

Chapter 13

COMPLAINTS, GRIEVANCES AND APPEALS [24 CFR 966.50-966.57]

INTRODUCTION

This document describes the policies to be used when families disagree with a decision by the LSHA based on any action, decision, or inaction by LSHA. It is the policy of LSHA to ensure that all families have the benefit of all protections due to them under the law.

If a Complainant does not follow the procedures set forth in this policy and/or does not request a hearing, then the Authority's action, inaction, or decision shall be considered final on part of LSHA. Failure of a Complainant to request a hearing does not constitute a waiver of his/her right to contest the Authority in an appropriate judicial proceeding.

For all aspects of the grievance and appeals process, a disabled person shall be provided reasonable accommodation to the extent necessary to provide the disabled person with an opportunity to use the grievance procedures equal to a non-disabled person.

The LSHA has determined that it will use a hearing officer which means a person selected in accordance with 24 CFR 966.55 of the grievance regulations to hear the grievance and render a decision with respect thereto. The LSHA may use either of the following methods to appoint a hearing officer

- Appointment of a person who will be the officer selected in a manner required by the grievance procedure.

Lease Requirements

The lease must provide that all disputes concerning the obligations of the tenant or the LSHA must, except as provided in the regulations, be resolved in accordance with the LSHA grievance procedures. The grievance procedures must comply with the regulations. The lease must include a description of the PHA's policies for selecting a hearing officer.

This document is divided into four (4) main sections:

- A. Complaints:** This section covers how to report a complaint of a general nature and the appropriate staff member or Department to whom the complaint should be referred.
- B. Applicants:** This section covers how an applicant would file a grievance, such as to appeal withdrawal from a Wait List. This section also covers the process for appealing determinations of ineligibility based on HUD's Restrictions to Non-Citizens.

- C. Tenants:** This section covers how a resident of LSHA property would appeal a decision, action, or inaction. Such appeals may include, but are not limited to, appealing the action to evict or appeal of how the resident's portion of the rent was calculated.
- D. Definitions:** This section covers definitions used in the document "Complaints, Grievances and Appeals."

A. COMPLAINTS

LSHA will respond promptly to all complaints.

Complaints from Applicant Families. If an applicant family disagrees with an action or inaction of LSHA, complaints will be referred to the Executive Director or designated assigned staff, central office, or LSHA staff member as appropriate. If the complaint cannot be resolved to the satisfaction of the resident, the resident shall have the right to appeal by following the grievance procedures outlined in Section B of this document.

Complaints from Resident Families. If a resident family disagrees with an action or inaction of LSHA, complaints will be referred to the Executive Director or designated assigned staff, central office, or LSHA staff member as appropriate. Complaints regarding the physical condition of the units may be reported to the central office or LSHA staff member. If the complaint cannot be resolved to the satisfaction of the resident, the resident shall have the right to appeal by following the grievance procedures outlined in Section C of this document.

Complaints from Staff. If a staff person reports a family is violating or has violated a lease provision or is not complying with program rules, the complaints will be referred to the Executive Director.

Complaints from the General Public. Complaints or referrals from persons in the community in regard to LSHA or a family will be referred to the Executive Director, as appropriate.

Selecting the officer:

A grievance hearing shall be conducted by an impartial person or persons appointed by the LSHA Executive Director as described below:

The LSHA shall have a hearing officer and shall mean an impartial person or persons selected by the LSHA, other than the person who made or approved the decision under review, or subordinate of that person. Such individual or individuals do not need legal training.

Such persons may include one person who is a person selected by the Executive Director from a slate of qualified individuals and may be an impartial person with Housing Authority experience or person from the community.

The LSHA will check with each nominee to determine whether there is interest in serving as a hearing officer, whether the individual feels fully capable of impartiality, whether the individual can serve without compensation, and what limitations on the individual's time would affect such service.

Nominees who are not interested in serving as hearing officers or whose time is too limited to make service will be withdrawn.

B. APPEALS BY APPLICANTS

Applicants who are determined ineligible, who do not meet LSHA's admission standards, or where LSHA does not have an appropriate size and type of unit in its inventory will be given written notification promptly, including the reason for the determination. The written notification will state that the applicant may seek an Informal Review/Hearing.

