

Chapter 15

COMPLAINTS, INFORMAL REVIEWS FOR APPLICANTS, INFORMAL HEARINGS FOR PARTICIPANTS

15.1 COMPLAINTS

IHFA will investigate and respond to complaints by participant families, owners, and the general public. IHFA may require that complaints other than HQS violations be put in writing. Anonymous complaints are investigated to the extent possible.

15.2 SUPERVISOR'S CONFERENCE FOR PARTICIPANTS

When a negative action is anticipated, a participant/applicant will be given the opportunity to meet with the Branch Office Supervisor to address the issue and attempt to reach a satisfactory resolution. By participating in this conference the participant/applicant does not give up their right to an Informal Review or Informal Hearing. If a resolution is not achieved at this Supervisor's Conference, a Notice of Right to an Informal Hearing for a participant or a Notice of Right for an Informal Review for an applicant will be issued and sent to the participant/applicant. Under certain circumstances, and only when warranted, the Branch Office Supervisor may elect to forgo the Supervisor's Conference and refer the issue directly to an Informal Review/Hearing.

15.3 INFORMAL REVIEW FOR APPLICANTS

A. Informal Review for the Applicant

IHFA will give an applicant for participation in the Section 8 Existing Program prompt notice of a decision denying assistance to the applicant. The notice will contain a brief statement of the reasons for IHFA's decision. The notice will state that the applicant may request an Informal Review within 10 (ten) business days of the denial and will describe how to obtain the informal review.

B. When an Informal Review is not required

IHFA will not provide the applicant an opportunity for an Informal Review for any of the following reasons:

1. Discretionary administrative determinations by IHFA.
2. General policy issues or class grievances.
3. A determination of the family unit size under the PHA subsidy standards.

4. IHFA determination not to approve an extension or suspension of a voucher term.
5. IHFA determination not to grant approval of the tenancy.
6. IHFA determination that a unit selected by the applicant is not in compliance with HQS.
7. IHFA determination that the unit is not in accordance with HQS because of the family size or composition.

C. Informal Review Process

IHFA will give an applicant an opportunity for an Informal Review of IHFA's decision denying assistance to the applicant. The procedure is as follows:

1. The review will be conducted by the IHFA Hearing Officer. If circumstances warrant, IHFA may appoint another individual to conduct an Informal Review. In any case, the review may not be conducted by an individual who made or approved the decision under review or a subordinate of this person.
2. The applicant will be given an opportunity to present written or oral objections to IHFA's decision.
3. IHFA will notify the applicant of its decision within 30 calendar days after the informal review. The notification will include a brief statement of the reasons for the final decision.

D. Informal Review Procedures for Denial of Assistance on the Basis of Ineligible Immigration Status.

The applicant family may request that IHFA provide an Informal Review after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. The applicant family must make this request within thirty (30) days of receipt of the Notice of Denial or Termination of Assistance, or within thirty (30) days of receipt of the INS appeal decision.

For applicant families, the Informal Review process above will be utilized with the exception that the applicant family will have up to thirty (30) days after receipt of the Notice of Denial or Termination of Assistance, or of the INS appeal decision to request the review.

15.4 INFORMAL HEARING FOR PARTICIPANTS

A. When a Hearing is required:

1. IHFA will give a participant family an opportunity for an Informal Hearing to consider whether the following IHFA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations, and IHFA policies:
 - a. A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
 - b. A determination of the appropriate utility allowance (if any) for tenant-paid utilities from IHFA utility allowance schedule.
 - c. A determination of the family unit size under IHFA subsidy standards.
 - d. A determination to terminate assistance for a participant family because of the family's action or failure to act.
 - e. A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under IHFA policy and HUD rules.
2. In cases described in paragraphs 15.3(A) (1) (d), and (e), of this Section, IHFA will give the opportunity for an Informal Hearing before IHFA terminates housing assistance payments for the family under an outstanding HAP contract.

B. When a Hearing is not required

IHFA will not provide a participant family an opportunity for an Informal Hearing for any of the following reasons:

1. Discretionary administrative determinations by IHFA.
2. General policy issues or class grievances.
3. Establishment of IHFA schedule of utility allowances for families in the program.
4. An IHFA determination not to approve an extension or suspension of a voucher term.
5. An IHFA determination not to approve a unit or lease.
6. An IHFA determination that an assisted unit is not in compliance with HQS. (However, IHFA will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family.)

7. An IHFA determination that the unit is not in accordance with HQS because of the family size.
8. A determination by IHFA to exercise or not exercise any right or remedy against the owner under a HAP contract.

