

## Chapter 14

### GRIEVANCES AND APPEALS

#### INTRODUCTION

This chapter discusses grievances and appeals pertaining to PHA 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 PHA'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.



## **PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS**

### **14-I.A. OVERVIEW**

When the PHA 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 PHA policies necessary to respond to applicant appeals through the informal hearing process.

### **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 in the PHA grievance procedure [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

#### **Use of Informal Hearing Process**

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

##### CDA Policy

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

#### **Notice of Denial [24 CFR 960.208(a)]**

The PHA 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 PHA 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.

##### CDA Policy

The CDA's notice of denial will include information about required remote informal hearings or permitted remote informal hearings upon the applicant's request.

When denying eligibility for admission, the PHA must provide the family a notice of VAWA rights 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.

## **Scheduling an Informal Hearing**

### CDA Policy

A request for an informal hearing must be made by the applicant, in writing, and delivered to the CDA 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 CDA's notification of denial of admission.

If the informal hearing will be conducted remotely, the CDA will inform the applicant in the notice of hearing of the following items:

The processes involved in a remote informal hearing;

That the CDA will provide technical assistance prior to and during the informal hearing, if needed. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform; and

That if the applicant or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal hearing, the applicant may inform the CDA and the CDA will allow the applicant to participate in an in-person informal hearing, as it deems reasonable and appropriate given the totality of the circumstances.

Applicants who intend to have an attorney represent them at their informal hearing must provide this information to the CDA at the time of their request for an informal hearing. The CDA will not discuss the applicant's case, or share any information from the applicant's file, with their attorney or anyone else without an applicant's signed release of information provided to the CDA.

## **Remote Informal Hearings [Notice PIH 2020-32]**

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

### CDA Policy

All CDA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and compliance with HUD regulations.

The CDA has the sole discretion to require or permit that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the CDA will conduct an informal hearing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant

does not have childcare or transportation that would enable them to attend the informal hearing, or if the applicant believes an in-person informal hearing would create an undue health risk. The CDA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearing must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual ~~their his or her~~ inability to participate in the remote informal hearing, and the PHA should consider whether postponing the remote informal hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person hearings, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

### **Conducting an Informal Hearing [Notice PIH 2020-32]**

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

The PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

## CDA Policy

The informal hearing will be conducted by a person other than the one who made 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 CDA.

The applicant may bring their own counsel, other representative(s), and/or witnesses to the informal hearing. Attorneys providing representation to applicants at informal hearings must be licensed to practice law in the State of Wisconsin.

In cases where the hearing officer is not a CDA employee, the person conducting the informal hearing will make a recommendation to the CDA, but the CDA is responsible for making the final decision as to whether admission should be granted or denied.

Informal hearings will only be rescheduled due to a verifiable medical emergency.

Informal hearings may not be conducted if the applicant arrives more than 15 minutes late for the scheduled informal hearing.

The CDA will conduct remote informal hearings via telephone conferencing call-in or via a video conferencing platform, when available. If the informal hearing will be conducted via a video conferencing platform, the CDA will ensure that all applicants, applicant representatives, CDA representatives, and the person conducting the informal hearing can adequately access the platform (i.e., hear, be heard, see, and be seen) by providing technical assistance to that extent, if needed, before the hearing. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform.

If any applicant, applicant representative, CDA representative, or person conducting the informal hearing is unable to effectively utilize the video conferencing platform, the informal hearing will be conducted by telephone conferencing call-in. Witness testimony may be accepted via telephone call-in.

Whether the CDA will conduct the informal hearing via a video conferencing platform or telephone call-in, the CDA will provide all parties login information and/or conferencing call-in information before the informal hearing.

If the informal hearing is to be conducted remotely, the CDA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail or via email, as well as in person, if the CDA office is open to the public. The CDA will scan and email copies of these documents to the CDA representatives and to the person conducting the informal hearing the same day.

Documents will be shared electronically whenever possible.

