Chapter 14

GRIEVANCES AND APPEALS

**INTRODUCTION**

This chapter discusses complaints, grievances and appeals pertaining to PHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not the PHA’s grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure. There is a fine line between policy (what the agency does) and procedure (how the policy is executed). In some decision points that line will is not clear. In these cases the model ACOP provides greater detail and includes some procedure decisions. However, a sample grievance procedure, adapted from the Public Housing Occupancy Guidebook, is included as Exhibit 14-1 in the ACOP.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

**14-I.A. OVERVIEW**

This section provides an overview of Part I. **No policy decisions are required.**

**14-I.B. INFORMAL HEARING PROCESS**

**Use of Informal Hearing Process**

🗹 **Decision Point: Will the PHA offer applicants the opportunity for an informal hearing for any reasons other than those required by the regulations?**

Things to Consider

* Offering informal hearings takes time and resources. Therefore, to reduce the administrative burden on PHAs, the model language states that the PHA will only offer informal hearings when required by the regulations.
* PHAs may want to offer informal hearings for other PHA decisions, or may want to offer applicants the option of meeting with the PHA to resolve specific concerns. For example, if an applicant is denied a preference, a PHA may want to offer them an opportunity for an informal hearing, or an opportunity to meet with PHA staff to resolve their concern.
* Informal meetings are a matter of courtesy and good customer service but do not need to be structured with policy requirements.
* If a PHA wants to offer informal hearings for reasons other than those required by the regulations, the policy should state this and include a listing of the reasons or circumstances under which an applicant family will be offered an informal hearing.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Notice of Denial [24 CFR 960.208(a)]**

🗹 **Decision Point: Will the PHA require remote informal hearings in certain circumstances? May applicants request a remote informal hearing?**

Things to Consider

* If the PHA does not offer remote informal hearings, delete this as a PHA policy.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

As applicable, the PHA’s notice of denial will include information about required or requested remote informal hearings.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Scheduling an Informal Hearing**

🗹 **Decision Point: How many days does an applicant family have to request an informal hearing, and how quickly must the PHA schedule it?**

Things to Consider

* The regulations state that the PHA must provide an informal hearing “within a reasonable time” upon the family’s request. The regulations do not state how long the family will have to make the request for an informal hearing.
* These time frames need to be standardized for consistency in program administration. For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.
* Per Notice PIH 2020-32, if the hearing will be conducted remotely, the PHA must ensure that the family has appropriate technological access in order to fully participate in the remote informal hearing, and to remove any technological barriers prior to the hearing. For this reason, the default policy contains language to facilitate this process in the event of a remote informal hearing.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA’s notification of denial of admission.

The PHA will schedule and send written notice of the informal hearing within 10 business days of the family’s request.

If the PHA informal hearing will be conducted remotely, at the time the notice is sent to the family, the family will be informed:

Regarding the processes involved in a remote informal hearing;

That the PHA will provide technical assistance prior to and during the informal hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal hearing, 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 hearing, as appropriate.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Conducting an Informal Hearing [PH Occ GB, p. 58]**

🗹 **Decision Point: Who will conduct the informal hearing and how will it be conducted?**

Things to Consider

* HUD regulations do not address informal hearing procedures. However, the Public Housing Occupancy Guidebook gives suggestions which are based on the housing choice voucher regulations found in 24 CFR 982.554(b). The model ACOP has adopted these suggestions as policy
* The Guidebook recommendations provide an adequate treatment of applicant disputes concerning the denial of admission without implementing the more detailed tenant grievance hearing requirements. The guidebook makes it clear that the informal hearing for rejected applicants is not the same as the grievance hearing provided for tenants.
* If the PHA desires a different approach to informal hearings, it should replace the model ACOP language with its own policies.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The informal hearing will 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 will be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether admission should be granted or denied.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Remote Informal Hearings [Notice PIH 2020-32]**

🗹 **Decision Point: Will the PHA require that informal hearings be held remotely under certain circumstances? Will the PHA consider conducting remote informal hearings upon request of the applicant for certain criteria?**

Things to Consider

* Advances in technology provide opportunities for families to participate in informal hearings remotely. Absent an applicant’s request for an in-person informal hearing, remote informal hearings may be conducted over the phone, via video conferencing, or through other virtual platforms. As such, the PHA has discretion as to when and whether to conduct remote informal hearings. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.
* The PHA also has the authority to require remote informal hearings in cases such as local, state, or federal physical distancing orders, natural disasters, or inclement weather. While the PHA is not required to conduct informal hearings remotely in these cases, conducting hearings this way may aid the PHA in continuing normal operations and providing required services to families.
* The PHA should also consider offering remote informal hearings outside of times of extraordinary circumstances upon request of the applicant for certain PHA-defined criteria. The model policy suggests that these criteria include reasonable accommodation, lack of transportation or child care, and when applicants are concerned about exposure to health risks by attending an in-person informal hearing. The PHA may wish to add other criteria to this list and consider other requests on a case-by-case basis.

🞎 *Option 1: Use the model policy language shown below. No changes to the model plan are needed.*

The PHA 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, the PHA will conduct an informal hearing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal hearing, or if the applicant believes an in-person informal hearing would create an undue health risk. The PHA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

🞎 *Option 2: Delete model policy language and substitute language as shown below.*

The PHA will not conduct remote informal hearings.

