



*Preserving America's Heritage*

## **Frequently Asked Questions About Lead Federal Agencies in Section 106 Review June 1, 2018**

### **Introduction**

When an undertaking subject to review under Section 106<sup>1</sup> of the National Historic Preservation Act is carried out, licensed, permitted, approved, or assisted by more than one federal agency, the Section 106 regulations allow for some or all of those agencies to designate one lead federal agency. 36 C.F.R. § 800.2(a)(2). Such an agency acts on their behalf and collectively fulfills their Section 106 responsibilities. Alternatively, each federal agency can choose to remain individually responsible for compliance with Section 106 and conduct its own Section 106 review for the undertaking without designating a lead federal agency to act on its behalf.

Significant advantages to designating a single lead federal agency for Section 106 review can include increased efficiency in coordinating and communicating with consulting parties, less duplicative analyses and paperwork, and more clarity and consistency in reaching findings and determinations. When the lead federal agency has extensive Section 106 experience, this can also help to move the process forward for those agencies with less familiarity.

Coordinated reviews under the direction of a lead federal agency are consistent with efforts to improve the federal permitting process, particularly for infrastructure development. The FAST-41 process (42 U.S.C. 4370m-2), created by specific provisions in Title 41 of the Fixing America's Surface Transportation (FAST) Act of 2015, offers opportunities to improve the federal coordination of environmental reviews for certain infrastructure projects in part by directing a lead agency to coordinate plans for completing all necessary environmental reviews and authorizations with other involved agencies. Similarly, EO 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure," directs that a major infrastructure project will have a lead federal agency to conduct it through federal environmental reviews and authorizations toward a unified decision. The Advisory Council on Historic Preservation (ACHP) encourages federal agencies to designate a lead agency for Section 106 reviews for both FAST-41 covered projects and EO 13807 major infrastructure projects to support review coordination and efficiency.

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<sup>1</sup> Section 106 of the National Historic Preservation Act (NHPA) [54 U.S.C. §306108] requires federal agencies to "take into account" the effects of their undertakings on historic properties. The regulations implementing Section 106, "Protection of Historic Properties" (36 CFR Part 800) set forth this review process. The federal agency consults with the State Historic Preservation Officer, the Tribal Historic Preservation Officer, Indian tribes, Native Hawaiian organizations, local governments, applicants, and others as appropriate to determine if the proposed undertaking will have an effect on a property listed on or eligible for listing on the National Register of Historic Places, and if so, what measures might be appropriate to avoid, minimize, or mitigate any adverse effects to it.

The ACHP has prepared these Frequently Asked Questions (FAQs) to assist federal agency officials and those they regularly consult with—State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Indian tribes, and other historic preservation partners—to address Section 106 responsibilities in these situations. These FAQs describe the coordination and timing of compliance actions in Section 106 review; clarify the roles and responsibilities of the (lead and non-lead) federal agencies; and discuss the factors that may give rise to one agency taking the lead in Section 106 review.

## **Roles and Responsibilities**

### **Q: Under what circumstances should agencies consider designating a lead federal agency for Section 106 review?**

**A:** Having one federal agency handle Section 106 responsibilities can be especially beneficial when, for example:

- a federal agency must obtain approval by another federal agency (e.g., highway and bridge improvement projects requiring a permit from the Corps of Engineers or the Coast Guard);
- one agency's project crosses or impacts another agency's property (e.g., Bonneville Power Administration transmission lines crossing Forest Service lands);
- time is of the essence in natural and manmade disaster response and recovery (e.g., Federal Emergency Management Administration and the Corps of Engineers);
- multiple federal agencies with varying responsibilities in approving or assisting an undertaking conducting independent Section 106 reviews would impose significant workloads, and confusion, on consulting parties as well as a duplication of efforts (e.g., many large-scale, complex infrastructure projects).

### **Q: How should agencies determine which agency should serve as lead when multiple federal agencies are responsible for complying with Section 106 for an undertaking?**

**A:** The decision as to which federal agency should serve as lead is up to the agencies involved. In general, the lead federal agency tends to be the agency with the greater degree of involvement in the undertaking. An agency may have a greater degree of involvement in an undertaking when, for instance, it manages the land where most of the undertaking, or its effects, take place; or provides a significant amount of financial assistance for the undertaking; or has broader control over how the undertaking may be designed or located. In some cases, it may make more sense to have the federal agency with greater Section 106 experience and expertise serve as lead agency, since such an agency should be able to conduct the review work with more efficiency and reliable quality.

