR 12 and throughout the Historic Preservation Fund Grants Manual, shall apply to all HPF grants to States. All grants to the National Trust for Historic Preservation shall be governed by the provisions of OMB Circulars A-110 and A-133. The appropriate Circular or implementing regulations shall be made applicable by States and the National Trust to all subgrants, contracts, or other agreements executed by them which involve HPF or matching grant funds (see Chapter 12 concerning cost principles applicable to subgrants). Failure by a grantee to comply with these

Circulars may be the basis for withholding payments for proper charges made by the grantee, recovery of such funds, and/or termination of financial support.

2. Environmental Requirements:

Activities funded under the Act shall be conducted in full accord with the policies and provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) and the categorical exclusions stipulated in Chapter 11.

3. Use and Disclosure of Information.

Grant applicants, grantees, and their contractors and subgrantees should be aware that information provided to NPS, or required by NPS to be on file with the grantee, is considered to be a public record and subject to disclosure under the Freedom of Information Act (5 U.S.C. 552), unless determined to be exempt and not to be disclosed under that statute, or locational information that may be withheld by NPS under Section 304 of the National Historic Preservation Act. In addition, NPS acquires the right, unless otherwise specified in the grant agreement, to use and disclose program and project data. However, there may be some information that a grantee or subgrantee wishes to remain confidential. Those items must be clearly and prominently identified to NPS at the time the information is presented. NPS will consider such requests on their merits and within the limits imposed by Federal law and regulation on public disclosures (see also Chapter 24 and Chapter 5, General Condition B.11.). Information received by NPS that is not accompanied by a claim for confidentiality in accordance with this paragraph may be made available to other public agencies and the general public without prior notice to the grantee.

4. Authorized Signatures.

Application SF 424 Face Sheets, Project Notifications, certifications, and reports must be signed by the State Historic Preservation Officer (or President, National Trust for grants to that organization), or by persons authorized by those officials' written designation to NPS to obligate the grantee to the terms and conditions of the grant. Each grant application and each individual Project Notification, if required (which becomes part of the application following NPS action) will be deemed to constitute an offer by the grantee to accept the requirements of the Historic Preservation Fund Grants Manual. Acceptance of the grant award by the grantee shall be deemed to constitute acceptance of the terms and conditions affixed to each Grant Agreement by NPS.

While authority can be delegated, the SHPO or the President of the National Trust remains responsible under the terms of the Act and State law for the grant program on behalf of the State. However, he/she can assign program and/or signature authority to a subordinate. To be a proper transfer of authority, the delegation must be in writing from the superior. Without such express written delegation, signatures on grant applications, Project Notifications, National Register nominations, etc., are not binding on the State or the National Trust and cannot be accepted by NPS as representing official State actions.

5. Certifications.

A grantee may be prosecuted under Federal or State statutes for any false statement, misrepresentation, or concealment made as part of a grant application or grant-related certification to NPS. The penalty for false statements in certifications is prescribed in 18 U.S.C. 1001.

6. Waivers.

When exceptional circumstances are involved, a grantee may submit a written request and justification for a waiver from NPS requirements, procedures, or NPS policy, as defined below, prior to submission of a grant application or Project Notification. In clearly exceptional cases, the NPS Grant Awarding Official may determine in writing that a waiver of normal requirements is essential to achieve NPS objectives. The written determination shall specify the reason(s) that special circumstances support that a waiver is in the best interest of the Federal Government.

Waivers, when granted by NPS, shall be in writing and shall extend for as short a time as necessary in the circumstances, but in no case longer than the end of the following fiscal year. If a State needs to request to renew a waiver, it must send a written request that documents efforts to remedy the circumstances and justifies the need for continuing the waiver.

Requirements imposed by legislation or Government-wide regulations promulgated in the Code of Federal Regulations, such as Office of Management and Budget or Treasury Circulars, cannot be waived. However, note that some regulations provide for situations where requirements can be waived, e.g., 36 CFR 61.10.

