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ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 801

RIN 3010-AA09

Rescission of Historic Preservation Requirements of the Urban Development Action Grant Program

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) is proposing to rescind its regulations, Historic Preservation Requirements of the Urban Development Action Grant Program, from the Code of Federal Regulations (CFR).

DATES: Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) number and title, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: kfanizzo@achp.gov.
- Mail: Advisory Council on Historic Preservation, 401 F Street, NW, Suite 308, Washington, DC 20001.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Kelly Fanizzo, General Counsel,

Advisory Council on Historic Preservation, (202) 517-0193, kfanizzo@achp.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The ACHP is an independent federal agency that promotes the preservation of America's historic places and advises the President and Congress on national historic preservation policy (see 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. Pursuant to 54 U.S.C. 304108(a), the ACHP "may promulgate regulations as it considers necessary to govern the implementation of section 306108 of this title in its entirety." The ACHP has promulgated regulations for implementing Section 106 of the NHPA at 36 CFR Part 800.

The Housing and Community Development Act (HCDA) of 1980, 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 306108 of Title 54, 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 provide the Section 106 review process for undertakings proposed to be funded by the Department of Housing and Urban Development's (HUD's) Urban Development Action Grant (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 expedited process in Part 801 includes some of the same steps as the standard Section 106 review process (as that process was set forth in Part 800 in 1981; see 44 FR 6072, Jan. 30, 1979), albeit with an applicant-led process, different timelines, and certain activities presumed to have no adverse effect to historic properties. The Part 801 process essentially functions similarly to a program alternative developed pursuant to 36 CFR 800.14.

II. Current Status of the UDAG Program

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 Part 801 regulations.

III. Reviewing the Regulations

In accordance with the President's direction and the general policy set forth in Executive Order (E.O.) 14192, "Unleashing Prosperity through Deregulation" (90 FR 9065, January 31, 2025), the ACHP reviewed Part 801 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 Part 801 as it is obsolete and no longer needed.

The Section 106 Part 800 regulations that formed the basis for Part 801 are the version that went into effect in 1979 (see 44 FR 6072). Since then, the ACHP has revised the Part 800 regulations multiple times; the most recent rulemaking for Part 800 was final in 2004 (see 69 FR 40544, July 6, 2004). Corresponding revisions to the process and citations in Part 801 have not occurred. Accordingly, the Part 801 regulations refer to outdated and non-existing portions of Part 800 (e.g., role of the ACHP Executive Director in objecting to a finding of no adverse effect and drafting a Memorandum of Agreement). The Part 801 regulations also include no role for or consultation with Indian Tribes.

The ACHP met the statutory requirement in 42 U.S.C. 5320(c) in promulgating Part 801 and continues to comply with the statutory directive to "prescribe regulations providing for expeditious action by the Council in making its comments" via Part 800. Rescinding Part 801 would mean that, 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 36 CFR Part 800 for purposes of Section 106 compliance. The current version of Part 800, including the possibility of pursuing program alternatives to tailor the review process, would stand in place of Part 801 in meeting the terms of the statute. Part 800 provides for the timely involvement of the ACHP as appropriate, the participation of the State Historic Preservation Officer, opportunities for public participation, and steps to identify historic properties, assess effects, and resolve adverse effects. Therefore, to eliminate obsolete and outdated regulations, the ACHP proposes to rescind 36 CFR Part 801.

IV. Regulatory Compliance Analysis

A. E.O. 12866, "Regulatory Planning and Review"

E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distribution of impacts; and equity). The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) has determined that this rulemaking is not significant.

B. Congressional Review Act (5 U.S.C. 801 *et seq.*)

OMB OIRA has determined that this rulemaking, if finalized, does not meet the criteria set forth in 5 U.S.C. 804(2) under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).

C. Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

The rule does not contain any information collection requirements that require the approval of the OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35).

D. Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The ACHP has determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if finalized, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require the ACHP to prepare a regulatory flexibility analysis.

E. Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

F. E.O. 13132, “Federalism”

The ACHP has determined that this action does not contain policies with federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This action contains no Federal mandates for State and

local Governments and does not impose any enforceable duties on State and local Governments.

G. E.O. 13175, “Consultation and Coordination with Indian Tribal Governments”

E.O. 13175 establishes certain requirements that an agency must meet when it proposes rulemaking that imposes substantial direct compliance costs on one or more Indian Tribes, preempts Tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule will not have a substantial effect on Indian Tribal Governments.

List of Subjects in 36 CFR Part 801

Grant programs-housing and community development, Historic preservation, Reporting and recordkeeping requirements, Urban renewal.

PART 801—[REMOVED AND RESERVED]

For the reasons stated in the preamble and under the authority of 54 U.S.C. 304108(a) and 42 U.S.C. 5320(c) , the Advisory Council on Historic Preservation proposes to remove and reserve Part 801 in title 36 of the Code of Federal Regulations.

Travis Voyles,

Vice Chairman, Advisory Council on Historic Preservation

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