October 30, 1991

POLICY MEMORANDUM #1

SUBJECT: REPURCHASE OF REPLACEMENT DWELLINGS

POLICY. The Office of Relocation will not purchase a relocation house from a relocatee in order to provide it as replacement housing to another relocatee.

DISCUSSION. This policy was originally instituted December 3, 1984, in order to assure that persons displaced by P.L. 93-531 received and occupied a replacement home in accordance with the law. As the result of relocations accomplished during the earlier years of the program, the agency found that in certain instances clients had acquired replacement homes not for occupancy but for the purpose of selling them in order to realize a cash payment which was not authorized by P.L. 93-531. As a result, the policy prohibiting the re-purchase of replacement homes by ONHIR was instituted to discourage relocatees from selling the home prior to, or shortly after moving into the replacement home.

EXCEPTIONS. The ONHIR may grant an exception to this policy on a case by case basis in unusual circumstances as justified by the Housing Supervisor in consultation with other management officials.

APPROVED: /s/ Carl J. Kunasek DATE Nov. 21, 1991
COMMISSIONER

August 1, 1994

POLICY MEMORANDUM #2 (Revised)

SUBJECT: ELIGIBILITY FOR NEW LANDS HOMESITE LEASES

POLICY. The ONHIR will make initial grants of homesite leases on the New Lands only to certified heads of household who have not yet received their relocation benefits.

DISCUSSION. The ONHIR has received requests for New Lands homesite lease assignments from individuals who are not certified for relocation benefits and awaiting relocation. These individuals include relatives and family members of persons who have relocated to the New Lands; and persons who received relocation benefits and relocated before the New Lands were available for settlement.

The circumstances of the individuals making these requests have been considered in relation to the intent of P.L. 93-531 as amended. The ONHIR has determined that at the present time, initial award of leases to individuals other than certified heads of household who are awaiting relocation would be contrary to the intent of Congress to complete the relocation program as efficiently and expeditiously as possible.

The ONHIR has also received requests to transfer leases from the original relocatee to another party, pursuant to the terms of a court order, deed of trust, will, or other transaction. Requests of this nature will be considered and may be approved on a case by case basis.

EXCEPTIONS. At the present time there are no exceptions to the policy that initial grants of New Lands homesite leases shall be made only to certified heads of household who have not yet relocated. After a lease has been granted, however, the Commissioner or his/her designee may approve the transfer of a lease under exceptional circumstances.

APPROVED /s/ C.J. Bavasi for DATE 7/9/94
COMMISSIONER

October 30, 1991

POLICY MEMORANDUM #3

SUBJECT: SALE OF RELOCATION HOUSES BUILT ON THE NEW LANDS

POLICY. Except in restricted circumstances described below, the Office of Relocation will not be a party to any transactions undertaken by a client in order to sell or otherwise dispose of their replacement house on the New Lands.

DISCUSSION. The ONHIR has received inquiries about selling their house from individuals who have moved to the New Lands. The ONHIR does not have the authority to prohibit a relocatee from "selling" their replacement house, if they have identified a buyer. However, the ONHIR strongly recommends against such transactions. Clients who move to the New Lands must be advised that they do not have title to the land; their entitlement to the property derives from the homesite lease issued to them by the ONHIR.

Pursuant to Policy Memorandum #2, the ONHIR will issue homesite leases on the New Lands only to certified heads of household who have not yet received their relocation benefits. A person who is thinking about buying a relocatee house must meet this criteria in order to be considered for a lease transfer. In addition, pursuant to Policy Memorandum #1, except in unusual circumstances, the ONHIR will not repurchase a relocation house in order to provide it as replacement housing to another relocatee.

Individuals who do not meet the criteria for ONHIR assistance in acquiring a relocation house on the New Lands are taking significant risk in entering into a purchase agreement, and should seek legal advice about the proposed transaction.

EXCEPTIONS. The restricted circumstances under which the ONHIR may consider the sale of a relocation house on the New Lands are described above. At the present time there are no other exceptions to this policy.

APPROVED /s/ Carl J. Kunasek DATE Nov. 21, 1991
COMMISSIONER

October 30, 1991

POLICY MEMORANDUM #4

SUBJECT: CONTRACTOR SALES AND SOLICITATION PRACTICES

POLICY. The Office of Relocation will make every effort to assure that relocatees receive the full value of their housing benefit by eliminating to the maximum extent possible inappropriate behavior on the part of contractors and agency staff which results in increased housing costs and unethical practices. The ONHIR will provide clients with equal access to all contractors. The ONHIR will investigate and take appropriate action against contractors who offer inducements outside of the contract process, or who misrepresent or engage in improper sales practices in order to secure a contract for the construction of relocation housing. All consideration agreed upon by the client and the contractor must be incorporated into the construction contract and related documents, and a provision to this effect to be signed by both the client and the contractor will be added to the construction contract effective September 9, 1991.

DISCUSSION. The ONHIR has received complaints from relocatees and contractors about the methods used by certain contractors to solicit business. The complaints allege that certain contractors and/or their agents have paid incentives to secure construction contracts with relocatees. It has also been reported that contractor's agents have told clients that they "represent the Government" or have made similar statements intended to mislead the clients in the selection of a contractor. Finally, the ONHIR has received reports from contractors that staff of the agency have made recommendations to relocatees regarding the contractor they should select.

In order to curb these abuses, the ONHIR has issued a letter on September 6, 1991 to all contractors who do business with the agency
identifying unacceptable activities and conduct on the part of contractors and agency staff. The ONHIR has adopted the following policy guidelines regarding contractor selection.

1. Relocatees will be instructed not to begin the process of selecting house designs and contractors until they have completed the initial housing interview.

2. Relocatees will be advised to select their contractors on the basis of the features which the contractor will provide in the home.

3. Relocatees will be advised that promises of payment to them of incentives such as cash, goods or furniture are not a part of the relocation construction contract and as such are not enforceable against the contractor.

4. Contractors will be instructed to make no efforts to solicit contracts from relocatees until after completion of the initial housing interview. In the event that such solicitations are documented, contractors my be disqualified from contracting with the relocatee so solicited and/or may be placed on probation.

5. Contractors will be held responsible for the conduct of their agents. Misrepresentations made by contractors or their agents will be investigated and appropriate action will be taken.

6. Contractors will be advised that payment of incentives, inducements or rebates are improper and

not appropriate. All consideration must be recited in the construction contract, specifications and worksheets. All such payment of incentives, rebates, finders fees, etc. will be deducted from the contract since they are not going into the construction of the house.

7. Staff of the ONHIR are specifically prohibited from making recommendations regarding the selection of a contractor. Violations will be investigated and appropriate disciplinary action taken.

EXCEPTIONS. There will be no exceptions to the policy guidelines established. Violations will be investigated by ONHIR management and action will be taken depending upon the circumstances of the case.

APPROVED /s/ Carl J. Kunasek DATE Nov. 21, 1991
COMMISSIONER

POLICY MEMORANDUM #5

SUBJECT: ACCIDENT INVESTIGATION - LOSS CONTROL

POLICY: It is the policy of the Office that a Board of Review will be convened to investigate and report on the following accidents or incidents:

1. All on-duty employee injuries requiring first aid, medical attention, continuation-of-pay or lost time, including any temporary or permanent disability, regardless of duration.

2. All motor vehicle accidents involving Federally- owned or leased vehicles and employee-owned or rented vehicles while being used on official business, regardless of the amount of damage.

3. All agency property or equipment damage, other than motor vehicles, when the amount of damage or loss exceeds $50.00.

DISCUSSION: It is the responsibility of each Federal employee to properly use government-owned or leased property and safeguard against loss of, or damage to, such property. Our goal is to assure a safe workplace, adequate equipment, and working conditions which do not constitute hazards to employees. One method to aid in reaching this goal is to review each accident and injury to determine if: (1) Work methods or conditions need to be changed to eliminate or reduce risks which contribute to accidents or injuries; (2) Additional training of employees to identify and avoid risks or unsafe practices is warranted.

Boards of Review will be appointed by the Executive Director in accordance with the provisions of Attachment 1 to this policy memorandum.

EXCEPTIONS: Exceptions to the requirements in Attachment 1 may be made on a case-by-case basis by the Commissioner.

/S/ Carl J. Kunasek July 8, 1992
Carl J. Kunasek, Commissioner Date
Attachment 1, Policy Memorandum #5

ACCIDENT REPORTING

Consistent with the provisions of the Federal Property and Administrative Services Act of 1949, 68 Stat.1128, as amended; 18 USC 641; 41 CFR 101, 25 CFR 700, and FPM 930, the following procedures will be followed in the event of a motor vehicle accident or incident or other such incident as specified in Policy Memorandum #5.

1. Board of Review Composition and Responsibility:

The Board of Review is an ad hoc group consisting of a Chairman designated by the Executive Director, Agency Counsel, the Supervisor of the employee involved, and a peer representative designated by the employee involved. In cases of motor vehicle accidents or incidents, the Property Management Specialist will sit as a Board member. In cases of employee on-the-job injury, the Personnel Officer will sit as a Board member.

The Board of Review is to ascertain the primary cause of the accident or incident and not to recommend discipline or adverse action. The general procedures for conducting a Board of Review may consist of the following:

- The Board reviews the accident report.

- The involved employee describes what happened and answers questions from the Board.

- The investigating officer (if any) provides a report and answers questions from the Board.

- The supervisor describes the accident investigation, its findings, etc., and answers questions from the Board.

- The employee has the right to be represented before the Board of Review, by an attorney or other person.

- The Board, apart from the presence of the employee and the supervisor, considers information and isolates identifiable causes.

- The Board reports in writing to the Deputy Director, with a copy provided to the employee.

2. Employee Responsibility: Each employee must report any motor vehicle accident or incident (e.g., fuel pump failure, steering gear failure, etc.), other equipment damage or loss, or personal injury within 24 hours of the accident or incident. Employees must also cooperate with a Board of Review in describing the accident or incident, and answering the Board's questions.

Accidents/incidents require submission of the following:

Optional Form 26, Data Bearing Upon Scope of Employment of Motor Vehicle Operator.

Standard Form 91, Operator's Report of Motor Vehicle Accident.

Standard Form 94, Statement of Witness (if any)

Appropriate CA forms in the event of employee injury

Narrative statement of circumstances of accident, incident, loss or injury.

Law Enforcement Officer's investigative report (if any)

3. Supervisor Responsibility: Each supervisor must cooperate with a Board of Review to investigate the cause(s) of an accident/incident. The supervisor must also provide a narrative statement of their knowledge of the accident/incident, to accompany the employee's report. The supervisor's report must address, at a minimum, the following areas:

Employee's accident/incident, equipment damage or loss history which may have a nearing on the accident/incident under review.

Any training provided the employee which may bear on the accident/incident under review.

