

not delegate its responsibility for compliance with grant assistance terms and conditions.

[49 FR 14899, Apr. 13, 1984, as amended at 50 FR 35224, Aug. 30, 1985]

§ 61.5 Approved local programs.

(a) All approved State programs shall provide a mechanism for certifying local governments to participate in the National program.

(b) All approved State historic preservation programs shall develop, for approval by the Secretary, procedures for the certification of local governments. Procedures also shall be defined for removal of CLG status for cause. States shall indicate specific requirements for certification, specific responsibilities that will be delegated to certified local governments (CLGs), and the schedule for the certification process. The requirements outlined in paragraph (c) of this section must be incorporated into the State's process for local certification that is submitted to the Secretary for approval. Beyond the minimum delegations of authority that must be made to all CLGs, States may make additional delegations of responsibility to individual CLGs. These delegations may not include the State's overall responsibility derived from the *National Historic Preservation Act, as amended*, or where specified by law or regulation (e.g., the operations of the Review Board and nominations to the National Register). Regulations and standards governing performance of State functions (e.g., rules relating to conflict of interest) are to be enforced by States when the functions are delegated.

(c) States shall require local governments to satisfy the following minimum requirements:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State shall define what constitutes appropriate legislation so long as it is consistent with the purposes of the Act. Where State enabling legislation or home rule authority permits local historic preservation ordinances, a State may require adoption of an ordinance and indicate specific provisions that must be included in the ordinance.

(2) Establish by State or local law an adequate and qualified historic preservation review commission (Commission) composed of professional and lay members. All Commission members shall have a demonstrated interest, competence, or knowledge in historic preservation. To the extent available in the community, the local government shall appoint professional members from the disciplines of architecture, history, architectural history, planning, archeology, or other historic preservation related disciplines, such as urban planning, American Studies, American Civilization, Cultural Geography, or Cultural Anthropology.

(i) States may specify the minimum number and type of professional members that the local government shall appoint to the Commission and indicate how additional expertise can be obtained. Requirements set by the State for local Commissions shall not be more stringent or comprehensive than its requirements for the State Review Board. Local governments may be certified without the minimum number or types of disciplines if they can demonstrate that they have made a reasonable effort to fill those positions. When a discipline is not represented in the Commission membership, the Commission shall be required to seek expertise in this area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This can be accomplished through consulting (e.g., universities, private preservation organizations, or regional planning commissions) or by other means that the State determines appropriate.

(ii) States shall specify the role and responsibilities of the local government's Commission in local preservation decisions. These responsibilities must be complementary to and carried out in coordination with those of the State as outlined in § 61.4(b) of these rules.

(iii) States shall make available orientation materials and training to all local Commissions. The orientation and training shall be designed to provide a working knowledge of the roles and operations of Federal, State, and local preservation programs.

(3) Maintain a system for the survey and inventory of historic properties. States shall formulate guidelines for local survey and inventory systems which ensure that such systems and the data they produce can be readily integrated into statewide comprehensive historic preservation planning and other appropriate planning processes. Local government survey and inventory efforts shall be coordinated with and complementary to those of the State. The State also shall require that local survey data be in a format that is consistent with the planning processes noted above.

(4) Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register. States shall require adequate public participation in relation to all responsibilities that are delegated to CLGs. States shall outline specific mechanisms to ensure adequate public participation in local preservation programs. These may include requirements for open meetings, published minutes, and the publication of procedures by which assessments of potential National Register nominations, design review, etc. will be carried out as well as compliance with appropriate regulations. National Register notification requirements may be found in 36 CFR part 60.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. States shall monitor and evaluate the performance of CLGs. States shall outline procedures and standards by which the performance of CLGs in program operation and administration will be evaluated. Written records shall be maintained for all State evaluations of CLGs so that results are available for the Secretary's performance evaluations of States. If a State evaluation of a CLG's performance indicates that, in the State's judgment, such performance is inadequate, the State shall suggest ways to improve performance. If, after a period of time stipulated by the State, the State determines that there has not been sufficient improvement, it may recommend decertification of the local government to the Secretary for his concurrence. This recommendation shall cite the specific reasons why de-

certification is proposed. If the Secretary does not object within 30 working days of receipt, the decertification shall be considered approved by the Secretary. Appropriately documented State recommendations for decertification ordinarily will be accepted by the Secretary. When a local government is decertified, the State shall conduct financial assistance closeout procedures as specified in *The National Register Programs Manual*.

(d) Effects of certification:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The State may delegate to a CLG any of the responsibilities of the SHPO and the State Review Board in processing National Register nominations as specified in 36 CFR part 60, except for the authority to review and nominate properties directly to the National Register. CLGs may make nominations directly to the National Park Service only when the State does not have an approved program. States shall ensure that CLG performance of these responsibilities is consistent and coordinated with the identification, evaluation, and preservation priorities of the comprehensive State historic preservation planning process.

(2) Eligibility to apply for a portion of the State's annual HPF grant. At least 10 percent of the State's annual HPF apportionment shall be set aside for transfer to CLGs. All CLGs in the State shall be eligible to receive funds from the designated CLG share of the State's annual HPF grant; no government, however, is automatically entitled to receive funds. Local governments that receive these monies shall be considered subgrantees of the State.

(3) The requirements set forth in paragraph (c) of this section may be amplified by the Secretary and/or the States as necessary to reflect particular State and or local government program concerns.

