ADVISORY COUNCIL ON HISTORIC PRESERVATION
ENVIRONMENTAL REVIEW MEMORANDUM
Final Rule: Recission of 36 CFR Part 801, "Historic Preservation Requirements of the Urban Development Action Grant Program"
9-30-2026

Pursuant to the National Environmental Policy Act of 1969, as amended, I have determined that the promulgation of a final rule to rescind 36 CFR Part 801, "Historic Preservation Requirements of the Urban Development Action Grant Program," falls within the Department of the Interior categorical exclusion at 43 CFR § 46.210(i) adopted by the Advisory Council on Historic Preservation (ACHP) on September 18, 2026 (91 FR 59151); and no extraordinary circumstances apply.

This Environmental Review Memorandum documents the ACHP's rationale for using the categorical exclusion identified above, as well as the ACHP's consideration of extraordinary circumstances and confirmation that no extraordinary circumstance applies to the promulgation of the final rule.

Signature Approval:

Signature	Title	Date
	Executive Director	9-30-2026

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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ADVISORY COUNCIL ON HISTORIC PRESERVATION
ENVIRONMENTAL REVIEW MEMORANDUM
Additional Documentation
Final Rule: Recission of 36 CFR Part 801, "Historic Preservation Requirements of the Urban Development Action Grant Program"

9-30-2026

The Advisory Council on Historic Preservation (ACHP) prepared this documentation in support of its Environmental Review Memorandum for promulgating a final rule to rescind 36 CFR Part 801, "Historic Preservation Requirements of the Urban Development Action Grant Program" (UDAG regulations). The UDAG regulations outline the process by which federal agencies fulfill their responsibilities under section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 306108) for undertakings proposed to be funded by the Department of Housing and Urban Development (HUD) Urban Development Action Grant (UDAG) Program.

The final rule does not require preparation of an environmental impact statement (EIS) or an environmental assessment (EA), under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq*.), because it is excluded pursuant to a Department of the Interior (DOI) categorical exclusion (CE) at 43 CFR § 46.210(i) adopted by the ACHP on September 18, 2026 (91 FR 59151).

The ACHP finds that it is not required to prepare an EIS or an EA for this rulemaking because a CE applies.

Background

The ACHP is an independent federal agency tasked with promoting the preservation of America's historic places and advising the President and Congress on national historic preservation policy (54 U.S.C. Chapter 3041). Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 306108) requires federal agencies to take into account the effects of undertakings that they propose to carry out, license, approve, or assist on historic properties and provide the ACHP a reasonable opportunity to comment. The ACHP is responsible for promulgating regulations "as it considers necessary to govern the implementation of [section 106 of the NHPA] in its entirety." (54 U.S.C. 304108(a)). The ACHP has promulgated regulations for implementing section 106 of the NHPA at 36 CFR Part 800 (Section 106 regulations).

The Housing and Community Development Act of 1980 (HCDA) (42 U.S.C. 5320(c)), requires the ACHP to "prescribe regulations providing for expeditious action by the Council in making its comments under [section 106 of the NHPA], in the case of properties which are included on, or eligible for inclusion on, the National Register of Historic Places and which are affected by a project for which an application is made under [42 U.S.C. 5318]. . . ." The ACHP's regulations at 36 CFR Part 801 (UDAG regulations) provide the Section 106 review process for undertakings proposed to be funded by the HUD UDAG Program. The purpose of the UDAG Program is to make urban development action grants to cities and urban counties that are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. Under the UDAG Program, applicants assume the status of the

federal agency for purposes of complying with section 106 of the NHPA.

The UDAG Program is no longer current. The last appropriation HUD received for the UDAG Program was for fiscal year 1988. HUD administratively closed out any remaining UDAG Program grants in 2021. Further, according to HUD, due to the passage of time and because the UDAG Program grants were administratively closed out, any remaining UDAG Program funds would be converted from program income to miscellaneous revenues upon either completion of the UDAG-funded activities or upon closeout. While these revenues would need to be spent on either UDAG Program activities or on Community Development Block Grant Program eligible activities, they would not be subject to any other requirements in 24 CFR Part 570, including cross- cutting requirements such as environmental review. Therefore, HUD does not anticipate any projects funded by the UDAG Program to be proposed as subject to the ACHP's UDAG regulations.

