

Refusal to extend or suspend a voucher

A PHA determination not to grant approval of the tenancy

Determination that unit is not in compliance with HQS

Determination that unit is not in accordance with HQS due to family size or composition

### **Procedure for Review**

A request for an informal review must be received **in writing** by the close of the business day, no later than ten (10) days from the date of the PHA's notification of denial of assistance. The informal review will be scheduled promptly, generally within ten (10) working days.

The informal review may not be conducted by the person who made or approved the decision under review, nor a subordinate of such person.

The review may be conducted by any person designated by the PHA other than the person who made or approved the decision under review, or a subordinate of such person.

The applicant will be given the option of presenting oral or written objections to the decision. Both the PHA and the family may present evidence and witnesses. The family may use an attorney or other representative to assist them at their own expense.

The review may be conducted by mail and/or telephone if acceptable to both parties.

A notice of the review findings will be provided in writing to the applicant promptly by the review officer. It shall include the decision of the review officer, and an explanation of the reasons for the decision.

All requests for a review, supporting documentation, and a copy of the final decision will be retained in the family's file.

### **D. INFORMAL HEARING PROCEDURES** [24 CFR 982.555(a-f), 982.54(d)(13)]

When the PHA makes a decision regarding the eligibility and/or the amount of assistance, applicants and participants must be notified in writing. The PHA will give the family prompt notice of such determinations which will include:

The proposed action or decision of the PHA

The date the proposed action or decision will take place

The family's right to an explanation of the basis for the PHA's decision

The procedures for requesting a hearing if the family disputes the action or decision

The time limit for requesting the hearing

When terminating assistance for criminal activity as shown by a criminal record, the PHA will provide the subject of the record and the tenant/participant with a copy of the criminal record upon which the decision to terminate was based.

The PHA must provide participants with the opportunity for an informal hearing for decisions related to any of the following PHA determinations:

Determination of the family's annual or adjusted income and the computation of the housing assistance payment

Appropriate utility allowance used from schedule

Family unit size determination under PHA subsidy standards

Determination to terminate assistance for any reason

Determination to terminate a family's FSS contract, withhold supportive services, or propose forfeiture of the family's escrow account

The PHA must always provide the opportunity for an informal hearing before termination of assistance.

Informal hearings are not required for established policies and procedures and PHA determinations such as:

Discretionary administrative determinations by the PHA

General policy issues or class grievances

Establishment of the PHA schedule of utility allowances for families in the program

- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to approve a unit or lease
- A PHA determination that an assisted unit is not in compliance with HQS (PHA must provide hearing for family breach of HQS because that is a family obligation determination)
- A PHA determination that the unit is not in accordance with HQS because of the family size
- A PHA determination to exercise or not exercise any right or remedy against the owner under a HAP contract

**Notification of Hearing**

It is the PHA's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. However, if this is not possible, the PHA will ensure that applicants and participants will receive all of the protections and rights afforded by the law and the regulations.

When the PHA receives a request for an informal hearing, a hearing shall be scheduled promptly, generally within ten (10) working days. The notification of hearing will contain:

- The date and time of the hearing
- The location where the hearing will be held
- The family's right to bring evidence, witnesses, legal or other representation at the family's expense
- The right to view any documents or evidence in the possession of the PHA upon which the PHA based the proposed action and, at the family's expense, to obtain a copy of such documents prior to the hearing. Requests for such documents or evidence must be received no later than three days before the hearing date.
- A notice to the family that the PHA will request a copy of any documents or evidence the family will use at the hearing.

## **The PHA's Hearing Procedures**

After a hearing date has been scheduled, the family may request to reschedule provided that they contact the individual hearing officer directly to reschedule. Once the hearing has been rescheduled to meet the convenience of the family, the hearing will rescheduled a second time only upon showing "good cause," which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

If the family fails to attend the hearing and failed to contact the hearing officer to reschedule the hearing, the hearing office will complete a hearing decision upon the evidence available to the hearing officer.

Families have the right to:

- Present written or oral objections to the PHA's determination.

- Examine the documents in the file which are the basis for the PHA's action, and all documents submitted to the Hearing Officer;

- Copy any relevant documents at their expense;

- Present any information or witnesses pertinent to the issue of the hearing;

- Request that PHA staff be available or present at the hearing to answer questions pertinent to the case; and

- Be represented by legal counsel, advocate, or other designated representative at their own expense.

If the family requests copies of documents relevant to the hearing, the PHA will make the copies for the family and assess a charge of \$.10 per page per copy. In no case will the family be allowed to remove the file from the PHA's office.