4. Fleet Manager Responsibility: The Fleet Manager must provide to the Board of Review a narrative statement of his/her knowledge of the accident/incident under review. The Fleet Manager may be requested to appear before the Board of Review to answer questions.

5. Personnel Officer Responsibility: The Personnel Officer will review any employee injury reports, and provide the Board of Review with information regarding the employee's history of on-the-job injuries. The Personnel Officer will provide the Deputy Director with information regarding the employee's history of disciplinary or adverse actions based on comparable accidents or incidents.

6. Deputy Director Responsibility: The Deputy Director will receive a report of findings from the Board of Review. After considering the findings, the Deputy Director will make recommendations to the Executive Director. Such recommendations may include additional training, changing practices or procedures, or disciplinary or adverse action as warranted.

7. Executive Director Responsibility: The Executive Director will designate a Board of Review to be convened for each accident, incident, loss or injury as specified in this Policy Memorandum. The Executive Director will consider the Deputy Director's recommendations, and accept or reject them as he deems appropriate. The Executive Director may direct disciplinary or adverse action when warranted.

8. Discipline/Adverse Actions Resulting From Incidents:

The Office cannot risk the consequences of ignoring employee misconduct or negligence, especially as it relates to motor vehicle and equipment operation. Poor driving performance places employees and the public in jeopardy, places the government at risk of tort liability, and is a leading source of accidental loss in the government.

Initial training and remediation is a supervisory responsibility. Employee misconduct should be documented to support disciplinary and/or adverse actions that may be warranted at a later date.

9. Situations Where Adverse Actions May Be Warranted:

- A supervisor's failure to properly train subordinates, or failure to take remedial action to correct poor driving performance.

- Employee convicted of operating under the influence of alcohol or illicit drugs;

- Employee is found to have misused a government owned or leased vehicle.

- Employee is found negligent as a result of a government vehicle accident. (Employees will not be held financially liable for damage or loss of a vehicle when the damage or loss is attributable to inadequate instruction, or inherent defects in the vehicle.)

-Employee is convicted of leaving the scene of an accident without making himself/herself known.

-Employee is convicted of moving traffic violations with a government vehicle.

-Employee's State License is revoked or suspended.

-Employee exhibits high accident frequency or abnormally high dollar accident costs;

-Employee fails to comply with administrative orders relating to motor vehicle care and operation, and/or:

-A qualified physician finds that the employee fails to meet the required physical standards.

10. Actions That May Be Taken Against Employees:

-If damage is a result of negligence the employee may be held financially liable for the amount of loss, damage or destruction of government property; Suspension of government driver's license and government driving privileges.

-Letter of warning or official reprimand.

-Suspension from duty without pay, and

-Separation from employment in extreme cases.

11. Use of Personal Vehicles - Insurance and Financial Responsibility:

The use of personal vehicles for the benefit of the government is prohibited unless officially authorized. When such authorization is given, the employee is reimbursed on a mileage basis. Since the cost of collision and liability insurance is a component of the mileage rate-setting process, employees must seek reimbursement from their private insurance carrier for loss or damage to their personal property while under a POV travel authorization. Employees may file a claim under the Military Personnel and Civilian Employees' Claims Act for up to the deductible amount in the employee's personal vehicle insurance policy.

Employees cannot be held personally liable for damage or injury to third parties if properly acting within the scope and authority of their employment. This does not, however, indemnify the employee from discipline or adverse action for negligence.

August 3, 1992

POLICY MEMORANDUM #6

SUBJECT: INFRASTRUCTURE PROVIDED TO RELOCATION HOUSES

POLICY. In order to assure that relocation clients receive a decent, safe and sanitary dwelling as defined in 25 CFR 700.55, the Office of Relocation will require that all replacement housing be connected to water, sewer, and electricity in good working order at the time the client moves into the house.

In order to provide infrastructure to relocation houses, the Office of Navajo and Hopi Indian Relocation may contribute to infrastructure projects up to one-hundred percent (100%) of project costs calculated on a per household basis for relocatees who are moving to the area to be served by the project. The ONHIR may contribute an additional thirty percent (30%) of per household costs for relocatees who moved to the community prior to the infrastructure project, and may contribute thirty percent (30%) for remaining project costs.

Contributions for clients moving to an infrastructure project area will be paid from the clients' infrastructure allocation. After the execution of an interagency agreement for the construction project, funds committed from the client infrastructure allocation will remain committed even though the client(s) change their relocation site and withdraw from the project. In such a situation, the amount committed for the project shall be deducted from the client(s) infrastructure allocation at their new site.

DISCUSSION. Due to past problems encountered in moving clients into homes which were constructed and occupied before water and power infrastructure was extended to the area, the ONHIR will no longer allow a client to move into a replacement house until water and power are connected and operational. In order to provide relocation homes with grid water and power systems, the Office of Navajo and Hopi Indian Relocation will engage in cooperative projects with such entities as the Indian Health Service and the Navajo Tribal Utility Authority to extend water and power infrastructure into communities in which relocation housing is being built. The utility provider will inform ONHIR of the total project cost and the number of homes which will be served by the project. After determining the per household cost of the project, the ONHIR may contribute 100% of the per household costs on behalf of relocation clients who are in the process of obtaining homesite leases in the community.

Pursuant to its mandate to reduce adverse impacts on host communities, the ONHIR may contribute to the project 30% of the per household costs on behalf of relocatees who have already relocated to the community; and an additional 30% of project costs remaining to be borne by the chapter or other agency.

Once an infrastructure construction project is underway, the withdrawal of a client may jeopardize the entire project by increasing the per house cost to a level which may result in cancellation of the project. For this reason, once an interagency agreement has been executed, funds committed to an infrastructure project from client infrastructure allocation will remain committed to the project even though the client changes their mind about the relocation site and withdraws from the project. This amount may be deducted from the client's

infrastructure allocation at the client's new relocation site. Clients will be advised of this policy at the time they apply for a lease in an infrastructure area, so they may be fully aware of their options.

EXCEPTIONS. ONHIR financial contributions to infrastructure projects are contingent upon Congressional authorization of discretionary funds and budget appropriations. Mutual obligations for specific projects are negotiated among cooperating agencies and incorporated into authorizing documentation.

Requests for waivers to deductions from client infrastructure allocation will be determined by the Deputy Director on a case-by-case basis.

The ROB Manager may request a waiver to the requirement that grid infrastructure be connected and fully operational before a client moves into a replacement house. Waivers may be granted by the Deputy Director on a case-by-case basis.

APPROVED /s/ Carl J. Kunasek DATE 8 Sep.92
COMMISSIONER

July 13, 1993

POLICY MEMORANDUM #7

SUBJECT: NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE FOR NEW LANDS DEVELOPMENT PROJECTS

POLICY. The Office of Navajo and Hopi Indian Relocation (ONHIR) will not perform environmental assessments for any of the development projects on the New Lands including housing, roads, domestic water systems, electricity, telephone, range improvements and facility development. The ONHIR may, however, require that third party developers conduct environmental assessments for projects that are being funded from sources other than ONHIR appropriations.

DISCUSSION. The ONHIR has been exempted from performing environmental assessments by the following language that is included in Public Law 96-305:

> "Sec. 11. The Act of December 22, 1974 (P.L. 93-531), is amended by adding at the end thereof, the following new sections:
>
> Sec. 28.(a). No action taken pursuant to, in furtherance of, or as authorized by this Act, as amended, shall be deemed a major Federal action for the purposes of the National Environmental Policy Act of 1969, as amended."

It is the position of the ONHIR that to perform environmental assessments in light of this legislative language would be contrary to the intent of Congress to complete the relocation program as efficiently and expeditiously as possible. Therefore, for the ONHIR to perform environmental assessments would require special Congressional approval.

EXCEPTIONS. In situations where third parties wish to undertake development activities on the New Lands the ONHIR may require that environmental assessments be conducted prior to granting approval for the undertaking.

APPROVED /s/ Carl J. Kunasek DATE 20 July 1993
COMMISSIONER

March 28, 1994

POLICY MEMORANDUM #8

SUBJECT: RELOCATION SITE FEASIBILITY.

POLICY. The Office of Relocation shall exercise the right to approve the location of the homesite selected by the client for construction of the relocation house. This applies to both reservation homesite leases and lots acquired off-reservation. The determination about the acceptability of the homesite shall generally be made at the time of the initial feasibility study, for reservation leases; and at the time of plan review or resale inspection, for off-reservation locations.

DISCUSSION. Pursuant to 25 CFR 700. 53 and 700.55, it is the policy of the Office of Relocation to provide the client with a relocation house which is decent, safe and sanitary. In order to assure that the relocation house meets the standards established by the ONHIR, the Office has established construction inspection, warranty and home repair programs. However, the location of the site on which the house is constructed, and the siting of the house on the lot, have a significant impact upon the achievement of the standards of ONHIR's quality assurance programs. House construction may be adversely impacted and/or rendered prohibitively expensive by such features as: soils, topography, drainage patterns, flood plain location, bedrock, wind-blown sand, the presence of historic artifacts, access to water and power lines, and access to the site.

Water and power service installation are two of the most important requirements of a safe, decent and sanitary house. All relocation homes must be connected to water, sewer/septic and electricity at the time the client moves into the house (see Policy Memorandum #6). The Office of Relocation has determined that relocation houses built in remote sites and served only by individual cistern/septic and solar photovoltaic systems encounter maintenance problems which the client is not prepared to handle, and which cannot be repaired and maintained by the ONHIR or an existing service agency. For these reasons, the Office of Relocation shall require that reservation homesite leases be located within 1500 feet of an existing water line, and within one-half mile of an existing power line.

Client Advisement. Given the current availability of homesite lease sites in areas accessible to grid water and power systems, the ONHIR shall advise clients during the social counseling stage that the ONHIR will not process lease applications for remote sites. The clients will be instructed to select a site within 1500 feet of an existing water line, and within one-half mile of a existing power line.

Clients shall also be advised to select an alternate site if the feasibility study demonstrates that there are other problems with the site, such as poor soils, drainage, access, etc.

Off-Reservation Building Lots. The majority of building lots selected by clients moving off-reservation are located in subdivisions which do not present the problems encountered in building on the reservation. Prior to a case being referred to Housing Acquisition the ONHIR will determine whether or not the site is located within a flood plain or presents other problems which will adversely impact the construction of a safe, decent and sanitary house. Any such locations will be rejected.

EXCEPTIONS. The ONHIR may approve and process a homesite lease application or off-reservation lot selection which does not meet site selection standards if the particular circumstances of the case warrant an exception. Waivers will be considered on a case by case basis, and circumstances justifying a waiver cannot be fully described here. Requests for waivers must be recommended by the Inspections and Compliance Supervisor and approved by the Deputy Director. Requests for waiver which are denied by the Deputy Director may be appealed to the Executive Director.