### **Q: What happens if there is a dispute regarding which federal agency should be designated as lead federal agency for a Section 106 review?**

**A:** While the ultimate decision as to lead federal agency status rests with the federal agencies involved in the undertaking, the ACHP is available to provide guidance and assistance on this or any other issue. If agreement on designation of a lead federal agency cannot be reached, then each agency remains individually responsible for complying with Section 106 for the undertaking. No agency can be forced to take over as lead or accept another agency as lead agency for it.

**Q: Is a non-lead federal agency relieved of Section 106 responsibilities for an undertaking when another federal agency is designated as lead federal agency?**

**A:** No. If a federal agency has agreed to designate another agency as the lead for purposes of Section 106 review, it is allowing that agency to *act on its behalf*; it is not *relieved of* Section 106 responsibilities for the undertaking. That is, if the lead agency correctly complies with Section 106, the non-lead agency is also in compliance with Section 106. By the same token, if the lead agency is in non-compliance with Section 106, so is the agency that designated it as lead.

The lead agency is fulfilling a collective responsibility to comply with Section 106 for the undertaking. The result of the lead agency's Section 106 review is evidence that it and the non-lead agencies have (or have not) complied with Section 106 for the undertaking.

**Q: Does the designation of a federal agency as lead for the project's review under the National Environmental Policy Act (NEPA) automatically mean that agency is also lead agency for Section 106?**

**A:** No. NEPA and NHPA are separate laws with their own requirements, and a lead agency for Section 106 is designated independently of any designation of a NEPA lead. However, it may make practical sense and offer the greatest review efficiency for the agency leading a NEPA review to be the lead agency for Section 106 as well, particularly if the two review processes will be closely integrated or the lead agency intends to follow the substitution process set forth in 36 CFR § 800.8(c). Documentation of NEPA lead agency status can also convey decisions about Section 106 lead agency designation so long as the agreement or other documentation clearly and explicitly states that the NEPA lead agency will serve as lead for Section 106 review purposes.

**Q: How does the designation of a lead agency for the implementation of "One Federal Decision" (OFD) for major infrastructure projects pursuant to EO 13807 influence whether a lead agency is designated for Section 106?**

**A:** While there is no specific requirement that the NEPA lead agency for OFD also become the lead agency for Section 106 review, this arrangement may make practical sense and offer the greatest advantage in achieving the efficiency goals of EO 13807. Since a NEPA lead agency preparing an Environmental Impact Statement (EIS) for OFD would coordinate various federal environmental reviews and authorizations and identify agency points of contact, it could include NHPA compliance in these efforts. Having the same agency act as lead for OFD and Section 106 could also improve coordination of Section 106 review timeframes within the project's permitting timetable. For other considerations about the integration of NEPA and Section 106 reviews, see the Council on Environmental Quality's and ACHP's [\*NEPA and NHPA: A Handbook for Integrating NEPA and Section 106\*](#).

**Q: If there is a lead agency for an undertaking, are all federal agencies involved in the undertaking required to accept such agency as lead for them?**

**A:** No. As stated above, no agency can be forced to take over as lead or accept another agency as lead agency for it. Some or all federal agencies with a responsibility for an undertaking may elect to designate a lead agency to conduct the Section 106 review. Any agency that chooses not to designate a lead agency, or an agency who wishes not to be the lead agency, remains individually responsible for complying with Section 106 for the undertaking.

**Q: Can a federal agency de-designate a lead federal agency and reassume its own Section 106 responsibilities later in the review process?**

**A:** Yes. If a federal agency decides it no longer wants an agency to continue as lead on its behalf, it must notify that agency and all consulting parties that it is going to be individually responsible for its Section 106 obligations. The agency may make use of the research, studies, findings, and determinations done thus far in the review process but would be responsible for completing its own Section 106 review, including consultation with consulting parties, for the undertaking.