C. Notice to the Family

1. In the cases described in paragraphs 15.3(A)(1)(a), (b), and (c) of this Section, IHFA will notify the family that the family may ask for an explanation of the basis of IHFA's determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.
2. In the cases described in paragraphs 15.3(A)(1)(d), and(e), of this Section, IHFA will give the family prompt written notice that the family may request a hearing within ten (10) business days of the notification. The notice will:
 - a. Contain a brief statement of the reasons for the decision; and
 - b. State if the family does not agree with the decision, the family may request an Informal Hearing on the decision within ten (10) business days of the notification.

D. Hearing Procedures

IHFA and participants will adhere to the following procedures:

1. Discovery
 - a. The family will be given the opportunity to examine, before the hearing, any IHFA documents that are directly relevant to the hearing. The family will be allowed to copy any such document at the family's expense (One copy of all relevant documents will be provided at no charge. Any subsequent copies will be at a cost of five (5) cents per page copied). If IHFA does not make the document(s) available for examination on request of the family, IHFA may not rely on the document at the hearing.
 - b. IHFA will be given the opportunity to examine, at IHFA's offices before the hearing, any family documents that are directly relevant to the hearing. IHFA will be allowed to copy any such document at IHFA's expense. If the family does not make the document(s) available for examination on request of IHFA, the family may not rely on the document(s) at the hearing.

Note: The term document includes records and regulations.

2. Representation of the Family

At its own expense, a lawyer or other representative may represent the family.

3. Hearing Officer

- a. The hearing will be conducted by the IHFA Hearing Officer. If circumstances warrant, IHFA may appoint another individual to conduct an Informal Hearing. In any case the hearing may not be conducted by an individual who made or approved the decision under review or a subordinate of this person.
- b. The person who conducts the hearing will regulate the conduct of the hearing in accordance with IHFA's hearing procedures.

4. Evidence

IHFA and the family must have the opportunity to present evidence and may question any witness. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings. Each side will have an opportunity to present their side of the issue.

Informal Hearings may be done in person or may be conducted via a telephone conference call.

In order to allow the family adequate time to prepare for the Informal Hearing, the family will be given no less than ten (10) business days notice of the scheduled date of the Informal Hearing. A request by the participant to waive the ten (10) days will only be given under special circumstance and must be approved by the Boise office. The participant will be required to sign a statement waiving the ten (10) working days preparation time.

5. Issuance of Decision

The Hearing Officer will generally issue a written decision within thirty (30) calendar days from the date of the hearing, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A preponderance of evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it: that is, evidence which as a whole shows that the facts sought to be proved are more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but the greater weight of all evidence.

As a courtesy to the owner, IHFA will pay thirty (30) days HAP to the owner, after the effective date of the hearing decision; however, if the participant is due a utility assistance payment (UAP), a pro-rated portion of the UAP will be paid to the participant through the effective date of the termination.

The audio recording of the Informal Hearing will be kept in the Boise office for a period of six (6) months. A copy of the written hearing decision will be kept in the Boise office and will be purged after a period of three (3) years. A copy of the hearing decision will also be kept as a permanent part of the participant's file.

E. Effect of the Decision

IHFA is not bound by a hearing decision:

1. Concerning a matter for which IHFA is not required to provide an opportunity for an Informal Hearing under this Section or that otherwise exceeds the authority of the person conducting the hearing under IHFA hearing procedures.
2. Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

If IHFA determines that it is not bound by a hearing decision, IHFA will notify the family within thirty (30) calendar days of the determination, and of the reasons for the determination.

F. Considering Circumstances

In deciding whether to terminate assistance because of action or inaction by members of the family, IHFA may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure to act.

IHFA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure to act will not reside in the unit. IHFA may permit the other members of a participant family to continue received assistance.

If IHFA seeks to terminate assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that IHFA provides notice to the family of IHFA determination to deny or terminate assistance. In determining whether to terminate assistance for these reasons IHFA will consider evidence of whether the household member:

1. Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;
2. Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or
3. Is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.

G. Family's Right to Judicial Review.

The hearing decision shall not constitute a waiver of, nor affect in any manner whatever, any right the applicant/participant may have to judicial review through the court system.

H. Informal Hearing Procedures for Denial of Assistance on the Basis of Ineligible Immigration Status.

The participant family may request that IHFA provide for an Informal Hearing after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. This request must be made by the participant family within thirty (30) days of receipt of the Notice of Denial or Termination of Assistance, or within thirty (30) days of receipt of the INS appeal decision.

For the participant families, the Informal Hearing Process above will be utilized with the exception that the participant family will have up to thirty (30) days of receipt of the Notice of Denial or Termination of Assistance, or of the INS appeal decision.

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