



Request for Proposal  
**Hearing Officers for Participant Grievance Hearings**

Issued by:  
**Scott County Community Development Agency**  
**323 South Naumkeag Street**  
**Shakopee, MN 55379**  
952-402-9022 phone 952-496-2852 fax

RFP for Hearing Officer  
RFP – 2-2023

CDA Contact: Kim Meierbachtol – Rental Assistance Housing  
Manager

9/18/2023

The Scott County Community Development Agency in the city of Shakopee is seeking qualified person(s) to serve as Hearing Officers in Housing Choice Voucher and Rural Development programs. The Scott County CDA is an independent government agency that administers these federally funded housing programs in Scott County. Information about the CDA is posted at [www.scottcda.org](http://www.scottcda.org).

A hearing officer conducts hearings requested by public housing and Rural Development resident's applicants and Housing Choice Voucher program applicants and participants. Typically, the issue is the CDA's decision to terminate a resident's lease or a participant's housing choice voucher, although hearing officers may also hear other issues. The hearings are informal but they must comply with federal law and regulations (24 Code of Federal Regulations, Parts 966 and 982; 7 Code of Federal Regulations, Part 3560) and the Housing Choice Voucher Informal Hearing Procedures and the Rural Development Tenant Grievance Procedures. Copies of the procedures are attached.

The selection and appointment of qualified person(s) as hearing officers will be made by the Scott County CDA. Person(s) selected will be asked to sign an agreement.

To qualify as a hearing officer, an applicant must have substantial experience with the federal housing choice voucher programs or other federally assisted housing programs; or be an attorney admitted to practice for at least three years. Experience as an administrative hearing officer or Referee is desirable. Familiarity with housing choice voucher regulations or other federal regulations is also desirable.

The CDA's staff will provide an orientation for person(s) selected as hearing officers, outlining the CDA's customary hearing procedures and expectations for written hearing decisions.

**Interested individuals should submit a resume with references and a completed Bid Form to the following address no later than 4:00 pm on Monday October 9, 2023.**

Scott County CDA  
Attention: Kim Meierbachtol  
323 S. Naumkeag Street  
Shakopee, MN 55379

Any questions regarding this proposal, contact Kim Meierbachtol at 952-641-5181 or [kmeierbachtol@scottcda.org](mailto:kmeierbachtol@scottcda.org)

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Request for Proposals (RFP)

For Hearing Officer Services

9-2023



Scott County Community Development Agency  
Notice of Request for Proposals (RFP)  
For Hearing Officer Services

Date RFP Posted: 09/18/2023

Date Response Due: 10/09/2023 @ 4:00 P.M.

Request for Proposals (RFP) for Hearing Officer Services for Scott County CDA in the Section 8 Housing Choice Voucher and Rural Development programs, are to be addressed to the Scott County CDA, Attention Kim Meierbachtol, 323 South Naumkeag Street, Shakopee, MN, 55379 and will be received on or before 4:00 p.m. on October 9, 2023.

A copy of the RFP in its entirety, including scope of work is available for download from Scott County CDA's website at [www.scottcda.org](http://www.scottcda.org). The RFP will be located on the bottom of the homepage under Contractors and Procurement.

The services provided by a Hearing Officer are professional services. The selection of a Hearing Officer for professional services is made at the discretion of the Scott County CDA and input from the Scott County CDA Resident Advisory Board. The Scott County CDA reserves the right to refuse and reject any or all Proposals and to waive any and all formalities or technicalities or to accept the firm/individual who the Scott County CDA in its sole discretion determines to be most qualified. The CDA may determine to take no action and reserves the right to do so. Proposals submitted after the deadline date and time will not be accepted. Note: Firms submitting Proposals not in proper form may be rejected.

Contact Information

Kim Meierbachtol  
Scott County CDA  
323 South Naumkeag Street  
Shakopee, MN 55379  
Telephone: (952) 641-5181  
Email: [kmeierbachtol@scottcda.org](mailto:kmeierbachtol@scottcda.org)

**Scott County Community Development Agency (CDA)**  
**Request for Hearing Officer**

**PURPOSE OF RFP**

The Scott County CDA is seeking proposals from qualified professional firms and/or individuals interested in serving as the Hearing Officer who will preside at Informal Hearings as set forth in the Tenant Grievance Procedures. Copies of the procedures are attached.

**SITE DESCRIPTION**

Hearings are conducted during normal business hours Monday through Friday 8:00 A.M. – 4:15 P.M. Hearings are held at Scott County CDA office in Shakopee. Hearings may also be held at other locations convenient to the complainant.

**OBJECTIVES**

The mission of the Scott County CDA is “we invest in possibilities to live and work in Scott County”.

The Scott County CDA proposes to retain a highly qualified, capable firm/individual to act as the Hearing Officer throughout planning and completion of the hearing. The Scott County CDA will give prime consideration to the firm/individual with significant, current experience with federal public housing or Section 8 programs and other federally assisted housing programs. Firm/Individual must be familiar with reasonable accommodation requests.