🞎 *Option 3: Use PHA-established policy. Edit the model policy language or delete it and insert the PHA’s policy.*

**Ensuring Accessibility for Persons with Disabilities ad LEP Individuals**

This section describes the requirements to ensure accessibility for persons with disabilities and limited English Proficiency (LEP) as they relate to remote informal hearings. **No policy decisions are required.**

**Conducting Remote Informal Hearings [Notice PIH 2020-32]**

🗹 **Decision Point: How will the PHA conduct informal hearings remotely?**

Things to Consider

* If the PHA chooses not to conduct remote informal hearings, this section should be deleted.
* The PHA must ensure that the applicant has appropriate technological access in order to fully participate in the remote informal hearing. Notice PIH 2020-32 states that the PHA should survey families participating in the remote informal hearing prior to the hearing to determine whether any technological barriers exist and to determine the resources to which families have access. This could mean asking whether the family has a computer, internet access, a phone, or a laptop, whether these items have cameras, and whether the family can go to a place with sufficient privacy and internet access.
* The PHA should attempt to resolve any identified technological barriers prior to the remote informal hearing. Section 6 of Notice PIH 2020-32 provides guidance on how to do so.
* Of the options presented in Notice PIH 2020-32, a voice-only or telephone option is the least preferrable due to challenges presented by the applicant being unable to view documents presented at the hearing and being unable to identify who is speaking during a phone call with multiple attendees. Attendees should be able to see, be seen, hear, and be heard. For this reason, the model policy states that the PHA will conduct remote informal hearings via video conferencing when available, unless families are unable to adequately access the video conferencing platform, in which case, telephone conferencing call-in will be used.
* In the event that the family still does not have proper technology access to allow them to fully participate, that is, if they cannot adequately access the video conferencing platform or the telephone call-in, Notice PIH 2020-32 states that the remote informal hearing should be postponed or an in-person alternative must be provided. The model policy reflects this language.
* Further, login information and all materials being presented, whether paper or electronic, must be provided to the family prior to the informal hearing. This may present challenges since families may be unfamiliar with how to access the video conferencing platform used by the PHA. The PHA should consider offering support to families around the time of the informal hearing to ensure that applicants are able to log into the video conferencing system.
* The default policy states that the PHA will provide an electronic copy of all materials being presented via email at least three business days before the informal hearing. The PHA must ensure that all electronic information stored or transmitted with respect to the informal hearing is secure per Notice PIH 2015-06, including personally identifiable information (PII). Also, keep in mind that for individuals with limited English proficiency (LEP), materials may need to be provided in a translated format.

🞎 *Option 1: Use the model policy language shown below. No changes to the model policy are needed.*

The PHA will conduct remote informal hearings 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 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 the scheduled remote hearing, the PHA 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 notice will advise the family of technological requirements for the hearing 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 hearing.

If the informal hearing is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. The PHA will scan and email copies of these documents to the PHA representative and to the person conducting the informal hearing 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 hearing 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 hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

🞎 *Option 2: Use PHA-established policy. Edit the model policy language or delete it and insert the PHA’s policy.*

**Informal Hearing Decision [PH Occ GB, p. 58]**

The PHA must notify the applicant of the PHA’s final decision, including a brief statement of the reasons for the final decision.

🗹 **Decision Point: What factors will the PHA consider in rendering its decision and how will the applicant be notified of the decision?**

Things to Consider

* Identifying the factors the PHA will consider when making an informal hearing decision helps to ensure consistency in the way decisions are made and makes the decision process transparent to all involved.
* The model ACOP language clarifies that the final decision is made by the PHA, not by the person conducting the hearing. This is consistent with HCV regulations, which are the source for the PH Occupancy Guidebook suggestions for informal hearings. The HCV regulation states that “The PHA must notify the applicant of the **PHA final decision** after the informal review…” [24 CFR 982.554(b)(3)].
* For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.
* This policy clarifies that the PHA will maintain proof of mailing for all informal hearing decision notices. This will ensure that the applicant family receives the PHA’s decision.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will notify the applicant of the PHA’s final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and their representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Reasonable Accommodation for Persons with Disabilities**

This section states the reasonable accommodations requirements pertaining to informal hearings. **No policy decisions are required.**

**PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS**

**14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

**Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

This section describes what must be included in the notice of denial or termination of assistance. **No policy decisions are required.**

**United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the United States Citizenship and Immigration Services (USCIS) secondary verification failed to confirm eligible immigration status of an applicant or tenant, the PHA must notify the family of the results, and the family has 30 days from the date of the notification to make an appeal to the USCIS of the verification results.

🗹 **Decision Point: How long will the PHA have to notify an applicant or tenant family of the results of the USCIS secondary verification process?**

Things to Consider

* For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.
* If the 10 business day time frame is changed here, it must also be changed in Chapter 3, Section 3-II.B, Ineligible Families.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

🗹 **Decision Point: What are the requirements for the family to notify the PHA that an appeal to the USCIS has been requested?**

Things to Consider

* For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

🗹 **Decision Point: How soon after the USCIS appeal results are issued, will the PHA send written notice to the family of their right to request an informal hearing on the PHA’s ineligibility decision?**

Things to Consider

* For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

The informal hearing procedures for applicants are discussed in this section.