In addition to other rights contained in this Chapter, the PHA has a right to:

- Present evidence and any information pertinent to the issue of the hearing;

- Be notified if the family intends to be represented by legal counsel, advocate, or another party;

- Examine and copy any documents to be used by the family prior to the hearing;

- Have its attorney present; and

Have staff persons and other witnesses familiar with the case present.

The informal hearing shall be conducted by the Hearing Officer appointed by the PHA who is neither the person who made or approved the decision, nor a subordinate of that person. The PHA appoints hearing officers who:

Are PHA management or Are managers from other PHAs

The hearing shall concern only the issues for which the family has received the opportunity for hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

No documents may be presented which have not been provided to the other party before the hearing if requested by the other party. "Documents" includes records and regulations.

The family must request an audio recording of the hearing, if desired, three days prior to the hearing date.

The Hearing Officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision.

If the family misses an appointment or deadline ordered by the Hearing Officer, the action of the PHA shall take effect and another hearing will not be granted.

The Hearing Officer will determine whether the action, inaction or decision of the PHA is legal in accordance with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

A notice of the hearing findings shall be provided in writing to the PHA and the family promptly, generally within ten working days, and shall include:

A clear summary of the decision and reasons for the decision;

If the decision involves money owed, the amount owed and an explanation of the calculation of the amount;

The date the decision goes into effect.

The PHA is not bound by hearing decisions:

Which concern matters in which the PHA is not required to provide an opportunity for a hearing

Which conflict with or contradict to HUD regulations or requirements;

Which conflict with or contradict Federal, State or local laws; or

Which exceed the authority of the person conducting the hearing.

The PHA shall send a letter to the participant if it determines the PHA is not bound by the Hearing Officer's determination within ten (10) working days. The letter shall include the PHA's reasons for the decision.

All requests for a hearing, supporting documentation, and a copy of the final decision will be retained in the family's file.

**E. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS"** [24 CFR Part 5, Subpart E]

Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the INS appeal.

Assistance to a family may not be terminated or denied while the PHA hearing is pending but assistance to an applicant may be delayed pending the PHA hearing.

**INS Determination of Ineligibility**

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the PHA notifies the applicant or participant within ten days of their right to appeal to the INS within thirty days or to request an informal hearing with the PHA either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give the PHA a copy of the appeal and proof of mailing or the PHA may proceed to deny or terminate. The time period to request an appeal may be extended by the PHA for good cause.

The request for a PHA hearing must be made within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in this chapter for both applicants and participants. If the hearing officer decides that

the individual is not eligible, and there are no other eligible family members the PHA will:

Deny the applicant family

Defer termination if the family is a participant and qualifies for deferral

Terminate the participant if the family does not qualify for deferral

If there are eligible members in the family, the PHA will offer to prorate assistance or give the family the option to remove the ineligible members. All other complaints related to eligible citizen/immigrant status:

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide.

Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.

Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of tenant rent and Total Tenant Payment.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

#### **F. MITIGATING CIRCUMSTANCES FOR APPLICANTS/PARTICIPANTS WITH DISABILITIES** [24 CFR 982.204, 982.552(c)]

When applicants are denied placement on the waiting list, or the PHA is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

## Chapter 20

### SPECIAL HOUSING TYPES

[24 CFR 982.601]

#### **INTRODUCTION**

**The PHA will permit the use of the Special Housing Types (Single Room Occupancy Housing; Congregate Housing; Group Home Housing; Shared Housing; Cooperative Housing; and Homeownership) in its program only if the applicant/participant can demonstrate that it is needed as a reasonable accommodation for a person with a disability.** Acceptable demonstration will include documentation from one or more knowledgeable professionals who are familiar with the applicant/participant and or the type of special housing requested as accommodation.

The PHA will not set aside any program funding for special housing types, or for a special housing type.

#### **Verification of Need for Reasonable Accommodation**

Acceptable documentation as verification of the need for reasonable accommodation would be a letter to the PHA describing how the special housing type requested provides the accommodation of which the person is in need. The request and documentation will be reviewed by the Executive Director or Section 8 and Occupancy Manager and a written response stating approval or disapproval will be sent to the applicant/participant promptly, generally, within fourteen (14) days of receipt of the request.

A copy of the PHA's response with supporting documentation will be maintained in the applicant/participant's file. The requested housing type must be approvable by all other HUD standards and HQS requirements in accordance with 24 CFR 982 Section M - Special Housing Types.

#### **A. SINGLE ROOM OCCUPANCY** [24 CFR 982.602]

A single person may reside in an SRO housing unit.

The PHA will use a separate lease and housing assistance payment contract for each assisted person residing in a SRO. [24 CFR 982.603]