Among the circumstances which may be considered for a waiver are:

1) the client has made a documented effort to obtain local approval for a site with access to water/power, better soils or slope, etc. but no better alternative site can be obtained;

2) the client is currently living on the lease site while lease approval is being processed and has family and traditional use ties to the location and does not want an alternate site;

3) the client acknowledges the deficiencies of the site and has been informed of the potential impacts upon house construction, and makes a fully informed decision that the site is their choice for construction of the relocation house.

APPROVED /s/ Carl J. Kunasek DATE 8 April 1994
COMMISSIONER

February 7, 2005

POLICY MEMORANDUM NO. 9 (Revised)

SUBJECT: 25 CFR §700.13 WAIVER OF REGULATIONS
REQUESTS FOR WAIVER OF REJECTED APPEALS
WAIVER OF TIME LIMITS IN OTHER REGULATIONS AND POLICIES

POLICY:

1. The Office of Navajo and Hopi Indian Relocation may consider requests for waiver of the time limit for filing an appeal of the Notice of Denial of Relocation Benefits pursuant to 25 CFR §700.13(a) from those applicants from whom the Office received personally signed return receipts but who did not timely file an appeal.
2. Regarding requests for waivers of extension of time limits for the filing of a claim or taking action under O.N.H.I.R. regulations, policy, and the O.N.H.I.R. Management Manual, such requests will be considered on a case by case basis to determine whether good cause exists for missing a deadline. Applicants will be required to demonstrate reasonable good cause through sworn affidavits and other relevant documentation explaining the circumstances which caused their failure to take timely action.
3. In determining whether a time limit for filing a claim or appeal under 25 CFR §700.13, (a)(b), Policy, and the O.N.H.I.R. Management Manual, should be extended under a reasonable good clause standard, the Office will consider the following factors:
    a. What circumstances kept applicant from making a timely request.
    b. Applicant's age and education
    c. Whether applicant had a physical, mental, educational, or linguistic limitation (including no or little facility with the English language) which prevented applicant from filing a timely request or from understanding or knowing about the need to file a timely request for review.
    d. Whether applicant received a Notice of Determination.
    e. The length of time between applicant's receipt of Notice of Determination and the time applicant requested review.
    f. Whether O.N.H.I.R. gave applicant incorrect, incomplete, or confusing information about when and how to request administrative review.
    g. Such other circumstances as may be determined in the discretion of the O.N.H.I.R. which justify the extension of time.

DISCUSSION:

Under Policy No. 9 of April 24, 1995, the Office determined that it would not consider Requests for Waiver of the Time Limit for filing an appeal of the Notice of Denial of Eligibility for Relocation Benefits from applicants who personally signed return receipts but who did not timely file an appeal. Under the decision in Sands v. NHIRC, such persons were not granted a right to file for a waiver of the regulations. (The Sands decision; however, did not preclude the consideration of such waiver requests by the Office.) Requests for waivers of the appeal time limit received after April 24, 1995, have not been considered for their merit. Since the adoption of Policy No. 9, the decison in Kensley v. ONHIR, (March 12, 1997) determined that the policy could not be applied retroactively. Additionally, the Navajo-Hopi Legal Services Program has advised the Office that it represents clients from whom they would file Waiver Requests but have not done so because of the Policy.

In light of the fact that the Office is preparing for closure and wishes to thoroughly complete the relocation program and to minimize unresolved benefit entitlement issues which could create legal obligations on the United States after closure, the Office has reconsidered Policy No. 9 and has determined that it is in the best interests of individual Indian applicants, the Office, and the United States to revise the policy and allow consideration of such Requests for Waivers of Rejected Appeals.

APPROVED: /s/ Christopher J. Bavasi DATE: 2/7/05
Christopher J. Bavasi, Executive Director

2004.268.3

October 17, 2000

POLICY MEMORANDUM NO. 10

SUBJECT: ONHIR Internet Policy

POLICY: The ONHIR Internet Policy is hereby adopted.

DISCUSSION: On February 12, 1999, the ONHIR issued its Interim Internet Policy to all ONHIR employees which outlined the privileges and restrictions for Internet and E-mail use which all employees were required to adhere to. The Office has now determined that said policies, as amended, are appropriate and proper to ensure the security and integrity of the ONHIR computer systems and that these policies mandate permanent adoption and implementation.

EXCEPTIONS: There are no exceptions to this policy.

APPROVED /s/ Christopher J. Bavasi DATE: 11/13/00
Executive Director

OHNIR INTERNET POLICY

Section 1: USE OF THE INTERNET

SCOPE.

Effective January, 1999, the Office of Navajo and Hopi Indian Relocation provided all employees with access to personal computers (PCs) which are capable of connecting to the Internet. The Internet provides a source of information which can benefit the professional and personal development of each employee of the Office of Navajo and Hopi Indian Relocation and can benefit the ONHIR through enhanced job performance.

In order to exercise this privilege, employees were required to participate in training scheduled by the Office and to familiarize themselves with the acceptable use of the Internet.

BACKGROUND.

The Internet is comprised of thousands of interconnected networks which provide digital pathways to millions of information sites. Because these networks subscribe to a common set of standards and protocols, users have worldwide access to Internet hosts and their associated applications and databases. Electronic search and retrieval tools permit users to gather information and data from a multitude of sources and to communicate with other Internet users who have related interests.

Access to the Internet provides government agencies with the opportunity to locate and use current historic data from multiple sources in their decision making processes. Employees are encouraged to develop the skills necessary to effectively utilize these tools in the performance of their jobs and to prepare themselves for future employment when the Office closes.

POLICY.

It is the policy of the ONHIR that employees will be encouraged to access the Internet using ONHIR computer equipment during work and personal time on the Office premises to build their search and retrieval skills. It is expected that employees will use the Internet to improve their job knowledge; to access legal, regulatory, technical, and other information on topics which have relevance to the ONHIR; and to communicate with employees of other government and private agencies whose services and products relate to the work of the ONHIR.

Users must be aware that when they access the Internet using the ONHIR sign-on address they will be perceived by others as representing the ONHIR. Users may not use the Internet for any purpose which would reflect negatively on the ONHIR or its employees.

Improper or unauthorized use of the Internet, including the E-mail function discussed in the next section, may be grounds for restricting the employee's use of the Internet or disciplinary action.

DOWNLOADING INFORMATION.

With authorization, staff may download files or graphics for government business purposes only. Downloading is a process by which a copy of a document or file is transferred to and stored on a computer for future retrieval and use. Downloading files can result in operating system conflicts and can import viruses to the Network and the PC. Consequently, with the exception of those key positions to which pre-approval has been granted, all staff must obtain advance approval from the Chief Information Officer prior to downloading files onto their personal computer.

USE OF THE INTERNET.

The ONHIR computer system is for official use. Personal use is permitted in accordance with the guidelines set forth below. Employees who are skilled at using the Internet are encouraged to guide and encourage other employees. **ONHIR employees are permitted to engage in the following activities:**

1. Access job-related information as needed to meet the requirements of their jobs.

2. Access information and graphics to enhance Internet use skills. It is expected that these skills will be used to improve the accomplishment and job assignments.

3. Search for job opportunities. Recognizing that the ONHIR is gradually phasing down, employees are encouraged to engage in job search to prepare themselves for other employment.

The following uses of the Internet are not allowed, either during working hours or on personal time, using the ONHIR equipment. Employees may not:

1. **Access or visit**, **retrieve, download, print, store, create, transmit or copy text from,** any Internet site which displays or advocates material which is sexually explicit in nature or related to sexual orientation, gambling, illegal weapons, terrorist activity, is offensive to co-workers or the public which shall include hate speech, and/or material which ridicules others based on race, creed, sex, religion, color, disability, national origin, culture or sexual orientation.

2. Access, retrieve, or print text or graphics which exceed the bounds of generally accepted standards of good taste and ethics.

3. Engage in any unlawful activity or any other activity which would in any way bring discredit to the ONHIR.

4. Offer services or merchandise for sale on the Internet.

5. Purposely engage in any activity or access an Internet site which would allow someone to invade the ONHIR computer system for the purpose of accessing, altering, or destroying agency records.

6. Engage in any fund raising activity, endorse any product or services, participate in any lobbying activity, or engage in any prohibited political activity.

7. Employees may not disclose their passwords to visitors or family members. **Visitors and family members are not permitted to access the Internet using an employee's PC.**

USER RESPONSIBILITIES.

Employees shall limit the amount of time spent accessing Internet sites for personal use. As a guideline, personal use of the Internet should be limited to morning and afternoon breaks, lunch breaks, and after hours. Employees are specifically responsible for:

1. Following Office security policies and procedures in their use of Internet services and will refrain from practices which might jeopardize the ONHIR computer systems and files.

2. Familiarizing themselves with any special requirements for accessing, protecting and utilizing data, including Privacy Act materials, copyrighted materials, and the procurement of sensitive data.

3. Conducting themselves in a way that reflects positively on the ONHIR.

MONITORING.

The ONHIR procures its Internet connection through "Sprint" by way of the Department of Homeland Security [DHS.] The Service screens out certain inappropriate sites from user access for all subscribers. These sites include pornography, gambling, drugs, militancy, dating and violence.

This Service, when requested, will provide ONHIR with reports of the sites accessed by ONHIR employees. These reports record the date and time the sites were accessed. The reports are intended to provide management with information as to the extent and nature of Internet use by employees.

MONITORING EMPLOYEES.

If a supervisor is concerned that an employee may be spending government time accessing the Internet for personal use; or is accessing inappropriate sites, the supervisor may ask the Chief Information Officer to individually electronically monitor the employee's use of the Internet. Employees need to be aware that any site they visit on the Internet may be subject to scrutiny and accordingly should assure themselves that it is an appropriate site and that their action in visiting the site will not reflect poorly upon the ONHIR or the government. Staff are cautioned that although our server does screen out inappropriate sites, this process is not 100% effective and that ultimately the responsibility for the proper use of the Internet at work rests with the employee.

SUPERVISOR RESPONSIBILITIES.

When questions arise, supervisors with line authority shall be responsible for making the initial determination about the appropriateness of their employee's use of the Internet. This shall include the acceptability of Internet sites visited and the determination of personal time versus official work hours.

Issues of employee conduct with respect to Internet use which are not resolved at the supervisory level will be referred through the chain of command for resolution.

Section 2: USING E-MAIL

SCOPE.

With the installation of the Internet, ONHIR employees will have access to electronic mail. E-mail will allow ONHIR employees to communicate more efficiently and economically but there are responsibilities which accompany this new tool. Federal law and regulation about electronic mail is still evolving. In the meantime, existing laws and regulations, including the Federal Records Act, the Freedom of Information Act, and the Privacy Act, apply to electronic mail just as they do to paper and other media.

POLICY.

