

CHAPTER 11

INFORMAL REVIEWS AND INFORMAL HEARINGS

*Cross Reference: (reserved)

11A. INFORMAL REVIEW

1. Reasons

An applicant shall have the right to an Informal Review for the following reasons:

- a. The applicant has been denied placement on the waiting list.
- b. HACK has refused to issue a Voucher of Family Participation.
- c. HACK has refused to allow the applicant to participate in the program

2. Notification of Applicant

If HACK has taken any of the aforementioned actions, it must notify the applicant, in writing, of the reasons for the action and the right of the applicant to request, within ten (10) business days from the date of issuance of the notice, an Informal Review. After conducting the Review, HACK will promptly notify the applicant, in writing, of its final decision.

Before HACK denies admission to an applicant on the basis of a criminal record, it will notify the applicant of the proposed decision and provide the applicant and the subject of the record with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of the record. HACK will also notify the applicant that they have the right to an informal review of the decision after their application is denied.

3. Review Procedure

- a. The applicant must notify HACK, in writing, of his/her desire for an Informal Review. The request must be made within ten (10) business days from the issuance of the notice of the right to request an Informal Review.
- b. The request from the applicant may state the reasons he/she object to the Determination.
- c. The applicant may be represented by an attorney or other representative, at his/her own expense.
- d. At the Review, the applicant, or his/her representative, may present oral or

written objections to HACK's determination.

- e. There view will be conducted by any person designated by HACK, other than the person who made or approved the decision under review or a subordinate of that person.
- f. HACK shall not grant a review requested by an applicant if the request is for any of the following reasons:
 1. To review discretionary administrative determinations by HACK, or to consider general policy issues or class grievances;
 2. To review HACK's determination of the number of bedrooms entered on the certificate under the standards established by HACK (see Chapter 3).
 3. To review HACK's determination that housing does not comply with the HQS, or HACK's determination not to approve the lease for the housing.
 4. To review HACK's decision not to approve a request by a certificate holder for an extension or suspension of the term of the certificate or voucher.
 5. A HACK determination not to grant approval to lease housing under the program or to approve a proposed lease.
 6. A HACK determination that housing selected by the applicant is not in compliance with HQS.
 7. A HACK determination that housing does not meet HQS because of family size or composition.

11B. INFORMAL HEARINGS

1. Participant's Right to Informal Hearing

A participant shall have the right to an Informal Hearing to consider whether decisions relating to individual circumstances of the family fall within the law, HUD regulations and HACK policy, in the following cases:

- a. A determination of the family's annual or adjusted income, and the use of such income to compute the HAP.
- b. A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the HACK utility allowance schedule.

- c. A determination of the family housing size under the HACK subsidy standards.
 - d. A determination that a voucher program family is residing in housing with a larger number of bedrooms than appropriate for the family housing size under HACK subsidy standards, or the HACK determination to deny the family's request for an exception from the standards, including a request for a hardship exemption from the minimum rent.
 - e. A determination to terminate assistance for a participant family because of the family's action or failure to act. (See 24 CPR 982.552)
 - f. A determination to terminate assistance because the participant family has been absent from the assisted housing for longer than the maximum period permitted under HACK policy and HUD rules.
 - g. A determination to deny assistance on the basis of a criminal record.
2. In cases described in paragraphs (1) (a), (d), (e), and (f) and (g) of this chapter, HACK must give the opportunity for an Informal Hearing before HACK terminates HAP for the family under an outstanding HAP contract.
 3. HACK may extend the period of time for requesting a hearing (for a specified period) at its discretion, and may extend the period of time for a specified period upon good cause shown or if HACK at any time determines that good cause exists. Good cause includes, but is not limited to, documented medical emergencies, natural disasters, and lack of actual notice to the participant caused by HACK's action or failure to act. HACK may also extend the period of time for requesting a hearing if such extension is needed to reasonably accommodate a family member's disability.
 4. When a Hearing is not Required

HACK is not required to provide a participant family an opportunity for an Informal Hearing for any of the following:

- a. Discretionary administrative determinations by HACK.
- b. General policy issues or class grievances.
- c. Establishment of the HACK schedule of utility allowances for families in the program.
- d. A HACK determination not to approve an extension or suspension of a voucher

term.