***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. **No policy decisions are required.**

***Evidence***

This section describes a family’s right to examine evidence, present evidence, and the right to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

🗹 **Decision Point: How much will the PHA charge the family for copies of documents related to the hearing, and what is the deadline for the family to request discovery of the documents?**

Things to Consider

* The model ACOP states that families will not be charged.
* If the PHA chooses to charge the family, whatever cost the PHA uses, it should be reasonable for both the PHA and the family. For example, the PHA could use $.25 per page.
* The model ACOP requires the family to request discovery of the documents no later than noon, on the business day prior to the hearing. This policy clearly sets expectations, and prevents the family from making any last minute requests that could cause a delay in the hearing.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The family will be allowed to copy any documents related to the hearing at no cost to the family. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Representation and Interpretive Services***

This section describes the family’s right to be represented by an attorney or other designee, and to arrange for an interpreter to attend the hearing. **No policy decisions are required.**

***Recording of the Hearing***

🗹 **Decision Point: Will the PHA provide a transcript of an audio taped hearing?**

Things to Consider

* 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.
* Providing a transcript to a hearing can be costly, therefore, the model ACOP states that the PHA will not provide it.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will not provide a transcript of an audio taped hearing.

🞎 *Option 2: Delete model ACOP language and substitute language as shown below.*

The PHA will provide a transcript of an audio taped hearing, upon request of the family.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Hearing Decision***

The PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision. **No policy decisions are required.**

**Retention of Documents [24 CFR 5.514(h)]**

The PHA must retain for a minimum of 5 years specific documents that were submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process. **No policy decisions are required.**

**PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS**

**14-III.A. REQUIREMENTS [24 CFR 966.52]**

🗹 **Decision Point: Will the PHA grievance procedure be included in, or incorporated by reference in the tenant lease?**

Things to Consider

* The PHA must either include the grievance procedure in, or incorporate it by reference in, the tenant lease.
* If the PHA has included the grievance procedure in the lease, then any revision of the grievance procedure would be considered a revision of the lease and the family must be given the opportunity to accept the new lease revision or leave the program.
* If the grievance procedure is not included in the lease, then any revision is independent of the lease since any revision would be incorporated by reference only and would not require the family to accept a new lease offer.
* In either event, the family is to receive a copy of both the lease and the grievance procedure upon admission to the program.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA grievance procedure will be incorporated by reference in the tenant lease.

🞎 *Option 2: Delete model ACOP language and substitute language as shown below.*

The PHA grievance procedure will be included in the tenant lease.

🗹 **Decision Point: How much time will the PHA give to notify tenants and resident organizations of proposed changes in the grievance procedure?**

Things to Consider

* The regulations state that the PHA must give at least 30 days notice of any proposed changes to the grievance procedure.
* The model ACOP considers 30 calendar days to be sufficient time for tenants and resident organizations to review and make written comment on proposed changes.
* If the PHA desires to give more than 30 days, it must change the length of time in the model ACOP to comply with PHA policy.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Residents and resident organizations will have 30 calendar days from the date they are notified by the PHA of any proposed changes in the PHA grievance procedure, to submit written comments to the PHA.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**14-III.B. DEFINITIONS [24 CFR 966.53 and 24 CFR 966.51(a)(2)(i)]**

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. **No policy decisions are required.**

**14-III.C. APPLICABILITY [24 CFR 966.51]**

At the time of this publication, almost all states, with the exception of Florida, are currently due process states. In due-process states, if eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises, the PHA is not required to offer a grievance hearing.

🗹 **Decision Point: Will the PHA offer grievance hearings if eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, for a violent or drug-related criminal activity on or off the premises, or for any criminal activity that resulted in felony conviction of a household member?**

Things to Consider

* In due-process states, families are afforded the right to due process in the local courts under state law. As such, PHAs in these states are not required to afford the family the opportunity for a grievance hearing if eviction is for the above mentioned criminal activities.
* However, PHAs may still choose to offer grievance hearings for all proposed lease terminations. If this is the case, the PHA may wish to consider using expedited grievance procedures for the above mentioned criminal activities.
* Should a state’s due process determination be rescinded, such as in the state of Florida, the PHA *must* grant opportunity for grievance hearings for all lease terminations, regardless of cause.
* Additionally, a PHA may be located in a HUD-declared due process state, but certain caveats or limitations may apply that could affect the PHA’s ability to bypass the grievance.
* If the PHA is located in a due-process state and does not wish to offer grievance hearings for all proposed lease terminations, choose Option 1.
* If the PHA will offer grievance hearings for all proposed lease terminations, regardless of whether the PHA is located in a due-process state or not, choose   
  Option 2.
* If the PHA is located in a due-process state and does not wish to offer grievance hearings for all proposed lease terminations, but certain caveats or limitations apply, Choose Option 3.