Applicants must submit their request for an Informal Review/Hearing **in writing** to LSHA within 5 business days from the date of the notification of their ineligibility. LSHA will then provide an Informal Review/Hearing within 10 working days of receiving the applicant's request. LSHA will notify the applicant of the place, date, and time of the hearing.

Informal Review/Hearings will be conducted by an impartial Hearing Officer. The person who is designated as the Hearing Officer cannot be the person who made the determination of ineligibility or a subordinate of that person.

The applicant may bring to the hearing any documentation or evidence s/he wishes. The applicant's information, along with data compiled by LSHA, will be considered by the Hearing Officer. A determination will be made based upon the merits of the evidence presented by both sides.

Within 10 working days of the date of the Informal Review/Hearing, the Hearing Officer will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

SPECIAL HEARING AND APPEAL PROVISIONS FOR APPLICANTS NOTIFIED OF INELIGIBILITY BASED ON "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS"

Assistance to a family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on an Immigration and Naturalization Service (INS) appeal.

USCIS Determination of Ineligibility [24 CFR 912.9(e)]

If a family member claims to be an eligible immigrant and the US Customs & Immigration Service (USCIS) SAVE system and manual search do not verify the claim, LSHA notifies the applicant within 10 working days of their right to appeal to the USCIS. The family will have 30 days from the date of LSHA's notification to request an appeal of the USCIS results.

The request for appeal shall be made by the family communicating in writing directly to the USCIS. The family must provide LSHA a copy of the written request for appeal, and proof of mailing. For good cause shown, LSHA shall grant the family an extension of the time within which to request an appeal.

Documentation to be submitted to the USCIS as a part of an appeal to the USCIS:

1. Copy of original Form G-845S received from USCIS annotated at the top center in bold print: **HUD APPEAL**.
2. Include two stamped envelopes, one addressed to the applicant and one addressed to LSHA.
3. Attach any and all documentation available to support the reason or basis for the appeal. This should include legible copies of both sides of the Form G-845S.

The USCIS will issue the results of the appeal to the family, with a copy to LSHA, within 30 days of its receipt. If, for any reason, the USCIS is unable to issue a response within the 30-day time period, the USCIS will inform the family and LSHA of the reason for delay.

When LSHA receives a copy of the INS response, LSHA will notify the family of its right to request an Informal Hearing on LSHA's ineligibility determination in accordance with the procedures outlined in "Section B. Appeals by Applicants."

If the Hearing Officer decides that the individual is not eligible, and there are no other eligible family members LSHA will:

1. Deny the applicant family, or
2. Defer termination if the family is a participant and qualifies for deferral, or
3. Terminate the participant if the family does not qualify for deferral.

If there are eligible members in the family, LSHA will offer to prorate assistance or give the family the option to remove the ineligible members.

A decision against an applicant under the USCIS appeal process or LSHA's Informal Hearing, does not preclude the applicant from exercising the right to seek redress directly through judicial procedures [24 CFR 912.9(g)].

All other complaints related to eligible citizen/immigrant status:

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide documentation and/or certification.

Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of Tenant Rent and Total Tenant Payment.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

C. TENANT GRIEVANCE POLICY AND PROCEDURES

LSHA's Grievance Policy and Procedures, for 30-Day Notices (Two-Part Process) and for 3-Day Notices (Expedited Process), shall be applicable to all individual grievances between the Resident and LSHA, *except* that it shall not apply to an order of eviction following a hearing in a court containing the elements of due process*. Denial of the hearing process does not preclude the resident from exercising the right to seek redress directly through judicial procedures.

* "Elements of Due Process" shall mean an eviction action or termination of tenancy in a state or local court in which the following procedural safeguards are required:

1. Adequate notice to the Resident of grounds for terminating the tenancy and for eviction.
2. Opportunity for the Resident to examine all relevant documents, records, and regulations of the Authority prior to the trial for the purpose of preparing a defense.
3. Right of the Resident to be represented by counsel.
4. Opportunity for the Resident to refute the evidence presented by LSHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have.
5. A decision on the merits.