**Designating Lead Federal Agencies**

**Q: How do federal agencies formalize, document, and communicate the designation of a lead federal agency for a Section 106 review?**

**A:** The Section 106 regulations do not provide specific requirements for how agencies should go about designating a lead. Based on its experience working with agencies in this regard, the ACHP recommends that the federal agencies:

- develop a Memorandum of Understanding (MOU) or other written agreement documenting which federal agency is the lead federal agency for Section 106 review for the undertaking. The document should also outline how the agencies intend to coordinate information sharing, including the treatment of any confidential information, and other tasks. This written documentation will help ensure the federal agency official(s) (the individuals who have approval authority for an undertaking and can commit their agency to a course of action) for each agency are aware of and agree with the lead federal agency designation. The ACHP also recommends that any MOU or other agreement created to designate the lead federal agency include provisions for dispute resolution among the agencies to address situations where agencies may disagree on the steps taken to comply with Section 106, such as the level of consultation or outreach efforts. This documentation should become part of the administrative record for the undertaking;
- notify all consulting parties of this lead federal agency arrangement in writing; and
- include in the preamble of the resulting Memorandum of Agreement (MOA) or Programmatic Agreement (PA), if any, a WHEREAS clause documenting the designation of the lead agency and identifying the non-lead federal agencies. As with all MOAs and PAs, the preamble should set forth the nature of any involvement in the undertaking by all agencies, lead and non-lead alike, including what triggers Section 106 responsibilities for them.

**Q: When should a lead federal agency be designated?**

**A:** A lead federal agency should be designated as early as possible in the Section 106 review process. Once an agency determines it has an undertaking with the potential to affect historic properties, it should also determine whether other federal agencies are likely to be responsible for carrying out the undertaking or issuing licenses, permits, approvals, or assistance for it. If so, the agencies should begin communicating about their respective roles and responsibilities and discuss whether a lead federal agency might be designated for the purpose of Section 106 review.

**Q: Do the non-lead federal agencies have to carry out any Section 106 tasks during the Section 106 review?**

**A:** Non-lead federal agencies may have tasks during the Section 106 review process depending on how the agencies have crafted their agreement for the designation of the lead federal agency. For example, non-lead agencies may agree to carry out the work to identify historic properties, host consultation meetings, or provide other administrative support to the lead federal agency. The parties may also agree that non-lead agencies would not participate in the review process. However, the lead federal agency is the one that makes the Section 106 findings and determinations on behalf of the other agencies.

**Q: How should a lead agency involve non-lead agencies during a Section 106 review?**

**A:** Ideally, this would be described in an MOU or other written agreement describing the lead agency arrangement, including agency roles and responsibilities, communication protocols, points of contact, and dispute resolution procedures. As a best practice, the lead agency should keep the non-lead agencies informed of the status of consultation as it does for all consulting parties, and circulate final documents and findings to the non-lead agencies regarding the outcome of the Section 106 review. While the lead agency is responsible for identifying and inviting consulting parties to participate in the Section 106 process, it should consider the advice of non-leads about parties who may have an interest in the effects of the undertaking on historic properties and should be invited to participate. When an undertaking requires the identification of or decisions about effects to historic properties located on federal land or property, and the property-managing agency is not the lead, it is important that the lead agency coordinate closely with the property-managing agency. Eligibility determinations and treatment plans can have longer term implications for the property-managing agency that should be factored into the review process.

**Q: Can the lead federal agency use an applicant or a consultant to initiate Section 106 consultation?**

**A:** Yes. The lead federal agency may use the services of applicants, consultants, or designees to prepare information, analyses, and recommendations under Section 106 in accordance with 36 CFR § 800.2(a)(3). Per 36 CFR § 800.2(c)(4), a federal agency can authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and other consulting parties provided the agency notifies the SHPO/THPO in advance. The lead federal agency remains legally responsible for all required findings and determinations on behalf of the non-lead agencies and must ensure the content of all documents and studies meets applicable standards and guidelines. The lead federal agency also remains responsible for the government-to-government relationship with Indian tribes for purposes of Section 106 review. For more information about authorizing an applicant or consultant to carry out Section 106 tasks, see <http://www.achp.gov/apptoolkit.html#authorization>.

**Q: What happens if a lead federal agency chooses to stop being a lead agency?**

**A:** If a lead federal agency chooses to stop being the lead agency in the Section 106 review for an undertaking, it must notify the non-lead federal agencies involved and all the consulting parties that it will no longer be representing the other federal agencies. This means that the federal agencies must either conduct their own individual Section 106 reviews or designate a new lead federal agency for the undertaking. As stated above, the agencies may make use of the research, studies, findings, and determinations done thus far in the review process.

