Chapter 14

GRIEVANCES AND APPEALS

INTRODUCTION
This chapter discusses grievances and appeals pertaining to DMMHA 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.
PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14-I.A. OVERVIEW

When the DMMHA makes a decision that has a negative impact on an applicant family, the family is entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. This part discusses the DMMHA policies necessary to respond to applicant appeals through the informal hearing process.

14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a)]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants under the DMMHA grievance procedures [24 CFR 966.53(a)].

Use of Informal Hearing Process

1. The DMMHA will provide an opportunity for an Informal Hearing regarding a decision denying assistance to an applicant:
   a. Placement on the waiting list.
   b. Participation in the Public Housing Program.
   c. Preference in determining eligibility for the Public Housing Program.

2. The DMMHA is not required to provide an opportunity for an Informal Hearing:
   a. To review discretionary administrative determinations by the Housing Agency, or to consider general policy issues or class grievances.
   b. To review the Housing Agency's determination of the number of bedrooms determined under the standards established by the Housing Agency in accordance with HUD regulations.
   c. To review the Housing Agency’s determination to retire/withdraw an application from the waiting list.
Notice of Denial [24 CFR 960.208(a)]

The DMMHA shall give an applicant prompt written notice of a decision denying assistance to the applicant, including a decision of ineligibility for housing, ineligibility for any of the selection preferences adopted by the DMMHA, or denying placement on the waiting list. The notice shall also state that the applicant may request in writing an Informal Hearing of the decision, and shall describe how to obtain the Informal Hearing.

When denying eligibility for admission, the DMMHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VI.D. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Scheduling an Informal Hearing

The applicant must submit a written request for an Informal Hearing within ten (10) business days after DMMHA mails the notification of the decision denying assistance.

If the applicant's request is not submitted within ten (10) business days after DMMHA mails the notification of the decision denying assistance, or in another way fails to comply with requirements, the request will be denied and the applicant will be promptly notified in writing.

If the request meets the criteria, an Informal Hearing will be scheduled within a reasonable time period.

A delay in requesting a file review or copies of file documents will not be grounds for a continuance or reschedule of the Informal Hearing.

Prior to the date of a scheduled informal hearing, an applicant will only be afforded the opportunity to request an informal hearing be rescheduled (1) one time.

Reschedule requests must be requested either by phone or in writing and must be received at any time in advance of the initial scheduled informal hearing. If a reschedule request is received within 24 hours after the initial scheduled informal hearing date and time, DMMHA will consider extenuating circumstances (such as car accident, hospitalization, death in family) and will require verification of the documented emergency.

Conducting an Informal Hearing

The Informal Hearing shall be conducted by any person or persons designated by the Director, other than a person who made or approved the decision under review or a subordinate of such person.
The applicant shall be given an opportunity to present written or oral objections to the DMMHA's decision.

DMMHA right to examine family documents:

The DMMHA must be given the opportunity to examine at DMMHA offices before the hearing any family documents that are directly relevant to the review, within a reasonable timeframe (at least 24 hours). The DMMHA must be allowed to copy any such document at the DMMHA’s expense. If the family does not make the document available for examination on the request of the DMMHA, the family may not rely on the document at the review.

i. The term “documents” includes records and regulations.

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

If the applicant family is more than 15 minutes late the Hearing Officer will declare that the applicant has waived their right to the Informal Hearing. The DMMHA may make exceptions to the 15-minute rule for extenuating circumstances. Extenuating circumstances are reviewed on a case-by-case basis.

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

If the applicant/tenant family is represented by an attorney, they shall provide notice to DMMHA at least three business days prior to the informal review/informal hearing. If an attorney comes to the informal review/informal hearing to represent the applicant/tenant family without prior notice to DMMHA, then DMMHA shall be afforded the opportunity for a continuance so DMMHA may also obtain legal representation.

Informal Hearing Decision

The DMMHA shall notify the applicant in writing of the final decision within a reasonable time after the Informal Hearing, including a brief statement of the reason(s) for the final decision.