🞎 *Option 1:* *Replace the model ACOP language with the language shown below.*

The PHA is located in a HUD-declared due process state. Therefore, the PHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, for violent or drug-related criminal activity on or off the premises, or for any criminal activity that resulted in felony conviction of a household member.

🞎 *Option 2:* *Replace the model ACOP language with the language shown below.*

The PHA will grant opportunity for grievance hearings for all lease terminations, regardless of cause.

* *Option 3:* *Replace the model ACOP language with the language shown below, inserting the appropriate caveats or limitations.*

The PHA is located in a HUD-declared due process state, but the following caveats or limitations apply:

The PHA must [state caveats or limitations]. Except for these caveats or limitations, the PHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, for violent or drug-related criminal activity on or off the premises, or for any criminal activity that resulted in felony conviction of a household member.

**14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the PHA office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

🗹 **Decision Point: What will be the PHA’s requirements for submitting a request for an informal settlement and for scheduling the meeting?**

Things to Consider

* The model ACOP states that requests for informal settlement may be accepted at the PHA’s office. This assumes that the PHA has only one office. Should the PHA have other offices and is willing to accept the request at a project office or elsewhere, the model ACOP language would have to be changed to reflect this.
* It is reasonable for a PHA to set a time limit for the family to initiate a grievance. This will prevent families from filing a grievance weeks, months or years after the grievable event occurs. For administrative ease and consistency, the model policy uses the standard of 10 business days that is used throughout much of the ACOP.
* The model ACOP also places a time limitation on the PHA for scheduling the informal settlement. For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.

🞎 *Option 1:* *If informal settlements are required to be conducted remotely or if the PHA considers requests for remote informal settlements, use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will accept requests for an informal settlement of a grievance either orally or in writing (including emailed requests) to the PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant. The informal settlement may be conducted remotely as required by the PHA or may be conducted remotely upon consideration of the request of the tenant. See 14-III.G for information on how and under what circumstances remote informal settlements may be conducted*.*

If a tenant fails to attend the scheduled meeting without prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, 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.

🞎 *Option 2: Replace the model ACOP language with the language shown below.*

The PHA will accept requests for an informal settlement of a grievance either orally or in writing (including emailed requests) to the PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, 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.

🞎 *Option 3:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

🗹 **Decision Point: How much time will the PHA have to prepare a summary of the informal settlement and notify the family of its decision?**

Things to Consider

* The standard 10 business days used through much of the ACOP may not be desirable for all the steps in the grievance process because it could result in the process taking more than two months to complete. The Public Housing Occupancy Guidebook suggests that the decision period for informal settlements only be five business days. Based on this guidance the model ACOP uses five business days.
* In most cases the person making the decision will want to weigh the information from the informal meeting(s) and render a decision while the facts are fresh in their mind, which more than likely will be within five business days.
* The regulation states that the summary must be provided within a “reasonable time”. Therefore, if the PHA decides to use a time frame different than the model ACOP language, this requirement should be kept in mind.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will prepare a summary of the informal settlement within five business days; one copy to be given to the tenant and one copy to be retained in the PHA’s tenant file.

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**14-III.E. PROCEDURES TO OBTAIN A HEARING**

**Requests for Hearing and Failure to Request**

🗹 **Decision Point: What will be the PHA’s requirements for submitting a request for a grievance hearing?**

Things to Consider

* HUD regulations do not dictate the method by which a tenant must request a grievance hearing. The PHA may establish a reasonable policy which will promote timely resolution of grievances.
* The standard 10 business days used through much of the ACOP may not be desirable for all the steps in the grievance process because it could result in the process taking more than two months to complete. The Public Housing Occupancy Guidebook suggests that the tenant be given five business days to submit a written request for a grievance hearing. Based on this guidance, the model ACOP uses five business days.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The resident must submit a written request (including emailed requests) for a grievance hearing to the PHA within five business days of the tenant’s receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the PHA’s disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA’s action in disposing of the complaint in an appropriate judicial proceeding.

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Scheduling of Hearings [24 CFR 966.56(a)]**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

🗹 **Decision Point: How much time will be permitted for the scheduling of the grievance hearing by the hearing officer?**

Things to Consider

* The regulations state that the hearing must be scheduled “promptly”. For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.
* The model ACOP assumes that the PHA uses a hearing officer and not a hearing panel to conduct grievance hearings. If the PHA uses a hearing panel it needs to change the language used in the model ACOP.
* Per Notice PIH 2020-32, if the hearing will be conducted remotely, the PHA must ensure that the family has appropriate technological access in order to fully participate in the remote hearing, and to remove any technological barriers prior to the hearing. For this reason, the default policy contains language to facilitate this process in the event of a remote grievance hearing.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PHA.

If the PHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

Regarding the processes involved in a remote grievance hearing;

That the PHA will provide technical assistance prior to and during the hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform the PHA and the PHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

The PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

🗹 **Decision Point: Under what circumstances can a tenant request to have a hearing rescheduled and how must the request be made?**

Things to Consider

* The model ACOP allows the tenant to request to reschedule a hearing only for good cause, which is defined in the policy. This type of policy reduces the number of hearings that have to be rescheduled, which can be particularly important when the PHA is relying on hearing officers who do not work for the PHA.
* The model ACOP allows the tenant to make the request orally or in writing. This gives the tenant flexibility if the timing or nature of the conflict makes it difficult for the tenant to complete and submit a written request.
* The model ACOP also allows the PHA to request documentation from the tenant, if the PHA determines it is necessary in order to determine good cause.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The tenant 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. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the “good cause” prior to rescheduling the hearing.

