



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Chapter 14 : GRIEVANCES AND APPEALS

INTRODUCTION

This chapter discusses grievances and appeals pertaining to FHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not the FHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure. A sample grievance procedure is provided as Exhibit 14-1. However, please note that the procedure provided is only a sample and is designed to match up with the default policies in the model ACOP. As such, the FHA would need to modify accordingly should any alternative policy decisions be adopted.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14-I.A. OVERVIEW

When the FHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the FHA policies necessary to respond to applicant appeals through the informal hearing process.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants under the FHA grievance procedures [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide applicants the opportunity to review the reasons for denial of admission and to present evidence to refute the grounds for denial.

Use of Informal Hearing Process

While the FHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the FHA could make the informal hearing process available to applicants who wish to dispute other FHA actions that adversely affect them.

FHA Policy

The FHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

Notice of Denial [24 CFR 960.208(a)]

The FHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the FHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

When denying eligibility for admission, the FHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Scheduling an Informal Hearing

FHA Policy

A request for an informal hearing must be made in writing and delivered to the FHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the FHA's notification of denial of admission.

The FHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

Conducting an Informal Hearing [PH Occ GB, p. 58]

FHA Policy

The informal hearing will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the FHA.

The person conducting the informal hearing will make a recommendation to the FHA, but the FHA is responsible for making the final decision as to whether admission should be granted or denied.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Informal Hearing Decision [PH Occ GB, p. 58]

FHA Policy

The FHA will notify the applicant of the FHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the FHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in FHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. The FHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the FHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the FHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The FHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the FHA must consider such accommodations. The FHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the FHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the FHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the FHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]

When the FHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the FHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the FHA with a copy of the written request for appeal and proof of mailing.

FHA Policy

The FHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the FHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the FHA, of its decision. When the USCIS notifies the FHA of the decision, the FHA must notify the family of its right to request an informal hearing.

FHA Policy

The FHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the FHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the FHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The FHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the FHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

FHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of FHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the FHA, and to confront and cross-examine all witnesses on whose testimony or information the FHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. The FHA is obligated to provide a competent interpreter, free of charge, upon request. The family may also or instead provide its own interpreter, at the expense of the family.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The FHA may, but is not required to provide a transcript of the hearing.

FHA Policy

The FHA will not provide a transcript of an audio taped informal hearing.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Hearing Decision

The FHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

The FHA must retain for a minimum of 5 years the following documents that may have been submitted to the FHA by the family, or provided to the FHA as part of the USCIS appeal or the FHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the FHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the FHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

14-III.A. REQUIREMENTS [24 CFR 966.52]

FHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any FHA action or failure to act involving the lease or FHA policies which adversely affect their rights, duties, welfare, or status. The FHA must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

The FHA grievance procedure must be included in, or incorporated by reference in, the lease.

FHA Policy

The FHA grievance procedure will be incorporated by reference in the tenant lease.

The FHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the FHA grievance procedure, and provide an opportunity to present written comments. Comments submitted must be considered by the FHA before adoption of any changes to the grievance procedure by the FHA.

FHA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by the FHA of any proposed changes in the FHA grievance procedure, to submit written comments to the FHA.

The FHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to FHA action or failure to act in accordance with the individual tenant’s lease or FHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the FHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Expedited Grievance** – a procedure established by the FHA for any grievance or termination that involves:
 - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment or the FHA’s public housing premises by other residents or employees of the FHA; or
 - Any drug-related criminal activity on or off the premises
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
 - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
 - Right of the tenant to be represented by counsel
 - Opportunity for the tenant to refute the evidence presented by the FHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
 - A decision on the merits
- **Hearing Officer** – an impartial person or selected by the FHA, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.
- **Tenant** – the adult person (or persons) (other than a live-in aide)
 - Who resides in the unit, and who executed the lease with the FHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
 - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

14-III.C. APPLICABILITY [24 CFR 966.51]

Grievances could potentially address most aspects of a FHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the FHA. It is not applicable to disputes between tenants not involving the FHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the FHA.

If HUD has issued a due process determination, a FHA may exclude from the FHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the FHA;
- Any violent or drug-related criminal activity on or off such premises; or
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, FHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, with the following exception: FHAs may use expedited grievance procedures for the excluded categories listed above. These expedited grievance procedures are described in Section 14-III.E. below.

If HUD has issued a due process determination, the FHA may evict through the state/local judicial eviction procedures. In this case, the FHA is not required to provide the opportunity for a hearing under the FHA's grievance procedure as described above.