**SCOPE OF WORK**

The selected Hearing Officer(s) are responsible for conducting fair hearings and rendering fair and reasonable decisions based upon the evidence introduced at each hearing as it applies to the law, federal requirements and the Scott County CDA's Administrative plan. The selected firm/individuals shall have Proposals and experience to perform the tasks related to this service.

- 1) Description of Work: Qualified firm/individuals selected for the Scott County CDA Hearing Officer Services will be required to:
  - a. Conduct informal hearings as needed at locations determined by Scott County CDA
  - b. Firm/Individual selected must be familiar and comfortable



SCCDA - 01

## CONTRACTOR COMPLIANCE FORM

This form must be filled out by all General Contractors and Sub-Contractors providing bids.

Project Address: **Scott County CDA Hearing Officer**

### SECTION I. CONTRACTOR INFORMATION

1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_
  2. Type of Business: \_\_\_\_\_
  3. Are you licensed in the State of MN? ☐ YES ☐ NO License Number: \_\_\_\_\_
  4. Women Business Enterprise? ☐ YES ☐ NO  
Minority Business Enterprise? ☐ YES ☐ NO  
If yes, enter Racial/Ethnic Code from Below: \_\_\_\_\_
  5. Bidding as a ☐ General Contractor ☐ Sub-Contractor If Sub, indicate General Contractor Name: \_\_\_\_\_
  6. Date of Site Visit: \_\_\_\_\_
  7. Current number of Employees: \_\_\_\_\_  
Current number of Women Employees: \_\_\_\_\_  
Current number of Minority Employees: \_\_\_\_\_
- If Minority Employees enter Racial/Ethnic Code from below:  
Code: \_\_\_\_\_  
Number : \_\_\_\_\_
8. Total Dollar amount of Bid: \$\_\_\_\_\_ (If amount exceeds \$100,000, please fill out Section II of this document).

### SECTION II. New Hires when Bid Exceeds \$100,000 (must comply with Section 3 requirements)

9. Number of employees to be hired for this contract: \_\_\_\_\_
10. Number of Low-Income Project Area Residents (L.I.P.A.R.) to be hired for this contract: \_\_\_\_\_

#### Racial/Ethnic Codes

- |                           |                                      |  |
|---------------------------|--------------------------------------|--|
| 1. White                  | 3. American Indian or Alaskan Native | 5. Native Hawaiian or Pacific Islander |
| 2. Black/African American | 4. Asian                             | 6. Hispanic or Latino                  |

I hereby certify that it is the policy of the undersigned to comply with all existing laws prohibiting discrimination in all aspects of employment due to race, color, creed, sex, age, religion, national origin, marital status, receipt of public assistance or disability.

**General Contractor/Subcontractor Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

The Scott County Community Development Agency does not discriminate on the basis of race, color, creed, national origin, sex, religion, disability, marital status, status with regard to public assistance, sexual orientation or familial status, in the employment and/or the provision of services.

**323 NAUMKEAG ST | SHAKOPEE MINNESOTA | 55379 | SCOTTCDA.ORG**

**PHONE: (952) 402.9022 | FAX: (952) 496.2852**

This institution is an equal opportunity provider and employer.





**Pricing Sheet**  
**Hearing Officer for Participant Grievance Hearings**

**NAME** \_\_\_\_\_

1. The undersigned, having carefully examined the RFP prepared by the SCCDA, hereby proposes, and if this proposal is accepted, agrees to enter into a Service Agreement with SCCDA to furnish services as a Hearing Officer. All work shall be in strict accordance with the requirements of federal law and regulations (24 Code of Federal Regulations, Parts 966 and 982; 7 Code of federal Regulations, Part 3560) and the CDA's Public Housing Tenant Grievance Procedure, the Section 8 Informal Hearing Procedures and the Rural Development Tenant Grievance Procedures.

2. **Base Bid per hour charge for the services at the rate of:**

\$ \_\_\_\_\_ Dollars per hour.

4. Addenda Nos. \_\_\_\_\_ have been received and incorporated in this Proposal.

This proposal is submitted after careful study of the qualifications and requirements of all services requested by the SCCDA. The undersigned does declare that this proposal is made without improper connection with any other person making a proposal on this work, and is in all respects fair and without collusion or fraud. It is understood that this proposal cannot be withdrawn within forty-five (45) days without the consent of SCCDA and that the said owner has the right to accept or reject any or all proposals and to waive any informalities in the proposal.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Legal name of person, firm or corporation**

Print Name \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Cell: \_\_\_\_\_ Email: \_\_\_\_\_

**323 NAUMKEAG ST | SHAKOPEE MINNESOTA | 55379 | SCOTTCDA.ORG**

# **PROFESSIONAL SERVICES CONTRACT**

## **Hearing Officer**

This agreement is entered into between the Scott County Community Development Agency, 323 South Naumkeag Street, Shakopee, MN. 55379 hereinafter referred to as the "AGENCY," \_\_\_\_\_ Herein after referred to as "CONTRACTOR" for inspection services as outlined in the request for proposal. Finding that the 'CONTRACTOR' is willing to assist the 'AGENCY' in providing snow management services, the 'AGENCY', and 'CONTRACTOR' do mutually agree as follows:

### **ARTICLE I - PERIOD OF CONTRACT**

This agreement shall become effective and binding when signed by both parties.