Effects of Decision

In accordance with federal regulations, the DMMHA will not be bound by an informal review decision in the following circumstances:

a. Concerning a matter for which the DMMHA is not required to provide an opportunity for an informal review in accordance with applicable regulations.

b. A decision in excess of the authority of the Hearing Officer, or
c. A decision contrary to Department of Housing and Urban Development regulations or requirements, or otherwise contrary to Federal, State or Local law.

If the DMMHA determines that it is not bound by an informal review decision, the DMMHA will promptly notify the applicant of the determination and the reason(s) for the determination.

Privacy of Informal Review Proceedings:

Unless specifically invited to hearing proceedings by DMMHA or participant/applicant, no outside persons will be allowed to attend the informal review proceedings. No third-party audio or video recording of an informal review will be allowed without a specific court order presented to the DMMHA at least 24 hours prior to the informal review. The DMMHA’s recording is the only recording permitted. A copy of the recording will be provided free of charge from the Agency upon written request from the participant/applicant.

Records:

1. A separate record and file of Informal Hearings conducted will be maintained for a period of five years.

2. The Director or his/her designee will be responsible for the scheduling, notification and record keeping activities associated with the applicant Informal Hearing process.
PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

14-ILA. 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.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the DMMHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the DMMHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

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

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the DMMHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.
United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]

When the DMMHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the DMMHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the DMMHA with a copy of the written request for appeal and proof of mailing.

DMMHA Policy

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

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

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the DMMHA, of its decision. When the USCIS notifies the DMMHA of the decision, the DMMHA must notify the family of its right to request an informal hearing.

DMMHA Policy

The DMMHA 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.

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

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the DMMHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the DMMHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The DMMHA 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.

Evidence

The family must be provided the opportunity to examine and copy at the family’s expense, at a reasonable time in advance of the hearing, any documents in the possession of the DMMHA pertaining to the family’s eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.
Applicants/tenants will be permitted to review the contents of their file maintained by DMMHA upon written request.

Applicants/tenants will be given the opportunity to examine before the informal review any DMMHA documents that are directly relevant to the informal review. The family will be allowed to copy any such document at the family’s expense. If the DMMHA does not make the document available for examination on request of the family, the DMMHA may not rely on the document at the informal review.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The DMMHA must be given the opportunity to examine at DMMHA offices before the hearing any family documents that are directly relevant to the hearing, within a reasonable timeframe (at least 24 hours). The DMMHA must be allowed to copy any such document at the DMMHA’s expense. If the family does not make the document available for examination on request of the DMMHA, the family may not rely on the document at the hearing.

i. The term “documents” includes records and regulations.

The family must also be provided the opportunity to refute evidence relied upon by the DMMHA, and to confront and cross-examine all witnesses on whose testimony or information the DMMHA relies.

**Representation and Interpretive Services**

The family is entitled to be represented by an attorney or other designee, at the family’s expense, and to have such person make statements on the family’s behalf. If the applicant/tenant family is represented by an attorney, they shall provide notice to DMMHA at least three business days prior to the informal review/informal hearing. If an attorney comes to the informal review/informal hearing to represent the applicant/tenant family without prior notice to DMMHA, then DMMHA shall be afforded the opportunity for a continuance so DMMHA may also obtain legal representation.

If the family is in need of an interpreter and does not arrange for their own interpreter, the DMMHA is obligated to provide oral translation services in accordance with its LEP Plan at the DMMHA’s expense.

**Recording of the Hearing**

The family is entitled to have the hearing recorded by audiotape. The DMMHA may, but is not required to provide a transcript of the hearing.

No third-party audio or video recording of an informal review will be allowed without a specific court order presented to the DMMHA at least 24 hours prior to the informal review. The DMMHA’s recording is the only recording permitted. A copy of the recording will be provided free of charge from the Agency upon written request from the participant/applicant.
**Hearing Decision**

The DMMHA 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.

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

The DMMHA must retain for a minimum of 5 years the following documents that may have been submitted to the DMMHA by the family, or provided to the DMMHA as part of the USCIS appeal or the DMMHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

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

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the DMMHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the DMMHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.
PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

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

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any DMMHA action or failure to act involving the lease or DMMHA policies.