**Q: What if a non-lead federal agency does not agree with the way the lead agency is carrying out the Section 106 review?**

**A:** Where the agencies have developed an MOU or other agreement describing the lead agency designation and included a dispute resolution clause, the agencies should follow that process to resolve any concerns or disagreements about the review process. If the agencies did not develop such an MOU or include a dispute resolution clause, they should still attempt to resolve any disagreement between them to ensure the Section 106 review is carried out appropriately. The ACHP is available to provide assistance as needed. If the agencies are unable to resolve a disagreement, a non-lead agency may withdraw its designation, and the agencies would then be responsible for individually complying with Section 106 for the undertaking.

**Q: How and when might an agency seek the advice of the ACHP on designating a lead federal agency?**

**A:** An agency may seek the advice of the ACHP at any time in the process. The ACHP's Office of Federal Agency Programs staff contact list is available here:  
<http://www.achp.gov/docs/OFAP%20Agency%20Org%20Chart%202018.pdf>.

## **Section 106 Compliance**

**Q: How is the review process completed when one federal agency assumes the lead for Section 106 compliance?**

**A:** The lead federal agency completes the Section 106 process for the undertaking by following the steps set forth in the Section 106 regulations at 36 CFR § 800.3-6. The lead agency may conclude the review process with a finding of no historic properties affected or no adverse effect, if appropriate. If there is a finding of adverse effect to historic properties, the lead agency will work with the consulting parties to identify measures to avoid, minimize, or mitigate the adverse effect and embody these measures in an MOA or PA (a "project PA"—see the ACHP's online *Guidance on Agreement Documents* at <http://www.achp.gov/agreementdocguidance.html>). The lead federal agency would be a signatory to the MOA or PA. The non-lead federal agencies do not have to sign the MOA or PA, though they should if they have specific roles or responsibilities to fulfill in the implementation of the agreement (see below).

**Q: Are the non-lead federal agencies bound by the findings and determinations of the lead federal agency for compliance with Section 106?**

**A:** Yes. The lead federal agency is acting on the collective behalf of the other non-lead agencies that have designated it. Therefore, any finding or determination that the lead agency makes in the course of the Section 106 review represents their collective federal agency decision in the review process for the undertaking. If a non-lead agency disagrees with the way in which the lead agency is carrying out the Section 106 review, it should attempt to resolve that disagreement with the lead agency or withdraw its designation. For more information, please see the question and answer on this topic above.

**Q: Are non-lead federal agencies required to participate in Section 106 meetings?**

**A:** Only to the extent that an MOU or other agreement designating the lead federal agency specifies their

participation. It is within the discretion of the federal agencies involved to decide how non-lead federal agencies participate in the Section 106 review. Non-lead agency participation could range from active consultation and analysis of alternatives to avoid, minimize, or mitigate adverse effects, to no formal participation at all.

**Q: How should the lead federal agency consult with the consulting parties during a Section 106 review?**

**A:** The lead federal agency should consult with these parties as it normally would in accordance with 36 CFR §§ 800.2 and 800.3-800.6. The lead agency should ensure that information about the nature of the involvement of the non-lead agencies in the undertaking is shared with consulting parties and that any specific issues related to the involvement or actions of the non-lead agencies are addressed in consultation.

**Q: Are there special considerations for the lead agency when consulting with Indian tribes or Native Hawaiian organizations (NHOs)?**

**A:** Yes. Just as in a normal Section 106 proceeding, the lead agency must recognize the government-to-government relationship with federally recognized Indian tribes, and consult with them in a manner respectful of tribal sovereignty. For guidance on consultation with Indian tribes and NHOs in the Section 106 review process, see: <http://www.achp.gov/docs/consultation-indian-tribe-handbook.pdf> and <http://www.achp.gov/Native%20Hawaiian%20Consultation%20Handbook.pdf>. If the lead federal agency has an agreement or protocol with a tribe or tribes that specifies how it will consult or how they will participate in the Section 106 process, that arrangement should be followed.

