

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



August 2, 2024

The Honorable Jack Reed
Chair, Armed Services Committee
United States Senate
Russell Senate Office Building, SR-228
Washington, DC 20510

The Honorable Roger F. Wicker
Ranking Member, Armed Services Committee
United States Senate
Russell Senate Office Building, SR-228
Washington, DC 20510

The Honorable Mike Rogers
Chair, Armed Services Committee
United States House of Representatives
Rayburn House Office Building, 2216
Washington, DC 20515

The Honorable Adam Smith
Ranking Member, Armed Services Committee
United States House of Representatives
Rayburn House Office Building, 2216
Washington, DC 20515

Dear Chair Reed, Chair Rogers, Ranking Member Wicker, and Ranking Member Smith:

The Advisory Council on Historic Preservation (ACHP) would like to take this opportunity to provide comments on the Senate and House versions of the National Defense Authorization Act (NDAA) (S. 4638/H.R. 8070) as they pertain to review of projects affecting military historic properties under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. §306108). Section 106 requires federal agencies to consider the effects of projects, carried out by them or subject to their assistance or approval, on historic properties (those properties listed on or eligible for the National Register of Historic Places). The ACHP is the independent federal agency that is charged with advising the President and Congress on historic preservation matters and with overseeing the Section 106 review process.

The ACHP offers the following advice to the Armed Services Committees for consideration during negotiations on the final NDAA.

- **The Section 106 review streamlining proposed in both the House and Senate versions of the FY 2025 NDAA is not necessary, since recently issued and other potential administrative alternatives are available to address the issues of concern. The ACHP urges that the final NDAA not include the sections from the House and Senate bills that address Section 106 review of military historic properties.**

The ACHP recognizes and supports the importance of streamlining the Section 106 process to enhance the effectiveness and efficiency of federal project review under Section 106. The Section 106 regulations, “Protection of Historic Properties” (36 CFR Part 800), offer options—known as “program alternatives”—through which the review process can be tailored for specific projects and programs. A Program Comment is one such program alternative that allows the ACHP to comment on certain categories of undertakings in lieu of commenting on a case-by-case basis. On May 17, the ACHP

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adopted a [Program Comment for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features](#), thus rendering the House bill's similar provisions addressing pre-1919 Army housing unnecessary. The provisions in the referenced Program Comment provide equivalent or better measures to address historic preservation needs.

Over the years, the ACHP has worked with the military services to adopt nine Program Comments streamlining Section 106 review. The ACHP stands ready to continue working with the Department of Defense (DoD) to tailor Section 106 review to address military historic properties through development of program alternatives. Legislated solutions are simply not necessary.

- **The provisions in the House bill addressing Section 106 review are partially redundant of administrative action already taken by the ACHP, would exempt projects from review under Section 106, and also would run counter to the regulations governing the National Register of Historic Places. The ACHP urges that the final NDAA not include Sections 2834, 2835, and 2837 of the House bill.**

Because of its successful track record in using its existing administrative authorities to fast-track critical agency reviews, the ACHP has consistently advised against the use of legislative exemptions, and Congress typically has agreed with such advice. The powerful tool of program alternatives simply negates the need for legislative exemptions from Section 106 review. In addition, legislative exemptions generally are not desirable, since they deprive nonfederal stakeholders and the public of the opportunity to influence federal decision making, a concept that is foundational to the NHPA.

Sections 2835 and 2837. Section 2835 of the House bill would exempt the Army and the Navy (for five years) from Section 106 review for repair and maintenance projects carried out in accordance with preservation standards at pre-1919 housing and operational facilities on selected pilot installations. Section 2837 of the House bill would exempt all the military services (for five years) from Section 106 review regarding use of imitative substitute building materials in projects at pre-1919 housing and operational facilities.

As noted earlier, these provisions were recently addressed for Army pre-1919 housing through the Program Comment adopted in May. That Program Comment and three previous Program Comments issued by the ACHP for other time periods of Army housing highlight how successful program alternatives are in addressing the complex needs of DoD's management of its historic properties. Legislative exemptions are not needed.

