

Requests Pursuant to Section 106 of HUD Reform Act

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Subject: Requests Pursuant to Section 106 of HUD Reform Act

January 16, 1992

MEMORANDUM FOR: Principal Staff

FROM: Frank Keating, General Counsel

SUBJECT: Responding to Requests Pursuant to Section 106 of the
HUD Reform Act

The purpose of this memorandum is to set forth the procedure which should be used to respond to requests for information concerning waivers of HUD regulations, pursuant to Section 106 of the HUD Reform Act.

As you are aware, Section 106 of the HUD Reform Act requires the agency to publish in the Federal Register instances in which requirements of its program regulations have been waived. The statute also requires the agency to inform the public in the publication how to obtain a copy of the waiver request and the approval.

A copy of the cover memorandum or correspondence requesting the waiver and a copy of the summary or cover document approving the waiver should be provided in response to a request for documents pursuant to a Federal Register publication under Section 106. In addition, unless the requestor has specifically limited his or her request to those two documents, all documents pertaining to the waiver should be reviewed. The additional related documents should be provided to the requestor if they otherwise would be disclosed under the Freedom of Information Act. However, documents or portions of documents that fall within an exemption to the Freedom of Information Act should be withheld. This procedure will preserve the "sunshine" purpose of Section 106 while at the same time protecting any unique "trade secret" or similar protected information that was provided by the person requesting the waiver. It will also preserve the agency's pre-decisional deliberative processes.

A request for documents pursuant to Section 106 of the HUD Reform Act initially should be responded to by the program office responsible for approving the waiver (or recommending such approval to the Secretary or Deputy Secretary). The program office should respond in writing to the requestor providing a copy of the request for the Section 106 waiver and a copy of the approving document. If the person making the request for

documents has specifically limited the request to those two

documents, no further response is necessary.

However, if the request for the document has not been so limited, the program office should then forward all correspondence and related Headquarters documents to the Office of the Executive Secretariat. The program office should advise the requestor in the initial written response that his or her request is being processed further under the Freedom of Information Act and that other documents related to the waiver may be made available separately pursuant to that Act. The Executive Secretariat will process other waiver-related documents, in Headquarters and the field, under the Freedom of Information Act and respond separately to the person making the request.

We hope that this information is helpful to you. Questions regarding the substance of Section 106 should be addressed to the Office of the Associate General Counsel for Legislation and Regulations, at 708-1793. Questions concerning the release of specific documents in response to a Section 106 request for documents may be addressed to the Office of the Executive Secretariat at 708-3054 or to the Office of Associate General Counsel for Equal Opportunity and Administrative Law at 708-2203.