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 all 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 bearing 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 Housing Supervisor 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.

<u>Client Advisement</u>. 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 or 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 cause 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 decision 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 _____ 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 agency 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 agency 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 agency 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, and/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 system 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 IS Manager 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 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 of 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 agency 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 procurement sensitive data.

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

MONITORING.

The ONHIR is contracting for Internet service through NAU. The service screens out certain inappropriate sites from user access for all subscribers. These sites include pornography, gambling, drugs, militancy, dating, and violence.

The service provider routinely provides ONHIR with a report of the sites accessed by ONHIR employees. This report records the date and time the sites were accessed. These reports are intended to provide management with information about 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 request the IS Manager 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 agency 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 agency 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 facilities 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 secretary 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 secretary 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 for 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 maintained on the User's computer for a period of not less than 180 days before they are deleted.

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, agency 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 property save an important E-mail could result in it being permanently lost.

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Employees are reminded that their use of the Internet is a privilege. There are no exceptions for 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 may contact the Personnel Department and IS Branch.

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

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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.

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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