In accordance with the President's direction and the general policy set forth in Executive Order 14192, "Unleashing Prosperity through Deregulation" (90 FR 9065, January 31, 2025), the ACHP reviewed the UDAG regulations with the goal of reducing potential regulatory burdens and eliminating regulations that are no longer necessary or lack current or future applicability. ACHP staff coordinated with staff from HUD to review the status of the UDAG Program, as described above. ACHP subsequently determined it was appropriate to rescind the UDAG regulations as it is obsolete and no longer needed.

Proposed Action

The Proposed Action is the issuance of a final rule to rescind the ACHP's UDAG regulations. In the Notice of Proposed Rulemaking (91 FR 34188, June 5, 2026), the ACHP requested public comments on or before July 6, 2026. The ACHP received no public comments on the proposed rule. In addition, the ACHP provided additional information about the Proposed Action on its agency website at achp.gov.

Categorical Exclusion

NEPA requires federal agencies to prepare an EIS before initiating "major Federal actions significantly affecting the quality of the human environment" (42 U.S.C. § 4332(C)). A "major Federal action" is defined as "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility" (42 U.S.C. § 4336e(10)(A)). In this context, the term "major Federal action" refers not only to actions such as constructing a building or bridge, but includes project proposals, proposals for new legislation, regulations, policy statements, or expansion or revision of ongoing programs. *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1088 (D.C. Cir. 1973).

When an agency determines that a major Federal action either does not have a reasonably foreseeable significant effect on the quality of the human environment, or the significance of such effect is unknown, the agency must prepare a concise EA, unless the action is excluded from review under one of the agency's CEs (42 U.S.C. § 4336(b)(2)). A CE is a category of actions that the agency has determined normally do not significantly affect the quality of the human environment (42 U.S.C. § 4336e(1)). Agencies often document their reliance on a CE to

support taking an action; however, NEPA does not require such documentation, unless an agency is relying on another agency's CE.

Section 109 of NEPA (42 U.S.C. 4336c) provides that an agency may adopt a CE listed in another agency's NEPA procedures for a category of proposed agency actions. The ACHP has adopted the Department of the Interior (DOI) CE at 43 CFR § 46.210(i):

> Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

(91 FR 59151).

The ACHP determined that the DOI CE applies to the Proposed Action because the UDAG regulations are administrative and procedural in nature. The Proposed Action rescinds the obsolete and outdated process for undertakings proposed to be funded by the UDAG Program.

Following rescission of the UDAG regulations, the Section 106 regulations, including the possibility of pursuing program alternatives to tailor the review process, would stand in place of the UDAG regulations in meeting the terms of the HCDA. In the unlikely event any monies would be appropriated to the UDAG Program in the future, the applicant would follow HUD's regulations at 24 CFR Part 58 and the Section 106 regulations for the purposes of compliance with section 106 of the NHPA, including the provision allowing for development of an expedited review process via a program alternative. The ACHP would continue to comply with the HCDA's statutory directive to "prescribe regulations providing for expeditious action by the Council in making its comments" through its promulgation and administration of the Section 106 regulations.

The final rule does not authorize any project or action or restrict the ACHP's or other federal agencies' discretion to authorize future actions under applicable laws and regulations. For these reasons, the rule is administrative or procedural in nature. Additionally, any future actions that are guided by the HUD's regulations at 24 CFR Part 58 and the Section 106 regulations will be subject to the appropriate level of NEPA review. To the extent that those future actions may have effects on the human environment, the responsible entity will comply with NEPA before approving those actions. The locations of these future actions, the activities that they may authorize, and terms and conditions governing these future actions are unknown at this time, making the environmental effects associated with those future actions too speculative or conjectural for the ACHP to meaningfully evaluate now.

The ACHP also verified that none of the DOI's extraordinary circumstances at 43 CFR § 46.215 apply to the final rule. Specifically, the ACHP confirmed that the final rule would not:

(a) Have significant impacts on public health or safety.
(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal

drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(d) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(e) Have a direct relationship to other actions that implicate potentially significant environmental effects.

(f) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

(g) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

(h) Significantly limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.

(i) Contribute to potentially significant effects resulting from the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or from other actions that promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act).

Because the ACHP's final rule is the rescission of an obsolete and outdated procedural regulatory framework, its issuance would not itself have significant impacts on public health or safety under (a) or species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species under (g). The Proposed Action would also not contribute to potentially significant effects resulting from the introduction, continued existence, or spread of noxious weeks or non-native invasive species known to occur in the area or from other actions that promote the introduction, growth, or expansion of the range of species (Federal Noxious Weed Control Act) under (i).