FHA Policy

The FHA is located in a HUD-declared due process state. Therefore, the FHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the FHA, for violent or drug-related criminal activity on or off the premises or for any criminal activity that resulted in felony conviction of a household member.

See Chapter 13 for related policies on the content of termination notices.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the FHA office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

FHA Policy

The FHA will accept requests for an informal settlement of a grievance either orally or in writing, to the FHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the FHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the FHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the FHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

FHA Policy

The FHA will prepare a summary of the informal settlement within five business days; one copy to be given to the tenant and one copy to be retained in the FHA's tenant file.

For FHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

14-III.E. PROCEDURES TO OBTAIN A HEARING

Requests for Hearing and Failure to Request

FHA Policy

The resident must submit a written request for a grievance hearing to the FHA within 14 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the FHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the FHA's action in disposing of the complaint in an appropriate judicial proceeding.

Scheduling of Hearings [24 CFR 966.56(a)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the FHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate FHA official.

FHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the FHA.

The FHA may wish to permit the tenant to request to reschedule a hearing for good cause.

FHA Policy

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the FHA may request documentation of the "good cause" prior to rescheduling the hearing.

Expedited Grievance Procedure [24 CFR 966.52(a)]

The FHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the FHA;
- Any drug-related criminal activity on or near such premises; or
- Any criminal activity that resulted in felony conviction of a household member.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

The FHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

FHA Policy

The FHA will not offer expedited grievance procedures.

14-III.F. SELECTION OF HEARING OFFICER/PANEL [24 CFR 966.53(e)]

The grievance hearing must be conducted by an impartial person or persons appointed by the FHA, other than the person who made or approved the FHA action under review, or a subordinate of such person. The FHA must describe their policies for selection of a hearing officer in their lease.

FHA Policy

FHA grievance hearings will be conducted by a single hearing officer and not a panel.

The FHA will appoint a staff member who was not involved in the decision under appeal. If a designated staff member (such as the program manager) was involved in the decision, or is a subordinate of such person, an alternate hearing officer will be selected.

The FHA may select designated staff members who were not involved in the decision under appeal in certain circumstances, such as appeals involving discrimination claims or denials of requests for reasonable accommodations.

FHAs must describe their policies for selection of a hearing officer in their lease forms. Changes to the public housing lease are subject to a 30-day comment period [24 CFR 966.4]

14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)]

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any FHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the FHA does not make the document available for examination upon request by the complainant, the FHA may not rely on such document at the grievance hearing.

FHA Policy

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of FHA documents no later than 12:00 p.m. on the business day prior to the hearing.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

- The right to be represented by counsel or other person chosen to represent the tenant, and to have such person make statements on the tenant's behalf.

FHA Policy

Hearings may be attended by the following applicable persons:

A FHA representative(s) and any witnesses for the FHA

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by the FHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the FHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the FHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

Failure to Appear [24 CFR 966.56(c)]

If the complainant or the FHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the FHA must be notified of the determination by the hearing officer: Provided, That a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest the FHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

FHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the FHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

"Good cause" is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

General Procedures [24 CFR 966.56(d), (e)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the FHA must sustain the burden of justifying the FHA action or failure to act against which the complaint is directed [24 CFR 966.56(d)].

The hearing is conducted informally by the hearing officer. The FHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

FHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to the FHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the FHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine FHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the FHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The complainant or the FHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(e)].

FHA Policy

If the complainant would like the FHA to record the proceedings by audiotape, the request must be made to the FHA by 12:00 p.m. on the business day prior to the hearing.

The FHA will consider that an audio tape recording of the proceedings is a transcript.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Accommodations of Persons with Disabilities [24 CFR 966.56(f)]

The FHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the FHA's responsibilities pertaining to reasonable accommodation.

Limited English Proficiency (24 CFR 966.56(g))

The FHA must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

14-III.H. DECISION OF THE HEARING OFFICER [24 CFR 966.57]

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the complainant and the FHA. The FHA must retain a copy of the decision in the tenant's folder. A log of all hearing officer decisions must also be maintained by the FHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer [24 CFR 966.57(a)].

FHA Policy

In rendering a decision, the hearing officer will consider the following matters:

FHA Notice to the Family: The hearing officer will determine if the reasons for the FHA's decision are factually stated in the notice.

Discovery: The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with FHA policy.

FHA Evidence to Support the FHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the FHA's conclusion.

Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and FHA policies. If the grounds for termination are not specified in the regulations or in compliance with FHA policies, then the decision of the FHA will be overturned.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

The hearing officer will issue a written decision to the family and the FHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

- Name of the complainant
- Date, time and place of the hearing
- Name of the hearing officer
- Name of the FHA representative(s)
- Name of family representative (if any)
- Names of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the FHA's decision.

Order: The hearing report will include a statement of whether the FHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the FHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the FHA to restore the family's status.

Procedures for Further Hearing

FHA Policy

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 FHA will take effect and another hearing will not be granted.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer is binding on the FHA which must take the action, or refrain from taking the action cited in the decision unless the FHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern FHA action or failure to act in accordance with or involving the complainant's lease on FHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer is contrary to federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the FHA

FHA Policy

When the FHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the FHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer, or Board of Commissioners in favor of the FHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights, nor effect in any manner whatever, any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

EXHIBIT 14-1: SAMPLE GRIEVANCE PROCEDURE

Note: The sample procedure provided below is a sample only and is designed to match up with the default policies in the model ACOP. If your FHA has made policy decisions that do not reflect the default policies in the ACOP, you would need to ensure that the procedure matches those policy decisions.

I. Definitions applicable to the grievance procedure [24 CFR 966.53]

- A. Grievance: Any dispute a tenant may have with respect to FHA action or failure to act in accordance with the individual tenant's lease or FHA regulations that adversely affects the individual tenant's rights, duties, welfare, or status.
- B. Complainant: Any tenant (as defined below) whose grievance is presented to the FHA or at the project management office in accordance with the requirements presented in this procedure.
- C. Elements of due process: An eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
 - i. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
 - ii. Right of the tenant to be represented by counsel
 - iii. Opportunity for the tenant to refute the evidence presented by the FHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant may have
 - iv. A decision on the merits of the case
- D. Hearing officer: An impartial person or persons selected by the FHA other than the person who made or approved the decision under review, or a subordinate of that person. Such individuals do not need legal training.
- E. Tenant: The adult person (or persons other than a live-in aide) who resides in the unit and who executed the lease with the FHA as lessee of the dwelling unit, or if no such person now resides in the unit, who resides in the unit and who is the remaining head of the household of the tenant family residing in the dwelling unit.
- F. Resident organization: An organization of residents, which also may include a resident management corporation.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

II. **Applicability of this grievance procedure [24 CFR 966.51]**

In accordance with the applicable federal regulations (24 CFR 966.50), this grievance procedure is applicable to all individual grievances (as defined in Section I above) between the tenant and the FHA with the following exception of disputes between tenants not involving the FHA or class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the FHA's Board of Commissioners [24 CFR 966.51(b)].

This grievance procedure is incorporated by reference in all tenant dwelling leases and will be furnished to each tenant and all resident organizations [24 CFR 966.52 (b) and (d)].

Any changes proposed in this grievance procedure must provide for at least 30 days' notice to tenants and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. Comments will be considered by the FHA before any revisions are made to the grievance procedure [24 CFR 966.52(c)].

III. **Informal settlement of a grievance [24 CFR 966.54]**

Any grievance must be personally presented, either orally or in writing, to the FHA's central office or the management office of the development in which the complainant resides **within 10 days after the grievable event.**

Grievances related to complaints about operations matters that are received by the FHA's central office will be referred to the person responsible for the management of the development in which the complainant resides. Grievances involving complaints related to discrimination, harassment, or disability rights will be referred to the Civil Rights Administrator or Director of Operations.

As soon as the grievance is received, it will be reviewed by the management office of the development or the Civil Rights Administrator (if applicable) to be certain that neither of the exclusions in paragraphs II.A or II.B above applies to the grievance. Should one of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to the FHA's grievance procedure with the reason specified.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time **within 10 business days** to meet so the grievance may be discussed informally and settled without a hearing. At the informal settlement, the complainant will present the grievance and the person in charge of the management office or the Civil Rights Administrator will attempt to settle the grievance to the satisfaction of both parties.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

Within five business days following the informal discussion, the FHA will prepare and either hand deliver, mail, or email to the tenant a summary of the discussion that must specify the names of the participants, the dates of meeting, the nature of the proposed disposition of the complaint, and the specific reasons therefore, and will specify the procedures by which a formal hearing under this procedure may be obtained if the complainant is not satisfied. A copy of this summary will also be placed in the tenant's file.

IV. Formal grievance hearing

If the complainant is not satisfied with the settlement arrived at in the informal settlement, the complainant must submit a written request for a hearing to the management office of the development where the tenant resides **no later than five business days after the summary of the informal hearing is received.**

The written request must specify:

- The reasons for the grievance; and
- The action of relief sought from the FHA

Within 10 days of receiving the written request for a hearing, the hearing officer will schedule and sent written notice of hearing to both the complainant and the FHA.