This agreement shall terminate on or before \_\_\_\_\_ with optional 2 – 1 year extensions unless terminated pursuant to Article V infra. This contract, the RFP and the subsequent Bid submitted by CONTRACTOR dated \_\_\_\_\_, represent the entire agreement between parties and supersedes all prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written change orders as provided elsewhere in this contract.

### **ARTICLE II - SCOPE OF WORK**

Contractor shall refer to the RFP form for description of scope of work.

### **ARTICLE III - PAYMENTS**

The AGENCY shall pay the CONTRACTOR as a fee for the services as stated in this contract, according to the bid submitted on \_\_\_\_\_ and attached hereto. An invoice and excel spreadsheet detailing the date of service, service performed and charge for service must be received by the Agency within thirty (30) days of job completion. Payment shall occur within thirty (30) days upon satisfactory job completion.

### **ARTICLE IV - GROSS RECEIPTS TAX**

The CONTRACTOR shall be responsible for the payment of Federal, State, and FICA tax levied on amounts paid to CONTRACTOR pursuant to this agreement.

### **ARTICLE V - TERMINATION**

This agreement may be terminated by either party upon written notice delivered to the other at least seven (7) working days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

### **ARTICLE VI – COMPLIANCE WITH THE LAW**

CONTRACTOR will comply with all applicable federal and state laws, codes, regulations, municipal ordinances and regulations and will pay all costs, expenses, fees and taxes connected with such compliance, including sales and use taxes, and will also pay all taxes imposed by any state or federal law for any employment insurance, pensions, old age retirement funds or any similar purpose and will furnish all necessary reports and information to the appropriate

federal, state and municipal agencies, with respect to all of the foregoing, and will hold AGENCY harmless from any and all losses or damage occasioned by the failure of the CONTRACTOR to comply with the terms of this paragraph.

In particular, and without limiting the foregoing, CONTRACTOR shall comply with:

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 701, et. Seq., and the regulation contained in 31 C.F.R. Part 51. This Act states in part that, "...all recipients of federal funds, whether in the form of a grant or a contract, shall review, and if necessary, modify their programs and activities so that discrimination based on handicap is eliminated",

The Minnesota State Human Rights Act (Minnesota Statute, Chapter 363)

The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, as applicable.

All applicable federal and state labor standards laws, including but not limited to labor standards and prevailing wage rates mandated by the "Davis-Bacon" Act and related acts; and

#### **ARTICLE VII – CONTRACTOR'S INSURANCE AND BONDS**

CONTRACTOR shall purchase and maintain at all times, during the performances of services, and for one (1) year thereafter, the following insurance.

Comprehensive General Liability Insurance of not less than \$1,000,000. AGENCY shall be an additional name insured on the prime CONTRACTOR'S insurance policy.

Automobile Liability Insurance including owned, non-owned, and hired vehicles in an amount not less than \$ 1,000,000.00 combined single limit (CSL) for total bodily injuries and/or damages arising from any one accident. If automobiles are not used, we must receive a letter from you stating this.

Professional General Liability Insurance including owned, non-owned and hired vehicles in an amount not less than 1,000,000.00 combined single limit (CSL) for total bodily injuries and/or damages arising from any one accident. If automobiles are not used, we receive a letter from you stating this.

Excess Umbrella Liability Policy in the amount of \$1,000,000.00 will be additionally required if any of the above policies have lower limits than stated.

Workers' Compensation Insurance per Minnesota Statutes. In addition, CONTRACTOR must provide proof of insurance, whether or not the owners are covered or there are any employees.

Prior to the effective date of this Contract, and as a condition precedent to this Contract, the CONTRACTOR with furnish AGENCY with certificates of insurance listing AGENCY as an "Additional Names Insured."

The following words must be on the certificate: "Thirty (30) days' advance written notice of changes or cancellation of coverage will be given to the certificate holder." Any additional words such as "will endeavor to" or failure to do so will impose no obligation, must be crossed off the certificate.

#### **ARTICLE VIII- STATUS OF CONTRACTOR**

The CONTRACTOR and its agents or employees are independent contractors performing professional services for the AGENCY. CONTRACTOR is an independent contractor, and nothing contained in the Contract is intended or shall be construed as creating an employee, copartner or joint venture relationship with the AGENCY, Scott County, or any of their departments or agencies. No tenure or any rights or benefits including Workers Compensation,



Unemployment Insurance, medical care, sick leave, vacation leave, severance pay, PERA or other benefits available to the 'AGENCY' or to Scott County employees shall accrue to CONTRACTOR or employees of CONTRACTOR performing Work pursuant to the Contract.

