

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 under the PHA 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 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.

SHA Policy

The PHA will only offer informal hearings to applicants who were determined to be ineligible for 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.

When denying eligibility for admission, the PHA 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 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

SHA Policy

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

The PHA will schedule and send written notice of the informal hearing within 10 business days of the family's request or soon as practicable.

If the PHA informal hearing will be conducted remotely, at the time the notice is sent to the family, the family will be informed:

Regarding the processes involved in a remote informal hearing;

That the PHA will provide technical assistance prior to and during the informal hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal hearing, the family may inform the PHA and the PHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal hearing, as appropriate.

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

PHA 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 PHA.

A PHA-provided interpreter will be provided throughout the hearing process, free of charge, upon request of a LEP person.

The person conducting the informal hearing will make a final decision as to whether admission should be granted or denied.

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.

PHA Policy

The PHA has the sole discretion to require 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. The applicant always has the option to request an in-person hearing.

In addition, the PHA 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 PHA 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 his or her inability to participate in the remote informal review, 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 Remote Informal Hearings [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.

As with in-person informal hearings, 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.

SHA Policy

The PHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote hearing, the PHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

If the informal hearing is to be conducted remotely, the PHA 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, via email, or text. The PHA will scan and email copies of these documents to the PHA representative and to the person conducting the informal hearing the same day.

Documents will be shared electronically whenever possible.

The PHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal hearing to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

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

SHA 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 mitigating circumstances or written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make the final decision as to whether admission should be granted or denied.

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

SHA Policy

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

In rendering a decision, the hearing officer 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 PHA 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 PHA 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 PHA will uphold the decision to deny admission.

All mitigating circumstances presented.

The PHA 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 15 business days of the informal hearing or as soon as practicable, to the applicant and his or her representative, if any.

If the family fails to appear for their informal hearing without good cause, 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 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.

SHA Policy

The PHA 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 PHA 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.

SHA Policy

The PHA 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.

SHA Policy

The family will be allowed to copy any documents related to the hearing. The family must request discovery of PHA 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 request an interpreter. The PHA 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 PHA may, but is not required to provide a transcript of the hearing.

SHA Policy

The PHA 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 15 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 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 PHA grievance procedure must be included in, or incorporated by reference in, the 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 provide an opportunity to present written comments. Comments submitted must be considered by the PHA before adoption of any changes to the grievance procedure by the PHA.

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 or persons 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]

The grievance procedure is applicable to all individual grievances as specified in Section III of this document between the resident and the Authority. Residents shall have no right to a grievance hearing for:

1. Evictions which are brought pursuant to the expedited procedure set out in M.G.L. c. 121B §32, M.G.L. c. 139 §19, and/or for which the Hearing Officer has granted a waiver to the SHA; or
2. Evictions from federally-funded housing where the alleged grounds are based upon drug related criminal activity, or criminal activity which threatens the health, safety, or right to peaceful enjoyment of the SHA's public housing premises by other residents or employees of the SHA;
3. Matters which have already been heard by the Hearing Officer or for which there has been a judicial resolution;
4. Matters involving class grievances or disputes between resident's not involving the SHA.
5. Grievances that are initiated for the purpose of negotiating policy changes between a group or groups of residents and the Somerville Housing Authority Board of Commissioners.

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 housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

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.

14-III.E. PROCEDURES TO OBTAIN A HEARING

Requests for Hearing and Failure to Request

A grievance shall not have standing and a complaint will not be granted a hearing before a Hearing Officer prior to compliance with Section 14-III.D, Informal Settlement of Grievance. The complainant shall submit a written request; for a hearing to the main office of the Somerville Housing Authority within five (5) business days after receipt of the summary discussion pursuant to Section 14-III.D.

Failure of the resident to request a hearing within five (5) business days of the proposed disposition of the complaint by the SHA shall constitute a waiver of the resident of a grievance hearing but shall not constitute a waiver of the right to contest the SHA's decision in an appropriate legal 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 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.

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

Expedited Grievance Procedure [24 CFR 966.52(a)]

The PHA may establish an expedited grievance procedure in certain circumstances.

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.

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

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.

The PHA 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. Changes to the public housing lease are subject to a 30-day comment period (24 CFR 966.4)

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, applicants may still request an in-person hearing, as applicable.

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 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.

As with in-person grievance hearings, 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.