14-III.B. DEFINITIONS [24 CFR 966.53; 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. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to DMMHA action or failure to act in accordance with the individual tenant’s lease or DMMHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status

- **Complainant** – any tenant whose grievance is presented to the DMMHA or at the project management office

- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit

- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by the DMMHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
  - A decision on the merits

- **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto

- **Tenant** – the adult person (or persons) (other than a live-in aide)
  - Who resides in the unit, and who executed the lease with the DMMHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit

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

Grievances could potentially address most aspects of a DMMHA’s operation. However, there are some situations for which the grievance procedure is not applicable.
1. The DMMHA Grievance Procedure shall not be applicable to disputes between tenants not involving the DMMHA or to class grievances.

2. This Grievance Procedure is not intended, nor shall be used for, initiating or negotiating policy changes between a group or groups of tenants and the DMMHA's Director or Public Housing Board or Municipal Housing Governing Board.

3. This Grievance Procedure does not apply to termination of tenancy or evictions that involve:
   a. Any activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or employees of the DMMHA to include any criminal activity.
   b. Drug-related criminal activity that occurs on or off the DMMHA premises.
   c. Violent criminal activity that occurs on or off the DMMHA premises.
   d. Any criminal activity that resulted in a felony conviction of a household member.

HUD has determined that Iowa is a “due process” state and that the DMMHA may exclude the above categories from the Grievance Procedure.

14-III.D. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]

1. The complainant shall submit a written request for an Administrative Hearing to the DMMHA administrative office within ten (10) business days after DMMHA mails the notification of the decision of the action of the DMMHA citing:
   a. The reasons the tenant is disputing the DMMHA actions; and
   b. The action or relief the tenant is requesting.

2. Upon receipt of a written request for an informal hearing, the Director or his/her designee will schedule an informal discussion to be held between the complainant and the Program Supervisor or his/her designee.

3. The Program Supervisor or his/her designee will make at least two attempts to contact the participant and discuss the reason for the Agency’s action.

   A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the complainant and one copy retained in the Agency’s tenant/participant’s file. The summary shall specify the names of the tenants/participants, the date of the discussion, the nature of the disposition and the reasons therefore.

   If the grievance has not been resolved to the satisfaction of both parties, the summary will advise the tenant/participant that a hearing will be scheduled and that a notification of the hearing date will be sent to the tenant/participant within one week, specifying the time, place and the procedures governing the Administrative Hearing which shall be delivered to the complainant and the appropriate DMMHA staff.
The Administrative Hearing Officer shall be an impartial, disinterested person selected by the DMMHA.

4. At the Administrative Hearing both parties (DMMHA and tenant) will discuss the grievance. Both parties will have the opportunity to present information relevant to the grievance and support their position regarding the action taken by the DMMHA.

5. Failure to appear for a scheduled Administrative Hearing constitutes a waiver of the tenant’s rights to an Administrative Hearing. Prior to the date of a scheduled Administrative hearing, a Participant will only be afforded the opportunity to request the hearing be rescheduled (2) times.

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

1. The Administrative Hearing shall be held before the Administrative Hearing officer.

2. DMMHA right to examine family documents:

   The DMMHA must be given the opportunity to examine at DMMHA offices before the hearing any family documents that are directly relevant to the review, within a reasonable timeframe (at least 24 hours). The DMMHA must be allowed to copy any such document at the DMMHA’s expense. If the family does not make the document available for examination on the request of the DMMHA, the family may not rely on the document at the review.

   a. The term “documents” includes records and regulations.

3. The complainant shall be afforded the opportunity to:

   a. Examine before the Administrative Hearing, and at the expense of the complainant, to copy all documents, records and regulations of the DMMHA that are relevant to the Hearing. Any documents requested by the tenant, but not made available by the DMMHA to the complainant, may not be relied on by the DMMHA.

   b. The right to be represented by counsel or other person. If the applicant/tenant family is represented by an attorney, they shall provide notice to DMMHA at least three business days prior to the informal review/informal hearing. If an attorney comes to the informal review/informal hearing to represent the applicant/tenant family without prior notice to DMMHA, then DMMHA shall be afforded the opportunity for a continuance so DMMHA may also obtain legal representation.

   c. The right to a private Hearing unless a public hearing is requested.
d. The right to present evidence and arguments in support of his/her complaint, to controvert evidence relied on by the DMMHA, and to confront and cross-examine all witnesses on whose testimony or information the DMMHA relies.