It is ONHIR policy to encourage all employees to take advantage of the increased efficiencies made possible by electronic mail in conducting Office business. Employees shall have desktop access to electronic mail for both sending and receiving messages. Electronic mail is by far the least expensive form of communication available and, absent other factors, it should be the communications medium of choice. Correspondence should be transmitted via electronic mail when possible. It is anticipated that electronic mail will be used as extensively as feasible for communications with other federal agencies, with state and tribal government agencies, contractors and vendors.

Employees may use electronic mail for personal communications with restrictions equivalent to those governing the use of government telephones. Employees are advised that there is no expectation of privacy with respect to their personal E-mail. Personal E-mail communications must be infrequent, brief, and present minimal cost to the government. E-mail may be used to communicate with offices and businesses which are only open during regular working hours, when it would be impractical for the employee to have to leave the office. E-mail may also be used to contact family members when necessary to communicate an urgent or important message.

Electronic mail messages may be government records. Supervisors shall apply management controls in order to ensure compliance with applicable laws and regulations and accepted standards for record keeping, accountability, and protocol.

GENERAL USE AND PROTOCOLS.

1. Some electronic mail messages may constitute official government records and as such they may be subject to release pursuant to the Freedom of Information Act and/or all other legal requirements that deal with government records. They also may be subject to the civil "discovery" process used by parties to litigation.

2. Since electronic mail messages can be official government records they are not private, however, they are generally kept confidential. They may be reviewed by supervisors in the same manner that mailed and faxed communications are reviewed. All electronic mail messages should be analyzed for their status as records or non-record materials under the Federal Records Act.

3. Client file information and other information which requires approval of the Freedom of Information/Privacy Act Officer for release from the manual records, also requires approval for release via E-mail. Such requests should be directed to the FOIA/Privacy Act Officer.

4. The same standards of civility apply to electronic mail as to other forms of communication. Use of profanity, slang, racial or ethnic slurs, sexually harassing language, and slander are as inappropriate in electronic mail as elsewhere, and will not be tolerated. Users are cautioned to choose words carefully, as facial expressions and verbal inflection are not available to clarify the user's meaning or intent. E-mail must adhere to the same standard of conduct as expected in any written business communication.

5. Users need to be aware of the impact of over-sized files and extremely large volumes of mail on the Office printing facilities and adjust their requests to printer availability accordingly.

6. Electronic mail may not be used to advertise personal services or goods for sale.

7. Staff are cautioned concerning the opening of E-mail and/or attachments from unknown sources as they may contain viruses which can result in damage to the ONHIR network and/or the personal computer.

8. Users are responsible for using the electronic mail professionally and considerately. Misuse of electronic mail is cause for restriction on use and/or disciplinary action.

RESPONSIBILITIES OF USERS:

1. Employees are responsible for the general management and security of their mail, mailboxes and passwords. They are responsible for checking their own mail in a timely manner and for making arrangements for their mail to be checked when they are out of the office for extended periods of time. They may disclose their passwords to a supervisor or other staff who have need to know, such as a assistant who must retrieve E-Mail in the employee's absence. If a staff member is expecting business correspondence which needs prompt action (ie. letter from an insurance company or contractor) and plans to be out of the office, the assistant or supervisor should be able to retrieve the document for appropriate action.

2. Correspondence or memoranda which is sent via electronic mail must adhere to standard routing procedures. If a supervisor or team leader's signature or concurrence is required on a paper document, E-Mail will also require the team leader or supervisor's concurrence.

3. Correspondence sent by electronic mail should follow the standard correspondence addressing procedures. The layout and features should be as simple as possible. It should not contain bolds, underlines, special fonts, tables or other features as they do not always translate well from other software to electronic mail and may create printing problems or the recipient.

4. Users are responsible for assuring that the ONHIR's manual files are complete and that the manual copies are filed in the appropriate section of the manual file. When E-mail is sent to or received from an outside agency, vendor, contractor, etc., it is the responsibility of the originating staff member (or receiving staff member) to print a copy of the electronic correspondence, with attachments, if any, for the manual file, which may be a project file, client file, contract file, or vendor file. The paper file copy of the electronic correspondence must contain the transmission data, including the names of the sender and the addressee, the date the correspondence was sent, and the fact that the correspondence was sent by electronic mail. The same procedures shall be followed on internal E-mail (electronic correspondence or memoranda sent from one ONHIR staff member or department to another.) *The foregoing applies to all E-mail which is government business related and meets the definition of an "agency record."*

5. "Record" E-mails shall be printed, file in the appropriate system of records and then, if no longer needed, deleted from the employee's In-box.

6. Staff may receive E-mails which contain reference material or technical material which they may wish to maintain on their computer for future use. E-mails of this nature can be maintained on the employee's computer for an indefinite period of time at the discretion of the employee.

7. Electronic messages or mail of a temporary nature, such as notices of staff meetings, CFC Fund raising, in-house training, training courses, temporary acting delegations, Office functions of a social nature such as potlucks, etc., should be deleted from the electronic record when the event has been completed.

8. E-mails which are purely personal in nature should be deleted after being read by the addressee. Outgoing personal E-mails should be deleted by the employee as soon as is reasonable.

9. Employees are cautioned that compliance with the foregoing schedule is important. E-mail backups are created by capturing E-mails as they arrive from the server. These backups are for recovery purposes only and are written over on a weekly basis. Consequently, failure to properly save an important E-mail could result in it being permanently lost.

* * * * * * * * * *

Employees are reminded that their use of the Internet is a privilege. There are no exceptions to the foregoing policy and compliance is mandatory. The Office has set in place monitoring functions to assure this compliance. Failure to adhere to these policies will result in disciplinary action. If you have questions concerning these policies, you should contact the Human Resources Office or the Chief Information Officer.

February 15, 2001

POLICY MEMORANDUM NO. 11

SUBJECT: 25 CFR §700.709

NEW LANDS GRAZING PERMITS
WAIVER OF REGULATIONS

POLICY:

The Office of Navajo and Hopi Indian Relocation (Office) will not republish a notice establishing a date which closes the period for application for New Lands Grazing Permits. Those persons who are still eligible to receive a "guaranteed" New Lands Grazing Permit will be notified by the Office. The notice will be delivered personally if possible. If not, it will be sent by certified mail, return receipt requested, to their last known address. The notice will tell such persons that they are eligible for a New Lands Grazing Permit provided they apply for such permit within sixty (60) days of receipt of the notice. After such notification, the Office will determine the number of discretionary permits available under 25 CFR §700.709(a), and will proceed to issue permits as will best facilitate relocation.

DISCUSSION:

Pursuant to 25 CFR §700.13(b) the ONHIR (Office) may waive any requirement of its regulations if such requirement is not required by law and if the Office finds such waiver to be in the best interests of the individual Indian applicants, the Office, and the United States.

On June 9, 1992, the Office published in the Federal Register (Vol. 57, No. 111, at pg. 24363) a final rule regarding New Lands Grazing privileges. The rule, 25 CFR 700.709(d), provided that the Office would determine when the application period for New Lands Grazing Permits will close and that a notice of that date would be published. On March 20, 1997, at Vol. 62, No. 54, p. 13402, the Office published a notice establishing June 2, 1997, as the date that closed the period for application for New Lands Grazing Permits. The June 2, 1997, date was never implemented because of the ongoing implementation of the Settlement (Accommodation) Agreement, and the approximately 65 persons then eligible to receive a New Lands Grazing Permit were not contacted personally, as stated in the notice.

The Office has reviewed the list of persons who are eligible for a New Lands Grazing Permit and has determined that there are approximately fifteen (15) persons who have not yet relocated or have not signed Accommodation Agreements, or who have not received Ninety Day Notices to Vacate, who are still eligible for New Lands Grazing Permits. These persons will be notified of the sixty (60) day time period during which they must apply for a New Lands Grazing Permit and that their failure to do so will mean that they are no longer "guaranteed" eligibility for such a permit.

The Office has determined that publication of a new application date in the Federal Register would

not effectively notify the persons still eligible for a permit and that it is in their best interests, and is in the best interests of the Office and the United States, to waive the requirement of 25 CFR §700.709.

After the Office notifies the fifteen (15) persons still eligible, the Office will proceed to issue discretionary New Lands Grazing Permits pursuant to 25 CFR §700.709(d), as will best facilitate relocation.

APPROVED /s/ C.J. Bavasi DATE: 3/1/01
Executive Director

UNITED STATES GOVERNMENT

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

January 3, 2006

Christopher J. Bavasi
Executive Director

POLICY MEMORANDUM NO. 12

SUBJECT: **25 C.F.R. §700.303(b)**
EXPLANATORY CONFERENCES
WAIVER OF REGULATIONS

POLICY:

The Office of Navajo and Hopi Indian Relocation will not schedule and hold Explanatory Conferences as required by 25 C.F.R. §700.303(b), such regulation being waived.

DISCUSSION:

O.N.H.I.R. Regulations, 25 C.F.R. §700.303(b) and Management Manual Policy §1300, require that an Explanatory Conference be scheduled and held if required if requested by the applicant. As of this date 144 Requests for Hearing and Explanatory Conferences have been received from N.H.L.S.P. on behalf of all recently denied applicants. It is anticipated that similar requests will be received on behalf of the remaining 65 denied applicants.

In light of the Office's "sunset" status and plans for closure which require that all final determinations be expeditiously made by O.N.H.I.R. for each appeal so that the September 30 closure date can be met, it has been determined that scheduling and holding Explanatory Conferences would be administratively burdensome, time consuming, and would not facilitate an expedited Appeals process.

Pursuant to 25 C.F.R. §700.13, Waiver of Regulations, the requirement of 25 C.F.R. §700.303(b) and Management Manual §1300 are waived, for all pending Accepted Appeals and all appeals accepted after this date.

Applicants, or their legal representatives, may submit documents/evidence, ask questions, and discuss the Appeal by telephone, fax, or scheduled appointment as needed prior to the Hearing and also do so on the date of Hearing.

EXCEPTIONS:

At the present time there are no exceptions to this Policy.

APPROVED: C. Bavasi Date: 1/3/06
Christopher J. Bavasi, Executive Director

P.O. Box KK • 201 E. Birch • Flagstaff, Arizona 86002 • (928) 779-2721 • Fax (928) 774-1977

September 26, 2007

POLICY MEMORANDUM NO. 13

SUBJECT: FISMA Documents Policy

POLICY: The FISMA Documents Policy is hereby adopted

DISCUSSION: It will be the policy of the relocation office to conform with all the Federal Information Security Management Act of 2002(FISMA) requirements and to move expeditiously to satisfy the deficiency in reporting as soon as possible. Towards that end all procedures and file documentation will be maintained in the IS as they are particular to that department and there are no implementation responsibilities in any other departments.

EXCEPTIONS: There are no exceptions to this policy.