NPS has authority to approve certain waivers, such as:

- a. The imposition of greater or lesser limitations than those imposed by the Historic Preservation Fund Grants Manual upon the use of a standard, procedure, form, requirement, or condition of grant assistance that is not legislatively mandated or required without possibility of waiver by Government wide regulations;
- b. The waiver of any policy, procedure, method, or practice of administering or conducting grant awards prescribed by the Historic Preservation Fund Grants Manual;
- c. Omission of any mandatory NPS (but not Governmentwide) grant provision; or
- d. Use of different forms or alteration of prescribed forms.

A copy of the NPS written approval must be enclosed with the grant application or Project Notification and the original retained by the grantee in the official project file.

7. Publications and Public Information.

- a. Acknowledgment of support. An acknowledgment of NPS support must be made in connection with the publication or dissemination of any printed, audio-visual, or electronic material based on, or developed under, any activity supported by HPF grant funds. This acknowledgment shall be in the form of the following statement:

The activity that is the subject of this [type of publication] has been financed [in part/entirely] with Federal funds from the National Park Service, U.S. Department of the Interior. However, the contents and opinions do not necessarily reflect the views or policies of the Department of the Interior, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior.

(Note that only relevant portions of the required statement need to be applied, and should be used as appropriate depending on the content of the publication; e.g., if there are no commercial products, then that part of the statement can be omitted.)

- b. Nondiscrimination Statement. Publications and audio-visual materials must also include the following nondiscrimination statement:

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as amended, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, disability or age in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

Office of Equal Opportunity
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

- c. Public information. Press releases, publications, and any other public dissemination of information (including electronic materials such as World Wide Web pages) by a grantee made possible by grant assistance shall acknowledge Department of the Interior, National Park Service grant support by use of the above statements. See Section D.7.e., below, for publications specifically excluded from these requirements.
- d. Copies of publications. Upon publication, a minimum of three copies of the publication will be furnished by the grantee to NPS, which will furnish one copy to the Department of the Interior's Natural Resource Library for deposit. Publications covered by this section include any publication produced as a result of research or any other work funded in whole or in part by HPF grants. For copyright requirements for grant-assisted publications, see Chapter 19, Section D.6.
- e. Exclusions. Specifically excluded from the requirements of Section D.7.a-d., above, are the following types of publications:
- 1) Internal documents required for administrative or operational purposes which have no public interest, or educational, scientific, or research value.
 - 2) Classified publications and materials otherwise marked against unauthorized disclosure.
 - 3) Tentative drafts such as preliminary planning reports that will appear later in revised or final form.
 - 4) All disclosure materials containing any description, specification, data, plan, or drawing of any unpatented invention upon which a patent application is likely to be filed unless an opinion by the Solicitor of the Department, or his duly authorized designee, has been rendered which finds that the interests of the Government will not be prejudiced by the action called for in this section with regard to such disclosure materials. Accordingly, copies of

these materials must be provided to the National Park Service for forwarding to the Department's Office of the Solicitor. The National Park Service will notify grantees in writing of the Solicitor's opinion regarding disclosure of the material.

- 5) Grant applications, Final Project Reports, or End-of-Year Reports pertaining to grant administrative or operational activities.

E. NPS Approval via Grant Agreement.

When a grant application has been judged adequate, a Grant Agreement is executed by the NPS Grant Awarding Official. This is the NPS official whose name/title appears on the Grant Agreement. The Grant Agreement is composed of three documents completed by NPS that together indicate the approval of a grant application: the Grant Agreement Signature Page, which includes changes made by NPS in the grant application or financial information as submitted; any special conditions accompanying approval; and the completed Standard Form 424.

Obligation of funds occurs when the Grant Agreement is signed by the NPS authorized Grant Awarding Official and notice forwarded to Congress and to the NPS Accounting Operations Center. The signature of the NPS Grant Awarding Official on the Grant Agreement shall constitute the signer's certification that the Grant Agreement is materially complete and that the grant application is in keeping with all applicable laws, Federal and Department regulations, and NPS program requirements.

The signed Grant Agreement is the legal document constituting the assistance agreement between NPS and the grantee. At a minimum, the Grant Agreement will include the information listed below. Co-signature by the grantee on the Grant Agreement is not required. The Grant Agreement incorporates the general conditions applicable to all grants and special conditions applicable to the specific approved grant. Subsequent amendments to the Grant Agreement, including subsequent Project Notifications, do not affect general or special conditions unless expressly waived in writing by NPS.

