

8. Abuse or Violence Against HA Personnel

The final rule provides that the HA may deny or terminate assistance if the family has engaged in or threatened abuse or violent behavior toward HA personnel. (§ 982.552(b)(10))

B. Procedures for Informal Review or Hearing

1. Applicants

In the proposed rule, HUD proposed to remove the existing regulatory distinction between "hearing" procedures for participants, and "review" procedures for applicants.

Some comments endorse this change. These comments note that the appeal process has serious consequences for the family, and assert that the greater protection of a "hearing" process is warranted. The change avoids confusion on the appropriate procedure for review of the HA decision.

Other comments strongly object to the proposed change extending "hearing" requirements to HA decisions concerning program applicants. These comments recommend that HUD should retain informal review for applicants. "Hearings" are unwieldy and time consuming. The change proposed by HUD would create bottlenecks and increase HA administrative costs. HAs would need additional professional, stenographic and clerical staff to conduct applicant hearings.

From the comments, it appears that some HAs voluntarily operate hearing procedures that exceed HUD requirements, and are more burdensome and expensive than needed to comply with minimum hearing requirements prescribed by HUD. The HAs appear to assume that "hearings" for applicants would be conducted under the more elaborate processes used for program participants, even if those processes exceed HUD requirements.

In the final rule, HUD has decided to retain the existing regulatory distinction between informal review procedures for applicants and hearing procedures for program participants. The HA must give the opportunity for informal review of a decision denying assistance to an applicant. The review procedures under the final rule are essentially unchanged from the procedures under the old rules for the tenant-based programs. The HA informal review procedures must comply with the following elements:

- The review may be conducted by any person or persons designated by the HA. However, the HA reviewer may not be a person who made or approved the decision under review or a subordinate of this person.

- The applicant may present written or oral objections.

- The HA must notify the applicant of the HA final decision after informal review. The notice must include a brief statement of the reasons for the decision. (§ 982.554(b))

On consideration of the comments, HUD finds that there is insufficient reason to change the existing procedures by extending hearing processes to applicants. The nature and justification for the existing review and hearing requirements is discussed at length in the preamble of the 1984 rule that originally promulgated these procedures. (49 FR 12215, 12224–12230)

Under the HUD rules, there is a separate procedure for review of an HA decision that a family does not qualify for a preference claimed by the family. (§ 982.210(d)(1); 59 FR 36688, July 18, 1994) Under this procedure, the applicant has the right to meet with an HA representative to review the HA determination. The meeting may be conducted by a person designated by the HA. The designated HA representative may be an officer or employee of the HA, including the person who made or reviewed the determination or a subordinate employee. The HA preference decision is not subject to the informal review process for an HA decision denying assistance to an applicant. (Now at § 982.555)

Comments recommend that the HA should be required to use the same procedure on review of denial of preference as for a denial of assistance. The comments assert that preference is the most important factor in determining whether an applicant gets subsidy, and should have the same procedural protection as other HA decisions on applicant eligibility.

In the final rule, HUD has retained the existing procedures granting a family the opportunity to meet with an HA representative to review an HA preference determination. This procedure has been used since 1988 to review denial of a federal preference. (See revision of § 882.216(k) at 53 FR 1122, 1155, column 3, January 15, 1988) In 1994, this procedure was extended to review of an HA decision denying a federal preference, ranking preference or local preference. (See § 982.210(d)(1) at 59 FR 36688)

Since the beginning, HA decisions to grant or deny preference have been subject to a separate review process, not to the informal review procedure used to review denial of assistance to the applicant. In adopting this process, the

Department noted that the notice and opportunity for meeting:

"strikes an appropriate balance among the competing interests involved in the denial of a preference. On the one hand, this approach recognizes the importance of qualification for a preference in securing housing assistance at the earliest time, by establishing a mandatory mechanism for the prompt resolution of factual issues and concerns. On the other hand, use of this degree of informal procedure reflects the Department's belief that the denial of a preference—which has the effect of prolonging an applicant's wait for housing assistance—is not of such magnitude as to justify imposition of the administrative burden on (HAs) * * * that are inherent in a more formal process". (53 FR 1122, 1140. For full discussion, see section X of preamble ("Informal Review of Federal Preference Denials" at *Id.*))

The rule provides that the HA administrative plan must state the HA procedures for conducting an informal review for applicants or an informal hearing for participants. (§ 982.54(d)(12) and 13; § 982.554(b); § 982.555(e)(1))

2. Participant—Informal Hearing Hearing—When Required

The HA must offer a hearing for certain HA determinations "relating to the individual circumstances of a participant family". The hearing is held to consider whether HA decisions related to the family circumstances "are in accordance with the law, HUD regulations and HA policies". The rule lists the cases when the HA must offer a hearing, and cases when a hearing is not required.

The HA must provide the opportunity for a hearing on:

- An HA determination of the family's income.
- An HA determination of the family unit size for the family under the HA subsidy standards.
- An HA determination of the appropriate utility allowance for the family from the HA utility allowance schedule.
- An HA determination to deny or terminate assistance because of family actions.
- An HA determination to terminate assistance because the family has been absent from the unit for longer than the maximum period permitted under HA policy and HUD rules.
- In the certificate program, an HA determination that the family's unit is too big. (§ 982.555(a)(1)).

The HA is not required to grant a hearing for HA discretionary administrative determinations or for general policy issues or class grievances. (§ 982.555(b) (1) and (2)) The final rule provides that a hearing is not required