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Expedited Grievance Procedure [24 CFR 966.52(a)]**

The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

* Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA, or
* Any drug-related criminal activity on or near such premises

🗹 **Decision Point: Will the PHA adopt expedited grievance procedures and if so, what are the conditions of such procedures?**

Things to Consider

* The concept of an expedited grievance procedure is to provide a shorter process for those cases where termination or eviction involves criminal activity that threatens health, safety, or peaceful enjoyment, is based on drug-related criminal activity, or for any criminal activity that resulted in felony conviction of a household member.
* In such cases the PHA will want to move as quickly through the grievance process as possible.
* If the PHA is in a state where a due process determination has been made and the PHA exercises its option to skip the grievance process and move directly to the court hearing when the termination or eviction is for the reasons mentioned above, the PHA does not need an expedited grievance procedure because they would have an even shorter process than the expedited grievance process would provide.
* The model ACOP assumes the PHA is located in a due process state.
* The only difference between the standard grievance procedure and the expedited grievance procedure is the length of time given for each step in the process. For those PHAs who can and do adopt expedited grievance procedures, the Public Housing Occupancy Guidebook suggests that the PHA compress all deadlines to 3 business days. Based on this guidance, the model ACOP uses 3 business days.
* If the PHA is located in a due process state or does not want to offer an expedited grievance procedure, select Option 1.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will not offer expedited grievance procedures.

🞎 *Option 2:* *Replace the model ACOP language with the language shown below.*

The PHA will follow expedited grievance procedures for any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA, or any drug-related criminal activity on or near such premises.

Such procedures will provide for an expedited notice of hearing request, an expedited scheduling of the hearing, and for an expedited decision on the grievance. The tenant will have 3 business days to make their hearing request. The hearing officer will have 3 business days to schedule the hearing, and 3 business days to render a decision. When possible, the PHA will conduct expedited hearings remotely via a remote video conferencing platform in accordance with PHA policies in section 14-III.G. All other aspects of the expedited grievance process shall be the same as for other grievances.

🞎 *Option 3:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.53(e)]**

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review, or a subordinate of such person. The PHA must describe their policies for selection of a hearing officer in their lease.

🗹 **Decision Point: Will the PHA use a hearing officer or hearing panel to conduct grievance hearings?**

Things to Consider

* The PHA has the option to use either a hearing officer or hearing panel to conduct grievance hearings. Advantages and disadvantages could be offered for either choice. Residents may feel that a panel is more impartial than an officer, especially when these persons are PHA employees. On the other hand, it may be easier to match the schedule of a hearing officer to the PHA and family’s schedules than it would be to match the schedules of hearing panel members to the PHA and family.
* The PHA needs to weigh the advantages and disadvantages of each before deciding which option would better serve the interests of the PHA and the residents.
* The model ACOP has chosen to use a hearing officer instead of a panel. HUD regulations no longer contain references to hearing panels, and the regulations governing the process of selecting a hearing officer or panel have been removed.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

PHA grievance hearings will be conducted by a single hearing officer and not a panel.

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

🗹 **Decision Point: How will the PHA select hearing officer(s)?**

Things to Consider

* The applicable regulations require that the hearing officer must be impartial and uninvolved in the decision under review.
* While most PHAs appoint an employee, other agencies utilize a hearing officer who is not affiliated with the PHA. This could be an employee of a nearby PHA, a person with legal experience such as an administrative law judge, or a community volunteer. Outside hearing officers may be paid or unpaid.
* The decision to appoint an employee or outside hearing officer depends in part upon the PHA’s program size and resources. For example, a small agency with only two employees would most likely be unable to appoint an employee, since both staff members would be familiar with the case. A small agency would also be unlikely to have funds available for a paid outside hearing officer such as an administrative law judge. In this situation, the best options might be to appoint an employee of a nearby PHA or a community volunteer with experience in housing programs.
* The PHA may want to consider appointing alternate hearing officers for grievances involving specific issues. For example, the PHA might bring in the civil rights officer for discrimination claims or the 504 coordinator for grievances involving reasonable accommodations.
* Option 1 states that the PHA will appoint an impartial person as the hearing officer.
* Option 2 specifies that an outside person will serve as the hearing officer.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will appoint an impartial person who was not involved in the decision under appeal. If a designated staff member (such as the program manager) was involved in the decision, or is a subordinate of such person, an alternate hearing officer will be selected.

The PHA may select designated staff members who were not involved in the decision under appeal in certain circumstances, such as appeals involving discrimination claims or denials of requests for reasonable accommodations.

🞎 *Option 2:* *Replace the model ACOP language with the language shown below.*

The PHA will select hearing officers who do not work for the agency. These could include employees of other housing agencies in the area, retirees, legal professionals, or other community volunteers with experience in subsidized housing programs.

