

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

FEB 9 1988

Memorandum

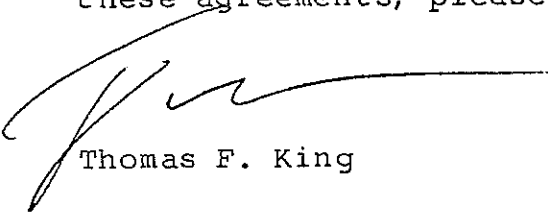
To: State Historic Preservation Officers

From: Director, Office of Cultural Resource Preservation

Subject: Programmatic Agreements with HUD and Department of Education.

Attached for your information and use are copies of two Programmatic Agreements recently executed by the Council and the National Conference of SHPOs. One is with the Department of Housing and Urban Development, and covers certain transitional housing programs whose "fast-track" nature has complicated review under Section 106. The other is with the Department of Education, and addresses that Department's Library Services Program.

If you or any members of your staff have any questions about these agreements, please feel free to call me at (202) 786-0505.



Thomas F. King

Enclosures (2)

PROGRAMMATIC AGREEMENT
AMONG THE
UNITED STATES DEPARTMENT OF EDUCATION,
THE NATIONAL CONFERENCE OF STATE HISTORIC
PRESERVATION OFFICERS,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING PUBLIC LIBRARY CONSTRUCTION GRANTS

WHEREAS the United States Department of Education (ED) through its Division of Library Programs, is responsible for administering the Library Services and Construction Act, as amended (20 U.S.C. 351 et seq.) (LSCA), and awarding grants to States for public library construction pursuant to Title II of the LSCA, and

WHEREAS ED has determined that grants provided for library construction, including grants for acquiring, expanding, remodeling, or altering existing buildings, may have effects on properties included in or eligible for inclusion in the National Register of Historic Places (historic properties), and accordingly has requested the comments of the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and

WHEREAS because the LSCA Title II Public Library Construction Program is a State-administered program, responsibility for collection of information on the effects of proposed construction lies with the State Library Agencies (SLAs) and the local libraries which are the recipients and subrecipients of grants (34 CFR 75.602(a)), and

WHEREAS, pursuant to 34 CFR Secs. 75.602(a) and 76.600(c) of the Department of Education General Administrative Regulations, in deciding whether to make a Title II grant to an SLA, ED considers the information submitted by the State Librarian pursuant to 34 CFR Sec. 76.600(c), and ascertains that the comments of the Council, if any, have been considered by the State Librarian in order to take into account the effects of the proposed action on historic properties:

NOW, THEREFORE, ED, the National Conference of State Historic Preservation Officers, and the Council have conferred in accordance with 36 CFR Sec. 800.13 of the Council's regulations, and agree that Title II of the LSCA will be administered in accordance with the following stipulations.

STIPULATIONS

1. Guidance to State Library Agencies

In its issuance of annual Program Memoranda to the SLAs, ED will remind eligible SLAs of the applicability of, and the importance of, compliance with 34 CFR Secs. 75.602 and 76.600, and will advise eligible SLAs on how to obtain pertinent guidance material from the Council, including but not limited to the Council's regulations and the Standards and Guidelines for Evaluation (49 FR 44723-44726 and subsequent editions) issued by the Secretary of the Interior.

2. Identification of Historic Properties

A. In accordance with 34 CFR Sec. 75.602, ED will advise each State Librarian to consult with the pertinent State Historic Preservation Officer (SHPO) and to determine, in accordance with the criteria established by the Secretary of the Interior (See 36 CFR Sec. 60.4 for these criteria) whether the library to be affected by a project for which Title II assistance is sought, or any other property to be affected by such a project, is included in or may be eligible for inclusion in the National Register of Historic Places. ED will advise each State Librarian that such determinations should be undertaken early in the process of planning each project, and be completed before the application for Title II assistance is submitted to ED.

B. In its issuance of Program Memoranda to the SLAs, ED will direct SLAs to notify ED if the State Librarian and SHPO are unable to agree on the eligibility or ineligibility of a property to be affected by a project for which Title II assistance is sought. Upon receipt of such notification, ED will request the relevant documentation from the SLA and will obtain a final determination of eligibility from the Secretary of the Interior.

3. Identification and Alleviation of Adverse Effects

A. In its issuance of Program Memoranda to the SLAs, ED will direct State Librarians to the regulations of the Council (36 CFR Part 800) as cross-referenced at 34 CFR Sec. 75.602, and advise the State Librarians that these are the regulations to be applied in determining the effect of each project on historic properties and in determining whether the effect is adverse, as well as for the purpose of developing measures to avoid or mitigate any adverse effects, in consultation with the pertinent SHPO and, if necessary, with the Council. In accordance with 34 CFR Sec. 76.600(c), ED will direct State Librarians to submit the information regarding adverse effects on historic properties to ED as part of their Title II grant applications.

B. In its issuance of Program Memoranda to the SLAs, ED will direct SLAs to notify ED if the State Librarian, the SHPO, and the Council are unable to agree on measures to avoid or mitigate adverse effects on a historic property. Upon receipt of such notification, ED will notify the SHPO and the Council that consultation has ended without agreement being reached, and will request final Council comments. ED will transmit any final Council comments to the State, and ascertain that the State has fully considered such comments before ED makes a final decision on the subject Title II grant.

4. Submission of Documentation

ED will require each State Librarian to submit documentation of compliance with the applicable regulatory requirements discussed in the above stipulations with its application for a Title II grant, and ED will consider this documentation in making its decision on the grant award.

5. Categorical "No Adverse Effect" Determination

Activities carried out with LSCA Title II funds that are conducted in a manner that preserves the historical and architectural value of affected historic properties through conformance with the Recommended Approaches in the Secretary of the Interior's **Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings** (Rehabilitation Standards) will be considered by the Council to have "no adverse effect" on historic properties pursuant to 36 CFR Sec. 800.9(c)(2).

6. Failure to comply

In the event that ED does not act in accordance with the terms of this Programmatic Agreement, ED will request the Council's comments on the effects of construction on historic properties on a project-by-project basis, as provided in 36 CFR Sec. 800.13(g). ED will not take any action, knowingly sanction any action on the part of State Librarians seeking or administering construction grants under LSCA Title II, nor make any irreversible commitment, that would result in adverse effects on historic properties, until the terms of this agreement have been complied with.

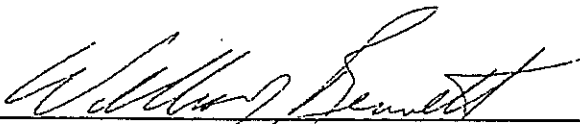
7. Council Comment

Execution of this agreement evidences that the Council has been afforded a reasonable opportunity to comment with regard to the probable effects of LSCA Title II grant awards on historic properties. As long as ED proceeds to review State grant applications and issue LSCA Title II grant awards for library

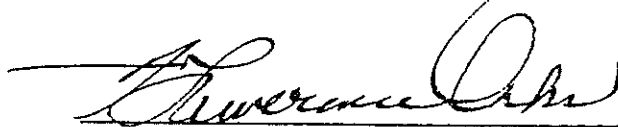
construction in a manner consistent with applicable sections of this agreement, ED will have met the responsibilities imposed upon it by Section 106 of the National Historic Preservation Act.

Executed:

For the Department of Education:

 JAN 4 1988
Secretary of Education (date)

For the National Conference of
State Historic Preservation Officers:

 1/28/88
President (date)

For the Advisory Council on Historic Preservation:

 1/14/88
Vice Chairman (date)