APPROVED _____ DATE: 9/28/07

Executive Director

UNITED STATES GOVERNMENT
OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

July 27, 2009

Christopher J. Bavasi
Executive Director

POLICY MEMORANDUM NO. 14. (Revised)

SUBJECT: 25 CFR § 700.133

POLICY:

A. Persons to whom ONHIR will seek to provide notice of the possibility that they may be eligible for Relocation Benefits

The Office of Navajo and Hopi Indian Relocation will give such notice as it can reasonably provide to persons who it is aware of and who may meet requirements a. or b. and c. through h.

a. The person, if a Navajo, was a resident of what became the Hopi Partitioned Lands ("HPL") on December 22, 1974 and had not moved to what became the HPL on or after December 22, 1973; and

b. The person, if a Hopi, was a resident of what became the Navajo Partitioned Lands ("NPL") on December 22, 1974 and had not moved to what became the NPL on or after December 22, 1973; and

c. The person became a Head of Household on or before the earlier of the date the person left the HPL (if a Navajo) or the NPL (if a Hopi) or July 7, 1986; and

d. The person did not knowingly reject Relocation Benefits; and

e. The person has not already received Relocation Benefits as a Head of Household or spouse (or spouse equivalent) of a Head of Household; and

f. The person did not relocate with a Head of Household as a member of that Household prior to the person becoming a Head of Household him/herself.

g. The person did not sign the Accommodation Agreement with the Hopi Tribe; and

h. The person did not previously apply for Relocation Benefits.

B. Persons from whom ONHIR will accept Applications for Relocation Benefits

a. The person, if a Navajo, claims to have been a resident of what became the Hopi Partitioned Lands ("HPL") on December 22, 1974 and had not moved to what became the HPL on or after December 22, 1973; and

b. The person, if a Hopi, claims to have been a resident of what became the Navajo Partitioned Lands ("NPL") on December 22, 1974 and had not moved to what became the NPL on or after December 22, 1973; and

c. The person claims to have become a Head of Household on or before the earlier of the date the person left the HPL (if a Navajo) or the NPL (if a Hopi) or July 7, 1986; and

d. The person did not knowingly reject Relocation Benefits; and

e. The person has not already received Relocation Benefits as a Head of Household or spouse (or spouse equivalent) of a Head of Household; and

f. The person did not relocate with a Head of Household as a member of that Household prior to the person becoming a Head of Household him/herself.

g. The person did not sign the Accommodation Agreement with the Hopi Tribe; and

h. The person did not previously apply for Relocation Benefits.

i. The Application is received by ONHIR on or before the Application Deadline.

C. Persons from whom ONHIR will not accept Applications for Relocation Benefits from

ONHIR will decline to accept Applications for Relocation Benefits from persons who fall into any of the following categories. Such persons will not be permitted to appeal this declination through ONHIR's Administrative Appeals procedure.

a. Persons who are not members of the Navajo Nation or Hopi Tribe *unless* such persons are surviving spouses of members of the Navajo Nation or Hopi Tribe and the decedent met the requirements of Subsection B. a-h., above.

b. Persons who were born after December 22, 1974

c. Persons who signed the Accommodation Agreement with the Hopi Tribe and did not relinquish the Agreement within three (3) years of signing it

d. Persons who previously applied for Relocation Benefits

e. Persons who previously relocated as a spouse or spouse equivalent of a Head of Household

f. Persons who file Applications for Relocation Benefits after the Application deadline

g. Persons who file incomplete Applications for Relocation Benefits

D. Persons whom ONHIR will certify as being eligible for Relocation Benefits

ONHIR will certify for Relocation Benefits persons who file a timely and complete Application for Relocation Benefits which is accepted by ONHIR and who prove to ONHIR's satisfaction that:

a. The person, if a Navajo, was a resident of what became the Hopi Partitioned Lands ("HPL") on December 22, 1974 and had not moved to what became the HPL on or after December 22, 1973; and

b. The person, if a Hopi, was a resident of what became the Navajo Partitioned Lands ("NPL") on December 22, 1974 and had not moved to what became the NPL on or after December 22, 1973; and

c. The person became a Head of Household on or before the earlier of the date the person left the HPL (if a Navajo) or the NPL (if a Hopi) or July 7, 1986; and

d. The person did not knowingly reject Relocation Benefits; and

e. The person has not already received Relocation Benefits as a Head of Household or spouse (or spouse equivalent) of a Head of Household; and

f. The person did not relocate with a Head of Household as a member of that Household prior to the person becoming a Head of Household him/herself.

g. The person did not sign the Accommodation Agreement with the Hopi Tribe; and

h. The person did not previously apply for Relocation Benefits.

i. The Application for Relocation Benefits was filed on a timely basis

E. Appeals

A person permitted to apply for Relocation Benefits but who is denied eligibility and wishes to pursue their claim of eligibility must file an administrative appeal with ONHIR and follow ONHIR's regulations, Management Manual and policies in pursuing such an appeal.

F. Eligibility of persons with Appeals pending before October 10, 2008

The eligibility of persons with Eligibility Appeals which were pending before October 10, 2008 shall be evaluated under the criteria set forth in Section D., a. or b. and c. through g. above.

G. Eligibility of persons with Final Agency Action prior to October 10, 2008

Persons for whom Final Agency Action has been taken and the Statute of Limitations to seek review in the Federal Courts under the Administrative Procedure Act has not expired may, on request and in the discretion of the Executive Director, have their eligibility for Relocation Benefits determined under criteria set forth in Section D., a. or b. and c. through g. above.

DISCUSSION:

As we seek to complete our work, we need to make sure that we have fulfilled the goals that the Congress set for this Agency both when it was established by the 1974 Settlement Act (P.L. 93-531) as well as by amendments to that Act and directives from the Congress as well as the Federal Courts.

One of the things we must be sure of is that we have provided Relocation Benefits to persons who are entitled to them under the standards established by the Congress and implemented by our Agency.

Our own Regulation (25 CFR § 700.133) imposed on us the obligation to "issue a preliminary relocation notice to each person identified by the Commission as potentially subject to relocation."

ONHIR worked hard to provide outreach and information concerning Relocation and the benefits available to eligible persons as well as the procedure for applying for benefits.

As a Federal Agency, in addition to our responsibility to persons eligible for Relocation Benefits, we had and have an obligation to the taxpayer to spend their money carefully and only when

necessary. Thus, to the extent that we could fulfill the Congressional mandate by looking to eligible persons to come to ONHIR and apply for Relocation Benefits, rather than our having to search out and find such persons, we would minimize the cost of the Relocation Program to the taxpayers by avoiding or at least minimizing the cost of conducting an outreach program.

Over the last year we have been reviewing a 2008 Federal Court decision which interpreted 25 CFR § 700.133 to require not only "issuing" the "relocation notice" in the manner set forth in that regulation, but also providing "notice" in the manner set forth in another of our regulations, 25 CFR § 700.11. Based on this review we will modify our approach to determining eligibility so that the Agency assumes the responsibility of giving notice to certain persons who are or were "potentially subject to relocation" under the criteria in effect on July 7, 1986 and carefully documenting that notice and our contacts.

This revision in Policy Memorandum No. 14. of October 10, 2008 clarifies certain aspects of that Policy Memorandum.

Approved: _____ Date: July 27, 2009
Christopher J. Bavasi
Executive Director

POLICY MEMORANDUM NO. 15: - Amended

SUBJECT: Use of Government Vehicles: Travelers and Passengers

POLICY: It is the policy of the Office of Navajo and Hopi Indian Relocation that occupants, drivers and passengers, in ONHIR Government Owned Vehicles (includes personal vehicles used for government work) shall be restricted to ONHIR employees, relocation clients (including family members), official visitors, and tribal representatives. The transportation of ONHIR client(s) is authorized only in the course of the employee's job duties directly related to the client(s') relocation. **Exceptions to this policy are set forth below.**

DISCUSSION: In accordance with Management Manual Section §5240, "Use of Government Property - Government Vehicles," relocation staff are authorized to use government owned vehicles in furtherance of their job responsibilities. In connection therewith the employee may be required to travel to/from various locations for meetings with relocation clients or to assist clients in home search. As well as travel related to client activities, the employee may also find it necessary to provide transportation for official visitors or tribal representatives for the purpose of attending meetings or other functions on and off the Navajo Reservation and Hopi Reservations. In addition to those uses of a government vehicle directly related to client contact and the relocation process, staff may also be required to use a government vehicle for the purpose of attending training, picking up or transporting equipment or supplies, and other routine uses.

As stated above, occupants, drivers, and passengers in ONHIR government owned vehicles (includes personal vehicles used for government work) shall be restricted to ONHIR employees, relocation clients (including family members), official visitors, and tribal representatives. ONHIR employees are hereby authorized to transport any of these individuals in a government owned vehicle without prior approval of management. All of the policies and procedures set forth in MM§5240, shall be strictly adhered to by staff members.

EXCEPTIONS: The ONHIR recognizes that situations/circumstances may arise wherein it may be in the best interests of the government (ONHIR) to allow passengers to travel with an employee in a government-owned vehicle (includes personal vehicles used for government work) who are not clients of the office, official visitors, or tribal representatives. For example, several New Lands employees reside in the Flagstaff area and travel back and forth. Routinely, functions are held at the New Lands at which the attendance of the employee's spouse, family member, or other person is appropriate. Provided, however, this exception shall not be limited to New Lands staff as the office also recognizes that it may be appropriate for an employee's spouse, family member or other person to accompany the employee on an out-of-town trip for other purposes.

The ONHIR is a government agency which was created for a singular purpose. Many of its employees have been with the Office since its inception resulting in the unusual situation in that the average age of staff is over 55 and the average term of service is 24 plus years. The job duties of the ONHIR staff are unique in that employees are required to travel long distances in extremely remote areas. The lack of cell phone service in these remote areas is not uncommon. Given the average age of staff, and the distances ONHIR employees must travel to accomplish their job duties, and taking into consideration recent studies which have resulted in a finding that traveling with a passenger over the age of 30 may result in a safer traveling environment, the ONHIR has concluded that it is in the best interests of the government and for the safety

of its employees under some circumstances to allow a passenger to travel with an employee in a government vehicle (includes personal vehicles used for government work) .

In these situations the employee must obtain the advance approval of the Executive Director. The employee shall submit a request, in writing, to the Executive Director setting forth the reasons why the employee is making the request that a passenger be allowed to travel with the employee in the government-owned vehicle (includes personal vehicles used for government work) . Along with the request the employee must also submit the Passenger Authorization Form (attached hereto) which has been signed by the passenger. The Executive Director's advance approval is mandatory. There are no exceptions to this requirement.

The Executive Director may, in some instances and solely at the discretion of the Director, in order to avoid the necessity of the submission of repeated requests, grant a continuing authorization for a specific individual to travel as a passenger in a government vehicle (includes personal vehicles used for government work) with an ONHIR employee.