Victims of domestic violence have access to the grievance process for an adverse action on admission to assisted housing, or termination of benefits of assisted housing. Only victims retain the right to the formal grievance process as provided under the Violence Against Women's Act (VAWA).

Furthermore, the grievance policy is not applicable to disputes between Residents not involving LSHA, nor of class action grievances. The policy and procedures are not intended as a forum for initiating or negotiating policy changes between individual Residents or a group of residents and LSHA's Board of Commissioners.

The Grievance Process for a 30-DAY NOTICE to a resident is a two-part process:

1. **Informal Settlement:** The resident first requests an Informal Settlement (an informal discussion of the problem) with the program staff and attempts to resolve the matter with the program staff. The request may be presented in writing to the program staff. The request must be made within five (5) working days of the time the Resident was notified of an Authority action, or became aware of the condition, situation, or circumstance alleged in the grievance, in order that the grievance may be discussed informally and settled without a hearing if possible.

A summary of the discussion between the resident and program staff will be prepared within a reasonable time following the Informal Settlement, not to exceed five (5) working days, and one copy will be given to the Resident and one retained in LSHA's Resident lease file. The summary will specify the following:

1. The names of the participants.
 2. The date of the meeting or meetings held between the participants.
 3. The nature of the disposition thereof and the reason therefore.
 4. The procedures by which a hearing under provisions of LSHA's policy may be obtained if the resident is not satisfied.
2. **Hearing:** If the resident is not satisfied with the decision of the program staff, the resident may then file a written request for a Hearing with LSHA's Hearing Officer within ten (10) working days of receipt of the program staff member's written decision. The **written request** shall be hand delivered or mailed to the attention of LSHA's Hearing Officer, at LSHA's Administrative Office.

The written request shall specify:

- The reasons for the grievance;
- The action of relief sought from the LSHA; and
- Several dates and times in the following 10 days when the complainant can attend a grievance hearing.

The Hearing Officer/Panel will have five (5) working days from receipt of the request in which to schedule the time, place, and date of the Hearing. Once held, the Hearing Officer will prepare of summary of the Informal Hearing within five (5) working days of the Hearing, inclusive of the following:

- The names of the participants.
- The date of the meeting held between the participants.

- The nature of the disposition thereof and the reason therefore.

Hearing Process: Procedures governing the hearing: [966.56]

The hearing shall be held before a hearing panel or hearing officer. The complainant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the hearing LSHA 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. Copies of LSHA documents may be made at \$0.10 per page. If the LSHA does not make the document available for examination upon request by the complainant, the LSHA may not rely on such document at the grievance hearing. The LSHA will likewise have the opportunity to examine before the hearing applicant/participant documents, including records and regulations that are directly relevant to the hearing. The LSHA shall be allowed to copy any such document at the LSHA's expense. If the applicant/tenant does not make the document available for examination upon request by the LSHA, the applicant/tenant may not rely on such document at the grievance hearing.
- B. The right to be represented by counsel or other person chosen as the Tenant's representative and to have such person make statements on the Tenant's behalf.
- C. The right to a private hearing unless the complainant requests a public hearing. The right to present evidence and arguments in support of the Tenant's complaint to controvert evidence relied on by the LSHA or project management, and to confront and cross examine all witnesses upon whose testimony or information the LSHA or project management relies; and
- D. A decision based solely and exclusively upon the fact presented at the hearing. [966.56(b)]

The hearing panel or officer may render a decision without proceeding with the hearing if they determine that the issue has been previously decided in another proceeding. [966.56(c)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and, thereafter, the LSHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed. [966.56(e)]

The hearing shall be conducted informally by the hearing panel or officer. Oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. [966.56(f)]

The hearing panel or officer shall require the LSHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of

the hearing panel or 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 or denial of the relief sought, as appropriate. [966.56(f)]

The complainant or the LSHA may arrange in advance, and at expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript. [966.56(g)]

The LSHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the Tenant is visually impaired, any notice to the Tenant which is required under this procedure must be in an accessible format. [966.56(h)]

The LSHA must comply with HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons' issued on January 22, 2007.