**Q: Can a tribe or NHO refuse to consult with the lead federal agency?**

**A:** When one federal agency is lead federal agency in a Section 106 review, it is acting collectively on behalf of the other federal agencies, and represents them in government-to-government consultation and in consultation with NHOs. Unless the agencies agree otherwise, the lead agency is the point of contact for Section 106 consultation and should be recognized as such by the consulting parties. An Indian tribe or NHO can always refuse to consult with a particular federal agency at any time, and a non-lead agency could always voluntarily consult, but is not obligated to do so for Section 106 purposes.<sup>2</sup>

**Q: What does the lead federal agency do if a tribe or NHO refuses to consult with it?**

**A:** For undertakings off tribal lands, if a tribe or NHO refuses to consult with the lead federal agency, the lead agency may move forward in the Section 106 review for that undertaking without the participation of the tribe or NHO. For undertakings on tribal lands, the lead federal agency may also move forward in the Section 106 review for that undertaking,<sup>3</sup> except that a Section 106 agreement, including a program alternative such as a PA, to address any adverse effects for the undertaking may not be executed without

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<sup>2</sup> Note that a federal agency may have trust responsibilities to consult with Indian tribes that exist independent of Section 106 requirements and that would not be affected or modified by a Section 106 lead agency designation.

<sup>3</sup> As a matter of policy, a federal agency may not wish to move forward in the Section 106 review process without the involvement of the relevant tribe even if legally allowed to do so.

the tribe's signature. In such cases, the agency or the tribe must terminate consultation pursuant to 36 CFR § 800.7 and seek ACHP comment to conclude the Section 106 review for the undertaking. When a tribe or NHO is notified of a lead federal agency designation, it should raise any concerns it may have regarding consultation with that agency to the agency official and/or the ACHP as early as possible to allow a resolution to be sought.

**Q: How should the lead and non-lead federal agencies address confidentiality concerns about sensitive information?**

**A:** Section 304 of the NHPA [54 U.S.C. §307103] protects information about the location, character, or ownership of historic properties from public disclosure when disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners. Section 800.11(c) of the Section 106 regulations sets forth the process for involving the ACHP in determining what information can be withheld in the course of compliance with Section 106. Early in project planning, the lead federal agency should discuss with the non-lead agencies how to handle any sensitive or confidential information that may be provided to or developed by the lead federal agency in the course of Section 106 review. More information about protecting sensitive information under Section 304 is available here: <http://www.achp.gov/304guidance.html>.

**Q: Are non-lead federal agencies required to sign the MOA or the PA to complete the Section 106 process?**

**A:** No. A non-lead federal agency is not required to sign an MOA or PA for an undertaking to complete the Section 106 process. The lead agency signs the Section 106 agreement on behalf of the non-lead agencies to fulfill their collective responsibilities for the undertaking. However, non-lead federal agencies should sign the MOA or PA if they have been assigned responsibility for certain actions in the implementation of that agreement. In this case, the non-lead agencies should sign the MOA or PA as invited signatories. If the non-lead agencies would like to sign an MOA or PA in which they have not been assigned any specific responsibilities, they may sign as a concurring party. If a non-lead agency does not sign an MOA or PA, it does not prevent the agreement from being executed nor does it alter the fact that its responsibilities under Section 106 will be satisfied through the implementation of the agreement.

**Q: Can non-lead federal agencies amend or terminate an executed MOA or PA?**

**A:** Non-lead federal agencies can only amend or terminate an MOA or PA if they sign the agreement as invited signatories.

**Q: What happens if there is a failure to agree on the resolution of adverse effects under 36 CFR § 800.7?**

**A:** If the parties in the Section 106 review are unable to reach agreement on an MOA or PA, the lead federal agency, the SHPO/THPO, or the ACHP, may terminate the consultation pursuant to 36 CFR § 800.7(a)(1). In this case, the lead agency requests the comments of the ACHP on behalf of the non-lead agencies as well as itself. Under section 800.7(c), the ACHP would provide its comments to the head of the lead agency, with copies to the non-lead agencies. The head of the lead agency would need to take those comments into account in reaching its final decision on the undertaking, and provide his/her response to the ACHP.

The non-lead agencies need to await the response of the head of the lead agency to the ACHP's formal comments before they make their own final decisions on the undertaking.