#### **ARTICLE IX - ASSIGNMENT**

CONTRACTOR shall not subcontract any portion of the service to be performed under this agreement without the prior written approval of the AGENCY.

#### **ARTICLE X - HOLD HARMLESS AGREEMENT AND INDEMNITY**

CONTRACTOR shall defend and hold harmless AGENCY from all actions, proceedings, claims, demands, cost, damages, attorney's fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this agreement, which result in any way or to any degree from the wrongful act or omission of the CONTRACTORS, its employees, agents, or servants.

#### **ARTICLE XI – DISPUTE RESOLUTION**

Any controversy of claim arising out of or relating to this Contract or the breach thereof shall be settled by mediation, and then arbitration, each in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Contract shall be governed in accordance with the laws of the state of Minnesota.

#### **ARTICLE XII– DATA PRACTICES**

All data collected, created, received under this contract, maintained, or disseminated for any purposes by the activities of Contractor because of this Contract is governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as amended, the Minnesota Rules implementing such Act now in force or as adopted, as well as Federal Regulations on data privacy.

#### **ARTICLE XIII – RECORDS AVAILABILITY AND RETENTION**

Pursuant to Minnesota Statute 16B.06, Subd.4, CONTRACTOR agrees that the AGENCY, or any of its duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the CONTRACTOR and involve transactions relating to this Contract.

CONTRACTOR agrees to maintain these records for a period of six (6) years from the date of termination of this Contract.

#### **ARTICLE XIV - PRODUCT OF SERVICES: COPYRIGHT**

All materials developed or acquired by CONTRACTOR under this agreement shall become the property of the AGENCY and shall be delivered to the AGENCY not later than the termination date of this agreement. Materials furnished shall be the subject of an application for copyright by or on behalf of the CONTRACTOR without the prior written approval of the AGENCY. All CONTRACTOR copyrighted materials remain the sole property of CONTRACTOR.

#### **ARTICLE XV - DISCRIMINATION**

No person shall, on the grounds of race, color, religion, sex, national origin, familial status, disability, creed, marital status, public assistance status or sexual orientation be excluded from participating in, be denied the benefit of, or otherwise be subjected to discrimination under any activity performed pursuant to this agreement.

**ARTICLE XVI – MISCELLANEOUS**

The AGENCY shall not be responsible for delays in performance due to “acts of God,” Force Majeure, war, government interference or other causes beyond its reasonable control.

A waiver of any breach of this Contract is not a waiver of any continuing or subsequent breach. A waiver must be written and signed by the party against whom enforcement of the waiver is sought.

If any provision of this Contract, in whole or in part, is illegal or unenforceable, it will be severed and the balance of the Contract enforced.

The remedies in this Contract are exclusive, and all other remedies, warranties, conditions or other obligations (whether implied by law, fact, custom, trade, or course of dealing) are expressly excluded.

**ARTICLE XVII – CHANGES IN THE WORK**

All changes in the Work shall be authorized only by written Change Orders signed by the ‘AGENCY’ and ‘CONTRACTOR’ before commencement of the Work identified on the Change Order, and containing appropriate adjustments in payment and time.

**ARTICLE XVIII – LIEN FREE PROJECT**

CONTRACTOR shall ensure that the Project remains free and clear of all claims, encumbrances and liens for labor, services and materials. If CONTRACTOR fails to pay for any labor, services or materials purchased for or used in the Work, the AGENCY may, at its sole option, pay such claims and deduct the amount paid from any amount otherwise owing CONTRACTOR. In the event any suit is filed against the AGENCY, asserting a claim or lien for labor, services, or materials purchased for or used in the Work, CONTRACTOR, at its own sole cost and expense, including attorneys’ fees, will defend such suit and pay any judgment rendered therein.

IN WITNESS WHEREOF, the parties hereto have set their hands.

CONTRACTOR:

BY:

\_\_\_\_\_

Owner

DATE:

\_\_\_\_\_

AGENCY:

Scott County Community Development Agency

BY:

\_\_\_\_\_

DATE:

\_\_\_\_\_



# Housing Choice Voucher Tenant Grievance Procedures

Scott County Community Development Agency

323 S NAUMKEAG ST | SHAKOPEE, MINNESOTA | 55379 | [SCOTTCDA.ORG](http://SCOTTCDA.ORG)  
PHONE: (952) 402.9022 | FAX: (952) 496.2852

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## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.”

PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

#### **Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)]**

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- A PHA determination not to approve an extension of a voucher term
- A PHA determination not to grant approval of the tenancy
- A PHA determination that the unit is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition

### PHA Policy

The PHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the PHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

### **Notice to the Applicant [24 CFR 982.554(a)]**

The PHA must give an applicant prompt notice of a decision denying assistance. 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 review of the decision. The notice must describe how to obtain the informal review.

### **Scheduling an Informal Review**

#### PHA Policy

A request for an informal review must be made in writing and delivered to the PHA 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 PHA's denial of assistance.

The PHA must schedule and send written notice of the informal review within 10 business days of the family's request.