EXPEDITED GRIEVANCE PROCESS:

There is no requirement for a grievance under an expedited notice for termination that is known as a 10-day notice of termination. All applicable reasons for a 10-Day Termination listed below shall not allow for a formal Grievance Procedure:

1. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of LSHA, or;
2. Any violent or drug-related criminal activity on or off the public housing premises, or
3. Any activity of an extreme nature that poses a threat to the health/safety of others.

DECISIONS

The hearing officer must prepare a written decision, including the reasons for the LSHA's decision within a reasonable time after the hearing. A copy of the decision must be sent to the complainant and the LSHA. The LSHA must retain a copy of the decision in the tenant's folder.

The LSHA must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or a prospective complainant's representative.

The decision of the hearing officer will be binding on the LSHA unless the LSHA Board of Commissioners determines that:

- The grievance does not concern LSHA action or failure to act in

accordance with or involving the complainant's lease on LSHA regulations, which adversely affects the complainant's rights, duties, welfare or status; or

- The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the LSHA.

A decision by the hearing officer or Board of Commissioners in favor of the LSHA or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of, nor 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.

Miscellaneous matters related to the Tenant Grievance Policy and Procedures:

1. Before a hearing is scheduled in any grievance involving the amount of rent which LSHA claims is due, the resident shall pay to LSHA an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the act took place. The resident shall thereafter deposit the same amount of rent monthly in an escrow account established and maintained by LSHA, to be disbursed at the direction of the Hearing Officer at such time as the grievance is resolved by decision of the Hearing Officer.

If the resident fails to deposit the amount required, he or she shall have waived his or her right to a Hearing. However, LSHA in extenuating circumstances may waive these requirements. Unless so waived, the failure to make such payment shall result in a termination of the grievance procedure, provided however, that failure to make payment shall not constitute a waiver of any right the resident may have to contest the Authority's disposition of his or her grievance in any appropriate judicial proceeding.

2. 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.
3. If the resident or LSHA fails to appear at a scheduled Hearing, the Hearing Officer, for good cause and in the interest of justice, may make a determination to postpone the Hearing for a period of time not to exceed five (5) working days (except for an expedited hearing), or may make a determination that the party has waived its right to a Hearing. Both the resident and LSHA shall be notified of any such determination by the Hearing Officer, provided that determination that the resident has waived his or her right to a Hearing shall not constitute a waiver of any right the resident may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding.

Evidence

The LSHA will use the concept of the preponderance of the evidence as the standard for making all admission, termination, and grievance decisions.

Preponderance of the evidence is defined as the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may, or may not, be identical with quantity (the greater number of witnesses).

Consider all evidence. In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

Equally balanced. If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

D. DEFINITIONS

“**Authority**” shall mean the Housing Authority abbreviated also as LSHA.

“**Complainant**” shall mean any Tenant (as defined below) whose grievance is presented to the LSHA or at the project management office in accordance with the requirements presented in this procedure.

“**Elements of due process**” shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

- (1) Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
- (2) Right of the Tenant to be represented by counsel;
- (3) Opportunity for the Tenant to refute the evidence presented by the PHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
- (4) A decision on the merits.

“**Hearing Officer**” shall mean an impartial person or persons selected by the LSHA, other than the person who made or approved the decision under review, or subordinate of that person. Such individual or individuals do not need legal training. LSHA must describe their policies for selection of a hearing officer in their lease forms as required by these policies and regulations. Changes to the lease and grievance process are subject to a 30-day comment period.

“Tenant” shall mean the adult person (or persons)(other than a Live-in aide): (1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) Who resides in the unit, and who is the remaining head of the household of the Tenant family residing in the dwelling unit.

“Grievance” shall mean any dispute that a Resident may have with respect to any LSHA action, or failure to act, in accordance with the Resident’s lease or LSHA regulations, policies, or procedures that adversely affect the Resident’s rights, duties, welfare, or status with LSHA

“Request for Hearing” shall mean a written request filed in accordance with the provisions of the LSHA’s Grievance Policy and Procedures. The Request for Hearing should state the reason for the grievance, and the action or relief sought.

“Violent Criminal Activity” shall mean any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

“VAWA Activities” shall mean any act in which the applicant claims they are a victim of domestic violence, dating violence, sexual assault, or stalking.