(**Note:** In the event the passenger is an employee of another Federal Agency the authorization set forth in this Policy Memorandum shall not be required.)

AUTHORITY: FMR §102-34-220.

APPROVED: _____ Date: 8/10/11
Christopher J. Bavasi, Executive Director

POLICY MEMORANDUM NO. 16 (Amended):

SUBJECT: Use of Cellular Telephones while operating a motor vehicle on ONHIR business
Cross-Reference §MM5243(12)

AUTHORITY: Executive Order -October 1, 2009
Federal Leadership on Reducing Text Messaging While Driving

POLICY: It is the policy of the Office of Navajo and Hopi Indian Relocation that no employee operating a vehicle while on ONHIR related business shall use a cellular telephone for the purpose of verbal communication and/or texting.

DISCUSSION: The Office of Navajo and Hopi Indian Relocation has provided cellular telephones (cell phones) to various members of management and staff who require the use of a cell phone in the performance of their duties. Additionally, staff members who have not been assigned a cell phone by the Office, may possess personally owned cell phones.

The mission of the Office of Navajo and Hopi Indian Relocation requires staff to work in rural areas which may necessitate that the employee travel great distances during the course of a work week. Employees may utilize a government owned vehicle or their personal vehicle in the performances of these duties.

During the course of travel, staff may receive cell phone calls or text messages. In this event the employee shall not answer the call or retrieve the text message while operating the vehicle. The employee must exit the roadway, park in a safe location, and return the call or retrieve the message. The call must be terminated prior to the employee re-entering the roadway. (Parking in the emergency lane for the purpose of making or retrieving a phone call is prohibited.) Employees are also strictly prohibited from placing cell phone calls or texting while operating a vehicle in the course of their employment with the ONHIR. If the employee needs to make a phone call while traveling, the employee must exit the roadway, park in a safe location, and place and complete the call prior to re-entering the roadway. This policy applies to government owned vehicles and personally owned vehicles operated during the course of the employee's duties.

This policy shall also apply to all Government Contractors, Subcontractors, Recipients and Subrecipients.

EXCEPTIONS: There are no exceptions to this policy.

APPROVED: _____ Date: 8/10/11
Christopher J. Bavasi, Executive Director

POLICY MEMORANDUM NO. 17

Reconsideration of decisions/recommendations of the Independent Hearing Officer in Eligibility Appeals and certain Final Agency Actions in Eligibility Appeals

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POLICY:

A. Reconsideration of decisions and recommendations of the Agency's Independent Hearing Officer.

a. An Applicant for Relocation Benefits ("Applicant") either *pro* se or through the Applicant's counsel of record or the Eligibility and Appeals Branch of the Agency ("E/A") either through the Agency's Attorney or Contract Counsels who believes an initial decision/recommendation from the Independent Hearing Officer ("IHO") is incorrect may seek reconsideration of that decision/recommendation.

b. If an Applicant or E/A seeks reconsideration, a written request for reconsideration setting forth in detail the claimed error with appropriate citations to the Administrative Record shall be filed with the IHO not later than fourteen (14) days after receipt of the decision/recommendation.

i. For purposes of this Policy Memorandum, "receipt" means when received by mail, facsimile, private delivery service or as an attachment to E-Mail and "filed" means mailed, sent by facsimile, private delivery service or sent as an attachment to E-Mail.

ii. A copy of the request for reconsideration must be provided to the Applicant (or Applicant's counsel) or E/A (as the case may be) at the time the request is filed with the IHO.

c. The other party to the Appeal (E/A or the Applicant, as the case may be) shall have fourteen (14) days from receipt of the request for reconsideration to file a response to the request with the IHO with appropriate citations to the Administrative Record and provide a copy of the response to the other party.

d. A party may not file more than one request for reconsideration with the IHO for a given Appeal.

e. The Hearing Officer has the discretion to decide the request for reconsideration on the existing Administrative Record; to permit filing of additional documents, to schedule oral argument or to conduct an evidentiary hearing on the matter or matters raised in the request for reconsideration.

f. The IHO shall rule on requests for reconsideration within thirty (30) days after the request from the Applicant or E/A is at issue.

i. A request is "at issue" upon the expiration of the latest of the following:

1. A response to a request for reconsideration has been filed or the time for filing such a request has expired and the IHO does not set the matter for oral argument or for further hearing or direct the filing of additional documents; or
2. The IHO has directed the filing of additional documents and the documents have been filed; or

3. The IHO has set the matter for oral argument and the oral argument has taken place; or
4. The IHO has set the matter for an evidentiary hearing and the hearing has been held and the transcript from the hearing has been received by the IHO and the parties.

ii. The ONHIR Commissioner or Executive Director can extend the time for the IHO to rule on the request for reconsideration on request of the IHO and for good cause shown.

B. Filing of objections to the IHO's recommendations/decisions with the Commissioner or Executive Director.
   a. A party may not file objections to the IHO's supplemental recommendation/decision in an Appeal with the Commissioner or Executive Director unless that party has filed a motion for reconsideration or a response to a motion for reconsideration with the IHO.
   b. Any objection to the IHO's supplemental recommendation/decision with appropriate citations to the Administrative Record must be filed with the Commissioner or Executive Director not later than fourteen (14) days after receipt of the IHO's supplemental recommendation/decision in the Appeal.
      i. A copy of the objections shall be provided to the other party to the Appeal when the objection is filed with the Commissioner or Executive Director.
   c. If an Applicant or E/A files objections to the IHO's supplemental recommendation/decision in the Appeal the other party to the Appeal shall have fourteen (14) days to file a response to those objections with appropriate citations to the Administrative Record.

C. Requests for Reopening of Appeals in which there has been Final Agency Action ("FAA") in which the Statute of Limitations for seeking Federal District Court under the Administrative Procedure Act has not expired.
   a. The Commissioner or Executive Director has the discretion to reopen any Eligibility Appeal in which FAA has been entered and the Statute of Limitations has not expired and to refer a request for reopening and reconsideration to the IHO.
   b. If an Applicant seeks reopening, a written request for reopening setting forth in detail the claimed error in the original decision with appropriate citations to the Administrative Record shall be filed with the Commissioner or Executive Director
      i. A copy of the request for reopening must be provided to E/A at the time the request is filed.
   c. If the request is referred to the IHO, the parties will be notified and E/A shall have fourteen (14) days from receipt of the request for reopening to file a response to the

request with the IHO with appropriate citations to the Administrative Record and provide a copy of the response to the Applicant or the Applicant's counsel.

i. If a request is not referred to the IHO, then the Commissioner or Executive Director shall rule on the request.

d. An Applicant may not file more than one request for reopening.

e. The Hearing Officer has the discretion to decide the request for reopening on the existing Administrative Record; to permit filing of additional documents, to schedule oral argument or to conduct an evidentiary hearing on the matter or matters raised in the request for reopening.

f. The IHO shall rule on requests for reopening within thirty (30) days after the request from the Applicant or E/A is at issue.

i. A request is "at issue" upon the expiration of the latest of the following:

1. A response to a request for reopening has been filed or the time for filing such a request has expired and the IHO does not set the matter for oral argument or further hearing or direct the filing of additional documents; or
2. The IHO has directed the filing of additional documents and the documents have been filed; or
3. The IHO has set the matter for oral argument and the oral argument has taken place; or
4. The IHO has set the matter for an evidentiary hearing and the hearing has been held and the transcript from the hearing has been received by the IHO and the parties.

ii. The ONHIR Commissioner or Executive Director can extend the time for the IHO to rule on the request for reopening on request of the IHO and for good cause shown.

D. Filing of objections to the IHO's recommendations/decisions with the Commissioner or Executive Director.

a. E/A may not file objections to the IHO's recommendation/decision concerning a request for reopening with the Commissioner or Executive Director unless E/A has filed a response to the request for reopening with the IHO.

b. Any objection to the IHO's recommendation/decision with appropriate citations to the Administrative Record must be filed with the Commissioner or Executive Director not later than fourteen (14) days after receipt of the IHO's recommendation/decision concerning reopening the Appeal.

i. A copy of the objections shall be provided to the other party to the Appeal when the objection is filed with the Commissioner or Executive Director.

POLICY MEMORANDUM NO. 17

Reconsideration of decisions/recommendations of the Independent Hearing Officer in Eligibility Appeals and certain Final Agency Actions in Eligibility Appeals

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c. If an Applicant or E/A file objections to the IHO's recommendation/decision concerning reopening the Appeal, the other party to the Appeal shall have fourteen (14) days to file a response to those objections with appropriate citations to the Administrative Record.

d. In cases referred to the IHO, following receipt of the IHO's recommendation and any timely filed objection or response, the Commissioner or Executive Director shall make a final decision whether or not to reopen the Appeal.

E. Phase-in provision:

a. In order to phase-in the procedures set forth in this Policy Memorandum, with respect to any pending objections to the IHO's recommendation/decision the other party shall have thirty (30) days to respond to such objections with appropriate citations to the Administrative Record from the date this Policy Memorandum is promulgated by the Executive Director of the Agency.

b. With respect to any pending Applicant request for reopening an Appeal in which there has been Final Agency Action, E/A shall have thirty (30) days to respond to such a request with appropriate citations to the Administrative Record from the date this Policy Memorandum is promulgated by the Executive Director of the Agency.

APPROVED: _____ Date: February 9, 2011

Christopher J. Bavasi, Executive Director

POLICY MEMORANDUM No. 18
Death of an Applicant—Family Members Pursuing Application and Appeal

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Background:

From time to time an Applicant whose Application is still being reviewed dies before an eligibility decision is made. In addition there are a number of Eligibility Appeals pending in which the Applicant has died before the Appeal was decided. It is possible that during the time needed to make eligibility decisions on all remaining Applications and to hear all appeals from the denials of eligibility that other Applicants will die. Such deaths raise the question of whether the Application should continue to be processed or whether the Appeal should proceed or not—and if so, under what conditions.

While ONHIR has had a policy to deal with the death of Certified Applicants ("clients") for many years (25 CFR § 700.145) there has been no formal policy promulgated by ONHIR to deal with the situation in which the Applicant dies before he or she is certified.

On a case-by-case basis ONHIR has sometimes permitted a surviving spouse to pursue an Application or Appeal. Rarely a child of a decedent was given that opportunity.

Since ONHIR has always endeavored to treat all Applicants equally with respect to procedural matters, the Agency has determined that it would be appropriate to have a formal policy in place to deal with the death of Applicants who have not been certified.