1. Coverage of the Grant Agreement.

The Grant Agreement establishes the terms and conditions of the Grant Award, including:

- a. Legal name and address of the grantee agency to which the grant is awarded.
- b. Identifying grant number assigned by NPS.
- c. Grant period, which specifies the length of time NPS intends to support the proposed effort, and during which costs may be charged to the grant. See Section E.5., below.
- d. Federal share awarded.
- e. Minimum nonfederal share required.
- f. Setting forth the obligations assumed by the grantee through acceptance of the Federal assistance award, including the applicability of the Federal cost principles and administrative requirements incorporated in the Historic Preservation Fund Grants Manual. The Grant Agreement for the National Trust shall specify OMB Circulars applicable to nonprofit organizations.

- g. Other information or provisions deemed necessary by NPS to carry out its granting activities or to accomplish the purpose of the grant. The Catalog of Federal Domestic Assistance Program Title and Number appear in block 10 of the SF 424.

The Grant Agreement is the mechanism through which NPS accepts the work proposed to be accomplished during the term of the grant. The Grant Agreement obligates NPS to provide financial assistance up to the stipulated amount for eligible costs incurred for projects and programs, on the basis of information and cost estimates contained in the application. Unless specifically approved in the Grant Agreement or an NPS-approved grant amendment, no cost (either federal or nonfederal share) incurred prior to the approved grant beginning date or subsequent to the stipulated end date will be allowed.

If the submitted application is revised in any way by NPS, the revision will be noted on the Application and Budget Changes/Special Conditions page(s). This additional page is considered part of the Grant Agreement.

2. Federal Share.

The Federal share amount obligated by the grant award shall be set forth in the Grant Agreement. The Federal share amount, not to exceed the maximum percentage specified by law will represent the award ceiling. The grantee must exert its best efforts to perform, or cause to be performed, the work as specified in the grant application within the approved cost ceiling. If at any time the grantee becomes aware that the costs it expects to incur in the performance of the grant will be substantially more or less than the then-approved estimated total cost, the grantee must notify the NPS Grant Awarding Official promptly in writing, and request approval of an amendment. See Chapter 15.

If a State is unable to utilize or apply for the full amount of apportioned funds, the State Historic Preservation Officer should notify NPS at the earliest possible date so that the funds can be reallocated to other States. Funds not reallocated and used within the 24-month period of availability are returned to the U.S. Treasury.

NPS will not share costs incurred in excess of any approved amounts. Grant payments will be made in accordance with Chapter 21 up to the approved amount stipulated in the Grant Agreement.

3. Nonfederal share.

The nonfederal share amount must be contributed and documented in accordance with the criteria and timing stated in Chapter 14 and elsewhere in the Historic Preservation Fund Grants Manual. Such cash and in-kind contributions shall be limited to assisting eligible activities specified in the application and subsequently submitted Project Notifications (and in the case of third party agreements covered by Reduced Review Status, in subgrant agreements and files) and must be directly related to and necessary for the conduct of activities specified in these documents.

4. Total grant costs.

Both the Federal share and nonfederal share detailed in the application are subject to the provisions of the Historic Preservation Fund Grants Manual upon execution of the Grant Agreement with NPS. In particular:

- a. Costs eligible for assistance shall be determined upon the basis of the criteria set forth in Chapters 6, 12, 13, and 14.
- b. The Grant Agreement may include the use of the indirect cost rate approved for the grantee or subgrantee by the cognizant Federal agency according to the provisions of Chapter 12.

5. Duration of grant.

Funds obligated by NPS shall be available to a State or the National Trust for expenditure during the 24-month grant period specified in the Grant Agreement and contingent upon compliance with NPS Use or Lose procedures. Authorization to incur expenditures during the succeeding fiscal year (for awarded subgrants plus an amount not to exceed 25 percent of the Federal share of the Annual Grant) is specified in the Grant Agreement and requires that funds will be committed by the grantee in accordance with NPS procedures (see Section K, below). No costs for programs or projects beyond the term of the grant period specified in the Grant Agreement may be charged to the HPF grant.