If the informal review will be conducted remotely, at the time the PHA notifies the family of the informal review, the family will be informed:

- Regarding the processes to conduct a remote informal review;

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

- That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, 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 review, as appropriate.

### **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must 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 must be provided an opportunity to present written or oral objections to the decision of the PHA.

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

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

#### PHA Policy



The PHA has the sole discretion to require that informal reviews 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 PHA will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. The PHA will consider other reasonable requests for a remote informal review on a case-by-case basis.

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

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review 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.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual their inability to participate in the remote informal review, and the PHA should consider whether postponing the remote informal review 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 informal reviews, 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 reviews.

### **Conducting Remote Informal Reviews**

The PHA must ensure that the lack of technology or inability to use technology for remote informal reviews 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 review and, if the family does not have the proper technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. 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 reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

#### PHA Policy

The PHA will conduct remote informal reviews 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 review 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 review 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 review, the PHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical 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 review is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. The PHA will scan and email copies of these documents to the PHA representative 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 review 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 review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

### **Informal Review Decision [24 CFR 982.554(b)]**

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

#### PHA Policy

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

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

The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of assistance. 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 assistance.

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

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The PHA will be notified of the decision in writing by the hearing officer within 10 business days of the informal review. The PHA will notify the applicant and their representative, if any, upon receipt of the decision.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

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

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed.

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

### **Decisions Subject to Informal Hearing**

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule
- A determination of the family unit size under the PHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- Establishment of the PHA schedule of utility allowances for families in the program
- A PHA determination not to approve an extension of a voucher term
- A PHA determination not to approve a unit or tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with HQS because of family size
- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

#### **PHA Policy**

The PHA will only offer participants the opportunity for an informal hearing when required to by the regulations and if the PHA denies a request for a reasonable accommodation (see Chapter 2).

### **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.

In addition, the PHA will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have child care or transportation that would enable them to attend the informal hearing, or if the participant believes an in-person 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 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 informal hearings. PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

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 inability to participate in the remote informal 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 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 Informal Hearings Remotely**

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's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, 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 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

#### **PHA Policy**

The PHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon 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.

The PHA will follow up with a phone call and/or email to the family at least one business day prior to the remote informal hearing to ensure that the family 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.

### **Informal Hearing Procedures**

#### ***Notice to the Family [24 CFR 982.555(c)]***

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.



For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

#### PHA Policy

In cases where the PHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of the PHA.

- A brief statement of the reasons for the decision including the regulatory reference.

- The date the proposed action will take place.

- A statement of the family's right to an explanation of the basis for the PHA's decision.

- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

- A deadline for the family to request the informal hearing.

- To whom the hearing request should be addressed.

- A copy of the PHA's hearing procedures.

- That the family may request a remote informal hearing

#### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### PHA Policy

A request for an informal hearing must be made in writing by the family or its representative and delivered to the PHA either in person, by fax, by email or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's decision or notice to terminate assistance.

The PHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

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

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, the family may inform the PHA and the PHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

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

If the family does not appear within 20 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The PHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. If the family cannot show good cause for the failure to appear, or a rescheduling is not needed as a reasonable accommodation, the PHA’s decision will stand.

#### ***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

#### **PHA Policy**

The family will be allowed to copy any documents related to the hearing at no cost to the family. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

If the hearing will be conducted remotely, the PHA will compile a hearing packet, consisting of all documents the PHA intends to produce at the informal hearing. The PHA will mail copies of the hearing packet to the family, the family’s representatives, if any, and the hearing officer at least three days before the scheduled remote informal hearing. The original hearing packet will be in the possession of the PHA representative and retained by the PHA.

Documents will be shared electronically whenever possible.

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

#### **PHA Policy**

For in-person hearings, the PHA will not require pre-hearing discovery by the PHA of family documents directly relevant to the 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 or via email. The PHA will scan and email copies of these documents to the hearing officer and the PHA representative the same day.

Documents will be shared electronically whenever possible.

#### ***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

#### ***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

#### ***Attendance at the Informal Hearing***

##### **PHA Policy**

Hearings may be attended by a hearing officer and the following applicable persons:

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

The participant and any witnesses for the participant

The participant's counsel or other representative

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

#### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

##### **PHA Policy**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines

for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

***Evidence [24 CFR 982.555(e)(5)]***

The PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

PHA 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 PHA. Writings include all forms of recorded communication or representation, including letters, 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. 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 either the PHA (or the family, if required in a remote hearing) fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

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

***Procedures for Rehearing or Further Hearing***

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

***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

### PHA 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 PHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if the PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.

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

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

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

#### **Hearing information:**

Name of the participant;

Date, time and place of the hearing;

Name of the hearing officer;

Name of the PHA representative; and

Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the 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 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 PHA's decision.

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

***Issuance of Decision [24 CFR 982.555(e)(6)]***

A copy of the hearing must be furnished promptly to the family.