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

### CDA Policy

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

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

**CDA Notice of Denial:** Whether or not the reason(s) for denial were stated adequately in the notice

**The validity of the evidence:** The person conducting the informal hearing will evaluate whether the facts presented at the informal hearing (including but not limited to the information in the applicant's admissions file and any information provided by the applicant) prove the reason(s) for denial of admission. If the facts prove that there are grounds for denial of admission, and the reason for denial is mandatory according to HUD regulations, the decision to deny admission will be upheld by the person conducting the informal hearing.

If the facts prove the grounds for denial, and the reason for denial is discretionary according to HUD regulations, the CDA will consider the recommendation of the person conducting the informal hearing.

The CDA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision, a citation to the applicable regulation(s), a summary of the facts relied upon in making the decision, and information regarding an appeal.

If the decision to deny admission is overturned as a result of the informal hearing, 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.

The CDA is responsible for making the final decision as to whether admission should be granted or denied.

### **Mailing of notice of final decision:**

If the hearing officer is a CDA employee, the notice will be mailed within 10 business days of the informal hearing to the applicant and ~~their his or her~~ representative.

In cases where the hearing officer is not a CDA employee, the CDA will mail a notice of final decision within 10 business days after receiving the hearing officer's written decision. The CDA will mail the notice to the applicant and his or her representative.

**Appeal Information:** The written final decision after an informal hearing shall include the following statement about the right to appeal:

"If you disagree with this decision, you may request a review of the decision by filing an appropriate action in Circuit Court within thirty (30) days of the receipt of the written decision."

**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 PHA must consider such accommodations. The PHA 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.



## **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 PHA 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 PHA 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 PHA 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.

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

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA 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 PHA with a copy of the written request for appeal and proof of mailing.

### CDA Policy

The CDA 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 CDA 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 PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

### CDA Policy

The CDA 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.

## **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 PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA 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 PHA 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 PHA 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.

#### **CDA Policy**

The family will be allowed a copy of any documents related to the hearing at a charge equal to the current rate published under local general ordinance, MGO 3.70. The family must request discovery of CDA 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 PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA 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 arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the PHA is still obligated to provide oral translation services in accordance with its LEP Plan.

### ***Recording of the Hearing***

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

#### **CDA Policy**

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

### ***Hearing Decision***

The PHA 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 PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA 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 PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA 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.

## **PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS**

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

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status.

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

#### CDA Policy

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

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

#### CDA Policy

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

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

#### 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 PHA action or failure to act in accordance with the individual tenant’s lease or PHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the PHA 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 PHA for any grievance or termination that involves:
  - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment or the PHA’s public housing premises by other residents or employees of the PHA; 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 PHA 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 selected by the PHA, 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 PHA 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

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

Grievances could potentially address most aspects of a PHA'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 PHA. It is not applicable to disputes between tenants not involving the PHA. 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 PHA.

If HUD has issued a due process determination, a PHA may exclude from the PHA 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 PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described in Section 14-III.E. below, to deal with the first two of the above three categories of lease terminations.

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

#### **CDA Policy**

The CDA is located in a due process state. Therefore, the CDA will exclude from its 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 PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

The CDA will not use expedited grievance procedures.

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

#### **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 PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

##### CDA Policy

The CDA will accept requests for an informal settlement of a grievance either orally or in writing, to the CDA office, by the close of the business day, no later than 10 business days from the date of the grievable event.

Grievances related to complaints about operational matters that the CDA's Central Office receives will be referred to the property manager responsible for management of the development in which the tenant resides. The CDA will refer grievances involving complaints related to discrimination, harassment, or disability rights to the CDA Housing Operations Director (or his/her designee).

Upon receiving a timely request for an informal settlement of a grievance, the CDA will schedule and hold the meeting, by the close of the business day, no later than 10 business days from the date on which the tenant requested an informal settlement.

The informal settlement may be conducted remotely as required by the CDA, or may be permitted to be conducted remotely upon request of the tenant. See 14-III.G for information on how and under what circumstances remote informal settlements may be conducted.

If a tenant fails to attend the scheduled informal settlement meeting, the CDA will reschedule the meeting only if the tenant provides written proof of a verifiable medical emergency.

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 PHA'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.

##### CDA Policy

The CDA will prepare a summary of the informal settlement; one copy will be given to the tenant and one copy will be retained in the CDA's tenant file.