Policy

1. In most cases ONHIR will permit spouses of deceased Applicants to carry on the Application or Appeal without the need for such spouses to be designated as Personal Representatives of the decedent by a Court if all the children of a deceased Applicant are also the children of the surviving spouse.

    a. If the parentage of the decedent's children were otherwise or where some other person comes forward and claims that they—and not the spouse—were entitled to pursue the Application or the Appeal the Agency would require a Personal Representative or Administrator to be appointed by a court of competent jurisdiction to represent the interests of the decedent with respect to pursuing the Application.

2. There may be special situations in which the surviving spouse married a Relocatee who already received (or is about to receive) Relocation Benefits. ONHIR could not permit the surviving spouse to pursue an Appeal in her/his own name in such situations since a person is not entitled to receive a second Relocation Benefit. There may also be

situations in which the surviving spouse is not a Tribal member at all or not a member of her/his former spouse's Tribe so that providing a Relocation Benefit to such a person would not be providing benefits to someone who, under the Settlement Act, was required to relocate and, therefore, no Relocation Benefit would be provided. In such cases, the surviving spouse would not be permitted to carry on the Application or Appeal.

3. With respect to children of a decedent, ONHIR would consider permitting them to pursue an Application or Appeal only if the decedent was not married when she/he died or, if married, only if the surviving spouse has been disqualified based on the factors discussed above.

    a. Except in cases in which there was only one child of the decedent (and no surviving spouse) such that the child was the sole heir of the decedent, ONHIR would require a Personal Representative or Administrator to be appointed by a court of competent jurisdiction to represent the interests of the decedent with respect to pursuing the Application or Appeal.

    b. In addition, in order for a child or children to pursue an Application or Appeal, the child pursuing the Application or Appeal would have to be a member of the same Tribe as the decedent and not have received a Relocation Benefit or been the spouse of a person who received the Relocation Benefit.

4. It is also possible that the decedent will have tried to assign her/his rights to the Relocation Benefits by a will or some testamentary equivalent. In such circumstances ONHIR would require a Personal Representative or Administrator to be appointed by a court of competent jurisdiction to represent the interests of the decedent with respect to pursuing the Application or Appeal.

5. The Agency reserves the right to require a Personal Representative or Administrator to be appointed in any other situation in which there is a dispute or substantial question regarding the proper party to represent the interests of the decedent.

6. The Agency reserves the right to require any person seeking to pursue an Application or Appeal to execute such documents and assurances concerning such activities as it deems appropriate.

7. Please note that authority to pursue an Application or Appeal does not mean that such a person would automatically receive the Relocation Home if the Application or Appeal

resulted in certification—the certification is for the decedent, not the child or Personal Representative.

a. Assuming a successful Application or Appeal, whether any person would actually receive a Relocation Home and, if so, the identity of the person who would actually receive the Relocation Home is something that ONHIR would determine if and when ONHIR found that the decedent was eligible for Relocation Benefits and in doing so ONHIR would use the "household remaining to be relocated" standard.

Approved: _____ Date: 12/6/1(

Christopher J. Bavasi
Executive Director, ONHIR

POLICY MEMORANDUM NO. 19
TEMPORARY APPOINTMENT OF GRAZING PERMIT REPRESENTATIVE

Background:

As provided in 25 CFR Part 700, Subpart Q, ONHIR issues Grazing Permits for grazing on rangeland in the New Lands (Nahata' Dziil Chapter). While the ONHIR regulations provide for assignment of Grazing Permit by Permittees with such assignments to become effective with ONHIR approval either at the time of the assignment or on the death of the Permittee (25 CFR 700.715), situations have arisen and can be expected to arise in the future when a Permittee dies or becomes so disabled that they can no longer make decisions or take actions with respect to the Grazing Permit and the livestock being grazed under the Permit and have not made arrangements prior to their death or disability for some other person to be responsible for the Permit.

In order for proper range management to continue, every Permit must have a designated person who is responsible for compliance with the ONHIR Grazing Regulations and is responsible for the livestock being grazed under that Permit. The death or disability of a Permittee without the designation of another qualified person to be responsible for that Permit and the livestock being grazed under that Permit creates a situation which must be remedied as soon as possible.

The caseload of the Navajo Family Courts which have jurisdiction over guardianships, conservatorships and probate/administration proceedings is such that it often takes a long time for family members to file proceedings in the Window Rock Family Court and then obtain an Order designating the person responsible for matters relating to a New Land Grazing Permit.

Options:

ONHIR could require that whenever a Permittee dies or is disabled without another qualified person having been properly selected to be responsible for the Permit and livestock, the Permit would be suspended and all livestock grazed under that Permit would immediately be removed from the range. ONHIR is aware, however, that most livestock grazing on the New Lands is grazing by a family or household such that this option might create a hardship for the surviving family members living on the Range Unit.

An alternative would be for ONHIR through its Executive Director on a temporary basis to recognize a family member of the deceased or disabled Permittee as the Grazing Permit Representative.

Appointment of Grazing Permit Representative:

A Grazing Permit Representative may be appointed by the Executive Director in the following circumstances:

1. If there is a written document submitted to the Range Office which is signed by the Permittee prior to being disabled or dying which names a Grazing Permit Representative and the document is witnessed by at least two family members; or

2. If there is a written request filed with the Range Office from a majority of the Permittee's adult immediate family members which request names the proposed Representative; or
3. If there is a written recommendation from the Director of the ONHIR Range Office for such an appointment with the written consent of the proposed Representative; or
4. If there are special circumstances such that the Executive Director deems such appointment necessary for proper range management in the Range Unit.

Removal/Resignation of Grazing Permit Representative:

A Grazing Permit Representative shall cease to serve when:

1. The Representative submits a written resignation to the Range Office; or
2. The Navajo Family Court appoints a Personal Representative/Administrator or Conservator/Guardian of Property which includes the Permit.
3. The Executive Director removes the Representative upon:
    a. A written request of family members of the Permittee with good cause shown; or
    b. A written request of the Director of the ONHIR Range Office with good cause shown; or
    c. The Executive Director determining that here are special circumstances such that the Representative's removal is necessary for proper range management in the Range Unit.

Powers of Grazing Permit Representative

A Grazing Permit Representative shall have the authority to take such actions as a Permittee may take *except* no Representative may:

1. Sell or assign a Grazing Permit; or
2. Appoint a new Representative

Approved: _____ Date: 11/24/13
Christopher J. Bavasi
Executive Director

POLICY MEMORANDUM NO. 20: HOUSING BENEFITS FOR PERSONS WHO WERE MEMBERS OF ANOTHER RELOCATION HOUSEHOLD

Background:

Pursuant to its statutory authority and responsibility, ONHIR has been relocating Navajos and Hopis since 1977. Over these 36 years ONHIR accepted Applications for Relocation Benefits from its first day of operation until July 7, 1986; took Applications from Navajos with Accommodation Agreements from 1997 to 2000; invited Navajos who met preliminary screening criteria to apply in 2005-2006 and accepted Applications from October of 2008 through August 31, 2010.

As a result, a significant number of Applicants who are awaiting Relocation Benefits or are currently in the certification or certification appeal process are "next generation Applicants"--the children (or grandchildren) of earlier Applicants. A significant number of these "next generation Applicants" were members of the older generation's "Household" when the older generation relocated.

Prior Policy:

Since at least 1984, the Regulation governing "Eligibility" has provided:

> **§ 700.147 Eligibility.**
>
> (a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on December 22, 1974, of an area partitioned to the Tribe of which they were not members.
>
> (b) The burden of proving residence and head of household status is on the applicant.
>
> (c) Eligibility for benefits is further restricted by 25 U.S.C. 640d-13(c) and 14(c).
>
> (d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.
>
> (e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.
>
> [49 FR 22278, May 29, 1984, as amended at 51 FR 19170, May 28, 1986]

Consequently, in the past the general Agency practice had been not to accept an Application for Relocation Benefits if the Applicant was, in fact, a member of a Household that had previously received Relocation Benefits.

The Effect of the *Herbert* Case:

In the *Noller Pete Herbert* case—decided in February 2008—the United States District Court for the District of Arizona determined that ONHIR knew Noller Pete Herbert to be a member of a family residing on the Hopi Partitioned Lands and that he might qualify for Relocation Benefits on his own when he became 18. The Court further found that ONHIR had not provided what the Court found to be legally mandated notice to Noller Pete Herbert before July 7, 1986 so as to enable him to apply for Relocation

Benefits under the less stringent regulations applicable to people who applied on or before July 7, 1986. Because of what the Court deemed inadequate notice, the Court reviewed the facts in the case under the prior "133" Regulations and certified him.

Following this decision ONHIR determined that in the long run it was more cost-effective (and fairer to all concerned) to permit anyone who had not previously applied for Relocation Benefits to file an Application and to evaluate such Applications based on ONHIR's historical eligibility criteria—those in effect as of July 7, 1986. (Applications were accepted from October of 2008 through August 31, 2010 and more than 3,200 Applications were received.)

The *Herbert*-type issue with respect to persons who were children in households that previously relocated is that ONHIR is not able to show on any consistent basis that it advised household members that if they were included in their parents' household then they could not later apply on their own. The form regularly used by ONHIR in "adult inclusion" situations did not contain language that told the adults seeking inclusion in their parents' household that a consequence of being included in their parents' Relocation was that they could never apply on their own.

For household members who were minors at the time of their parents' Relocation, such members could not, as minors "opt out" of their parents' household and their parents' decision – often after consultation with an ONHIR ROB Specialist—was binding on the children.

Thus, if ONHIR seeks to enforce its current regulation, it runs the significant risk that persons denied Relocation Benefits based on the regulation will successfully challenge the denial utilizing the *Herbert* "you did not properly notify us" argument.

Policy:

Based on the foregoing history and analysis:

1. Persons who relocated as a member of another household will not be denied solely on that basis *unless* they were the Head of Household or spouse or spouse equivalent of the Head of Household in that other household.

2. The amount of the Relocation Benefit to be provided to a Certified Applicant who previously relocated as a member of another household will be calculated without taking into consideration his or her membership in that other household and the effect, if any, on the amount the Relocation Benefit received by that other household.

Date: January 31, 2014

Christopher J. Bavasi

Executive Director ONHIR

POLICY MEMORANDUM No. 21
Same Sex Married Couples

Background:

A. ONHIR does not require that an applicant for relocation benefits ("Applicant") be married to be certified as eligible for relocation benefits; though marriage is one way that an Applicant can show that he/she meets the "Head of Household" eligibility requirement.

Rather ONHIR requires that a person be a "Head of Household" while still a resident of lands partitioned to the "other"[1] Native American Nation (and on or before July 7, 1986) and defines a "household" as including "A group of two or more persons living together at a specific location who form a unit of permanent and domestic character."[2]

Nor does ONHIR require that an Applicant certified as eligible for relocation benefits ("Certified Applicant") be married to receive such benefits.