The following discussion addresses the remaining extraordinary circumstances (b)–(f) and (h).

Extraordinary Circumstance (b): Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.

The Proposed Action would not have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas. The Proposed Action is the rescission of an obsolete and outdated procedural regulatory framework formerly used for undertakings proposed to be funded by the UDAG Program. In the unlikely event any monies would be appropriated to the UDAG Program in the future, the applicant would follow HUD's regulations at 24 CFR Part

58 and the Section 106 regulations for the purposes of compliance with section 106 of the NHPA. Neither the UDAG regulations, nor the rescission of the UDAG regulations, in and of themselves have significant impacts on the resources identified in extraordinary circumstance (b).

Extraordinary Circumstance (c): Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

The Proposed Action would not have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. The Proposed Action rescinds an obsolete and outdated procedural regulatory framework. In the unlikely event any monies would be appropriated to the UDAG Program in the future, the applicant would follow HUD's regulations at 24 CFR Part 58 and the Section 106 regulations for the purposes of compliance with section 106 of the NHPA. Any uncertainties regarding the effects of future undertakings under the HUD's regulations at 24 CFR Part 58 and the Section 106 regulations do not arise from the Proposed Action.

Extraordinary Circumstance (d): Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Proposed Action would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. The Proposed Action rescinds an obsolete and outdated procedural regulatory framework. In the unlikely event any monies would be appropriated to the UDAG Program in the future, the applicant would follow HUD's regulations at 24 CFR Part 58 and the Section 106 regulations for the purpose of compliance with section 106 of the NHPA. The Proposed Action does not change the federal agencies' obligations to meet the statutory requirements of the NHPA or NEPA for undertakings proposed to be funded by the UDAG Program. Major federal agency actions subject to the Section 106 process as "undertakings" would also be subject to the NEPA process, either collectively or case-by-case.

Extraordinary Circumstance (e): Have a direct relationship to other actions that implicate potentially significant environmental effects.

The Proposed Action would not have a direct relationship to other actions that implicate potentially significant environmental effects. The Proposed Action rescinds an obsolete and outdated procedural regulatory framework. In the unlikely event any monies would be appropriated to the UDAG Program in the future, the applicant would follow HUD's regulations at 24 CFR Part 58 and the Section 106 regulations for the purposes of compliance with section 106 of the NHPA. The Proposed Action does not change the federal agencies' obligations to meet the statutory requirements of the NHPA or NEPA for undertakings proposed to be funded by the UDAG Program. Major federal agency actions subject to the Section 106 process as "undertakings" would also be subject to the NEPA process, either collectively or case-by-case.

Extraordinary Circumstance (f): Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

The Proposed Action would not have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places (National Register). The Proposed Action rescinds an obsolete and outdated procedural regulatory framework. In the unlikely event any monies would be appropriated to the UDAG Program in the future, the applicant would follow HUD's regulations at 24 CFR Part 58 and the Section 106 regulations for the purposes of compliance with section 106 of the NHPA. While undertakings proposed to be funded by the UDAG Program may have significant impacts on properties listed, or eligible for listing, on the National Register, the HUD's regulations at 24 CFR Part 58 and the Section 106 regulations themselves do not result in such effects on the human environment. The Proposed Action does not change the federal agencies' obligations to meet the statutory requirements of the NHPA or NEPA for undertakings proposed to be funded by the UDAG Program. Major federal agency actions subject to the Section 106 process as "undertakings" would also be subject to the NEPA process, either collectively or case-by-case.

Extraordinary Circumstance (h): Significantly limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.

The Proposed Action would not significantly limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites. The Proposed Action rescinds an obsolete and outdated procedural regulatory framework. In the unlikely event any monies would be appropriated to the UDAG Program in the future, the applicant would follow HUD's regulations at 24 CFR Part 58 and the Section 106 regulations for the purposes of compliance with section 106 of the NHPA. While undertakings proposed to be funded by the UDAG Program may limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites, the HUD's regulations at 24 CFR Part 58 and the Section 106 regulations themselves do not result in such effects on the human environment.

The Proposed Action does not change the federal agencies' obligations to meet the statutory requirements of the NHPA or NEPA for undertakings proposed to be funded by the UDAG Program. Major federal agency actions subject to the Section 106 process as "undertakings" would also be subject to the NEPA process, either collectively or case-by-case.