For PHAs 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.



## **14-III.E. PROCEDURES TO OBTAIN A HEARING**

### **Requests for Hearing and Failure to Request**

#### CDA Policy

The tenant must submit a written request for a grievance hearing to the CDA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the tenant does not request a hearing, the CDA'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 tenant of the right to contest the CDA's action in disposing of the complaint in an appropriate judicial proceeding.

### **Scheduling of Hearings [24 CFR 966.55(f)]**

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 PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

#### CDA Policy

Upon receiving a timely request for a grievance hearing, The CDA will schedule and send written notice of the hearing to the tenant. The CDA will schedule and hold the grievance hearing, by the close of the business day, no later than 10 business days from the date of the tenant's request for a grievance hearing.

If the grievance hearing will be conducted remotely, the CDA will inform the tenant in the notice of hearing of the following items:

- The processes involved in a remote grievance hearing;

- That the CDA will provide technical assistance prior to and during the grievance hearing if needed. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform; and

- That if the tenant or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote grievance hearing, the tenant may inform the CDA and the CDA will allow the tenant to participate in an in-person grievance hearing, as it deems reasonable and appropriate given the totality of circumstances.

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

#### CDA Policy

If the tenant fails to attend the grievance hearing, the CDA will reschedule the hearing only if the tenant provides written proof of a verifiable medical emergency.

### **Expedited Grievance Procedure [24 CFR 966.55(g)]**

The PHA 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 PHA, or
- Any drug-related criminal activity on or near such premises

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

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

#### CDA Policy

The CDA is located in a due process state and will not use expedited grievance procedures.

#### **14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.55(b)]**

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review, or a subordinate of such person.

##### CDA Policy

CDA grievance hearings shall be conducted by a single, CDA appointed hearing officer who is neither the person who made or approved the decision nor a subordinate of that person.

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 CDA 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.

The PHA must determine the methodology for appointment of the hearing officer and it must be stated in the grievance procedure.

##### CDA Policy

The CDA will appoint hearing officers who are persons with experience in conflict resolution, property management, administrative hearings, and/or knowledgeable about the Public Housing program.

The PHA must consult with resident organizations before a person is appointed as a hearing officer or hearing panel member. Comments from the resident organizations must be considered before making the appointment.

##### CDA Policy

The method of designating staff and appointing hearing officers will be presented to the CDA's Resident Advisory Board.

#### **14-III.G. REMOTE HEARINGS [Notice PIH 2020-32]**

There is no requirement that grievance hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their grievance hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote grievance hearings, tenants may still request an in-person hearing, as applicable.

##### CDA Policy

The CDA will conduct remote hearings in accordance with due process requirements and in compliance with HUD regulations.

The CDA has the sole discretion to require or permit hearings to be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the CDA will conduct a hearing remotely upon the tenant's request as a reasonable accommodation for a person with a disability, if a tenant does not have childcare or transportation that would enable them to attend the hearing, or if the tenant believes an in-person hearing would create an undue health risk. The CDA will consider other reasonable requests for a remote hearing on a case-by-case basis.

#### **Discovery of Documents Before the Remote Hearing**

##### CDA Policy

If the hearing will be conducted remotely, the CDA will compile a hearing packet, consisting of all documents the CDA intends to produce at the hearing. The CDA will mail copies of the hearing packet to the hearing officer at least three (3) days before the scheduled remote hearing. The original hearing packet will be in the possession of the CDA representative and retained by the CDA.

If the hearing is to be conducted remotely, the CDA will require the tenant to provide any documents directly relevant to the hearing at least 24 hours before the scheduled hearing through the mail or via email. If the CDA Site Office is open to the public, documents may be provided in person to the Site Office. The CDA will scan and email copies of these documents to the hearing officer and the CDA representative the same day they are received.

Documents will be shared electronically whenever possible.

The rights of the tenant and the tenant's representatives to review CDA documents directly relevant to the hearing prior to the hearing are outlined in 14-III.H.

## **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person grievance hearings, the platform for conducting remote grievance hearings must be accessible to persons with disabilities and the grievance hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote grievance hearings.