- e. A HACK determination not to approve housing or a lease.
- f. A HACK determination that assisted housing is not in compliance with HQS. However, HACK must provide the opportunity for an Informal Hearing for a decision to terminate assistance for a breach of HQS caused by the family as described in 24 CFR 982.551(c).
- g. A determination by HACK to exercise or not to exercise any right or remedy against the owner under a HAP contract.
- h. HACKs determination that the unit is not in accordance with HQS because of the family size.

5. Notice to Family

In the cases described in paragraphs 11B.(1)(a), (b), and (c) of this chapter, HACK must notify the family in writing that they may ask for an explanation for the basis of HACK's determination, and that if the family does not agree with the determination, they may request an Informal Hearing on the Decision.

In the cases described in paragraphs 11B.(1)(d), (e), and (f) of this chapter, HACK must give the family prompt written notice that the family may request a hearing.

The notice must:

- a. Contain a brief statement of the action being proposed by HACK, the effective date of the proposed action, and the reasons for the proposed action.
- b. State that if the family does not agree with the decision, the family may request an Informal Hearing on the decision.
- c. State the deadline for the family to request an Informal Hearing, which shall be no less than ten (10) business days from the date of issuance of such notice.
- d. Notify the family of its rights in connection with the informal hearing, including the right to be represented by counsel or other designated representative, the right to review HACK's documents related to the informal hearing (and to have excluded from the hearing any requested documents that were not provided to the participant prior to hearing), the right to present evidence and testimony in support of the participant's position at the hearing, and the right to confront and cross examine witnesses.
- e. Include a copy of the Section 8 Program Informal Hearing Procedures.

6. Expeditious Hearing Process

Where a hearing for a participant family is required under this section, HACK must proceed with the hearing in a reasonably expeditious manner upon request of the family.

Unless a sooner hearing date is requested by the family, HACK shall set a hearing date no sooner than fourteen (14) days after it receives the family's hearing request. HACK shall mail notice of the hearing to the family or the family's representative at least 10 days before the hearing date.

A family may request a continuance of the hearing date upon five days notice. HACK may at its discretion grant requests for continuance where the family states reasonable grounds including illness, other outside emergencies, or need to obtain counsel.

7. Hearing Procedures

The Administrative Plan must state HACK procedures for conducting Informal Hearings for participants.

a. Discovery By Family

The family must be given the opportunity to examine the participant file and any documents, before the hearing that are relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If HACK does not make the document available for examination and copying on request of the family, HACK may not rely on the document at the hearing.

b. Discovery By HACK

HACK hearing procedures may provide that HACK must be given the opportunity to examine any and all family documents before the hearing that are directly relevant to the hearing. HACK must be allowed to copy any such document at HACK's expense. HACK must notify the family that, if the family does not make the document available for examination on request of HACK, the family may not rely on the document at the hearing.

c. Documents

The term "documents" includes records and regulations.

d. Representation of Family

The family may be represented by a lawyer or other representative at its own expense. Such representative may make statements on the family's behalf at the hearing. If the family indicates that it is represented by a lawyer or other representative, HACK shall communicate with the family's representative regarding all matters related to the hearing.

8. Hearing Officer: Appointment and Authority

a. The hearing may be conducted by a hearing officer designated by HACK. The

person conducting the hearing shall be knowledgeable regarding HUD regulations, state landlord-tenant law, anti-discrimination law and basic constitutional law principles. Current or former HACK employees will not conduct hearings involving proposed terminations.

- b. The person who conducts the hearing may regulate the conduct of the hearing per HACK hearing procedures and Federal regulations.

9. Evidence

HACK and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings. HACK will give statements of persons who are not present at the hearing appropriate weight, considering legally established indicia of reliability, including but not limited to the person's potential bias and whether the statement is consistent on its face. HACK shall not base termination of a family's assistance solely on statements by persons who are not present at the hearing.