This process for seeking, considering, and responding to ACHP comments would fulfill and conclude the Section 106 review responsibilities of the lead agency and the non-lead agencies for the undertaking.

Though not required for compliance with Section 106, the ACHP strongly recommends the following best practices for these types of terminations:

1. The lead and non-lead agencies should briefly consult with the ACHP right after a termination to clarify roles and responsibilities in wrapping up Section 106 compliance. There may be unusual circumstances—such as where the lead agency's role in the undertaking is to advise a non-lead, or where a non-lead agency's decision turns out to have a more direct bearing on the adverse effects of the undertaking and how they could be resolved—where it may make sense to consider adjustments to the process detailed above;
2. Before responding to the ACHP, the head of the lead agency should consult with the non-lead agencies in order to be cognizant of any concerns or policy issues such agencies may have, and to coordinate their decisions as necessary; and
3. While the non-lead agencies are not required to provide the ACHP with a response to the ACHP's formal comments, the non-lead agencies should consider such comments prior to making their own final decisions on the undertaking. The non-lead agencies should also notify the ACHP and consulting parties about such final decisions.

**Q: Can a non-lead agency terminate consultation pursuant to 36 CFR § 800.7(a)(1)?**

**A:** No. If a non-lead agency is concerned with the manner in which the lead agency is conducting the Section 106 review, as noted above, it should attempt to resolve those concerns with the lead agency. If unsuccessful, the non-lead agency may withdraw its designation of that federal agency as lead for conducting Section 106 review on its behalf and comply with Section 106 individually for the undertaking. Only when a former non-lead agency is conducting its own Section 106 review, is the option of termination under 36 CFR § 800.7(a)(1) for its individual Section 106 review available.

**Q: How should the non-lead federal agencies be informed of the outcome of consultation?**

**A:** The lead federal agency should notify all non-lead agencies in writing when the Section 106 consultation has been concluded, provide final documentation of the review process, and where applicable, provide a copy of the executed agreement document. This enables the non-lead agencies to have a record of Section 106 compliance for purposes of their own administrative records and proceed with their own decisions on the undertaking.

**Q: How does a non-lead agency record the outcome of the Section 106 process?**

**A:** It is up to the non-lead agency to decide how it wants to keep its Section 106 record. However, it is recommended that non-leads at a minimum maintain copies of the lead agency's documentation and correspondence of its findings and determinations and a resulting Section 106 agreement, if any.

**Q: Can multiple federal agencies select a lead agency to develop a “program PA” or other program alternative that creates a review process that differs from the standard Section 106 review process?**

**A:** Yes. Program PAs and other program alternatives can be amenable to a lead federal agency approach in those situations where more than one federal agency is responsible for relevant types of undertakings, for example to cover routine management actions or telecommunication deployment activities when multiple agencies propose to either carry out, license, permit, or assist the undertakings. The lead federal agency would consult with the consulting parties on behalf of the other agencies to develop the PA or other program alternative; however, the lead federal agency would need to be mindful of any responsibilities assigned to other agencies in the program alternative and involve those other agencies as appropriate. It would be best to contact the ACHP for more information when considering use of a lead federal agency to develop a program alternative.

**Q: If a non-lead federal agency has an existing Section 106 MOA or PA applicable to the undertaking, can the agency designated as lead adopt that MOA or PA to meet its Section 106 responsibilities and those of other agencies for the undertaking?**

**A:** It depends. If a federal agency that is not a party to an existing Section 106 MOA or PA subsequently becomes the lead federal agency for the subject undertaking, that agency may utilize the terms of the existing MOA or PA where the MOA or PA explicitly allows for such use. The ACHP recommends agencies proactively consider such a possibility and incorporate this type of stipulation in an agreement document where it is likely that other agencies may subsequently have involvement in the undertaking requiring them to comply with Section 106. More information on this type of stipulation is available here: <http://www.achp.gov/samplestips.html>.

If an existing MOA or PA is silent as to whether other federal agencies may use the agreement to satisfy their Section 106 responsibilities for the subject undertaking, then the other agencies should consult with the parties to the existing MOA or PA to see if it is appropriate to amend it to allow for such use. Otherwise, they must conduct their own Section 106 reviews for the undertaking.

*For further information contact Blythe Semmer [bsemmer@achp.gov](mailto:bsemmer@achp.gov)*