F. Application and Budget Changes/Special Conditions.

The Application and Budget Changes/Special Conditions page(s) is used as an attachment to the Grant Agreement to indicate special conditions and any changes made by NPS in the application submitted by the grantee.

If a specific cost, work item, or other element in the application is reduced or eliminated by NPS, the application will be approved with the revisions specifically identified on this page, and the grantee must not use funds for that purpose without prior written NPS approval.

SPECIAL CONDITIONS are used to require the grantee to submit additional necessary documentation, to execute certain specified actions, or to emphasize important requirements. The special conditions are part of the Grant Agreement and must be complied with by the grantee. NPS determines whether a grantee has achieved acceptable compliance with special conditions. Grantee noncompliance may cause disallowance of incurred costs, withholding, suspension of funds, or other administrative remedies. Special conditions are in addition to General Conditions Governing Grants (Chapter 5), which apply to all grant awards, amendments, and subsequent subgrants or other agreements awarded by the grantee.

G. Effect of Grant Award.

The grant becomes effective upon execution of the Grant Agreement by the NPS Grant Awarding Official. Grant approval authorizes the grantee to proceed with the activities specified, but does not by reference make specific approval of those types of cost items which are allowable only by NPS prior specific approval (see Chapter 13, Section C). These types of costs must be specifically identified by the grantee in the Budget Form 424B (Section E, Other Budget Information) of the grant application, or by subsequent correspondence.

All funds shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget (including subsequent Project Notifications), and in accordance with the regulations governing these grants, the Secretary of the Interior's "Standards," the terms and conditions of the award, the applicable Federal cost principles, and the Historic Preservation Fund Grants Manual.

The award of any grant does not commit or oblige NPS to award any additional funds to cover cost overruns, nor does the award of any grant constitute an obligation to fund any subsequent budget period.

In accepting the award, the grantee agrees that it will meet the terms and conditions of the Apportionment Certificate and NPS Grant Agreement and that it will further impose these requirements upon any subgrantee or subrecipient to which funds are transferred pursuant to the Grant Agreement. The grantee also agrees that it shall be responsible for compliance with the terms of the Grant Agreement by any subgrantee, and that failure by such subgrantee to so comply shall be deemed a failure by the grantee to comply with the terms and conditions of the Grant Agreement.

The terms and conditions of the Annual Grant Agreement also apply to all subgrant and other third party agreements including those covered by Reduced Review Status (see Chapter 8, Section G).

H. Amendments and Other Programmatic Changes.

The grantee shall submit an amendment describing any material change in the plan (grant application) or in the proposed conduct of the approved program or grant before the change is executed. All requests for changes shall be made in writing and described using the same forms as the original application; only the changed forms need be submitted with the requested change clearly explained in the "Remarks" section of the Standard Form 424 (see Chapter 15).

1. Project Notification.

The award of subgrants to a third party to perform substantive programmatic work proposed in the SHPO's grant application is considered a substantive programmatic change unless the required information is submitted concurrently with the Annual Grant Application. However, see Chapter 8, Sections F. and G., for details on Project Notifications and Reduced Review Status (i.e., when Project Notifications are not required).

Except for activities covered by Reduced Review Status (see Chapter 8, Section G), subsequent substantial changes in subgrant objectives or scope of work described in Project Notifications shall be requested in writing by the grantee prior to effecting such changes.

2. NPS-Initiated Amendments.

Grant amendments may be initiated by NPS if: a) on the basis of reports or adverse findings, it appears that HPF funds are being used for purposes beyond the scope of the grant agreement (i.e., the approved grant application or for unauthorized or ineligible purposes); or, b) if additional funds, previously appropriated or apportioned but unreleased, become available.

I. Grantee Accounting Responsibilities.

1. Grantee records of accounts are to be established on the 12-month budget period basis. HPF funds disbursed and nonfederal share claimed must be charged to the correct grant budget period. This applies to Federal share claimed and nonfederal share applied by the grantee organization itself and by any of its subgrantees, including universities and Certified Local Governments. The Federal share of costs shall be charged to the fiscal year in which the costs were incurred (i.e., the fiscal year the reimbursable work was performed). Similarly, the nonfederal costs claimed shall be charged to the fiscal year the cash was disbursed or the goods or services were contributed. Therefore, each subgrant or similar agreement with third parties that authorizes costs to be incurred during more than one HPF grant period (i.e., "crosses" Federal fiscal years) should require that the subgrantee provide the grantee with appropriate documentation of the nonfederal share claimed during the fiscal year promptly after the close of the fiscal year. This will not only allow the grantee to maintain its

accounts as intended by the Act, but can also serve as an early warning to the grantee of insufficient nonfederal share.