The PHA will ensure that all electronic information stored or transmitted with respect to the grievance hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

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.
- 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.
- 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.

Failure to Appear [24 CFR 966.56(c)]

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 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 PHA 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 PHA's disposition of the grievance in an appropriate judicial proceeding.

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 PHA must sustain the burden of justifying the PHA 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 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 to question any witnesses.

Hearsay Evidence is evidence based not on a witness' personal knowledge. 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 PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

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

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(e)].

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

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.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 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, his/her representative, or the hearing officer [24 CFR 966.57(a)].

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

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, 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)].

EXHIBIT 14-1: GRIEVANCE PROCEDURE

I. PURPOSE, SCOPE AND APPLICABILITY

A. Purpose

The purpose of this procedure is to ensure that Somerville Housing Authority (SHA) tenants in federally subsidized units have a recognized method for informally resolving disputes with the SHA, and to afford tenants the opportunity for a fair hearing within a reasonable time if the dispute cannot be settled informally.

B. Grievant

Any tenant in federally subsidized public housing who has signed an SHA lease may use this grievance procedure. Any adult person who is listed on the latest continued occupancy form as a member of the tenant household who remains on the premises after the tenant has vacated may also use this grievance procedure.

C. Scope and Applicability

- (1) This procedure applies to any dispute which a grievant may have with respect to SHA action or failure to act in accordance with the individual tenant's lease or SHA rules which adversely affect the individual tenant's rights, duties, welfare or status. This procedure does not apply to disputes between tenants not involving the SHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between tenants and the SHA Board of Commissioners.
- (2) The U.S. Department of Housing and Urban Development (HUD) has determined that the law of the Commonwealth of Massachusetts requires that a tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction. Because HUD has made this determination, the SHA may exclude from this grievance procedure any grievance regarding a termination of tenancy or eviction which involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the SHA, or any drug-related criminal activity on or near such premises. When the SHA is not required to afford the tenant the opportunity for a hearing, and the SHA has decided that it will exclude a grievance from this procedure, the SHA will send the tenant a Notice of Lease Termination that will state that the tenant is not entitled to a grievance hearing, specify the court procedure utilized by the SHA for eviction and state that HUD has determined that this court procedure provides due process, and specify whether the eviction is for criminal activity or drug-related criminal activity. The Notice of Lease Termination will also inform the tenant of the tenant's right to examine SHA

documents concerning the termination of tenancy and eviction.

II. THE HEARING PANEL

- A. Nominations** - The Hearing Panel Pool shall have at least fourteen (14) members. At least two (2) members of the Pool shall be tenants nominated by the Mystic Tenants Association, at least two (2) members of the Pool shall be tenants nominated by the Clarendon Hill Tenants Association, and at least four (4) members of the Pool shall be tenants nominated by the tenants' associations in at least three (3) elderly/handicapped buildings. The SHA Executive Director shall nominate four (4) staff members. The remaining two (2) members may not be officers, employees, agents or tenants of the SHA and will be nominated jointly by the tenant and staff members of the Hearing Panel Pool.
- B. Notice and Comment** - The SHA shall consult the tenants' associations before appointment of each Panel Member. Any comments or recommendations submitted by the tenants' associations shall be considered by the SHA before the appointment.
- C. Appointment and Term** - Unless there is cause to reject a nomination, Hearing Panel Pool Members will be appointed by the SHA Board of Commissioners for a term of three (3) years and may be re-appointed to serve successive terms. Vacancies shall be filled by the same procedure used for designating original members.
- D. Composition** - Each Hearing Panel will be composed of three (3) members: one (1) tenant, one (1) staff and one (1) independent. Where the grievant is a tenant in family housing, the tenant panel member shall be from a family development other than the one in which the grievant resides, unless no such member is available. Where the grievant resides in elderly/handicapped housing, the tenant panel member shall be from an elderly/ handicapped building other than the one in which the grievant resides, unless no such member is available. The independent member shall be the "presiding officer" of the Hearing Panel. An SHA staff member shall be the Hearing Panel Clerk.
- E. Disqualification** - Any person who is related to the grievant or who participated in the decision that is the subject of the grievance shall be disqualified from sitting on the Panel for that hearing. Any Panel Member who believes that she/he cannot be impartial in a particular matter may disqualify himself/herself from the Panel for that hearing.
- F. Expenses** - The SHA shall pay for all supplies, space and clerical staff required by the Hearing Panel. Tenant members shall receive a forty (\$40.00) dollar stipend for every day that they sit on the Hearing Panel.
- G. Training** - The SHA shall provide the Hearing Panel Pool with training at its

expense from time to time. Tenant members shall receive a stipend of forty (\$40.00) dollars per day for each day of training.