HACK has the burden of proof to establish a basis for termination by a preponderance of the evidence. As such, HACK should present its evidence first. The family has the burden to establish any defenses or the existence of any mitigating circumstances by a preponderance of the evidence.

10. Issuance of Decision

The person who conducts the hearing must issue a written decision that briefly states the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. The written decision should include all of the following:

- a. A summary of the factual and legal grounds for HACK's action;
- b. A summary of the evidence offered in support of HACK's course of action;
- c. A summary of the evidence offered by the family in defense and/or mitigation, if any;
- d. An evaluation of the evidence;
- e. An indication of the legal rules determined to be applicable by the hearing officer;
- f. Application of the law to the facts; and
- g. A statement of the hearing officer's ultimate conclusion to uphold or reverse HACK's course of action.

The decision shall notify the family of the availability of judicial review and the timeline for

seeking review. A copy of the hearing shall be furnished promptly to the family in writing, and to the family's designated representative, if any.

11. Notice to Family of Hearing Procedures

HACK shall provide a copy to participant families of the above hearing procedures at initial lease sign up and upon the family's request for an informal hearing.

12. HACK Not Bound by Decision

HACK is not bound by a hearing decision that concerns a matter for which HACK is not required to provide an opportunity for an Informal Hearing under this chapter, or that otherwise exceeds the authority of the person conducting the hearing under HACK hearing procedures.

HACK is not bound by a hearing decision that is contrary to HUD regulations or requirements, or otherwise contrary to Federal, State, or local law.

If HACK determines that it is not bound by a hearing decision, HACK must promptly notify the family of the determination, and of the reasons for the determination.

13. Restrictions on Assistance for Non-Citizens

The Informal Hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

14. After notification of the results of an INS appeal, or in lieu of request of appeal to the INS, a family may request that HACK provide a hearing regarding ineligible immigration status. This request must be made either within fourteen (14) days of the date HACK mails or delivers the notice in accordance with Chapter 2, or within fourteen (14) days of the mailing of the INS appeal decision.

15. The procedures for an Informal Hearing for participants concerning ineligible immigration status are set forth in Paragraphs 7-12.

16. The procedures for an Informal Hearing before the HA concerning ineligible immigration status for applicants are:

- a. The applicant shall be provided a hearing before person designated by HACK (other than a current or former officer or employee of HACK if the hearing is regarding a proposed termination), other than the person who made or approved the decision under review, and other than a subordinate of the person who made or approved the decision. The hearing officer shall be knowledgeable regarding HUD regulations, state landlord-tenant law, anti-discrimination law and basic due process principles.

- b. The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of HACK pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing. When HACK notifies the applicant of the hearing, HACK shall notify the applicant in writing of the applicant's right to be given the opportunity to examine before the hearing any documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If HACK does not make the document available for examination on request of the family, HACK may not rely on the document at the hearing.
- c. HACK shall notify the applicant that the applicant is entitled to an interpreter pursuant to HACK's LEP Plan if needed to allow the applicant to fully and fairly participate in the hearing.
- d. The applicant shall be provided the opportunity to present evidence and arguments in support of eligible immigration status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- e. The applicant shall be provided the opportunity to dispute evidence relied upon by the HA and to confront and cross-examine all witnesses on whose testimony or information the HA relied upon;
- f. The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;
- g. The applicant and HACK shall be entitled to have the hearing recorded by audiotape and HACK shall provide a copy of the audio recording to the applicant, upon the applicant's request and at the applicant's cost; and
- h. HACK shall provide the family with a written final decision based solely on the evidence presented at the hearing, within fourteen (14) days of the date of the conclusion of the Informal Hearing. The decision shall state the basis for the decision and shall include findings sufficient to allow a reviewing court to examine HACK's factual and legal reasons for the decision.

17. Judicial Relief

A decision against a family member under the INS appeal process or the Informal Hearing, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial process. Where judicial review is available, HACK shall promptly notify the family of the availability of judicial review and the timeline for

seeking such review.