Costs incurred prior to the effective date of the grant award, whether or not these costs would have been allowable after that date, are allowable only with the prior approval of NPS, or when specifically provided for in the NPS grant agreement (see Chapter 13, Section C).

2. Costs incurred through September 30 of each fiscal year must be billed no later than December 31 of that year.
3. States must retain executed subgrant agreements and purchase orders verifying the information in the Project/Activity Database Report and the Carryover Statement (see Chapter 25), and make these available for on-site inspection by NPS or its designated representative.
4. During the 24-month period of availability, funds may be transferred among subgrants, contracts, and cooperative agreements. Budget increases must be justified by an appropriate increase in the project scope and/or an adequate explanation of the reason(s) for the increase. States not on Reduced Review Status must send NPS a Project Notification Amendment for any Federal share increase to a subgrant, contract, or cooperative agreement. States with Reduced Review Status must retain this information in their files for State Program Review purposes.
5. Grantees are required to certify the accuracy of the January Financial Status Report (mailed to States by NPS in February). Corrections will be made by NPS when justified.

J. Expiration of Grant Obligational Authority.

Costs incurred after the end date of the second budget period cannot be charged to the Annual Grant. Any unexpended funds remaining after the end date of the grant will be returned to the U.S. Treasury. NPS will evaluate the reasons for such returns and reserves the right to adjust future apportionments accordingly. Because the period of obligational authority is usually 24 months, States should award funds to subgrants or contracts with logical units of work that can be accomplished or completed within the term of the grant.

K. Use or Lose Policy.

1. General.

The "Use or Lose" policy means that a grantee that does not "use" its grant award funds in a timely fashion will lose a portion of those funds as described below. The purpose of this adjustment action is to direct monies to those grantees most capable of making immediate productive use of available monies, and to demonstrate that funds appropriated by Congress for the HPF are in fact needed and being used promptly. The Use or Lose policy is intended to have these results:

- a. Continue the exemplary expenditure rate performance of the HPF grant program.
- b. Authorize each grantee to carry over up to 25 percent of the Annual grant into the second year of fund availability to maintain staff and "in house" program operations. The 25 percent reserve is intended to provide up to 3 months of operating costs without disruption because of "late" Congressional appropriations.

- c. Allow each grantee to carry over unexpended funds in subgrants crossing Federal fiscal years.
- d. Provide a framework for financial management and reporting that minimizes grantee accounting problems related to the annual cost/matching share provisions of Section 102(a)(3) of the Act.

The Carryover Statement in the End-of-Year Report (see Chapter 25) closes out each fiscal year and provides a bridge to the next, allowing up to 25% of the Annual Grant to be carried over, uncommitted, to support continuing program operations for up to 12 additional months (i.e., the second year of the 24-month grant period). The full 2 years of obligational authority provided by Federal appropriations legislation is afforded to grantees demonstrating prompt use of the funds apportioned to them.

As detailed below, NPS reserves the option to adjust grant awards to a grantee when the amount of uncommitted funds exceeds 25 percent of the amount apportioned during the fiscal year. The 25 percent limitation does not apply to the amounts carried over in committed subgrants, contracts, or cooperative agreements; these commitments must appear in the Project/Activity Database Report and the Carryover Statement submitted with the End-of-Year Report (see Chapter 25).

