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PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

Both applicants and participants have the right to 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 but has not yet been admitted to the program. Informal Reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554]. *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 **NSPIRE standards**;
- A PHA determination that the unit **does not meet space standards**.

OHCD Policy

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OHCD will only offer an Informal Review to applicants for whom assistance is being denied. Denial of assistance includes denying listing on the OHCD 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, and how to obtain it.

Scheduling an Informal Review

OHCD Policy

A request for an Informal Review must be made in writing and delivered to OHCD either in person, fax, e-mail or by first class mail, by the close of the business, no later than 10-business days from the date of the Denial Notice.

OHCD 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.

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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.

OHCD Policy

The OHCD 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 OHCD 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 childcare 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 OHCD 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 audiodescription, 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.

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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 process 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.

OHCD 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 **informal review** 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 **informal review**.

If the informal review is to be conducted remotely, the PHA will require the

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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.

OHCD Policy

In rendering a decision, OHCD 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. OHCD 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, OHCD will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, OHCD will consider the recommendation of the person conducting the Informal Review in making the final decision whether to deny assistance.

OHCD will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the Informal Review, to the applicant and their representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the Informal Review, processing for admission will resume. If the family fails to participate in their Informal Review, the denial of admission will stand, and the family will be so notified.

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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. A participant family is defined as an individual or family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of an 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 participant family's head of household 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 approved lease
- Terminating housing assistance payments under an outstanding HAP Contract
- Refusing to process or provide assistance under portability procedures

OHCD Policy

In decisions that are subject to an Informal Hearing, and pertain to a determination to terminate assistance, OHCD is not permitted to stop HAP (unless a Breach of the HAP Contract by the landlord has occurred) and/or UAP under an outstanding HAP contract until the time allowed for the family to request an Informal Hearing has elapsed, and any requested hearing has been completed. If a request for an Informal Hearing has been received by OHCD within the OHCD required timeframe, HAP and UAP will continue to be paid under the outstanding HAP contract until a Notice of Final Decision (NFD) is issued.

OHCD will not allow family initiated moves during the Informal Hearing process. At the discretion of OHCD, a family may be granted the ability to move during the Informal Hearing process if OHCD deems the move to be involuntary. An involuntary move includes, but is not limited to, the following circumstances:

1. Landlord caused abatements where the move process is triggered under Chapter 8;
2. VAWA is triggered under Chapter 16;
3. The landlord opts out of the HAP Contract at the Annual Re-Examination;
4. The foreclosure process is completed, and the move process is triggered under Chapter 13; or
5. The landlord has breached the HAP contract and has been removed from the program by HCV Compliance staff.

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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 participant 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 participant family unit size under the PHA's subsidy standards;
- 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 PHA's subsidy standards, or the PHA determination to deny the family's request for exception from the 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 PHAA 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 **NSPIRE standards**;

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- A PHA determination that the unit is not in accordance with **space standards** 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.

OHCD Policy

OHCD will **only** offer participants the opportunity for an Informal Hearing only when required to by the regulations, **and if the PHA denies a request for reasonable accommodation (See Chapter 2).**

Remote Informal Hearings [Notice PIH 2020-32

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.

OHCD Policy

OHCD 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, OHCD will conduct an Informal Hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have childcare 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. OHCD 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

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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 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.

OHCD Policy

The OHCD 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, OHCD 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

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notice will advise the family of technological requirements for the hearing and request the family notify OHCD of any known barriers. OHCD 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 OHCD 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.

OHCD Policy

In cases where OHCD makes a decision for which an Informal Hearing must be offered, the written notice to the family will include all of the following:

1. The proposed action or decision of OHCD.
2. A brief statement of the reasons for the decision, including the regulatory reference.
3. The date the proposed action will take place.
4. A statement that if the family's right to an explanation of the basis for the decision.
5. A statement that if the family does not agree with the decision the family may request an Informal Hearing of the decision.
6. A deadline for the family to request an Informal Hearing.
7. To whom the hearing request should be addressed.

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8. A copy of OHCD hearing procedures.
9. That the family may request a remote Informal Hearing.

If the PHA will require that the hearing be conducted remotely, at the time the notice is sent to the family informing them of the right to request an Informal Hearing, the family will be notified that the Informal Hearing will be conducted remotely. The family will be informed of the processes involved in a remote Informal Hearing and that the PHA will provide technical assistance, if needed, before the 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.

OHCD Policy

A request for an Informal Hearing must be made in writing and delivered to OHCD either in person, by electronic means, or by first class mail, by the close of the business day, no later than 10 business days from the date of the termination notice.

Within 10 business days of the family's request, OHCD will send written notice to the family, either scheduling the hearing or notifying the family that an extension is granted to schedule a hearing.

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. Request to reschedule a hearing must be made orally or in writing 48 hours prior to the hearing date. At its discretion, the OHCD may request documentation of the "good cause" prior to rescheduling the hearing. The family is only allowed to reschedule the hearing one time.

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 OHCD within 24 hours of the scheduled hearing date, excluding weekends and holidays. The OHCD 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 Conferences: OHCD staff may need to conduct a pre-hearing conference with a participant prior to an Informal Hearing to determine whether there is a preponderance of evidence to support the termination. OHCD staff will discuss with the participant the reasons for the action taken and the participant's explanation of relevant events and actions. A pre-hearing conference is discretionary.

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The pre-hearing conference may be performed via phone, or it can be a face-to-face meeting at OHCD's discretion. At the pre-hearing conference, OHCD staff will share with the participant the information, which is causing the potential action including termination action.

If the matter is resolved with a pre-hearing conference the action will take place. If, however, the matter cannot be resolved with a pre-hearing conference, OHCD will proceed with the Informal Hearing process.