18. Appeal to INS

Upon receipt of notification that the INS secondary verification failed to confirm eligible immigration status, HACK shall notify the family of the results of the INS verification, and the family shall have thirty (30) days from the date of the notification to request an appeal of the INS results. The request for appeal shall be made by the family in writing directly to the INS. The family must provide the HA with a copy of the written request for appeal and proof of the mailing. HACK shall grant the family an extension of the time within which to request an appeal if the family can show good reasons for its delay.

The INS will issue the results of the appeal to the family, with a copy to HACK, within thirty (30) days of its receipt. The INS will inform the family and HACK of delays, if necessary.

When HACK receives a copy of the INS response, HACK shall notify the family of its right to request an Informal Hearing on the ineligibility determination.

19. Response to INS Ineligibility

- a. The participant must notify HACK, in writing, of his/her desire for an Informal Hearing. The request must be made within ten (10) business days of the Participant's receipt of the notice.
- b. The request from the Participant must state the reasons he/she objects to the determination.
- c. The Participant may be represented by an attorney or other representative, at his/her own expense.
- d. The Hearing will be conducted by a person(s) designated by HACK, other than the person who made or approved the decision under review or a subordinate of the person.
- e. The Hearing Officer shall have the sole right to regulate the order and conduct of the hearing.
- f. HACK and the Participant will be given the opportunity to present evidence and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- g. The Hearing Officer will issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the

Participant will be based on the evidence presented at the hearing. A copy of the hearing decision shall promptly be furnished to the Participant.

20. HACK Not Bound by Decision

HACK is not bound by a hearing decision if:

- e. The Hearing concerned a matter for which HACK is not required to provide the opportunity for a hearing.
- f. The decision of the Hearing Officer is contrary to HUD regulations or requirements, or otherwise contrary to Federal, State, or local laws.

If HACK determines that it is not bound by a hearing decision, HACK will promptly notify the Participant of the determination.

11C. CONSIDERATIONS

In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity HACK will consider the preponderance of evidence that indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

HACK shall have discretion to consider all of the circumstances in each case, including the seriousness of the offense, the extent of participation by family members, and the effects that denial or termination would have on family members not involved in the proscribed activity. HACK, in appropriate cases, may permit the remaining members of the family to continue receiving assistance and may impose a condition that family members determined to have engaged in the proscribed activities will not reside in the housing. HACK may require a family member that has engaged in the illegal use of drugs to submit evidence of successful completion of a treatment program as a condition to being allowed to reside in the housing.

11D. RETENTION OF FILES

HACK will retain, for a period of three (3) years, a copy of the applicant or Participant file, the notification letters, the family's response, if any, the record of the Informal Review or Informal Hearing (including documentary evidence presented and any audio or visual recording of the proceeding), and a statement of final disposition.

11E. SECTION 504 (Disability Non-discrimination) Grievance Procedure)

HACK has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by HUD regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). Section 504

states, in part, that "no otherwise qualified individual with a disability. ...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance".

Complaints should be directed to the 504 Compliance Coordinator.

A complaint should be filed in writing and it should contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations.

A complaint should be filed within thirty (30) days after the complainant becomes aware of the alleged discrimination violation. (Processing allegations of discrimination that occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the 504 Compliance Coordinator. These rules contemplate informal but thorough investigations, affording all interested people and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

Under the HUD regulations, HACK need not process complaints from applicants for employment or from applicants for admission to post-secondary educational institutions.

A written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by 504 Compliance Coordinator and a copy forwarded to the complainant no later than ninety (90) days after its filing.

The 504 Compliance Coordinator will maintain HACK's records and files relating to the complaints filed.

The complainant may request a reconsideration of the case in instances where he/she is dissatisfied with the resolution. The request for reconsideration should be made within thirty (30) days to the Executive Director.

The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of a Section 504 complaint with the appropriate federal department or agency. Using this grievance procedure is not a prerequisite to the pursuit of other remedies.

These rules will be construed to protect the substantive rights of interested people, meet appropriate due process standards and assure that HACK complies with Section 504 and its implementing regulations.

All documents related to the informal hearing process, including but not limited to notices,

hearing request forms, and written decisions, shall be considered vital documents and will be translated into the family's primary language, if other than English, in accordance with HACK's Limited English Proficiency Plan ("LEP").