PHA Policy

The hearing officer will mail a "Notice of Hearing Decision" to the PHA and the PHA will mail a copy to participant on the same day received. This notice will be sent by first-class mail. The participant will be mailed the original "Notice of Hearing Decision" and a copy of the proof of mailing. A copy of the "Notice of Hearing Decision" will be maintained in the PHA's file.

***Effect of Final Decision [24 CFR 982.555(f)]***

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

PHA Policy

The Executive Director has the authority to determine that the PHA is not bound by the decision of the hearing officer because the PHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

In such a case, the PHA will mail a "Notice of Final Decision" to the PHA and the participant on the same day. The "Notice of Final Decision" will be sent by first-class mail. A copy of this notice will be maintained in the PHA's file.



#### **16-III.D. 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. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

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)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- 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 participant, 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.

#### **USCIS 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 the proof of mailing.

##### PHA 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.

### PHA 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, the 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. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

#### ***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.

### PHA Policy

The family will be allowed to copy any documents related to the hearing and will be charged for copies made in accordance with the PHA's Data Practices policy. 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. Upon request, the PHA will provide competent interpretation services, free of charge.

### ***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.

#### **PHA Policy**

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

### ***Hearing Decision***

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

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

#### **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

## **PART IV: OWNER OR FAMILY DEBTS TO THE PHA**

### **16-IV.A.OVERVIEW**

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. If the family breaches an agreement with



# Rural Development Grievance Procedures

Scott County Community Development Agency

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documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

### **B. Other Lease Terminations**

A landlord may terminate occupancy for conditions beyond the tenant's control, such as:

- Required repair or rehabilitation of the building; or
- Natural disaster.

Under these circumstances, the affected tenants may request a LOPE from the Agency. The LOPE will provide the tenant with priority entitlement to rental units in other Agency-financed projects for 120 days from the date of the LOPE. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period. Tenants that are displaced due to circumstances beyond their control are entitled to benefits under the Uniform Relocation Act.

## **SECTION 8: TENANT GRIEVANCE PROCEDURES [7 CFR 3560.160]**

This section presents the process for resolving tenant grievances. Every step of the process will be explained with the responsibilities of each party involved. Topics covered in this section include when to file a complaint, the hearing process, requirements governing the hearing, and the hearing decision. It is important to note that a resolution that is in the best interest of everyone should have gone through the entire grievance process before a final decision was made.

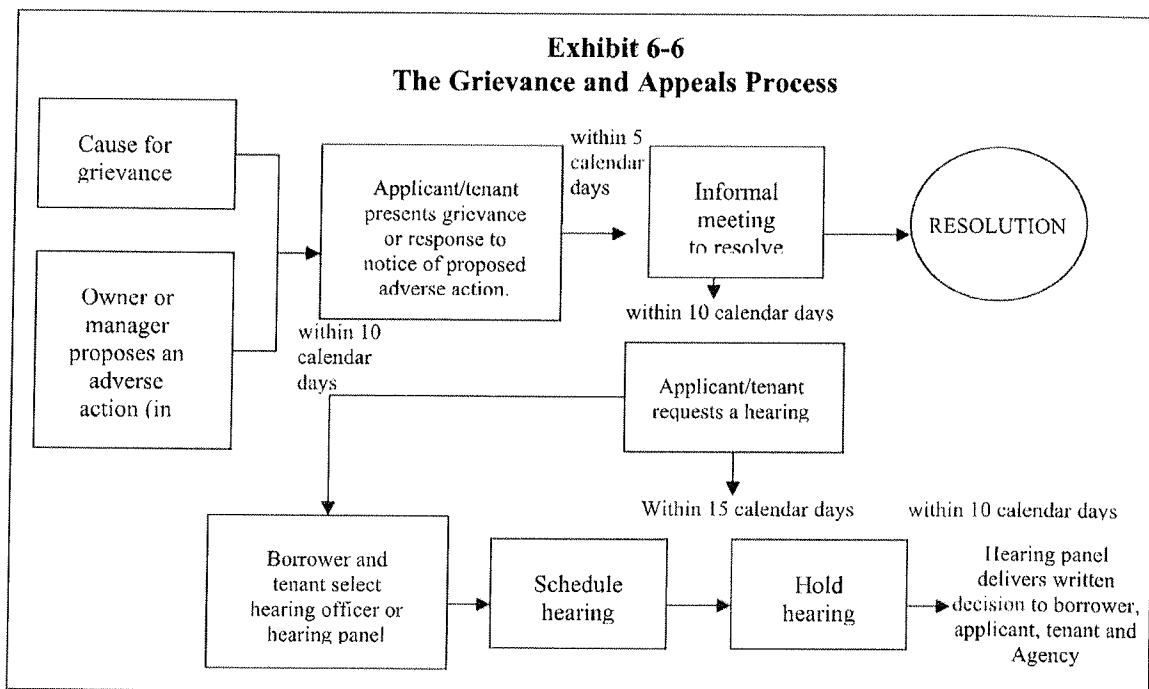
Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in Paragraphs 6.31 and 6.32.

