

Grievance Procedures

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The Coronavirus Aid, Relief and Economic Security (CARES) Act (Public Law 116-136) provides the US Department of Housing and Urban Development (HUD) with broad authority to waive or establish alternative requirements for numerous statutory and regulatory requirements for the Public Housing program. Through [Public and Indian Housing \(PIH\) Notices](#), HUD established temporary waivers and alternative requirements to be used at the discretion of the PHA and which may provide for flexibilities from some of the statutory and regulatory requirements described in this document. HUD strongly encourages PHAs to utilize any and all waivers and alternative requirements as necessary to keep Public Housing programs operational to the extent practicable during the COVID-19 pandemic.

Please visit https://www.hud.gov/coronavirus/public_housing_agencies for the latest COVID-19-related resources, including relevant PIH Notices.

1 Chapter Overview

This chapter outlines the U.S. Department of Housing and Urban Development's (HUD) requirements for Public Housing Agencies (PHAs) in establishing and implementing grievance procedures, under 24 CFR part 966. Specifically, this chapter provides guidance on the elements of the grievance process and the PHA's grievance procedure. The grievance procedure is an administrative remedy, prescribed by HUD to PHAs, to ensure adequate due process regarding adverse actions against public housing tenants.¹

2 General Requirements

PHAs must have a grievance procedure that meets HUD's regulatory requirements in addition to any other requirements by local, State or Federal law.² The grievance procedure must either be included or incorporated by reference in the PHA's lease and a copy of the procedure provided to each tenant and resident organization.³ If a PHA desires to change its grievance procedure, at least 30 days' notice of the proposed changes and an opportunity to present written comments must be provided to tenants and resident organizations. PHAs must consider all submitted comments prior to adopting any changes to the grievance procedure.⁴

3 Applicability and Due Process Determinations

The grievance procedure is applicable to disputes a tenant may have with respect to a PHA's action or failure to act in accordance with the individual tenant's lease or the PHA's regulations which adversely affect the individual tenant's rights, duties, welfare, or status ("grievances").⁵ The grievance procedure is not applicable to disputes between tenants not involving the PHA or to class grievances. Additionally, the grievance procedure established by PHAs is not to be used by a group or groups of tenants as a forum for initiating or negotiating PHA policy changes.⁶

As it relates to terminations and evictions, HUD may make a due process determination that the law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court that provides the basic elements of due process before eviction. A judicial eviction or lease termination in a State or local court includes the elements of due process if the following procedural safeguards are required:

¹ On March 8, 2016, HUD published its "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs," also known as the "streamlining rule." This rule eliminates many prescriptive requirements related to the process for obtaining a hearing and the procedures governing the hearing, and permits PHAs to establish local requirements regarding the process for obtaining a grievance hearing. However, this rule does not prevent a PHA from maintaining the current procedures in place immediately before this final rule. See Notice PIH 2016-05, *Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies* for implementation guidance.

² 42 U.S.C. 1437d(k); 24 CFR § 5.105; 24 CFR part 966

³ 24 CFR § 966.52(b) and (d)

⁴ 24 CFR § 966.52(c)

⁵ 24 CFR §§ 966.50, 966.53(a)

⁶ 24 CFR § 966.51(b); The PHA Plan process is the appropriate forum for making policy recommendations, see 24 CFR §§ 903.13 and 903.17

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
- Right of the tenant to be represented by counsel;
- Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant may have; and
- A decision on the merits.⁷

If HUD has issued a due process determination and a PHA is terminating the lease through judicial eviction procedures, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure. Additionally, if HUD has issued a due process determination, a PHA may exclude the following three types of terminations or evictions from its grievance procedure:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
- Any violent or drug-related criminal activity on or off such premises; and
- Any criminal activity that resulted in felony conviction of a household member.⁸

HUD recommends that the PHA's grievance procedure contain a statement of applicability which describes the situations in which the grievance procedure is and is not applicable. PHAs may contact counsel in their local HUD office to find out whether HUD has issued a due process determination for their state.

