

FACT SHEET: QUESTIONS AND ANSWERS

Department of Energy's Office of Weatherization and Intergovernmental Programs (OWIP) and Section 106 Prototype Programmatic Agreement and Implementation

1. Why was the prototype Programmatic Agreement selected as a tool for the Department of Energy's OWIP grant programs for weatherization related activities?

The Department of Energy (DOE) and the Advisory Council on Historic Preservation (ACHP), with input from the National Conference of State Historic Preservation Officers (NCSHPO) explored options that would expedite historic preservation reviews and improve coordination between the State's energy agencies (Recipients) and the State Historic Preservation Officer (SHPO). Under the ACHP regulations, 36 CFR 800.14(b)(4), a prototype programmatic agreement (PA) was identified as the most appropriate approach to meet these goals and allow DOE to proceed with the administration of OWIP's program undertakings.

2. Which DOE programs does the prototype PA cover?

The prototype PA covers three weatherization related programs under DOE's OWIP. Those programs are the Energy Efficiency and Conservation Block Grant (EECBG), the Weatherization Assistance Program (WAP), and the State Energy Plan (SEP). All three of these programs provide grant monies to a state agency or an entitlement community that qualifies for funds. In addition to its relevance for state energy agencies, the prototype PA is intended to be used to manage weatherization reviews for individual communities and non-governmental organizations (NGOs), as well as sub-recipients, receiving funds directly from DOE.

3. What are the benefits provided by the prototype PA?

As the selected program alternative for use by DOE for its OWIP programs, the prototype PA provides many benefits that will address the workload concerns of that SHPOs are confronting in the review of ARRA projects while ensuring the timely obligation of DOE funds for OWIP undertakings. These benefits include exempting the majority of routine activities with limited potential to affect historic properties from review; allowing the use of current interagency agreements between SHPOs and the state energy agencies (Recipients) for Section 106 compliance if they established historic preservation review protocols similar to those that would otherwise be established by the prototype PA; establishing a template PA that can be readily signed to evidence Section 106 compliance; allowing DOE, SHPO, and state energy agencies to execute PA without ACHP involvement; and requiring DOE to develop tribal and Native Hawaiian Organization (NHO) protocols if projects may affect historic properties of religious and cultural significance to those parties.

4. As a template, can the prototype PA be modified?

Yes, the prototype PA is a template that can be modified by the SHPOs and Recipients in order to establish further efficiencies and improve the management of undertaking effects on historic properties within their State. SHPOs and Recipients may add other provisions and should focus on additions to Stipulations IV, V, VI, and VII, which can further tailor the historic preservation reviews to unique circumstances within a specific state. The other Stipulations in the prototype PA should be retained as they reflect the negotiations between DOE, the ACHP, and NCSHPO that were critical to developing the framework of the prototype PA.

5. If a State has a pre-existing state-level interagency agreement with a state department or agency in place for managing Section 106 reviews, will these agreements be recognized by DOE and the ACHP?

During the months of developing the prototype PA, the ACHP and DOE was aware that several states had been in the process of developing state level interagency agreements between the SHPO and the state energy agency to assist in managing the potential for an increase of projects being funded by DOE's OWIP grants. In order to recognize these efforts, as DOE, the ACHP, and with input from NCSHPO worked on the language of the prototype PA, as Stipulation was included in the final version of the document that would allow the use of interagency agreements for Section 106 compliance if they had established historic preservation review protocols similar to those that would otherwise be established by the prototype PA itself. These existing interagency agreements had to be executed no later than February 19, 2010, to have the potential to be recognized for use by DOE.

6. How will a State know if their interagency agreement will be allowed by DOE for use in reviewing DOE OWIP undertakings?

Any State that has a pre-existing state level interagency agreement that they believe meets the criteria set forth in the prototype PA should inform both DOE and the ACHP, and provide a narrative explaining how the agreement adheres to the requirements of the NHPA. The State will prepare a package to DOE that includes the existing state-level interagency agreement, documentation that the agreement had been executed no later than February 19, 2010, and a narrative explaining how the agreements meets the requirements of NHPA for reviewing projects for Section 106. Once DOE reviews the submittal package and agrees to acknowledge the state agreement to fulfill the requirements of Section 106 for their undertakings, a cover PA affirming this action will be signed by the SHPO, the state energy agency (ies), and DOE.

7. What is the ACHP's role in the prototype PA?

In order to expedite the execution, and use of the PA, the prototype PA was developed to allow DOE, SHPOs, and state energy agencies to have the ability to follow the template, make any agree-upon modifications, and consult in preparing the PA without the need for ACHP involvement. Once executed, DOE must file all executed PAs with the ACHP prior to their use. This will enable the ACHP to monitor the effectiveness of the prototype PA and engage DOE in future discussions regarding Section 106 administration of the OWIP programs after the conclusion of ARRA funding. The ACHP will also be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of the PA.

8. How does the prototype PA involve Indian tribes and Native Hawaiian Organizations (NHO) in the consultation process for the PA?

DOE retains its responsibility for government-to-government consultation with Indian Tribes and NHOs, unless the Indian Tribe agrees to the delegation of this responsibility to the Recipient. In addition, DOE shall retain responsibility in matters related to potential effects on historic properties of cultural and religious significance to Indian tribes, except with the concurrence of the Indian tribe. DOE shall notify Indian tribes of undertakings that may result in an adverse effect on historic properties. The undertakings covered under the prototype PA are not located on Tribal lands and are primarily small scale activities and routine projects, without the potential for adversely effecting historic properties, rather than complex undertakings with a greater potential to adversely affect historic properties historic properties, which would require completion of the typical Section 106 review process. Any administration of Tribal grants requires coordination directly with DOE as the prototype PA is focused on grants to state recipients.

9. What is the duration of the prototype PA for reviewing DOE's OWIP programs?

The intent of the prototype PA is to be valid for a period of three (3) years from the date of execution, as verified with DOE filing the executed PA with the ACHP. The three year period should allow for all ARRA related funds to be spent through the three DOE OWIP programs.

10. How will I find additional information and guidance for implementing a State PA for DOE's OWIP programs?

The ACHP has created a dedicated page on its website that will be populated with evolving guidance and toolkit documents, copies of executed state PAs, and the outcomes of complex undertakings. There will also be links to DOE's website to provide information on DOE's programs and activities.