### **6.33 NOTICE OF ADVERSE ACTION**

In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of "the right to respond to the notice within 10 calendar days after date of the notice" and of "the right to a hearing in accordance with 7 CFR 3560.160 (f), which is available upon request." The notice must contain the information specified in 7 CFR 3560.160 (a)(2). For housing projects in areas with a concentration of non-English-speaking individuals, the notice must be in English and the non-English language.

### 6.34 OVERVIEW OF THE PROCESS

The grievance process should always begin with an informal meeting between the grieved party and the borrower/management agent. It is the Agency's belief that the best way to resolve grievances is through an informal meeting between the two parties. Borrowers must offer to meet with tenants to discuss the grievance within 5 calendar days of receiving the grievance. If an informal meeting is held, the borrower must provide a summary of the meeting to the tenant within 10 calendar days of the meeting date. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.



The parties will select a hearing panel or hearing officer to govern the hearing. Within 10 calendar days after the hearing, all parties are informed of the decision. Exhibit 6-6 provides an example of the grievance process.

### 6.35 WHEN IS A TENANT GRIEVANCE LEGITIMATE?

It is important for the management agent to determine if a tenant or prospective tenant's grievance is within the requirements established for the program. For example, "I want to file a complaint because the manager does not speak to me," is not a legitimate complaint. On the other hand, a complaint that the building manager fails to maintain the property according to the Agency guidelines is a legitimate complaint. Exhibit 6-7 lists the circumstances in which a tenant may or may not be able to file a complaint.

Exhibit 6-7	
Tenant Complaints—Allowable Circumstances	
<i>A complaint may NOT be filed if:</i>	<i>A complaint MAY be filed if:</i>
<ul style="list-style-type: none"> <li>• There is a proposed rent change that is authorized by the Agency.</li> <li>• A tenant or prospective tenant believes that they have been discriminated against. If a person believes that discrimination has occurred, they should file a complaint with the USDA's Office of Civil Rights or the Secretary of HUD.</li> <li>• A project has formed a tenant's association and all parties involved have agreed to use this association as a method of settling grievances.</li> <li>• There are changes in the rules that are required by the Agency and proper notice has been given.</li> <li>• The tenant is in violation of the lease and those violations result in termination of tenancy.</li> <li>• Disputes between tenants that do not involve the borrower/management agent.</li> <li>• Displacement or other effects as a result of prepayment.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a modification of the lease, change in the rules, or changes in the rent that are not authorized by the Agency.</li> <li>• The borrower/management agent fails to maintain the property in a manner that is decent, safe, and sanitary.</li> <li>• The borrower violates a lease provision or occupancy rule.</li> <li>• Denial of admission to the project by a prospective tenant.</li> </ul>

### 6.36 BORROWER/MANAGEMENT AGENT RESPONSIBILITIES

The borrower/management agent is responsible for providing all tenants and prospective tenants with decent, safe, and sanitary housing. The following is a list of all of the responsibilities of the borrower/agent:

- Post all regulations, summary of regulations, or tenant information, including the equal housing opportunity poster, "and justice for all" poster, tenant grievance and appeals procedures, the AFHMP, occupancy rules, and office and emergency hours and phone numbers in a conspicuous place.
- Provide all tenants with a summary of their rights at the time the lease is signed and at each lease renewal. For tenants that are currently living in the project, a summary must be submitted once the summary is created.
- If the project has a large population of non-English-speaking tenants, the borrower/agent must provide the summary and any other documents that pertain to the tenant's rights, in the non-English language.



## **6.37 THE HEARING PROCESS**

### **A. Request for a Hearing**

- Each hearing process must begin with the request for a hearing. The tenant or prospective tenant must present their request within 10 days after the receipt of the summary of the informal meeting. The request must contain the following information:
  - ◊ The reason for the grievance or contest of the borrower/management agent's proposed action;
  - ◊ The action relief sought; and
  - ◊ Additional information.
- If the tenant or prospective tenant's request for a hearing is not received within the given time, the borrower or management agent's decision will become final.

### **B. Scheduling the Hearing**

The hearing must be scheduled within 15 days after the receipt of the tenant's request for a hearing. If a hearing officer or hearing panel must be selected, the hearing will be scheduled within 15 days after the selection or appointment of a hearing officer or hearing panel. It is the responsibility of the two parties to agree upon a place and time that is mutually convenient to hold the hearing. If the two parties cannot agree on a place and time, it will become the responsibility of the hearing officer or hearing panel to make the decision.

### **C. Selection of the Hearing Officer or Hearing Panel**

The two parties must select a hearing officer. If the hearing officer cannot be agreed upon, the two parties will choose members to serve on the hearing panel. The hearing panel should consist of three members. The tenant and the borrower/management agent will each elect one person to the panel. It is then the responsibility of the two chosen members to elect a third member to the panel. If within 30 days from the time the request for the hearing was submitted a hearing panel has not been formed, the borrower/management agent must inform the Agency. Within 10 days of reviewing the facts, the Agency must appoint a hearing officer. Once a hearing officer or panel is selected the Agency must inform them in writing of their responsibilities for conducting the hearing.