Marital status affects eligibility in that if one spouse has already received relocation benefits and the other spouse was a member of that spouse's household at the time such benefits were received, if the couple is still married, the other spouse (the "household member") cannot receive a relocation benefit of his/her own as a "Head of Household."[3]

Marital status also affects ONHIR policy and procedure in that if the married couple have separated and established new families, ONHIR will not proceed with the relocation of the Head of Household unless there is a divorce.

B. Currently the ONHIR Regulation defining marriage provides, "Marriage is a legally recorded marriage or a traditional commitment between a man or [*sic*]

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[1] Hopi Partitioned Lands for Navajos and Navajo Partitioned Lands for Hopis

[2] 25 CFR §700.69 (a) (1)

[3] *See*: 25 CFR §700.147 (d)

woman recognized by the law of the Hopi or Navajo Tribe." (25 CFR § 700.79) When this Regulation was promulgated in 47 FR 2092, on Jan. 14, 1982 the Navajo Nation recognized any marriage "if valid by the laws of the place where contracted."[4]

Current Navajo Law generally provides that marriages which are valid where the marriages are contracted are "valid within the Navajo Nation," but with the qualification that there is an "exception [for] marriages that are void and prohibited by Section 2. of this Title." [5]

And Navajo Law provides, "Marriage between persons of the same sex is void and prohibited."[6] This limitation on recognition was established by the Navajo Nation in its 2005 Dine' Marriage Act

C. As a general matter, ONHIR Regulations also provide that "[t]he Commission may waive any requirement of these regulations in this part if such requirement is not required by law and if the Commission finds such waiver or exception to be in the best interest of individual Indian applicants, the Commission, and the United States." 25 C.F.R. § 700.13C.

D. In June of 2013 the Supreme Court of the United States decided *United States v. Windsor*, 570 U.S. _____, 133 S. Ct. 2675 ("Windsor") in which the specific issue was the constitutionality of Section 3 of the Defense of Marriage Act, 1 U.S.C. § 7 ("DOMA"), which defined "marriage" for all federal purposes as meaning an opposite-sex marriage and did not recognize a same-

[4] Pre-2005 9 N.N.C. § 1(a)

sex marriage even if such a marriage was legal under the laws of the state where the marriage was entered into.

In *Windsor* the same sex couple resided in New York and had married in Ontario, Canada in 2007 where such marriages were lawful. (New York did not legalize such marriages until 2011, but recognized same sex marriages entered into elsewhere if they were lawful where entered into.)

The Supreme Court held that this provision of DOMA was unconstitutional as a violation of the Fifth Amendment to the Constitution. The Supreme Court did not address Section 2 of DOMA which limits the obligation under the Constitution's Full Faith and Credit Clause[7] for states and Native American Nations to recognize marriages by explicitly providing that one state or Native American Nation need not recognize a same sex marriage entered into under the laws of another state or Native American Nation.[8]

E. ONHIR is not aware of any Hopi Law on same-sex marriage.

F. The benefits received by a Certified Applicant arise solely under federal law and regulation and not the laws of any Native American Nation or state.[9]

Policy

1. ONHIR will recognize the validity of any marriage which is recognized by the laws of the jurisdiction where the marriage was entered into.

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[8] 28 U.S.C. § 1738C.

[9] 25 U.S.C. § 640d-14

2. ONHIR shall interpret the term "husband" and/or "wife" to mean "spouse" without regard to gender.

3. To the extent that 25 C.F.R. § 700.69 or § 700.79 is construed as requiring a different result, I authorize (pursuant to 25 C.F.R. § 700.13) the waiver of any such requirement in order to further pursue the best interests of individual Native American applicants, the Commission, and the United States. This approach will avoid the serious constitutional questions that might be raised by alternative approaches and provide for a more uniform application of the relevant provision.

4. This Policy is effective as of the date of its approval.

Approved: _____ Date: May 15, 2014

Christopher J. Bavasi
Executive Director, ONHIR

POLICY MEMORANDUM No. 22
HOUSEHOLD REQUIRING RELOCATION PURSUANT TO THE ACT

Issue:

What is the appropriate interpretation of the term "household requiring relocation pursuant to the Act"[1]—sometimes phrased as "remaining household to be relocated" when an Applicant dies without a surviving spouse and prior to signing a Relocation Contract.[2]

Background:

Benefits and Eligibility

The principal relocation benefit provided by the Navajo—Hopi Settlement Act[3] ("the Act") is the housing benefit.[4] This benefit provides a Replacement Home in which the eligible "Head of Household" ("HOH") will reside and is intended to replace the home on lands partitioned to the "other" Indian Nation by the Federal District Court in which the HOH formerly resided but, because of the Act is "required to relocate."[5]

The basic eligibility requirements also mandate that the Applicant must have been a legal resident on lands partitioned to the other Indian Nation on December 22, 1974 and have had such residency as of December 22, 1973 and that the Applicant must have attained HOH status while still a legal resident of such lands and on or before July 7, 1986.[6]

In addition to these requirements, in order to insure that the Congressional purposes which underlie the Settlement Act are fulfilled, there must be some reasonable likelihood that a certified Applicant is able to use and enjoy the Replacement Home. Thus, for example, a Certified Applicant whose suffers from a medical condition that requires residency 24/7 in an institution and could not live in a Replacement Home—even with caregiver assistance—will not be provided a Replacement Home.

The Time for the Relocation Process to be Completed

The time needed to complete the relocation process has varied widely during the period that ONHIR has been in existence. Some aspects of the time needed to complete the relocation process are beyond the control of the Applicant—for example, like all federal Departments and Agencies, ONHIR has been (and is) dependent on Congressional appropriations for the funds needed for our operations. Depending on

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[1] 25 CFR § 700.145 (a) (1)
[2] If the Applicant had been certified and signed a Relocation Contract, the housing benefit amount is paid to the Estate. 25 CFR § 700.145 (a) (2)
[3] 25 U.S.C. § 640d et seq. (as amended)
[44] 25 U.S.C. § 640d-14 "Relocation Housing"
[5] *ibid.*
[6] 25 CFR §§ 700.69, 700.147

the level of appropriations (and any possible carry-over funds), the time for ONHIR carrying out its functions such as determining eligibility and providing a housing benefit has varied.

ONHIR's workload has also varied greatly over the years – sometimes there have been many Applicants whose Applications needed review, at other times few, if any, such Applications. When denied Applicants file appeals from such denials, the time for such appeals to be heard and determined also varies based on factors including Agency workload; the workload of counsel for Applicants and the time needed for Applicants to be ready for an Appeal Hearing.

Other aspects of the time needed to complete the relocation process are dependent on Navajo Nation requirements (or Navajo Nation and Bureau of Indian Affairs' requirements) such as the time needed to obtain an approved Homesite Lease within the Navajo Nation. Still other aspects of the time needed to complete the relocation process are dependent on the Certified Applicant—has the Applicant decided where she/he wants the Relocation Home? Has the Applicant maintained contact with ONHIR's Relocation Operations Branch ("ROB") and her/his Counseling Specialist? Has the Applicant provided ROB the information and documents needed in the Relocation Process? Has the Applicant taken the actions necessary to acquire a Homesite Lease (for Relocations within the Navajo Nation)?

Given the time it may take for the Relocation process to be completed after certification of an Applicant, from time to time an Applicant dies before signing a Relocation Contract. This Policy Memorandum addresses what obligations, if any, ONHIR has if such an Applicant dies without a surviving spouse.

What Constitutes a "household requiring relocation pursuant to the Act"?

The structure of the Act is based on the relocation of "households." In the most common situation where the partition of the Former Joint Use Area ("FJUA") "causes" relocation, a mother, father and their children apply for Relocation Benefits through the HOH, and end up certified or denied. If certified the family then goes through the counseling and housing processes and ends up with a Replacement Home.

During the time the relocation process takes, there have often been changes in family composition—children grow up; new children come into the world; people marry and couples sometimes divorce and people die. ONHIR's goal is to provide "decent, safe and sanitary" housing for the family as it is constituted when the actual Relocation Contract and housing construction contract are signed.

If the HOH dies and there is a surviving spouse the process will continue with the surviving spouse.[7] If there is no surviving spouse, but there are minor children who were (legally and actually) dependent on

[7] If the HOH has not been certified at the time of her/his death, a situation can arise if all of the decedent's children are not also the children of the surviving spouse. In such cases under ONHIR Policy Memorandum No. 18.

the decedent for housing, then these children are members of "a household requiring relocation pursuant to the Act."[8]

As noted above, the time for the relocation process can vary widely from household to household. Situations can and have arisen in which when the Applicant first applied for Relocation Benefits the Applicant had minor children, but over the time period the relocation process has taken, all minor children have become adults.

While ONHIR could certainly look at the age of the HOH's children at the time when a Relocation Contract is ready to be signed to determine whether the HOH's children are then, in fact, part of the "household requiring relocation pursuant to the Act," as discussed above, ONIHR appreciates that in many cases the time or some part of the time that the process has taken arose from matters outside the control of the HOH or the HOH's family.

Thus, since ONHIR has always endeavored to administer a "thorough and generous [relocation] program,"[9] unless the HOH's own conduct was largely responsible for the time the Relocation process has taken, in which case ONHIR will consider the children's then current age to determine if they are household members, ONHIR will look to the age of an Applicant's children when the Applicant applied for Relocation Benefits. As discussed below, such an approach also permits this Policy to be applied when the issue is whether or not a pending Appeal should be permitted to continue or should be dismissed.

Applying this Policy to Pending Appeals

In Eligibility Appeals, by virtue of the status being an appeal from a denial of an Application for Relocation Benefits ("Application"), the Applicant has not been certified. For an Appeal to be filed, or if filed to be permitted to continue, only makes sense if were the Appeal successful it would result in the award of a Replacement Home.

If the Applicant/HOH dies and there is no surviving spouse, an Appeal is appropriate only if there is a household requiring relocation pursuant to the Act. Unless the Applicant has unduly delayed pursuing an Appeal, in which case the children's then current age when they seek to continue an Appeal shall be utilized for determination of the "remaining household" question, the appropriate inquiry will be whether when the Application was filed the HOH had minor children. If so, the Appeal is appropriate. If not the Appeal should be dismissed.

ONHIR requires the surviving spouse to be court-appointed as the legal representative of the decedent's estate in order for the surviving spouse to carry on the Application (or Appeal from a denial of the Application).

[8] For purposes of determining whether or not there is a household requiring relocation, ONHIR considers an adult with a disability that precludes him or her from living alone the legal equivalent of a minor child.

[9] 1990 ONHIR Plan Update

Other Special Situations

As with all policies and general rules, there can be outliers—if for example, an Applicant had no minor children at the time of filing an Application, but has children later, then there would be a household requiring relocation. Or if an Applicant did have a minor child or children at the time of Application, but the child or children died, then there would be no household requiring relocation.

Approved: _____ Date: 8/1, 2014
Christopher J. Bavasi
Executive Director, ONHIR