III. INFORMAL SETTLEMENT

- A. Eviction Cases - Before terminating the tenancy of a tenant, SHA Management will invite the tenant to a private conference to discuss the alleged lease violations and, where appropriate, to attempt to resolve the matter informally. The SHA will provide the tenant with a written notice after the conference which will inform the tenant of the decision and will specify the procedure for requesting a grievance hearing.
- B. All other Grievances - A tenant who is aggrieved by any action or inaction of the SHA as described in Paragraph I C (1) above, other than a proposed eviction, may present the grievance orally or in writing at the Manager's Office or at the Administration Building. If the grievance is presented in response to any SHA action, the tenant must present the grievance within ten (10) calendar days from the date of the notice of the SHA action. Management shall meet with the grievant to discuss the matter informally and, if appropriate, settle the grievance without a hearing. A summary of the discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the tenant file. The summary shall specify the names of the participants, dates of meeting, nature of the proposed disposition of the complaint and the specific reasons therefore and shall specify the procedures by which a hearing may be obtained if the grievant is not satisfied.

IV. PROCEDURES TO REQUEST A HEARING

- A. Prerequisite to Hearing Requests - All grievances must be presented pursuant to the informal procedure in Paragraph III above as a condition precedent to a grievance hearing. If the grievant shows good cause why she/he failed to proceed in accordance with paragraph III above, then the Hearing Panel may waive this condition. In order for the Panel to consider the grievant's request, the grievant's written request must include the reasons that the informal procedure was not used and any third-party verification or other documents which the grievant wishes the Panel to consider. The Hearing Panel Clerk will forward the grievant's request to the Hearing Panel. If the Hearing Panel decides not to waive the condition, the tenant will be notified in writing. If the Hearing Panel decides to waive the condition, a hearing will be scheduled.
- B. Eviction cases - After the tenant is given the opportunity to attend a private conference, if the matter is not resolved, the tenant will be given a notice of termination of the tenancy. The notice will inform the tenant of Management's decision to proceed with eviction and will inform the tenant that she/he may

request a grievance hearing in writing within five (5) working days of the date of the notice.

- C. All other Grievances - All requests for hearings regarding any action or inaction of the SHA as described in Paragraph I C (1), above, other than a proposed eviction must be presented in writing within ten (10) calendar days of the date of the summary of the informal discussion described in Paragraph III B above.
- D. Failure to Request a Hearing - If the grievant does not request a hearing in accordance with Paragraph IV B or IV C above, then the SHA's disposition of the grievance under Paragraph III shall become final, provided that the failure to request a hearing shall not constitute a waiver by the grievant of her/his right thereafter to contest the SHA's disposition of the grievance in an appropriate judicial proceeding.

V. PROCEDURES GOVERNING THE HEARING

A. Before the Hearing

- (1) The Hearing Panel Clerk shall give the grievant at least five (5) working days' notice of the hearing date which shall be not later than twenty (20) calendar days from receipt of the tenant's request for a hearing.
- (2) The grievant and/or her authorized representative shall have adequate opportunity to inspect and copy all SHA documents, including records and regulations that are directly relevant to the hearing. Any document that is not so made available by SHA may not be relied on by SHA at the hearing, and if the grievance concerns a termination of tenancy, the SHA may not proceed with the eviction.
- (3) A postponement may be granted by the Hearing Panel because of illness or unavoidable absence of a necessary person, or for other good cause. The Panel may require written verification of the reason for the postponement. Hearings may also be postponed by agreement of the grievant and the SHA.
- (4) The grievant or the SHA may arrange, in advance and at their own expense, for a transcript of the hearing. The other party may purchase a copy of such transcript at the actual cost of reproduction.
- (5) A grievant who is disabled may request a reasonable accommodation in order to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations or attendants. Visually

impaired tenants may request that all notices be in an accessible format. The Hearing Panel may require third party documentation of the disability and the need for accommodation, and the Panel and the SHA shall grant all such legitimate requests.