4 Initiating a Grievance and Informal Settlement

Grievances originate with a tenant, who must present the grievance either orally or in writing to the PHA office or to the office of the development in which the tenant lives. A PHA cannot require that a tenant present a grievance in writing.⁹ To present a grievance, an individual must be a tenant, defined as the adult person(s) (other than a live-in aide) who resides in the unit and executed the lease as the lessee or, where there is no such person, who resides in the unit or resides in the unit and is the remaining head of household.¹⁰ Tenants who have presented a grievance are referred to as complainants.¹¹ HUD recommends, but does not require, that the grievance procedure state the addresses of the PHA office and location where grievances will be accepted, and state a reasonable length of time for how long after the adverse action the tenant has to file the grievance, for example, 10 working days.

The PHA's first step in the grievance procedure is to attempt an informal settlement with the complainant except in limited circumstances described below.¹² HUD does not prescribe a specific format for the informal settlement process. However, at the informal stage, the grievance typically is first reviewed to ensure that the grievance is a type of dispute that can be appropriately addressed through the grievance process. If the type of dispute is appropriate, the grievance may be referred to the department or office responsible for the matter being grieved. The complainant typically is then contacted by a representative of that department or office,

⁷ 24 CFR § 966.53

⁸ 24 CFR § 966.51(a)(2)(i)

⁹ 24 CFR § 966.54

¹⁰ 24 CFR § 966.53(f); 966.54; An individual appointed power of attorney for a tenant or a legal guardian with legal authority to act for the tenant also may present a grievance.

¹¹ 24 CFR § 966.53(b)

¹² 24 CFR § 966.54

and an informal discussion arranged at a mutually agreeable time. Complainants may attend with their own representative at their discretion. Some PHAs have separate methods for handling informal discussions on allegations of discrimination or harassment that differ from those for disputes about PHA operations. PHAs are reminded that allegations of discrimination or harassment may involve violations of and be the subject of complaints pursuant to the Fair Housing Act or other civil rights laws.¹³

The PHA must prepare a summary of the informal discussion within a reasonable time following the discussion. A copy must be provided to the tenant and another copy retained in the tenant's file. The discussion summary must include:

- The name of each participant;
- The date(s) of the meeting(s);
- The nature of and specific reasons for the proposed disposition of the complaint; and
- The procedures by which a complainant may obtain a grievance hearing if they are not satisfied with the outcome of the informal discussion.¹⁴

The utilization of the informal discussion process is beneficial as it may often help to eliminate the time and expense associated with a hearing. For example, a tenant may grieve an excess utility consumption surcharge for which the tenant could be granted relief if the tenant meets certain criteria as described in the applicable notice given by the PHA.¹⁵ The informal discussion could allow the PHA to clarify the applicable criteria and for the tenant to demonstrate eligibility for individual relief from the surcharge avoiding the need for a hearing. As another example, PHAs can avoid the cost of eviction proceedings if the tenant agrees to vacate the unit during the informal grievance discussions. If an eviction is required, sometimes tenants agree to voluntarily vacate a unit to avoid having an eviction on their record. However, if the tenant agrees yet fails to vacate, the PHA must continue with the grievance hearing and eviction process. The tenant must be informed of this process in accordance with grievance hearing requirements.¹⁶

PHAs may establish an expedited grievance procedure in the following circumstances, bypassing the requirement for informal settlement:

- Terminations or evictions that involve any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or PHA employees; or
- Terminations or evictions that involve any drug-related or violent criminal activity on or off such premises.¹⁷

¹³ See, e.g., 24 CFR Part 1 (Title VI of the Civil Rights Act), Part 8 (Section 504 of the Rehabilitation Act of 1973), and Part 100 (Fair Housing Act). For guidance about preventing and addressing harassment allegations under the Fair Housing Act, go to [HUDexchange.info/](https://www.hudexchange.info/) at <https://www.hudexchange.info/trainings/preventing-harassment/>. See also, "Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act" ("Harassment Rule"), 81 Fed Reg. 63054 (Sep. 14, 2016)