V. Selecting the hearing officer

A grievance hearing will be conducted by a single impartial person appointed by the FHA as described below:

- A. The hearing officer will be appointed directly by the executive director.
- B. The hearing officer will be a staff member who did not make or approve the decision under review and who is not a subordinate of such persons. If the designated staff member (such as the program manager) was involved in the decision or is a subordinate of such person, an alternate hearing officer will be selected.
- C. The FHA may select designated staff members who were not involved in the decision under review in certain circumstances, such as those involving discrimination claims or denials of requests for reasonable accommodations.
- D. The FHA's method for selecting a hearing officer will be inserted into the lease.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

VI. Scheduling hearings [24 CFR 966.56(a)]

When a complainant submits a timely request for a grievance hearing, the FHA will immediately appoint an impartial hearing officer to schedule the hearing within the following 10 business days.

Once the hearing officer has scheduled the hearing, the hearing officer will send written notice of the hearing to both the complainant and the FHA. Notice to the complainant will be in writing, either personally delivered to the complainant, or sent by mail or email, return receipt requested.

The written notice will specify the time, place, and procedures governing the hearing.

The tenant may request to reschedule a hearing on a one-time basis. Should the complainant need to reschedule a second time, he or she may do so for good cause, or if needed as a reasonable accommodation for a person with disabilities. *Good cause* is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

VII. Procedures governing the hearing [24 CFR 966.56]

The hearing will be held before a hearing officer as described above in Section V. The complainant will be afforded a fair hearing, which will include:

- A. The opportunity to examine before the hearing any FHA documents, including records and regulations, that are directly relevant to the hearing.

The tenant is allowed to copy any such document at the tenant's expense. If the FHA does not make the document available for examination upon request by the complainant, the FHA may not rely on such document at the grievance hearing.

- B. The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf.
- C. The right to a private hearing unless the complainant requests a public hearing.
- D. The right to present evidence and arguments in support of the tenant's complaint, to refute evidence relied on by the FHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the FHA or project management relies.
- E. A decision based solely and exclusively upon the fact presented at the hearing [24 CFR 966.56(b)].

The hearing is conducted informally by the hearing officer. The FHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

The complainant or the FHA may arrange in advance for a transcript of the hearing at the expense of the party making the arrangement. Any interested party may purchase a copy of the transcript [24 CFR 966.56(e)].

The FHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the tenant is visually impaired, any notice to the tenant that is required under this procedure must be in an accessible format [24 CFR 966.56(f)].

The FHA must comply with HUD's requirements regarding limited English proficiency as specified in "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons," issued January 22, 2007, and available at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq.



ADMISSIONS AND CONTINUED OCCUPANCY POLICY

VIII. Failure to appear at the hearing

If the complainant or FHA fails to appear at the hearing, the hearing officer may make a determination to postpone the hearing or make a determination that the complainant has waived his or her right to a hearing.

Both the complainant and the FHA must be notified of the determination by the hearing officer. A determination that the complainant has waived his or her right to a hearing will not constitute a waiver of any right the complainant may have to contest the FHA's disposition of the grievance in an appropriate judicial setting [24 CFR 966.56(c)].

IX. Decision of the hearing officer [24 CFR 966.57]

The hearing officer will prepare a written decision together with the reasons for the decision **within 10 business days** after the hearing. A copy of the decision will be sent to the complainant and the FHA.

The FHA will retain a copy of the decision in the tenant's file.

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 a deadline ordered by the hearing officer, the hearing officer will make a decision based on the evidence presented.

The decision of the hearing officer will be binding on the FHA unless the FHA's Board of Commissioners determines within a reasonable time and notifies the complainant of its determination that:

- A. The grievance does not concern FHA action or failure to act in accordance with or involving the complainant's lease or FHA regulations, which adversely affect the complainant's rights, duties, welfare, or status; or
- B. The decision of the hearing officer is contrary to applicable federal, state, or local law, HUD regulations, or requirements of the annual contributions contract (ACC) between HUD and the FHA.

When the FHA considers the decision of the hearing officer to be invalid due to either of the reasons stated above, it will present the matter to the FHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer or Board of Commissioners in favor of the FHA or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of nor affect in any way the rights of the complainant to a trial or judicial review in any court proceedings, which may be brought in the matter later [24 CFR 966.57].