(e) States shall submit, within 180 days of publication of the final rule for local certification and funds transfer, their proposed local certification processes to the Secretary for review and approval. In developing the submission,

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the State shall consult with local governments, local historic preservation commissions, and all other parties likely to be interested in the CLG process; consider local preservation needs and capabilities; and invite comments on the proposed process from local governments, commissions, and parties in the State likely to be interested. The State's proposal shall review the results of this consultation process. States shall keep a record of their consultation processes and make them available to the Secretary upon request.

(f) States shall establish procedures to ensure that all parties likely to be interested are notified and provide a 60-day period for public comment on the proposal before it is submitted to the Secretary. Records of all comments received during the commenting period shall be kept by the State and shall be made available to the Secretary upon request. The State should be able to respond to all suggestions that it does not adopt.

(g) The Secretary shall review State proposals and within 90 days of receipt issue an approval or disapproval. This review will be based on compliance with all requirements set forth in this section.

(h) If a State proposal is disapproved, the Secretary will recommend changes that would make the proposed process acceptable and, in consultation with the State, will designate a date by which the revision must be submitted. Final approval by the Secretary must be achieved by October 1, 1985, or States will be ineligible to continue their approved State program status beyond that time.

(i) A State may begin certification of local governments as soon as the State's proposed certification process is approved by the Secretary. When a local government certification request has been approved in accordance with the State's approved certification process, the State shall prepare a written certification agreement that lists the specific responsibilities of the local government when certified. The State shall forward to the Secretary a copy of the approved request and the certification agreement. If the Secretary does not take exception to the request with-

in 15 working days of receipt, the local government shall be regarded as certified by the Secretary.

(j) A State may agree with a CLG to change the delegation of responsibilities by amending the certification agreement. The State must submit the amendment to the National Park Service for review to ensure that it is in conformance with the approved State process, this rule, and the Act. If the National Park Service does not object within 15 working days, the amendment shall be considered approved.

(k) States may amend their approved State certification and funds transfer processes. In developing the amendment, the State shall follow to the extent appropriate the same consultation procedures outlined in §61.5(e)/(f) and §61.7(g)(h). The State shall submit the proposed amendment to the National Park Service. The National Park Service shall review the proposed amendment for conformance with this rule and the Act, and, within 45 working days of receipt, issue an approval or disapproval notice.

(l) State administration of its local certification process shall be reviewed by the Secretary during performance evaluations and audits of State programs as required by section 101(b)(2) of the *National Historic Preservation Act, as amended*. Local governments may appeal to the Secretary State decisions to deny certification or to decertify. Appealed actions shall be examined for conformance with approved State procedures for CLGs, these regulations, and the Act.

(m) The District of Columbia shall be exempted from the requirements of section 61.5 because there are no subordinated local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States and hence cannot satisfy the requirements for local certification, it may apply to the Secretary for exemption from the requirements of §61.5.

(n) *Procedures for direct certification by the Secretary where there is no approved State program.* (1) When there is no approved State program, local governments wishing to be certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (c) of this section.

(3) The Secretary shall review certification applications under this subsection and take action within 90 days of receipt.

(4) To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved historic preservation program. Therefore, if a now disapproved State program had an approved local government certification process and had already certified local governments, the Secretary will consider the process in his review of any applications for local government certification from within the State.

[49 FR 14899, Apr. 13, 1984, as amended at 50 FR 35225, Aug. 30, 1985]

§61.6 Grants to approved State programs.

(a) All States with approved State historic preservation programs shall be eligible for matching grants-in-aid from the Historic Preservation Fund for carrying out the responsibilities of the SHPO including preparing comprehensive statewide historic surveys and plans, and for preserving and protecting properties listed in the National Register of Historic Places.

(b) Administration of HPF matching grants-in-aid shall be in accordance with *The National Register Programs Manual*. States receiving HPF grants shall adhere to the procedures and guidelines in *The National Register Programs Manual* and its supplements.

(c) States are responsible, through financial audit, for the proper accounting of HPF grants in accordance with OMB Circular A-102, Attachment P, "Audit Requirements," and *The National Register Programs Manual*.

(d) States are responsible, through the program performance evaluation requirements of §61.4(c), for administration of HPF grants in accordance with the requirements of this section.

§61.7 Transfer of grants to Certified Local Governments.

(a) At least 10 percent of each State's annual HPF allocation shall be des-

ignated for transfer by States to CLGs as subgrants. States may transfer more than 10 percent unless otherwise prohibited. Any year in which the annual HPF State grant appropriation exceeds \$65,000,000, one half of the excess shall also be transferred to CLGs according to procedures to be provided by the Secretary.

(b) All CLGs shall be eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. The State is not required to award funds to all governments that are eligible to receive funds.

(c) CLGs receiving HPF grants from the CLG share shall be considered subgrantees of the State. Transferred monies shall not be applied as matching share for any other Federal grant.

(d) States shall require all local governments receiving a portion of the local share of the State's annual HPF grant to satisfy the following minimum requirements:

(1) Maintain adequate financial management systems. Local financial management systems shall be in accordance with the standards specified in OMB Circular A-102, Attachment G, "Standards for Grantee Financial Management Systems." Local financial management systems shall be auditable in accordance with the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*. States shall be responsible, through financial audit, for the proper accounting of HPF CLG share monies in accordance with OMB Circular A-102, Attachment P, "Audit Requirements." The periodic State evaluations of CLG performance shall include an assessment of the fiscal management of HPF monies.

(2) Adhere to all requirements of *The National Register Programs Manual*. The *National Register Programs Manual* sets forth administrative procedures and policies for HPF grants awarded by the Secretary. It serves as a basic reference for the State management of HPF grants. Indirect costs may be charged as part of the CLG grant only if the CLG subgrantee meets the requirements of the Manual. Unless the