¹⁴ 24 CFR § 966.54

¹⁵ See 24 CFR § 965.508

¹⁶ 24 CFR §§ 966.4(l)(3)(iv) and (n); 24 CFR 966.52(e)

¹⁷ 24 CFR § 966.53(d)

5 Grievance Hearing Procedures

Grievance hearings must be held before a hearing officer.¹⁸ The hearing officer may be an individual or a panel consisting of more than one person. The hearing officer must be impartial and must not be the person or subordinate of the person who made or approved the decision under review. HUD does not require hearing officers to have legal training. The PHA's policies for selecting hearing officers must be included in the lease forms and any changes to the policy are subject to a 30-day comment period.¹⁹

Grievance hearings also must be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA.²⁰ Although HUD does not prescribe a process for determining a specific date and place for a grievance hearing, upon receiving a request for a hearing, some PHAs ask that the complainant propose several dates and times when they would be available to attend a grievance hearing. The PHAs may choose then to compare their hearing officer's schedules and follow up with the complainant to choose a reasonably convenient time for the tenant and the PHA. Once a date and time are determined, a written notice specifying the time, place, and the procedures governing the hearing must be delivered to the complainant and the appropriate official.²¹

If the complainant or the PHA fails to appear at the scheduled hearing, the hearing officer may postpone the hearing for up to 5 business days or may decide that the absent party has waived their right to a grievance hearing. However, the complainant maintains the right to challenge the PHA's disposition of the grievance in an appropriate judicial proceeding. Both the complainant and PHA must be notified of the hearing officer's determination.²²

Prior to the hearing, either the complainant or PHA may arrange for a transcript of the hearing to be made. The cost of the transcript will be paid by the party requesting the transcript. Any interested party may purchase a copy of the transcript.²³

At the hearing, the complainant must first demonstrate that they are entitled to the relief sought.²⁴ Next, the PHA has the burden of justifying its action or failure to act on the aggrieved matter.²⁵ The hearing officer has discretion as to how to conduct the hearing within HUD's requirements; for example, the hearing officer determines whether to grant a continuance of the proceedings if requested by one of the parties. The complainant must be afforded a fair hearing, which includes the following elements:

- **Opportunity to examine and copy documents**

Prior to the hearing, complainants must be provided an opportunity to examine any PHA documents, including records and regulations, that are directly relevant to the hearing. Complainants must be allowed to copy any such documents at the complainant's expense.²⁶

¹⁸ 24 CFR § 966.56(a)

¹⁹ 24 CFR § 966.53(e)

²⁰ 24 CFR § 966.56(a)

²¹ 24 CFR § 966.56(a)

²² 24 CFR § 966.56(c)

²³ 24 CFR § 966.56(e)

²⁴ 24 CFR § 966.56(d)

²⁵ 24 CFR § 966.56(d)

²⁶ 24 CFR § 966.56(b)(1); With respect to an adverse action based upon a criminal record, the PHA must provide the tenant and the subject of the record with a copy at no cost. See 24 CFR § 966.4(l)(5)(v). See also PIH Notice 2015-19, "Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions."

If the PHA does not make the documents available for examination upon request by the complainant, the PHA cannot use the documents at the grievance hearing.²⁷ Additionally, in the case of an eviction, the PHA cannot proceed with the eviction if the PHA does not make documents available for review upon the tenant's request.²⁸

- **Right to be represented**

Complainants have the right to be represented by counsel or another person chosen as their representative and to have that person make statements on their behalf.²⁹

- **Right to a private hearing**

Complainants have the right to a private hearing, unless they request a public hearing.³⁰

- **Right to support complaint**

Complainants have the right to present evidence and arguments in support of their complaint, to refute evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses relied upon by the PHA.³¹

- **Decision based on facts**

The decision must be based solely and exclusively upon the facts presented at the hearing.³²

6 Grievance Hearing Decisions

The hearing officer must prepare a written decision within a reasonable time following the hearing. The decision must state the reason(s) for the decision.³³ Although HUD does not prescribe the content that must be included in a written decision, common content for a written decision may include, but is not limited to:

- The names of the complainant, hearing officer, other participants, including complainant's counsel or representative, and witnesses;
- The date, time and location of the hearing;
- A summary of the grievance;
- The date on which the informal settlement discussion was held, who was present, and a summary of the results of the informal discussion (preferably quoting the informal settlement summary letter);
- A summary of the evidence, argument and testimony presented at the hearing; and
- The reason(s) for the hearing decision, citing the policy or regulation that supports the decision made.