Section 2834. Section 2834 of the House bill would defer DoD's responsibilities under Section 106 regarding post-1975 housing and landscape features until those properties are at least 60 years old. In accordance with the regulations (36 CFR Part 60) for the National Register of Historic Places, properties generally must be at least 50 years old to be eligible for listing, and federal agencies use that baseline age in evaluating what properties need to be considered during Section 106 review. Section 2834 would exempt DoD in perpetuity from needing to address effects to potentially historic post-1975 housing and landscape features for an additional 10 years beyond the current requirement.

Use of the term "defer" in Section 2834 implies that consideration of project effects is merely being postponed. However, this is not the case, considering that there is no guarantee that post-1975 housing will not be radically changed or demolished during the continuous expanded 10-year period when the buildings would completely escape any consideration under the NHPA. As noted previously, administrative alternatives exist that would avoid this problem. The ACHP can work with DoD to develop a Section 106 program alternative to address post-1975 housing. Also of note, the ACHP currently is exploring development of a Program Comment for certain activities related to

housing that would apply to all relevant federal agencies, including the military services.

Beyond the impact of Section 2834 on post-1975 DoD housing, there is a much broader issue at stake. Section 2834 would set a very troubling precedent. The long-established “50-year rule” regarding potential historic property significance is a foundational principle of the National Register program. It is used by all federal agencies in their planning for and management of historic properties, and in their consideration of project effects during Section 106 review. Every 50-year-old property will not be found to be significant, but their evaluation is essential to planning for the treatment of those that are deemed historically important. Negating the “50-year rule” for this group of federal properties could encourage other agencies to seek similar exemptions from review for other project types, which would undermine the consistency of the current system and result in conflicting review requirements among agencies.

- **As previously noted, the ACHP believes the provisions in the Senate bill addressing Section 106 review are not needed. However, should they be included in the final NDAA, the ACHP urges that Section 2852 be revised to address 1941-1948 Army housing through application of the ACHP’s Program Comment for Inter-War Era Historic Housing, Associated Buildings and Structures, and Landscape Features (1919–1940), and not the Program Comment named in the Senate bill.**

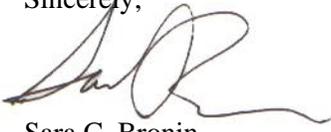
The Senate bill does not include the provisions of the House bill. It addresses only Section 106 review for Army housing dating from 1941-1948 and post-1975, the remaining Army housing not currently covered by existing Program Comments. Section 2852 provides that Section 106 review for 1941-1948 Army housing would be addressed by applying (through 2045) the terms of an existing [Program Comment for Capehart and Wherry Era housing](#) (1949-1962). Post-1975 Army housing would be addressed by applying (through 2045) the terms of an existing [Program Comment for Vietnam War Era housing](#) (1963-1975). For most undertakings covered by these Program Comments, the Army does not have to go through individual, case-by-case Section 106 reviews, instead using procedures for decision making and materials selection established by the Program Comments.

Section 2852 indicates that amendment of the cited Program Comments is not precluded, which is important since they were tailored to specific subsets of housing with unique issues regarding construction and historic significance, and amending them would be critical to facilitating expansion of their applicability. However, even with amendments, it would be difficult to revise the cited Capehart and Wherry Era Program Comment to adequately address the Army’s World War II era housing from 1941-1948. Architectural styles and management needs for World War II era housing are much more varied than the later Capehart and Wherry era housing, which was designed and built in large quantities using a series of identical designs. In contrast, another existing Program Comment, the [Program Comment for Inter-War Era housing](#) (1919–1940) would be a much better fit to also cover World War II era housing, since it addresses a broader range of property designs and construction techniques.

The ACHP is sensitive to DoD’s challenges relating to the management of historic military properties, particularly housing, and we remain confident that the tools already in place, the ability to amend current Program Comments, and the commitment to develop further program alternatives or negotiated agreements with the ACHP, positions DoD to be fully successful in considering effects to historic properties without the need for legislated relief.

Please feel free to contact me to discuss this matter; I would be happy to have the opportunity to meet with you or your staff. Your staff also may wish to follow up with Executive Director Reid Nelson at rmelson@achp.gov. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara C. Bronin', with a long horizontal flourish extending to the right.

Sara C. Bronin
Chair