

ONHIR—ELIGIBILITY: REVISED DRAFT FREQUENTLY ASKED
QUESTIONS:
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Applicant: Can you provide a brief summary of what the Navajo—Hopi Land Dispute is all about?

ONHIR: Back on December 16, 1882, then President Chester A. Arthur set aside a large area of land (2.5 million acres) in what is now Arizona as an Executive **Order Reservation for the “Moqui” (Hopi) and “such other Indians** as the Secretary [of Interior] might settle thereon. (“The EOA”)

The Navajo Nation and Hopi Indian Tribe could not agree on what their rights were to these lands and so in 1958 at the request of both the Navajo Nation and the Hopi Tribe the Congress authorized a lawsuit between the two Indian Nations to determine which Indian Nation had what rights. This resulted in a 1962 decision in a case called *Healing v. Jones* (affirmed by the U.S. Supreme Court in 1963) which held that what was known as “**Land Management District 6**” was exclusively Hopi and the remainder of the EOA (about 1.8 million acres) was a “**Joint Use Area**” in which both the Hopi Tribe and Navajo Nation had joint, equal and undivided rights (“the JUA”)

When the Navajos and Hopis could not agree on use of the JUA, efforts were made both in the Federal Courts and the Congress to deal with rights to use and occupy the JUA. These efforts lead to such things as livestock reduction, a freeze on development and the Navajo—Hopi Settlement Act of 1974 (P.L. 93-531.) (“the Act”)

Applicant: What do you mean by “HPL” or Hopi Partitioned Lands?

ONHIR: The Act called for an effort to resolve the JUA dispute with help from a Federal Mediator (Mr. William Simkin.) When these mediation efforts failed, the Mediator submitted a report to the Federal Court (Judge Walsh in Tucson) and the Federal Court eventually divided the JUA into two parts—**one part was awarded to the Hopis (“the HPL”) and the other part was awarded to the Navajos (“the NPL.”)**

(The division was only of the surface, the subsurface interests—like the Black Mesa coal—remained in joint ownership by both Indian Nations.)

The final partition line was set by the Federal Court in 1978.

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Applicant: I understand that in order to be eligible for Relocation Benefits I need to have been living on land that became part of the HPL on December 22, 1974. Why?

ONHIR: That is the date established by Congress in the Act. You also could not have moved to the lands which became the HPL after December 22, 1973.

We believe the reason Congress set these dates was to prevent people who **“really” lived outside the HPL from moving to the HPL just to claim benefits.**

Applicant: Are you accepting applications for Relocation Benefits?

ONHIR: **We are trying to complete our Agency’s work. As part of that effort** we are notifying people who may be eligible for Relocation Benefits about our Agency and the Relocation Program.

Applicant: What is the process you are utilizing?

ONHIR: We have a two (2) step process. First we are trying to make contact **with all people who might be eligible. Let me emphasize the word “might.”** Just because you contact us or we contact you does not mean you are eligible for Relocation Benefits.

The first step is your contact with us. We keep a record of all such contacts.

The next step is that we send you an Application for Relocation Benefits and you make an appointment to meet with one of our staff and complete the form or you complete the form on your own and send it to us.

Applicant: **What about the “Request for Preliminary Eligibility Determination” form?**

ONHIR: We used to use such a Request form, but after reviewing it and discussing the matter with the Navajo—Hopi Legal Services Program, we came to the conclusion that using this form meant asking an Applicant for the same information twice and we did not want to put this burden on Applicants so we eliminated this form.

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Applicant: What if I complete an Application for Relocation Benefits, but then you deny my Application. Can I appeal this?

ONHIR: Yes. You can appeal this decision to an ONHIR Hearing Officer provided that you file and we receive your Appeal within sixty (60) days after you receive our letter telling you your Application is denied.

If we deny your application we will send you a copy of the Regulations governing Appeals. We will also suggest you contact the Navajo—Hopi Legal Services Program, a free program of the Navajo Nation Department of Justice in Tuba City. We will provide you contact information for that program.

Applicant: How long will this application process take?

ONHIR: That will depend on how many people participate in the process and how long it takes for a specific applicant to get us the information we need to make a decision. So we cannot give you an estimate at this point. If you do decide to participate in this process, we will keep you advised of developments in your case.

Applicant: What are the criteria ONHIR uses to decide if I am eligible for Relocation Benefits?

ONHIR: While we will need to evaluate each applicant and each application, in general these are the requirements you must meet:

- a. You were a resident of what became the Hopi Partitioned Lands (“HPL”) on **December 22, 1974** and you had not moved to what became the HPL on or after December 22, 1973; and
- b. You became a Head of Household on or before July 7, 1986; and
- c. You were a resident of the HPL at the time you became a Head of Household
- d. You did not knowingly reject Relocation Benefits
- e. You did not previously apply for Relocation Benefits.