A copy of the decision must be sent to the complainant and a copy must be placed in the complainant's tenant file.³⁴ The PHA must maintain a log of all hearing officer decisions and make the log available upon

²⁷ 24 CFR § 966.56(b)(1)

²⁸ 24 CFR § 966.4(m)

²⁹ 24 CFR § 966.56(b)(2)

³⁰ 24 CFR § 966.56(b)(3)

³¹ 24 CFR § 966.56(b)(4)

³² 24 CFR § 966.56(b)(5)

³³ 24 CFR § 966.57(a)

³⁴ 24 CFR § 966.57(a)

request to prospective complainants, prospective complainants' representatives, or hearing officers.³⁵ At a minimum, the log must include the date of the hearing decision, the general reason for the grievance hearing (failure to pay rent, community service and self-sufficiency noncompliance, etc.) and whether the decision was in the favor of the complainant or the PHA.³⁶

The hearing officer's decision is binding on the PHA, meaning the PHA must take the action or refrain from taking the action, as cited in the decision, *unless* the PHA's Board of Commissioners determines that:

- The grievance does not concern the PHA's action or failure to act in accordance with or involving the complainant's lease or the PHA's regulations, which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer is contrary to Federal, State, or local law, HUD regulations, or requirements of the annual contributions contract between HUD and the PHA.³⁷

A decision by the hearing officer or panel or Board of Commissioners that is in favor of the PHA's action or failure to act, or a decision that denies the relief requested in whole or in part, does not waive the complainant's rights to a subsequent trial or judicial review.³⁸

7 Accessibility, Effective Communication, and Limited English Proficiency Requirements

PHAs must provide reasonable accommodations for persons with disabilities throughout the grievance process.³⁹ This requirement includes, but is not limited to, providing reasonable accommodation for persons with disabilities to participate in the hearing, to engage in the informal settlement process, to provide additional time, etc. Reasonable accommodations may include, for example, qualified sign language interpreters, readers, accessible locations, or attendants.⁴⁰

All notifications and communications must ensure effective communication for persons with disabilities. PHAs must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large-print, optical readers on computers available for viewing, assistive listening device systems, and sign language interpreters.⁴¹ There may be other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing, or other effective methods of making visually delivered materials available to individuals who are blind or have low vision. PHAs must provide, at their expense, auxiliary aids and services for effective communication with complainants during the grievance process. An individual with a disability may request a specific type of auxiliary aid or service as his or her preferred method of communication.⁴²

³⁵ 24 CFR § 966.57(a)

³⁶ Notice PIH 2016-05, *Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies*

³⁷ 24 CFR § 966.57(b)

³⁸ 24 CFR § 966.57(c)

³⁹ See 24 CFR Part 8 ; See also 28 CFR part 35.

⁴⁰ 24 CFR § 966.56(f); See 24 CFR Part 8; See also 28 CFR part 35.

⁴¹ 24 CFR § 966.56(f); See 24 CFR Part 8; See also 28 CFR part 35.

⁴² 24 CFR § 8.6; See also 28 CFR part 35, Subpart E.

PHAs also must take reasonable steps to ensure meaningful access to their programs and activities to individuals with limited English proficiency (LEP).⁴³ Detailed information on LEP requirements as well as reasonable accommodations and effective communications is provided in the Fair Housing and Nondiscrimination Chapter.

⁴³ 24 CFR § 966.56(g); See also HUD's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) (72 FR 2732). LEP guidance and LEP information is available on HUD's website at https://www.hud.gov/program_offices/fair_housing_equal_opp/promotingfh/lep-faq.