4. The Administrative Hearing Officer may render a decision without proceeding with the hearing if the Administrative Hearing Officer determines that an identical or similar issue has been previously decided in another proceeding.

5. If the complainant or the DMMHA fails to appear at the scheduled Hearing, the Administrative Hearing Officer may make a determination to postpone the Hearing for a period not to exceed four (4) business days, or may make a determination that the party has waived his/her right to a Hearing. Both the DMMHA and the complainant shall be notified of the determination provided that, if a complainant has waived his/her right to a Hearing, this shall not constitute a waiver of any right the complainant may have to contest the DMMHA's disposition in an appropriate judicial proceeding.

6. At the Hearing the complainant must first demonstrate he/she is entitled to the relief sought and thereafter the DMMHA must justify the action or failure to act in the matter against which the grievance is directed.

7. The Hearing shall be conducted informally by the Administrative Hearing Officer and both oral and documentary evidence pertinent to the facts and issues raised by the complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The Administrative Hearing Officer shall require the DMMHA, the complainant, counsel, and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with this procedure may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and the granting or denial of the relief sought.

14-III.F. DECISION OF THE HEARING OFFICER/PANEL [24 CFR 966.57]

1. The Administrative Hearing Officer shall prepare a written decision, together with the reasons therefore, within a reasonable time after the Hearing. A copy of the decision shall be sent to the complainant and the DMMHA. The DMMHA shall retain a copy of the decision in the tenant's file. A copy of this decision shall be maintained on file by the DMMHA and made available for inspection by the complainant, his representative or the Administrative Hearing Officer.

2. The decision of the Administrative Hearing Officer shall be binding on the DMMHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Municipal Housing Governing Board
determines within a reasonable time and promptly notifies the complainant of its determination, that:

a. The grievance does not concern DMMHA action or failure to act in accordance with or involving the complainants Dwelling Lease or DMMHA regulations, which adversely affect the complainant’s rights, duties, welfare or status, or

b. The decision of the Administrative Hearing Officer is contrary to applicable Federal, State or local law or HUD regulations or requirements of the Annual Contributions Contract between HUD and DMMHA.

3. A decision by the Administrative Hearing Officer, or Municipal Housing Governing Board in favor of the DMMHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

Privacy of Hearing Proceedings:

Unless specifically invited to hearing proceedings by DMMHA or participant, no outside persons will be allowed to attend the hearing proceedings. No third-party audio or video recording of a hearing will be allowed without a specific court order presented to the DMMHA at least 24 hours prior to the Hearing. The DMMHA’s recording is the only recording permitted. A copy of the recording will be provided free of charge from the Agency upon written request from the participant.

Records:

1. A separate record and file of Informal Hearings conducted will be maintained for a period of five years.

2. The applicant or participant individual or family, if dissatisfied with the decision resulting from the Informal Review or Hearing, will be advised of the right to exercise their rights if they feel the determination was based on discrimination due to race, color, religion, sex, creed, national origin, handicap or age.

3. The tenant may be assessed costs associated with Administrative Hearings should the Agency’s decision be upheld by the Hearing Officer.

DMMHA Eviction Actions

If a tenant has requested a Hearing in accordance with these procedures on a complaint involving a DMMHA notice of termination of the tenancy, and the Administrative Hearing Officer upholds
the DMMHA's action to terminate the tenancy, the DMMHA shall not commence an eviction action in a State or local court until DMMHA has served a notice to vacate on the tenant, and in no event shall the notice to vacate be issued before the decision of the Administrative Hearing Officer has been mailed, or delivered to the complainant. Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against him/her and he/she may be required to pay court costs and attorney fees incurred by him/her during judicial proceedings. If DMMHA serves notice to quit, DMMHA will deem the tenant evicted whether the tenant voluntarily moves out or not.