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1. This requirement will not apply if:
 - (a.) You applied, were denied and you currently have an appeal pending; or
 - (b) You applied, were denied, lost your appeal and have not taken your case to Federal Court and less than six (6) years have passed since you **received notice of Final Agency Action (“FAA”)** from ONHIR

Applicant: What do you mean by “Head of Household”?

ONHIR:

When the Congress passed the Navajo—Hopi Settlement Act they wanted to **reduce the hardship that having to leave land awarded to the “other” Indian Nation would cause**. Congress decided to provide certain benefits (which we **refer to as the “Relocation Benefits”**) and **provide them to families which were required to move from their homes**. The term “household” refers to such families.

If you think about it, a person is either a “member” of a household or the “head” of that household. A “Head of Household” can be a wife, a husband or, in some circumstances, a single parent or a self-supporting single individual.

To be eligible for Relocation Benefits, as noted above, a person needs to have his or her own family (husband/wife); be a single parent or be self-supporting. If, for example, a person is not a husband or wife and not a parent and is not self-supporting, then as a practical matter he or she would **be part of some other person’s “household” and would not be a “Head of Household.”** In that situation if a person received Relocation Benefits it would be through the Head of Household of the family the person was part of.

Here is what the ONHIR Regulation says:

“§ 700.69 Head of household.

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(a) Household. A household is:

(1) A group of two or more persons living together at a specific location who form a unit of permanent and domestic character.

(2) A single person who at the time his/her residence on land partitioned to the Tribe of which he/she is not a member actually maintained and supported him/herself or was legally married and is now legally divorced.

(b) Head of household. The head of household is that individual who speaks on behalf of the members of the household and who is designated by the household members to act as such.

(c) In order to qualify as a head of household, the individual must have been a head of household as of the time he/she moved from the land partitioned to a tribe of which they were not a member.

[49 FR 22278, May 29, 1984]"

Applicant: If I do get certified, what benefits will ONHIR provide?

ONHIR: The basic benefit is payment towards the cost of acquisition of a **"Replacement Home" to replace the home the applicant used to live in on the lands that were partitioned to the "other" Tribe in 1978.** (For a Navajo this would mean the home she or he had on the lands partitioned [awarded] to the Hopi Tribe.)

The maximum amount of this benefit has changed over the years as housing costs have changed, but assuming the number of household members was three (3) or less, the current value is about \$122,000 and if the number of household members is four (4) or more, the current value is about \$127,000.

In addition, ONHIR provides payment or reimbursement for certain moving expenses and we provide counseling concerning home ownership to people who need such counseling and assistance in the acquisition of the Replacement Home (either a newly constructed home or an existing home)

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and we assist if there are any warranty issues for two (2) years after the person getting the benefit moves into the home.

Applicant: Does the home have to be within the Navajo Nation?

ONHIR: We will offer counseling on locations that best fit your income and goals.

Applicant: Can I just get the cash equivalent of the housing benefit?

ONHIR: No. This is a Replacement Home Program. If, however, you presently own a home but have a mortgage or deed of trust and are making payments on the home, we may be able to pay off or pay down on what you owe on the home.

We would need to inspect and appraise the home to make sure it meets our standards and also make sure that there are **no "title" defects, but if the** home is up to our standards and there are no title problems or problems resulting from the appraisal (such as the home being worth less than you owe on the home) we may be able to pay off or pay down on what you owe. (We would **pay "down" if the current loan amount is more than the** maximum housing benefit and you would still owe the difference between your current loan balance and the maximum housing benefit.)

Applicant: What if I want the home for one of my children?

ONHIR: The home has to be one that you use and occupy. We will not provide a home if the applicant does not intend to live in it.

Applicant: Are my children eligible for Relocation Benefits in their own name....**that is could they also apply for Relocation Benefits?**

ONHIR: If you want to give us the names and contact information for your children, we will contact them. If you prefer, your children can contact ONHIR directly. Our address is P.O. Box KK, Flagstaff, AZ 86002 and our Toll-free Telephone Number is 800-321-3114.

Applicant: Can I be represented by someone in the application process or if I am certified and in the counseling process?

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ONHIR: Yes, if you wish to be represented by someone we will generally respect that decision. You can be informally represented in your dealings with ONHIR by a family member or other person of your choice so long as we have your written authorization to work with that person.

Applicant: If I am denied Relocation Benefits, and I decide to appeal that denial, can I be represented by a lawyer?

ONHIR: Yes.

If you want to be represented by a lawyer, then so long as the lawyer is admitted to practice in some state or in the Courts of the Navajo or Hopi Nation, he or she can represent you in the appeal process.

The Navajo Nation through the Navajo Nation Department of Justice has established the Navajo—Hopi Legal Services Program in Tuba City, Arizona to provide free legal services to Navajos with respect to relocation—related issues. Their office is at 117 Main Street in Tuba City. Their mail address is P.O. Box 2990, Tuba City, AZ 86045. Their telephone number is 928-283-3300 and their Fax number is 928-283-3314.

Applicant: Does ONHIR have staff members who speak Navajo?

ONHIR: Yes.