2. Limitation on Award of Obligational Authority.

- a. The annual apportionment of obligational authority awarded to a grantee will not be reduced when the grantee, in accordance with procedures detailed below, has either:
 - 1) Submitted by December 31 acceptable Electronic Funds Transfer payment requests, or SF 270 reimbursement requests and/or liquidations of advances for all funds expended during the fiscal year of the apportionment; and
 - 2) Submitted acceptable grant applications (including amendments, if necessary) by August 31 to obligate all available obligational authority during the current fiscal year; and
 - 3) Except for activities covered by Reduced Review Status (see Chapter 8, Section G), submitted acceptable Project Notifications for all subgrants and contracts with entities outside the administrative direction of the SHPO for projects which extend beyond the fiscal year budget period; and
 - 4) Confirmed by its Project/Activity Database Report and Carryover Statement (see Chapter 25) that no more than 25 percent of the annual award will remain unexpended and uncommitted at the beginning of the second year of grant availability.
- b. Calculating the Carryover amount for the second fiscal year. The amount of funds which may be carried over into the second fiscal year of the grant is based on two factors:
 - Committed Subgrants and Contracts, and
 - Uncommitted Expenses

The following two examples illustrate the carryover calculation:

EXAMPLE 1

Total FY 1997 Unexpended Funds Carried Over into FY 1998 (Uncommitted expenses and committed subgrants and contracts)	\$250,000
Minus Committed yet Unexpended Subgrant Funds	\$150,000
Uncommitted SHPO Carryover	\$100,000
FY 1997 Annual Award	\$500,000
\$100,000 represents 20 percent of the FY 1997 Annual Award of \$500,000, and is, therefore, under the 25 percent maximum uncommitted funds allowable.	

EXAMPLE 2

Sample Description	Sample Amount	Sample Calculation
Step 1. The FY 1997 Award	\$500,000	---
Step 2. Minus total FY 1997 dollars expended during FY 1997.	\$300,000	\$500,000 - \$300,000 = \$200,000
Step 3. Minus total unexpended FY 1997 funds that are committed to third-party agreements that will be carried over into FY 1998.	\$150,000	\$200,000 - \$150,000 = \$50,000
Step 4. Equals the uncommitted FY 1997 funds that will be carried over into FY 1998.	\$50,000	---
Step 5. Amount carried over divided by the total award (must be less than 25%).	\$50,000 or 10%	\$50,000/\$500,000 = 10%

1) Committed Subgrants and Contracts.

- i) States may carry over all unexpended balances for subgrants or contracts if acceptable Project Notifications have been forwarded to, and concurred with by, NPS (except for projects covered by Reduced Review Status; see Chapter 8, Section G).
- ii) Subgrants and contracts with entities outside the administrative control of the SHPO are considered valid commitments for carryover purposes. A subgrant agreement between the grantee and subgrantee must be executed by September 30 to be a valid commitment.
- iii) All continuing subgrants and contracts used in computing the amount of carryover must be included in the Project/Activity Database Report and Carryover Statement submitted with the End-of-Year Report. (See Chapter 25, Section D.)

- iv) All such committed subgrants and contracts do not count against the 25 percent carryover limitation.

The State is required to notify NPS if it has not been able to execute subgrants to CLGs for at least 10 percent of its award. This notice can be by letter to NPS, or with the End-of-Year Report.

2) Operational "In-house" Expenses.

Up to 25 percent of the prior year's total apportionment may be carried over into the following fiscal year for in-house expenses, including: SHPO salaries, equipment, other administrative expenses, and "in-house" contracts and agreements.

"In-house" contracts or agreements with State Historic Preservation Office staff or with State governmental units that are part of the same State government budgetary unit as the State Historic Preservation Office are not considered contractual commitments.

Unexpended HPF grant funds for in-house expenses are not considered committed. NPS reserves the right to adjust the State's current or subsequent Annual Grant Award if the State has uncommitted carryover funds in excess of 25 percent.

States must notify NPS in writing if they expect to exceed the 25 percent carryover limitation and request a waiver to exceed the limitation (see Section D.6). NPS should be informed that the carryover limitation will be exceeded prior to the submission of the End-of-Year Report. If this is not possible, then the State must explain that there is more than the allowable amount of uncommitted funds in the End-of-Year Report (in the Carryover Statement section).

Grantees must provide sufficient justification and sufficient time to allow objective review and consideration. Waivers shall be approved only in compelling circumstances in which, despite due diligence on the part of the grantee the circumstances involved were beyond the control of the grantee, and indicate what steps will be taken to avoid a recurrence of the situation.