🞎 *Option 3:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**14-III.G. REMOTE HEARINGS [Notice PIH 2020-32]**

🗹 **Decision Point: Will the PHA offer remote hearings?**

Things to Consider

* There is no requirement that grievance hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their grievance hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote grievance hearings, applicants may still request an in-person hearing, as applicable.
* The PHA also has the authority to require remote grievance hearings in cases such as local, state, or federal physical distancing orders, natural disasters, or inclement weather. While the PHA is not required to conduct grievance hearings remotely in these cases, conducting hearings this way may aid the PHA in continuing normal operations and providing required services to families.
* The PHA should also consider offering remote grievance hearings outside of times of extraordinary circumstances upon request of the applicant for certain PHA-defined criteria. The model policy suggests that these criteria include reasonable accommodation, lack of transportation or child care, and when applicants are concerned about exposure to health risks by attending an in-person hearing. The PHA may wish to add other criteria to this list and consider other requests on a case-by-case basis.
* If your agency opts not to conduct remote hearings, select Option 2. **However, should you select Option 2, none of the other decision points or policies in this section will apply, and you must delete them from the model ACOP.**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA has the sole discretion to require that 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, the PHA will conduct a hearing remotely upon request as a reasonable accommodation for a person with a disability, if a tenant does not have child care or transportation that would enable them to attend the hearing, or if the tenant believes an in-person hearing would create an undue health risk. The PHA will consider other reasonable requests for a remote hearing on a case-by-case basis.

🞎 *Option 2: Delete model ACOP language and substitute language as shown below.*

**CAUTION:** **The remaining policies in Section 14-III.G only apply if your agency offers remote hearings. If you select Option 2 below, you must delete the remainder of Section 14-III.G in the model ACOP, as it will no longer apply.**

The PHA does not offer remote hearings.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Discovery of Documents Before the Remote Hearing**

🗹 **Decision Point: How will the PHA fulfill the due process requirement, in the case of a remote hearing, to ensure the resident is given the right to review and copy, before the hearing, all documents the PHA intends to produce at the hearing?**

Things to Consider

* If the PHA chooses not to conduct remote hearings, this section should be deleted.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

If the hearing will be conducted remotely, the PHA will compile a hearing packet, consisting of all documents the PHA intends to produce at the hearing. The PHA will mail copies of the hearing packet to the tenant, the tenant’s representatives, if any, and the hearing officer at least three days before the scheduled remote hearing. The original hearing packet will be in the possession of the PHA representative and retained by the PHA.

If the hearing is to be conducted remotely, the PHA will require the resident to provide any documents directly relevant to the hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. The PHA will scan and email copies of these documents to the hearing officer and the PHA representative the same day they are received.

Documents will be shared electronically whenever possible.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

This section describes the requirements to ensure accessibility for persons with disabilities and limited English Proficiency (LEP) as they relate to remote grievance hearings. **No policy decisions are required.**

**Conducting Hearings Remotely**

🗹 **Decision Point: How will remote hearings be conducted remotely?**

Things to Consider

* If the PHA chooses not to conduct remote hearings, this section should be deleted.
* The PHA must ensure that the family has appropriate technological access in order to fully participate in the remote grievance hearing. Notice PIH 2020-32 states that the PHA should survey families participating in the remote grievance hearing prior to the hearing to determine whether any technological barriers exist and to determine the resources to which families have access. This could mean asking whether the family has a computer, internet access, a phone, or a laptop, whether these items have cameras, and whether the family can go to a place with sufficient privacy and internet access.
* The PHA should attempt to resolve any identified technological barriers prior to the remote grievance hearing. Section 6 of Notice PIH 2020-32 provides guidance on how to do so.
* Of the options presented in Notice PIH 2020-32, a voice-only or telephone option is the least preferrable due to challenges presented by the applicant being unable to view documents presented at the hearing and being unable to identify who is speaking during a phone call with multiple attendees. Attendees should be able to see, be seen, hear, and be heard. For this reason, the model policy states that the PHA will conduct remote grievance hearings via video conferencing when available, unless families are unable to adequately access the video conferencing platform, in which case, telephone conferencing call-in will be used.
* In the event that the family still does not have proper technology access to allow them to fully participate, that is, if they cannot adequately access the video conferencing platform or the telephone call-in, Notice PIH 2020-32 states that the remote grievance hearing should be postponed or an in-person alternative must be provided. The model policy reflects this language.
* Further, login information and all materials being presented, whether paper or electronic, must be provided to the family prior to the remote hearing. This may present challenges since families may be unfamiliar with how to access the video conferencing platform used by the PHA. The PHA should consider offering support to families around the time of the hearing to ensure that applicants are able to log into the video conferencing system.
* The default policy states that an electronic copy of all materials being presented will be provided via email. The PHA must ensure that all electronic information stored or transmitted with respect to the grievance hearing is secure per Notice PIH 2015-06, including personally identifiable information (PII). Also, keep in mind that for individuals with limited English proficiency (LEP), materials may need to be provided in a translated format.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will conduct remote grievance 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 grievance 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 grievance hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to the scheduled remote hearing, the PHA 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 notice will advise the family of technological requirements for the hearing 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 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 grievance hearing to ensure that the family 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 grievance hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**14-III.H. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

**Rights of Complainant [24 CFR 966.56(b)]**

HUD regulations provide the tenant the right to examine PHA documents prior to the hearing.

