



PHA Plan Elements (24 CFR 903.07) Plan Element 5

***Grievance Procedures.** A description of the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants.*

Section 8 HCV Informal Hearing and Review Procedure

Informal Reviews for Applicants

1. Notice to applicant

The Housing Authority must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the Housing Authority decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

2. Informal review process

The Housing Authority must give an applicant an opportunity for an informal review of the Housing Authority decision denying assistance to the applicant.

The review will be conducted by the Review Officer, designated by the Executive Director, who will appoint someone other than a person who made or approved the decision under review or a subordinate of this person.

At the informal review, the applicant must be given an opportunity to present written or oral objections to the Housing Authority decision.

The Housing Authority must notify the applicant of its final decision after the informal review, including a brief statement of the reasons for the final decision.

3. When informal review is not required

The Housing Authority is not required to provide the applicant an opportunity for an informal review for any of the following:

- i. Discretionary administrative determinations by the Housing Authority.
- ii. General policy issues or class grievances.
- iii. A determination of the family unit size under the Housing Authority subsidy standards.
- iv. A Housing Authority determination not to approve an extension or suspension of a voucher term.
- v. A Housing Authority determination not to grant approval of the tenancy.
- vi. A Housing Authority determination that a unit selected by the applicant is not in compliance with HQS.
- vii. A Housing Authority determination that the unit is not in accordance with HQS
- viii. because of the family size or composition.

4. Restrictions on assistance for noncitizens.

The informal review provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5. See Part C for more details.

B. INFORMAL HEARING FOR PARTICIPANT

1. When hearing is required

The Housing Authority must give a participant family an opportunity for an informal hearing to consider whether the following Housing Authority decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and Housing Authority policies:

- i. A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
- ii. A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the Housing Authority utility allowance schedule.
- iii. A determination of the family unit size under the Housing Authority subsidy standards.
- iv. A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the Housing Authority subsidy standards, or the Housing Authority determination to deny the family's request for an exception from the standards.
- v. A determination to terminate assistance for a participant family because of the family's action or failure to act
- vi. A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under Housing Authority policy and HUD rules.

In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the Housing Authority must give the opportunity for an informal hearing before the Housing Authority terminates housing assistance payments for the family under an outstanding HAP contract.

2. When hearing is not required

The Housing Authority is not required to provide a participant family an opportunity for an informal hearing for any of the following:

- i. Discretionary administrative determinations by the Housing Authority.
- ii. General policy issues or class grievances.
- iii. Establishment of the Housing Authority schedule of utility allowances for families in the program.
- iv. a Housing Authority determination not to approve an extension or suspension of a voucher term.
- v. a Housing Authority determination not to approve a unit or tenancy.
- vi. a Housing Authority determination that an assisted unit is not in compliance with HQS. (However, the Housing Authority must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family.)
- vii. a Housing Authority determination that the unit is not in accordance with HQS because of the family size.
- viii. A determination by the Housing Authority to exercise or not to exercise any right or remedy against the owner under a HAP contract.

3. Notice to family

In the cases described in paragraphs (i), (ii) and (iii) above, the Housing Authority must notify the family that the family may ask for an explanation of the basis of the Housing Authority determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

In the cases described in paragraphs (iv), (v) and (vi) above, the Housing Authority must give the family prompt written notice that the family may request a hearing. The notice must:

- i. Contain a brief statement of reasons for the decision,
- ii. State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and
- iii. State the deadline for the family to request an informal hearing.

4. Expeditious hearing process

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

5. Discovery

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

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

The term "documents" includes records and regulations.

6. Representation of family, recording of hearing

At its own expense, the family may be represented by a lawyer or other representative. The name and title of such representative must be submitted to the Housing Authority at least 5 days prior to the hearing. If the representative is a lawyer, the Housing Authority may arrange to have its lawyer present, too.

Either the family or the Housing Authority may elect to record the hearing at their own expense. If either party wishes to record the hearing, they must notify the other in writing at least 5 days prior to the hearing.

7. Hearing officer

The hearing may be conducted by any person or persons designated by the Executive Director, other than a person who made or approved the decision under review or a subordinate of this person.

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the Housing Authority hearing procedures.

8. Evidence

The Housing Authority and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

9. Issuance of decision

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 shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

10. Effect of decision

The Housing Authority is not bound by a hearing decision:

- i. Concerning a matter for which the Housing Authority is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing.
- ii. Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.
- iii. If the Housing Authority determines that it is not bound by a hearing decision, the Housing Authority must promptly notify the family of the determination, and of the reasons for the determination.

11. Restrictions on assistance to non-citizens

The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5. See Part C for more details.

C. RESTRICTIONS ON ASSISTANCE TO NONCITIZENS

1. Notice of denial or termination of assistance. The notice of denial or termination of assistance shall advise the family:

- i. That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;
- ii. That the family may be eligible for proration of assistance as provided under Sec. 5.520;
- iii. In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in Sec. Sec. 5.514 and 5.518;
- iv. That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal
- v. That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal
- vi. For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the informal hearing process.

2. Appeal to the INS. The family shall have 30 days to request an appeal of the INS verification results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the Housing Authority with a copy of the written request for appeal and proof of mailing.

3. Documentation to be submitted as part of appeal to INS. The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. Pending the completion of the INS appeal, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

4. Decision by INS When the Housing Authority receives a copy of the INS decision, it shall notify the family of its right to request an informal hearing on the ineligibility determination.

5. Informal hearing. After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the Housing Authority provide a hearing. This request must be made either within 30 days of receipt of the notice of the Housing Authority’s determination, or within 30 days of receipt of the INS appeal decision.

The informal hearing shall be conducted in accordance with the Housing Authority’s procedures for informal hearings or public housing grievances.

Low Income Public Housing Grievance Procedure

SECTION I: Definitions:

(A) Grievance shall mean any dispute which a tenant may have with respect to Housing Authority action or failure to act in accordance with the individual tenant's lease or Housing Authority regulations which adversely affect the individual tenant's rights, duties, welfare or status, including complaints alleging discrimination based on handicap.

Grievance shall not include any grievance concerning:

- An eviction or termination of tenancy based upon a tenant's creation or maintenance of a threat to the health and safety of other tenants, or to Housing Authority employees;
- Disputes between tenants not involving the Housing Authority, or involving class grievances (the grievance procedure is not intended to be a forum for initiating or negotiating policy changes between a group or groups)
- Complaints from applicants for employment
- Complaints from applicants for admission to housing assisted programs.

(B) Complainant shall mean any tenant whose grievance is presented to the Housing Authority either orally or in writing.

(C) Escrow Account is an account maintained by the Housing Authority, to which funds are deposited that are held in trust until the disposition of the funds are determined. The account draws no interest and is not delegated to any other account or to any person until their disposition is resolved.

(D) Hearing Officer shall mean a person selected in accordance with 24 CFR 966.55 to hear grievances and render a decision with respect hereto.

(E) Housing Authority shall mean: "The Housing Authority of the County of Santa Cruz."

(F) Tenant shall mean the adult person (or persons) (other than a live-in aide) who resides in the unit and who executed the lease with the Housing Authority as lessee of the dwelling unit, or if no such person now resides in the unit, an adult person who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

SECTION II: Process:

The Housing Authority shall make a good faith effort to resolve all complaints, including complaints alleging discrimination on the basis of handicap, through an Informal Grievance Procedure. The Informal Grievance Procedure is as follows:

1. The responsible Housing Authority Department Head will arrange a meeting with the aggrieved party. Both the Department Head and the aggrieved party, by mutual consent, can have persons who can clarify the issue attend the meeting.
2. A written summary of the meeting, dated and signed by the Department Head, shall be delivered or mailed to the Complainant within a reasonable time after the meeting. A copy of the written summary shall be filed in the Housing Authority office. The written summary shall include a synopsis of the discussion of the complaint, the names of the participants and those who attended the meeting, the date of the meeting, and shall specify:
 - The proposed disposition of the complaint and the specific reasons therefore;
 - The right of the Complainant to a hearing if desired; and

- The procedure by which a hearing may be obtained.
3. If the informal grievance procedure does not result in a mutually agreeable conclusion to the grievance, the Complainant has the option to submit a written request for a hearing to the Housing Authority within fifteen (15) business days receipt of the summary of the proposed disposition of his/her complaint.

Formal Hearing

4. Request for Hearing. The aggrieved party shall submit a written request for a hearing to the Housing Authority within fifteen (15) days after receipt of the answer to his/her complaint, or within fifteen (15) days from receipt of the written summary of the Informal Grievance meeting, if such meeting does not result in resolution of the problem. The request shall state:
 - The reasons for the grievance.
 - The action or relief sought.
5. Escrow Deposit. Before a hearing is scheduled in any grievance involving the amount of rent the Housing Authority claims is due under the lease or any rent re-determination, the Complainant shall pay to the Escrow Account an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The Complainant shall thereafter deposit the same amount of the monthly rent in the Escrow Account monthly until the complaint is resolved by decision of the Hearing Officer. These requirements may be waived by the Housing Authority in extenuating circumstances. Unless so waived, the failure to make payments shall result in a termination of the grievance procedure; however, failure to make payment shall not constitute a waiver of any right the Complainant may have to contest the Housing Authority's disposition of the grievance in any appropriate judicial proceeding.
6. Hearing Officer/Hearing Panel. A grievance hearing shall be conducted by an impartial person or persons appointed by the Executive Director, other than a person who made or approved the Housing Authority action under review or a subordinate of such person.

A written summary of the hearing, dated and signed by the Hearing Officer, shall be delivered or mailed to the Complainant within a reasonable time after the hearing. A copy of the written summary shall be filed in the Housing Authority office. The written summary shall include a description of the discussion of the complaint, the names of the participants and those who attended the hearing, the date of the hearing, and shall specify the proposed disposition of the complaint and the specific reasons therefore.

7. Presentation of Grievance. All grievances shall be personally presented, either orally or in writing, pursuant to the procedures prescribed above, as a condition precedent to a hearing under this section; provided that if the Complainant shall show good cause why he/she failed to proceed in accordance with said procedure to the Hearing Officer, the provision of this subsection may be waived by the Hearing Officer.
8. Scheduling of Hearing. Upon the Complainant's compliance with the paragraphs above, a hearing shall be scheduled by the Hearing Officer promptly for a time and place reasonably convenient to both the Complainant and the Housing Authority. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the Complainant and the appropriate Housing Authority official.
9. Failure to Request a Hearing. If the Complainant does not request a hearing in accordance with these procedures, then the Housing Authority's disposition of the complaint under the Informal Grievance Procedure set forth above shall become final; provided that failure to request a hearing shall not constitute a waiver by the Complainant of his/her right thereafter to contest the Housing Authority's action in disposing of the complaint in an appropriate judicial proceeding.

Hearing Procedures

10. Due Process. The Hearing Officer shall ensure that the Complainant and the Housing Authority are afforded a fair hearing providing the basic safeguards of due process which include:
- The opportunity to examine before the grievance hearing any Housing Authority documents, including records and regulations that are directly relevant to the hearing. The tenant shall be allowed to copy any such document at the tenant's expense. If the Housing Authority does not make the document available for examination upon request by the complainant, the Housing Authority may not rely on such documentation at the grievance hearing.
 - The right to be represented by counsel or other person chosen as the Complainant's representative, and to have such person make statements on the complainant'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 complainant, to controvert evidence relied on by the Housing Authority, and to confront and cross-examine all witnesses upon whose testimony or information the Housing Authority relies, and
 - A decision based solely and exclusively upon the facts presented at the hearing.
11. Accommodations of Persons with Disabilities
- The Housing Authority must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodations 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 under this subpart must be in an accessible format.
12. Hearing Officer Decision Without Hearing. The Hearing officer may render a decision without proceeding with the hearing if the Hearing Officer determines that the issue has been previously decided in another proceeding.
13. Failure to Appear at Hearing. If the Complainant or the Housing Authority fails to appear at a scheduled hearing, the Hearing Officer may make a determination to postpone the hearing not to exceed five (5) business days, or may make a determination that the party who failed to appear at the scheduled hearing has waived right to a hearing. Both the Complainant and the Housing Authority shall be notified of the determination by the Hearing officer; provided that a determination that the Complainant has waived his right to a hearing shall not constitute a waiver of any right the Complainant may have to contest the Housing Authority's disposition of the grievance in an appropriate judicial proceeding.
14. Presentations at Hearings. At the hearing, the Complainant must first make a showing of an entitlement to the relief sought and thereafter the Housing Authority must sustain the burden of justifying the Housing Authority action or failure to act against which the complaint is directed.
15. Conduct at the Hearing. The hearing shall be conducted informally by the Hearing officer and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules or evidence applicable to judicial proceedings. The Hearing Officer shall require the Housing Authority, the Complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting denial of the relief sought, as appropriate.

