**U.S. DEPARTMENT OF VETERANS AFFAIRS**

**STATE VETERANS HOME CONSTRUCTION GRANT PROGRAM**

**NATIONAL HISTORIC PRESERVATION ACT ALTERNATIVE PROCEDURES**

**WHITE PAPER**

The U.S. Department of Veterans Affairs (VA) requests the Advisory Council on Historic Preservation (ACHP) participate in the development of a Nationwide Programmatic Agreement (NPA) for the [State Home Construction Grant Program](https://www.va.gov/geriatrics/pages/State_Veterans_Home_Program_Construction.asp) (SHCGP). A NPA would contain specific provisions for dealing with historic properties in emergency situations (emergency procedures), which the ACHP recommended that VA develop during the COVID-19 emergency. Additionally, VA has identified a need for Section 106 guidance to support applicants who are responsible for initiating consultation. A NPA would outline a predictable Section 106 process during healthcare crises while also clarifying regular compliance procedures, providing a comprehensive and streamlined procedural roadmap for applicants.

**State Home Construction Grant Program Background**

The SHCGP is a partnership between VA and state veterans affairs agencies (applicants) to construct, renovate, or upgrade state-owned and operated nursing homes, domiciliaries, and/or adult day health care facilities (State Veterans Homes [SVHs]). Currently, there are 162 operating SVHs across the U.S., 20 of which are eligible for or listed on the National Register of Historic Places (NRHP). For a SHCGP grant, VA may reimburse applicants up to 65% of the cost of a project, pursuant to [38 CFR § 59](https://www.ecfr.gov/current/title-38/chapter-I/part-59?toc=1).80(a).

Applicants must complete an application to receive grant funds (Figure 1). Traditionally, an applicant prepares an application to include preliminary designs to secure funding. This pre-phase has little to no VA involvement. The applicant then submits the package to VA for consideration. Once VA has approved the justification and determined the applicant eligible under a nationwide metric of need for this type of healthcare, the application is advanced for regulatory review, including Section 106. This phase may take several years to secure appropriate funding and complete compliance. In 2019, VA issued a program-wide authorization for applicants to initiate Section 106 consultation on behalf of VA, pursuant 36 CFR § 800.2(c)(4) as one way to expedite the process. Once the second phase of the application has been approved, the applicant completes the project and submits documentation to VA.

A diagram of a process

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During the COVID-19 pandemic, Congress authorized additional funds to the SHCGP through the  [Coronavirus Aid, Relief, and Economic Security Act](https://news.va.gov/press-room/va-allocates-1b-to-aid-state-veterans-homes-amid-covid-19-pandemic/). To support applicants, VA undertook expedited application reviews of proposals specifically designed to mitigate the risk of COVID-19. VA therefore submitted all applications to State Historic Preservation Officers (SHPO) and other parties to Section 106 consultations pursuant the provisions for emergency situations at 36 CFR § 800.12(b)(2). Some states saw as many eight expedited consultation requests in response to COVID[[1]](#footnote-1). Given the number of emergency review requests, the ACHP recommended VA to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property, pursuant to 36 CFR § 800.12.

**Section 106 Challenges**

After a review of the Section 106 compliance efforts during the COVID-19 emergency, VA concurs with the ACHP recommendation that emergency procedures need to be developed for the SHCGP. Having emergency procedures in place is consistent with the President’s [National COVID-19 Preparedness Plan](https://www.whitehouse.gov/covidplan/); the procedures would be helpful in responding to natural disasters as well.

In addition, VA has observed that many applicants need guidance in the pre-application stage to develop plans consistent with historic preservation practices and further along in the application process for Section 106 compliance. As project budgets are often set years in advance and must go through state allocation prior to reaching Section 106 compliance, it would be advantageous for historic preservation considerations to be established earlier in the process to reduce the need for costly design modifications later. Additionally, applicants often do not have staff who are knowledgeable about Section 106. This has led to a misunderstanding of roles and responsibilities, issues with identification efforts, and misalignment of project timelines.

**Justification for NPA**

ACHP recommended pursuing a programmatic agreement that contains emergency procedures. This document could also provide clarity about historic preservation practices and the Section 106 process for nonfederal applicants who lack experience with NHPA.

Currently, VA’s only sanction to mandate compliance by SVHs is to withhold funds, a practice VA considers severe. Providing information to applicants in advance of design and clear procedures in case of emergency is preferable to denying funds.

A NPA would allow for the unanimous adoption of both emergency procedures and standard compliance provisions which is helpful both to VA and applicants as the unpredictability of Congressional allocations makes permanent VA staffing of this oversight program particularly challenging.

SVHs generally require similar actions to care for Veterans, resulting in projects with predictable effects on historic properties, which would facilitate the development and adoption of an NPA.

Consulting at a national scale allows VA to focus effort on one agreement document that could be utilized by all applicants, SHPOs/Tribal Historic Preservation Officers (THPO), and consulting parties. The NPA would serve as a singular reference point for the SHCGP that provides guidance in all funding situations.

**Emergency Procedures NPA**

Like the 2020-2021 FEMA “[Emergency Situation Procedures](chrome-extension://efaihttps:/www.achp.gov/sites/default/files/2020-05/36%20CFR%20800%2012a%20FEMA%20COVID19%20Agreement%205%2013%2020%20final%20signed.pdf),” the SHCGP NPA would assign the federal agency to the role of grantor, rather than as a project developer or designer, and would anticipate that most projects would have no potential to affect historic properties. The SHCGP NPA would delineate clear roles for VA and applicants; through consultation, establish a list of programmatic allowances with limited or no potential to adversely affect historic properties that can be applied during a standard Section 106 process and in times of emergency; and define “standard” and “emergency” processes for Section 106 compliance, including response times.

VA intends to include the following commitments in the SHCGP NPA:

* An annual distribution to SVHs of historic preservation management practices to avoid and/or minimize adverse effects to historic properties to help applicants design projects,
* An annual report of declared emergencies and related undertakings for public review,
* An annual report of undertakings subject to standard reviews and related determinations of effect for public review.

**Next Steps**

VA requests the opportunity to discuss the development of a NPA for the SHCGP that incorporates emergency procedures as well as clarifies the Section 106 process for nonfederal applicants.

1. Top Five States Receiving SVHCGP Funding During COVID: New York – 8 requests addressing issues at 4 SVHs; Missouri – 1 request addressing issues at 7 SVHs; Massachusetts – 3 requests addressing issues at 3 SVHs; Idaho – 3 addressing issues at 3 SVHs; Kentucky – 1 request addressing issues at 4 SVHs; Illinois – 1 request addressing issues at 4 SVHs. [↑](#footnote-ref-1)