🗹 **Decision Point: How much will the PHA charge the tenant for copies of documents related to the hearing, and what is the deadline for the tenant to request discovery of the documents?**

Things to Consider

* The model ACOP states that tenants will not be charged.
* If the PHA chooses to charge the family, whatever cost the PHA uses, it should be reasonable for both the PHA and the family. For example, the PHA could use $.25 per page.
* The PHA could encourage electronic delivery of documents by not charging for emailing documents.
* The model ACOP requires the tenant to request discovery of the documents no later than noon on the business day prior to the hearing. This policy clearly sets expectations and prevents the tenant from making any last-minute requests that could cause a delay in the hearing.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The tenant will be allowed to copy any documents related to the hearing at no cost to the family. There will be no charge for documents emailed by the PHA. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

The regulations provide the tenant with the right to be represented by counsel or another person of the tenant’s choosing.

🗹 **Decision Point: Who is authorized to attend grievance hearings?**

Things to Consider

* Including a listing of who is authorized to attend the hearing in the grievance procedures makes the process more transparent to all involved, and ensures that tenants are aware that they have the right to bring counsel or other representation, as well as witnesses.
* The hearing officer conducts the grievance hearing so is not listed as one who may attend.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Hearings may be attended by the following applicable persons:

The PHA representatives and any witnesses for the PHA

The tenant and any witnesses for the tenant

The tenant’s counsel or other representative

Any other person approved by the PHA as a reasonable accommodation for a person with a disability

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Failure to Appear [24 CFR 966.56(c)]**

When the complainant or the PHA fails to appear at the grievance hearing the hearing officer may either postpone the hearing for no more than five business days or render a decision that the absent party has waived their right to a hearing.

🗹 **Decision Point: Will the PHA reschedule a hearing if the tenant does not appear at the scheduled hearing and has not made previous arrangements to reschedule?**

Things to Consider

* A distinction needs to be made between being late and failing to appear. It needs to be decided how late is too late for the hearing to proceed instead of being considered for rescheduling. The model policy establishes this threshold at 30 minutes.
* If a tenant does not appear at a scheduled hearing, and did not make previous arrangements to reschedule it, the model language states that the PHA will only reschedule the hearing if the tenant contacts the PHA within 24 hours of the scheduled hearing date, and the tenant can show good cause.
* This type of policy reduces the number of no-shows and the number of hearings that have to be rescheduled, while still allowing tenants who face last minute legitimate emergencies to have a second chance to have a hearing.
* PHAs may wish to automatically schedule a second appointment if a tenant does not appear at the first scheduled appointment. See Option 2 for this type of policy.
* A third option is also provided. This option is the most streamlined and the strictest. Unless a tenant reschedules for good cause prior to the hearing, or qualifies for a reasonable accommodation, the tenant will not be offered a second opportunity for a hearing if they fail to appear at the hearing. If a tenant has an emergency the day of the hearing and is unable to make contact with the PHA prior to the time of the hearing, this policy prevents the tenant from having a hearing rescheduled.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or 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.

🞎 *Option 2: Delete model ACOP language and substitute language as shown below.*

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear, the PHA will automatically reschedule the hearing. Tenants who fail to attend two scheduled hearings will not be given another opportunity for a hearing, and the PHA’s original decision will stand.

🞎 *Option 3: Delete model ACOP language and substitute language as shown below.*

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear, the PHA will not reschedule the hearing unless needed as a reasonable accommodation for a person with disabilities.

🞎 *Option 4: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**General Procedures [24 CFR 966.56(d), 966.56(e)]**

The PHA and the tenant must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing.

🗹 **Decision Point: What are the types and standards of evidence that can be used in the grievance hearing process?**

Things to Consider

* Defining the types of evidence that can be presented and reiterating the admissibility rules provides transparency and helps those involved in the hearing to better understand the rules and process.
* A note about hearsay: Courts have consistently overturned PHA termination cases based solely on hearsay, unless there is clear “probative value” and credibility of the hearsay evidence, demonstrating preponderance of the evidence. Therefore, in the event hearsay evidence is the only evidence presented, the probative value and credibility of statements must meet the standard of proof.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence**: the testimony of witnesses

**Documentary evidence**: a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

**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.

**Real evidence**: A tangible item relating directly to the case.

*Hearsay Evidence* is evidence based not on a witness’ personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If the PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the PHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

The regulations make provision for the arrangement for a transcript of the hearing at either party’s request [24 CFR 966.56(e)].

🗹 **Decision Point: What will be the conditions for requesting a transcript of the grievance hearing proceedings?**

Things to Consider

* An audio tape record of a hearing serves the same purpose as a transcript and therefore the model ACOP states that an audio tape record is a transcript.
* A request for the hearing to be recorded needs to be made enough in advance that it can be arranged without causing a delay in the hearing. Therefore, the model ACOP requires that if a tenant desires a recording of the hearing they must make their request known by noon of the previous business day.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

If the complainant would like the PHA to record the proceedings by audiotape, the request must be made to the PHA by 12:00 p.m. on the business day prior to the hearing.