16. Transcript of Hearing. The Complainant or the Housing Authority may arrange for a transcript of the hearing, in advance and at the expense of the party making the arrangement. Any interested party may purchase a copy of the transcript.

Expedited Grievance Procedure

The Housing Authority may expedite the grievance procedure in cases of termination of tenancy or eviction due to criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Housing Authority's public housing premises by other residents or employees of the Housing Authority; or any drug-related criminal activity on or near such premises. In the case of a grievance under the expedited grievance procedure the option for an informal grievance procedure is not applicable.

Decision of the Hearing Officer

17. Written Decision. The Hearing Officer shall prepare a written decision including the reasons therefore within a reasonable time after the hearing. A copy of the decision shall be sent to the Complainant and the Housing Authority. The Housing Authority shall retain a copy of the decision in the Complainant's file. A copy of the written decision, with all names and identifying references deleted, shall also be maintained on file by the Housing Authority and made available for inspection by a prospective Complainant, his representative, or the Hearing Officer.
18. Effect of Decision. The decision of the Hearing Officer shall be binding on the Housing Authority, which will take all actions or refrain from any actions necessary to carry out the decision, unless the Housing Authority Board of Commissioners determines within a reasonable time, and promptly notifies the Complainant of its determination that:
- The grievance does not concern Housing Authority action, or failure to act, in accordance with or involving the Complainant's lease or Housing Authority regulations, which adversely affect the Complainant's rights, duties, welfare or status;
 - The decision of the Hearing is contrary to applicable federal, state or local law, HUD regulations, or HUD requirements of the annual contributions contract between HUD and the Housing Authority.
19. Right to Due Process. A decision by the Hearing Officer, or Board of Commissioners, in favor of the Housing Authority, or which denies relief requested by the Complainant in whole or in part, shall not constitute a waiver of, not affect in any manner whatever, any rights the Complainant may have to a trial De Novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

EVICTIION: EXCLUSION FROM GRIEVANCE PROCEDURE

The Housing Authority shall exclude from its administrative grievance procedure any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the Housing Authority; or any drug related criminal activity on or near such premises. The Housing Authority may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the Housing Authority is not required to provide the opportunity for a hearing under the Housing Authority's administrative grievance procedure.

When the Housing Authority is not required to afford a tenant the opportunity for a grievance hearing on a lease termination, and has decided to exclude the grievance from the PHA grievance procedure, the notice of lease termination shall:

- State that the tenant is not entitled to a grievance hearing.
- Specify the judicial eviction procedure to be used by the Housing Authority for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.
- State whether the eviction is for a criminal activity (which threatens health or safety, of Housing Authority residents or employees); or a drug-related criminal activity.

HOUSING AUTHORITY EVICTION ACTIONS:

If a tenant has requested a hearing on a complaint involving a Housing Authority Notice of Termination of the tenancy and the Hearing Officer upholds the Housing Authority's action to terminate the tenancy, the Housing Authority shall not commence an eviction action in a court until it has served a Notice to Vacate on the Complainant, and in no event shall the Notice to Vacate be issued prior to the decision of the Hearing Officer having been mailed or delivered to the Complainant. Such Notice to Vacate must be in writing and specify that if the Complainant fails to quit the premises within the applicable statutory period, or on the termination date stated in the Notice of Termination, whichever is later, appropriate action will be brought against the Complainant and the Complainant may be required to pay court costs and attorney fees.