- (6) To request a translator at informal conference and grievance hearing, the tenant must present said request orally or in writing at the Manager's Office or at the Administration Building at least seven (7) calendar days prior to the scheduled informal conference or grievance.
- (7) The SHA shall include in its notice to the tenant the requirement that, at least (3) days prior to the grievance hearing, the SHA shall be allowed to review and copy all documents which the tenant intends to rely upon at such grievance hearing. If the tenant does not make these documents available to the SHA at least three (3) days prior to the grievance hearing, then the SHA may either (1) go forward with the hearing as scheduled (and the tenant may submit and rely upon such documents at the hearing) or (2) seek a postponement of the grievance hearing in order to have time to respond to such documents.

B. The Hearing

- (1) The grievant has the following rights:
 - (a) to be represented by counsel or any other person of her choice, and to have such person make statements on the grievant's behalf.
 - (b) the right to a private hearing unless the grievant requests a public hearing.
 - (c) the right to present evidence and arguments in support of the grievance, to controvert evidence relied on by SHA, and to confront and cross examine all witnesses on whose testimony the SHA relies.
- (2) If the grievant or SHA fails to appear at a scheduled hearing, the Hearing Panel may decide to postpone the hearing for not more than five (5) business days or may determine that the party has waived the right to a hearing. The Hearing Panel Clerk shall notify both parties in writing of the decision. A decision that the grievant has waived the right to a hearing shall not constitute a waiver of any right the grievant may have to contest the SHA's disposition of the grievance in an appropriate judicial proceeding.
- (3) In eviction cases, the SHA presents its case first. In all other hearings, the grievant presents her case first. The Hearing Panel may interrupt either side at any time to ask questions.

- (4) The formal rules of evidence are not used at grievance hearings, and any evidence that the Presiding Officer rules relevant will be allowed to be introduced. After both sides have presented their evidence, they will each be allowed the opportunity to make a closing statement.
- (5) The Hearing Panel shall require that all participants or spectators at grievance hearings conduct themselves in an orderly fashion. Failure to comply with the directions of the Presiding Officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of a disorderly party and grant or denial of the relief sought, as appropriate.
- (6) All grievance hearings shall be tape recorded, and the tape recordings shall be kept on file by the Hearing Panel Clerk. The grievant and the SHA will be allowed access to the tape of the hearing by appointment during business hours at the SHA Administration Building.

C. The Hearing Panel's Decision

- (1) After the Presiding Officer adjourns the hearing, the Hearing Panel will make their decision in closed session.
- (2) A majority vote shall be necessary for any decision by the Hearing Panel.
- (3) The decision shall be based solely and exclusively upon the evidence presented at the hearing and upon applicable law and regulations.
- (4) The decision shall be in writing and shall contain the date of the decision and the reasons for the decision.
- (5) The Hearing Panel Clerk shall send a copy of the decision to the grievant, her representative, and to the SHA. SHA shall retain a copy of the decision, with all names and identifying references deleted, on file for public inspection.

D. Effect of the Hearing Panel Decision

- (1) No tenant may file a subsequent grievance on the same dispute unless facts and circumstances have changed since the hearing. A decision in favor of the SHA shall not, however, constitute a waiver, nor affect in any manner whatever, any rights the grievant may have to a trial or judicial review in court proceedings which may thereafter be brought in the matter.
- (2) The decision of the Hearing Panel shall be binding on the SHA, which shall take all actions or refrain from any actions necessary to carry out the decision unless the SHA Board of Commissioners determines, no later than its next regular meeting, and promptly notifies the grievant in writing of its determination that:

- (a) the grievance does not concern SHA action or failure to act in accordance with or involving the grievant's lease or SHA rules which adversely affect the grievant's rights, duties, welfare or status; or
 - (b) the decision of the Hearing Panel is contrary to federal, state, or local law, HUD regulations or the requirements of the annual contributions contract between SHA and HUD.
- (3) In all cases where the Tenant has a right to file a grievance on an adverse action proposed by SHA, SHA shall not take the proposed adverse action until the time for the Tenant to file a grievance has expired, and if a hearing was timely requested by the Tenant, until the grievance process has been completed. In eviction cases which are included in this procedure, the tenancy may be terminated, but SHA may not commence an eviction action in court until the completion or termination of the grievance process.