After a decision is made at the pre-hearing conference, or if no pre-hearing conference is held, OHCD must submit the request for an Informal Hearing to Hearing Officer in a reasonable expeditious manner.

OHCD is responsible to schedule hearings and notifies all parties.

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.

OHCD Policy

The family and OHCD must provide to the other party copies of any proposed exhibits related to the hearing no later than one week prior to the scheduled hearing date. If the participant wishes any additional documents in OHCD possession, they must submit a FOIA request through the Freedom of Information Act (FOIA) Coordinator.

If the hearing will be conducted remotely, OHCD will compile a hearing packet, consisting of all documents OHCD intends to produce at the Informal Hearing. OHCD will mail copies of the hearing packet to the family, the family's representatives, if any, and the Hearing Officer at least 10 business days before the scheduled remote Informal Hearing. The original hearing packet will be in the possession of the OHCD representative and retained by OHCD.

Documents will be shared electronically whenever possible.

PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA office 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.

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OHCD Policy

For in-person hearings, OHCD will not require pre-hearing discovery by OHCD of family documents directly relevant to the hearing.

If the Informal Hearing is to be conducted remotely, OHCD will require the family to provide any documents directly relevant to the Informal Hearing at least 24 hours before the scheduled hearing. OHCD will scan and email copies of these documents to the Hearing Officer and the OHCD representative at 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.

OHCD Policy

OHCD reserves the right to be represented by legal counsel.

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.

OHCD Policy

OHCD will assign one County staff to adjudicate OHCD Informal Hearings for closures and another for all other actions taken by OHCD.

Attendance at an Informal Hearing

OHCD Policy

Hearings may be attended by the OHCD's assigned County Staff, the Petitioner, and the OHCD representative and may include the following additional persons:

- A OHCD representative(s) (including legal counsel) and any witnesses for the OHCD
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by the OHCD as a reasonable accommodation for a person with a disability

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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)].

OHCD 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. All Hearing will be digitally recorded. If recording is requested will be sent electronically. Attendees are expected to comply with all hearing procedures established by the Hearing Officer and guidelines for conduct which includes sequester of Respondent or Petitioner witnesses. 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. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

OHCD Policy

Any evidence to be considered by the Hearing Officer must be presented at the time of the hearing or 24 hours before the hearing if conducted remotely. There are four categories of evidence.

1. **Oral evidence:** the testimony of witnesses.
2. **Documentary evidence:** a writing, which is relevant to the case, for example, a letter written to OHCD. Writings include all forms of recorded communication or representation, including letters, words, pictures, and sounds, videotapes, symbols, or combinations thereof.
3. **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.
4. **Real evidence:** A tangible item relating directly to the case.

Hearsay Evidence: Evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the Hearing Officers decision. [24 CFR 982.555(e)(6)]

If either the OHCD or the family 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.

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Procedures for Rehearing or Further Hearing

OHCD Policy

The Hearing Officer may ask the family or OHCD for additional information and/or might adjourn the hearing in order to reconvene later before reaching a decision. If the family misses an appointment or deadline ordered by the Hearing Officer, the action of the OHCD 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, briefly stating 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.

OHCD Policy

In rendering a decision, the Hearing Officer will address the following matters:

- **OHCD Notice to the Family:** The Hearing Officer will determine if the reasons for OHCD's decision are factually stated in the Notice.
- **Discovery:** The Hearing Officer will determine if OHCD and the family were given the opportunity to examine any relevant documents in accordance with OHCD policy.
- **OHCD Evidence to Support the OHCD 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 OHCD's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable):** The Hearing Officer will conclude if the termination of assistance is for one of the grounds specified in the HUD regulations and OHCD policy. If the grounds for termination are not specified in the regulations or in compliance with OHCD policies, then the decision of OHCD will be overturned.

The Hearing Officer will issue a written "Notice of Hearing Decision" to the family and OHCD no later than 10 business days after the hearing. 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 OHCD representative; and
- Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

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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 show 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 recommendation of whether these facts uphold OHCD's decision.

Order: The hearing report will include a statement of whether the OHCD's decision is upheld or overturned. If it is overturned, the Hearing Officer will instruct the OHCD 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 OHCD 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.

OHCD Policy

The Hearing Officer will either e-mail electronically or mail the "Notice of Hearing Decision" to OHCD and the participant at the same time. 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.

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OHCD Policy

The 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.

OHCD Director will either e-mail electronically or mail the “Notice of Hearing Decision” to all parties. A copy of the “Notice of Hearing Decision” will be maintained in the PHA’s file.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [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 an 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.

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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.

OHCD Policy

OHCD 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 OHCD 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.

OHCD Policy

OHCD 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.

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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.

OHCD Policy

The family and OHCD must provide to the other party copies of any documents related to the hearing no later than one week prior to the scheduled hearing date.

OHCD must be given an opportunity to examine before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an Informal Hearing, the hearing appointment notice will automatically include a statement to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant or the participant's legal counsel must make the documents available no later than 5 business days prior to the scheduled hearing date.

If the family is being represented by legal counsel, OHCD shall be advised of the name and contact information of said legal counsel no later than 5 business days prior to the hearing. Upon receipt of said contact information all communication related to the hearing shall be between OHCD and the family's legal counsel.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties.

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.

OHCD Policy

OHCD will not provide a transcript of an audio taped hearing.

CHAPTER 16

Hearing Decision

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

Retention of Documents [24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the 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 hearing
- The signed verification consent form
- The verification results
- The request for an appeal
- The final determination
- The request for an Informal Hearing
- The final Informal Hearing decision