If no method of conducting a remote grievance hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual ~~their his or her~~ inability to participate in the remote grievance hearing, and the PHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote grievance hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote grievance hearings.

## **Conducting Hearings Remotely**

The PHA must ensure that the lack of technology or inability to use technology for remote grievance hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote grievance hearing and, if the family does not have the proper technology to fully participate, either postpone the hearing or provide an alternative means of access.

The PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote grievance hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA's essential responsibility is to ensure grievance hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote grievance hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

### CDA Policy

In conducting any hearing remotely, the CDA shall ensure due process. The CDA will conduct remote hearings via telephone conferencing call-in or via a video conferencing platform when available. If the hearing will be conducted via a video conferencing platform, the CDA will ensure that all tenants, tenant's representatives, advocates,

witnesses, CDA representatives, and the hearing officer can adequately access the platform (i.e., hear, be heard, see, and be seen) by providing technical assistance to that extent, if needed, before the hearing. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform.

If any tenant, tenant representative, advocate, witness, CDA representative, or the hearing officer is unable to effectively utilize the video conferencing platform, the hearing will be conducted by telephone conferencing call-in. Witnesses may testify by telephone call-in.

Whether the CDA is to conduct the hearing via videoconferencing or telephone call-in, the CDA will provide all parties login information and/or telephone call-in information before the hearing.

## **14-III.H. 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 PHA 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 PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

#### CDA Policy

The tenant will be allowed a copy of any documents related to the hearing at a charge equal to the current rate published under local general ordinance, MGO 3.70. The family must request discovery of CDA documents no later than 12:00 p.m. on the business day prior to the hearing.

- 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.

#### CDA Policy

Hearings may be attended by the following applicable persons:

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

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

- 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 PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

### **Decision without Hearing [24 CFR 966.56(c)]**

The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another proceeding.

### **Failure to Appear [24 CFR 966.56(d)]**

If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived ~~their his/her~~ right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer: Provided, That a determination that the complainant has waived ~~their his/her~~ right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA'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.

#### CDA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 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 CDA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The CDA will reschedule the hearing only if the tenant provides written proof of a verifiable medical emergency.



## **General Procedures [24 CFR 966.56(e), (f), and (g)]**

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

The hearing must be conducted informally by the hearing officer. The PHA 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 question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].

### CDA 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 CDA. 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 based not on a witness' personal knowledge. Specifically, it is a statement, other than one made by a witness testifying at a hearing, that is offered to prove the truth of the matter asserted. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

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

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

The hearing officer must require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or the PHA 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(g)].

#### CDA Policy

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

The CDA will consider an audio tape recording of the proceedings as a transcript.

#### **Accommodations of Persons with Disabilities [24 CFR 966.56(h)]**

The PHA 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 PHA's responsibilities pertaining to reasonable accommodation.

#### **Limited English Proficiency (24 CFR 966.56(g))**

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

#### 14-III.I. 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 PHA. The PHA 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 PHA and made available for inspection by a prospective complainant, ~~their his/her~~ representative, or the hearing officer [24 CFR 966.57(a)].

##### CDA Policy

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

**PHA Notice to the Family:** The hearing officer will determine if the reasons for the CDA'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 CDA policy.

**PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusive and it is not argument. The hearing officer will evaluate the facts to determine if they support the CDA'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 CDA policies. If the grounds for termination are not specified in the regulations or in compliance with CDA policies, then the decision of the CDA will be overturned.

The hearing officer will issue a written decision to the family and the CDA no later than, by the close of the business day, 10 business days after the date of 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 CDA 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 ~~their 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 CDA's decision.

**Order:** The hearing report will include a statement of whether the CDA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the CDA 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 CDA to restore the family's status.

## **Procedures for Further Hearing**

### CDA 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 CDA will take effect and another hearing will not be granted.

### **Final Decision [24 CFR 966.57(b)]**

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

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA 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 PHA

#### CDA Policy

The CDA Board of Commissioners designates the CDA Executive Director to countermand the decision of a hearing officer when the CDA considers the decision of the hearing officer to be invalid due to the reasons stated above.

A decision by the hearing officer, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