Some helpful information that should be remembered by all parties involved in the process when selecting a hearing officer or hearing panel includes:

- Hearing panel members should be impartial, disinterested persons;
- The hearing officer cannot be a person previously considered by the tenant or borrower/management agent; and
- The hearing officer cannot be an Agency staff member.
- The hearing officer may not receive any payment unless that payment is made by the Agency.

**Potential Hearing Panel Members**

1. Legal aid counsel;
2. Someone with knowledge of the program; or
3. A Minister.

To minimize time and the level of effort, a management agent may elect to have a standing hearing panel for each project that they manage. If a standing panel is chosen, the above-listed process will have to be forfeited in lieu of the following process.

- A hearing panel consists of three members: one tenant panelist, one borrower/management agent panelist, and a chair.
- Tenants will get to nominate and vote for their panel members. A meeting must be held to allow the tenants the opportunity to choose two members to serve on the standing panel; one member will serve as the alternate. All residents should be notified of the time, date, and place where the election is going to take place. The borrower is responsible for ensuring that the notice is placed in a conspicuous place, within 2 weeks of the time the person is expected to start serving as a panel member. The meeting must also be held in a place that is convenient and accessible to the tenants.
- The borrower/management agent is responsible for selecting one or two members to serve on the standing panel. If two members are chosen, one will serve as the alternate.
- The third and “mutual” member of the panel will serve as the chair for the panel. The other two interested parties will elect the chairperson. Each party will only have the opportunity to give one vote, even if two people were elected to serve on the panel.
- Each member will serve on the panel for one year, with the opportunity for reelection. All members of the standing panel must be willing to render their services without compensation.

#### **D. Examination of Records**

At a reasonable time before the hearing, the borrower/agent must allow the tenant the opportunity to examine all files that are going to be used during the hearing. Documents can be examined and copied if:

- The tenant is willing to cover any expenses that may be incurred;
- The document, record, or policy is one that will be used during the hearing process; and
- The document, record, or policy is not subject to any laws or confidentiality agreements that prohibit reproductions.

**Documents That May Not Be Copied**

1. Credit reports;
2. Project budgets; and
3. Supervisory findings.

**E. Escrow Deposits**

Tenants may establish escrow accounts if a grievance involves a rent increase not authorized by the Agency or if the borrower/agent is not maintaining the property in a decent and sanitary manner. The escrow account will allow the tenant the opportunity to make timely rent payments without having the borrower/agent receive the payment until the grievance has been settled. To maintain an escrow account, tenants must adhere to the following rules:

- All deposits must continue until the grievance is resolved;
- The institution that the escrow account is established in must be a Federally insured institution;
- All deposits must be made on time—failure to do so will terminate the entire process and all sums will be due immediately; and
- Tenants must make all receipts of deposit available for examination by the borrower/agent.

**6.38 REQUIREMENTS GOVERNING THE HEARING**

The hearing is an informal proceeding at which evidence is presented to a hearing officer or hearing panel. The hearing must be designed to ensure that the rights of all parties involved are protected. The hearing must protect:

- The right of both parties to be represented by counsel or another person(s) chosen as their representative;
- The right of the tenant or prospective tenant to a private hearing unless a public one is requested;

- The right of the tenant or prospective tenant to present oral and written evidence and arguments in support of their grievance or appeal, and to refute the evidence and cross-examine all witnesses on whose testimony or information the borrower or management agent relies; and
- The right of the borrower or management agent to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses on whose testimony or information the tenant or prospective tenant relies.

During the hearing, each party must present evidence to support their position. All participants at the hearing must conduct themselves in an orderly manner. Participants that cannot conduct themselves in an orderly manner will be excluded from the proceedings or will cause the hearing panel or hearing officer to make a decision that is not in favor of the disorderly party.

**Remember**

The Agency approval is only to make sure that the decision is in compliance with other Agency programs.

If the tenant or prospective tenant or management agent fails to appear at a scheduled hearing, the hearing officer or hearing panel may choose to postpone the hearing for no more than 5 days or may determine that the party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. All parties involved in the hearing must be informed of the hearing panel's decision.

### **6.39 THE HEARING DECISION**

It is the responsibility of the hearing officer or hearing panel to prepare and submit a written decision to both parties within 10 calendar days of the hearing. The hearing officer or hearing panel must inform the Agency of the decision and the reasons for making that decision. The decision should be based on the facts that were presented during the hearing. The decision is not final until it has been approved by the Agency for compliance. This contingent form of approval should be noted in the decision letter. Upon receipt of the letter, the borrower and the tenant must comply with the directives specified in the decision.

## **SECTION 9: SPECIAL REQUIREMENTS FOR LABOR HOUSING** **[7 CFR 3560.575 AND 7 CFR 3560.624]**

While the Agency-sponsored Labor Housing programs have similar requirements in many respects to the Rural Rental Housing programs, because the target populations that these programs serve vary, there are some differences in program rules.