- c. Previous Year Consistency. The amount carried over into the second fiscal year must be consistent with the expenditures for the previous year shown in the End-of-Year Report. The amount carried over into the second fiscal year may not be larger than the original apportionment minus the amount expended in the first year (as shown in the End-of-Year Report) and minus any amounts recaptured or returned for other reasons.
- d. Reduction of Obligational Authority. Funds in excess of 25 percent of the total amount apportioned via the Apportionment Certificate executed by the Secretary of the Interior which are not committed by a grantee will revert to NPS through a reduction in the fiscal year's apportionment to the grantee. In addition, if any committed funds are not used among the listed subgrants, obligational authority may be revoked by NPS and funds reapportioned to other eligible States whenever time constraints and administrative expenses permit.

- e. Schedule. The following schedule shall be maintained:
- 1) Amendments affecting the Federal share must be postmarked by August 31.
 - 2) The End-of-Year Report must be postmarked by December 31. Data supplied in the Project/Activity Database Report and Carryover Statement submitted with the End-of-Year Report must confirm that the State carries over, in uncommitted funds, no more than 25 percent of the prior year's apportionment.
 - 3) Payment requests must be transmitted by December 31.

**21 GCA REAL PROPERTY
CH. 77 PARKS & RECREATION**

The Department shall, pursuant to the Administrative Adjudication Law, establish rules and regulations as may be deemed necessary to implement the provisions of this Chapter.

SOURCE: Added by P.L. 20-201:2.

**ARTICLE 3
HISTORIC PRESERVATION**

- § 77301. Guam Historic Resources Division Created.
- § 77302. Guam Historic Preservation Officer.
- § 77303. Guam Historic Preservation Officer; Duties.
- § 77304. Guam Historic Preservation Officer; Compensation.

§ 77301. Guam Historic Resources Division Created.

There is hereby created the Guam Historic Resources Division within the Department of Parks and Recreation, which division shall be responsible for establishing a comprehensive historic preservation program for Guam.

SOURCE: GC § 26030 added by P.L. 20-151:2 (Mar. 21, 1990). Public Law 25-69:9 repealed P.L. 20-151:2. However, P.L. 25-69:9 was itself repealed by P.L. 25-72:IV:13(c), which reverted the enactment of P.L. 20-151:2.

§ 77302. Guam Historic Preservation Officer.

The position of Guam Historic Preservation Officer is hereby created in the classified service under the Department of Parks and Recreation (the "Department"), the holder of which position shall be the State Historic Preservation Officer for federal purposes. The Director of Parks and Recreation (the "Director") shall select a qualified candidate to fill the position based on training, work experience and education pertinent to cultural resources management. The Guam Historic Preservation Officer shall be under the supervision of the Director and shall be the head of the Historical Resources Division of the Department and Executive Director for the Guam Preservation Trust Fund.

SOURCE: GC § 26031 added by P.L. 20-151:3 (Mar. 21, 1990). Public Law 25-69:9 repealed P.L. 20-151:3. However, P.L. 25-69:9 was itself repealed by P.L. 25-72:IV:13(c), which reverted the enactment of P.L. 20-151:3.

§ 77303. Guam Historic Preservation Officer; Duties.

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**21 GCA REAL PROPERTY
CH. 77 PARKS & RECREATION**

The Guam Historic Preservation Officer shall administer the comprehensive program for historic preservation, restoration and presentation prescribed by 21 GCA § 76103.

SOURCE: GC § 26032 added by P.L. 20-151:4 (Mar. 21, 1990). Public Law 25-69:9 repealed P.L. 20-151:4. However, P.L. 25-69:9 was itself repealed by P.L. 25-72:IV:13(c), which reverted the enactment of P.L. 20-151:4.

§ 77304. Guam Historic Preservation Officer; Compensation.

The Civil Service Commission shall establish the necessary qualifications and wage standards of the Guam Historic Preservation Officer.

SOURCE: GC § 26033 added by P.L. 20-151:5 (Mar. 21, 1990). Public Law 25-69:9 repealed P.L. 20-151:5. However, P.L. 25-69:9 was itself repealed by P.L. 25-72:IV:13(c), which reverted the enactment of P.L. 20-151:5.