The PHA will consider that an audio tape recording of the proceedings is a transcript.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Accommodations of Persons with Disabilities [24 CFR 966.56(f)]**

This section discusses the PHA’s responsibilities pertaining to reasonable accommodations of persons with disabilities in the grievance hearing process. **No policy decisions are required.**

**Limited English Proficiency (24 CFR 966.56(g)**

The PHA must comply with HUD’s LEP Final Rule in providing language services throughout the grievance process. **No policy decisions are required.**

**14-III.I. DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

The hearing officer must prepare a written decision, together with the reasons therefore, within a reasonable time after the hearing.

🗹 **Decision Point: What factors will the hearing officer consider when making a decision?**

Things to Consider

* Clearly identifying the factors the hearing officer will use when making a decision and including this information in policy makes the process transparent to the hearing officer, the PHA, and the tenant, and also helps to ensure consistency in how decisions are made. This is particularly important when the PHA relies on multiple hearing officers.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

In rendering a decision, the hearing officer will consider the following matters:

**PHA Notice to the Family**: The hearing officer will determine if the reasons for the PHA’s decision are factually stated in the notice.

**Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PHA policy.

**PHA Evidence to Support the PHA 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 the PHA’s conclusion.

**Validity of Grounds for Termination of Tenancy (when applicable)**: The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

🗹 **Decision Point: When will the hearing decision be issued and what will the decision notice contain?**

Things to Consider

* For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.
* Describing in detail the contents of the hearing report ensures that all hearing decisions contain the same information. Again, this information is helpful to all involved in the hearing. It sets a standard for the hearing officer to follow and informs tenants of what information they can expect to receive in the hearing report.
* The standard of evidence is the same as is used in Chapters 3 and 13.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The hearing officer will issue a written decision to the family and the PHA no later than 10 business days after the hearing. The report will contain the following information:

**Hearing information:**

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of the PHA representatives

Name of family representative (if any)

Names of witnesses (if any)

**Background**: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. It will also include the date the complainant requested the grievance hearing.

**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 shows 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 determination of whether these facts uphold the PHA’s decision.

**Order:** The hearing decision will include a statement of whether the PHA’s decision is upheld, overturned, or remanded (the hearing decision may remand the case back to the PHA for further action, for example, consideration of a reasonable accommodation). If the PHA’s adverse decision is overturned, the hearing decision will instruct the PHA to change the decision in accordance with the hearing officer’s determination. If the PHA’s decision to terminate is overturned, the hearing decision will instruct the PHA to restore the family’s status.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Procedures for Further Hearing**

🗹 **Decision Point: Under what circumstances will a further hearing be conducted?**

Things to Consider

* There may be circumstances in which a hearing officer determines it is necessary to allow the family to provide additional information, or to reconvene at a later date. The model ACOP language allows for this circumstance and explains what will happen if a family does not comply with the hearing officer’s requests.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the hearing officer’s decision will be based on testimony and evidence presented. Another hearing will not be granted.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Final Decision [24 CFR 966.57(b)]**

🗹 **Decision Point: What will be the process for intervention by the Board of Commissioners in the final decision and how much time will the PHA and Board have to complete this process?**

Things to Consider

* The decision of the hearing officer is binding on the PHA unless the PHA Board of Commissioners intervenes in the matter. Generally, the Board will not be involved unless the PHA requests their involvement. The PHA must make the decision to involve the Board in a timely manner. For administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.
* Most PHA Boards convene monthly. HUD regulations state that the Board must make a determination “within a reasonable time.” The model ACOP considers that to avoid requiring a Board to convene a special meeting to make this determination, it can be handled in the normal course of meeting and 30 days should assure that it will be considered at the next scheduled meeting. For those PHA Boards that meet less frequently, a special meeting may be required to address the matter. If the Board decides to reverse the decision of the hearing officer, it must “promptly” notify the complainant. Again, for administrative ease and consistency, this policy uses the standard of 10 business days that is used throughout much of the ACOP.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

When the PHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the PHA Board of Commissioners within 10 business days of the date of the hearing officer’s decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer’s decision, it must notify the complainant within 10 business days of this decision.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**FINALIZING THE DOCUMENT**

Take a final look at the changes you have made in this chapter of the ACOP.  
Have you:

(1) Added or subtracted any exhibits at the end of the chapter?  Yes  No.

(2) Added, subtracted or reordered any major sections (at the A, B, or C level?)  Yes  No

If you answered yes to either of these questions, you must adjust the chapter to match your changes.

**☑ Decision Point: Are any changes required to this chapter?**

No. No changes to the model policy are needed.

Yes. Edits only. Edit and insert PHA language as appropriate.

Yes. PHA changed the organization of the chapter. Adjust the chapter to reflect your changes **and** review the rest of the document to make sure that any references to section numbers are correct.

**☑ Decision Point: Are changes required in other chapters as a result of changes to this chapter?**

Check the “Things to Consider” under each decision point to identify if changes to the model policy will require changes to policies in other chapters of the ACOP.

No. Changes to other chapters are not necessary.

Yes. Changes to the following chapters are also required: