

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of District of Columbia Housing Authority ("DCHA") hereby gives notice of its intent to adopt the following amended and restated Chapter 89 of Title 14 DCMR, "Informal Hearing Procedures for Applicants and Participants of the Housing Choice Voucher and Moderate Rehabilitation Programs. in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendments contain the rules governing informal hearing procedures for applicants and participants of the Housing Choice Voucher Program.

CHAPTER 89 INFORMAL HEARING PROCEDURES FOR APPLICANTS AND PARTICIPANTS OF THE HOUSING CHOICE VOUCHER AND MODERATE REHABILITATION PROGRAMS

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8900 INTRODUCTION

- 8900.1 This chapter describes the policies, procedures and standards to be used when a participant or applicant disagrees with a DCHA decision.
- 8900.2 The procedures and requirements for an informal hearings of certain decisions affecting participants and applicants are contained in this Chapter.
- 8900.3 Applicants will be provided the informal hearing procedures, including a summary of the process, at the time of eligibility determination or denial of assistance.
- 8900.4 DCHA informal hearing procedures, including a summary of the process, shall be included in the briefing packet provided to new participants.
- 8900.5 Current participants will be provided the procedures for informal hearings, including a summary of the process, at the time of eligibility determination or denial of assistance.
- 8900.6 Applicants and participants have the right to request a reasonable accommodation for a disability in accordance with Chapter 74.

8901 DCHA DETERMINATIONS SUBJECT TO INFORMAL HEARING

8901.1 DCHA shall provide written notice to participants and applicants with the opportunity for an informal hearing to contest any of the following DCHA determinations:

- (a) Qualification for a preference;
- (b) Listing on DCHA's Waiting List
- (c) Issuance or non-issuance of a Housing Choice Voucher;
- (d) Continued participation in the Housing Choice Voucher or Moderate Rehabilitation Program;
- (e) Family and applicant's annual or adjusted income and the computation of the Housing Assistance Payment;
- (f) Appropriate utility allowance from schedule of utility allowances;
- (g) A participant Family's unit size under DCHA subsidy standards;
- (h) Unit under-occupied in the Housing Choice Voucher and Moderate Rehabilitation Program and the participant's or applicant's request for exception is denied;
- (i) Termination of housing assistance payments under an outstanding HAP contract for any reason including:
 - (A) The household's absence from the assisted unit for longer than 180 days;
 - (B) A breach of Housing Quality Standards by the Family; or
 - (C) Other action or failure to act by the Family.
- (j) Refusal to process assistance under DCHA portability policies and procedures;
- (k) Denial of assistance to an applicant for any reason other than identified in 9801.2 below
- (l) Denial of a request for a reasonable accommodation; and
- (m) Determinations of Participant Family household size and head of household status.

8901.2 Informal hearings are not permitted for established policies, procedures and DCHA determinations such as:

- (a) Discretionary administrative determinations by DCHA;

- (b) General policy issues or class grievances;
- (c) DCHA schedule of utility allowances for participants or applicants in the Housing Choice Voucher Program;
- (d) Approval or denial of a unit or lease for any reason, including non-conformance of the unit to HQS or family size, composition or subsidy standards;
- (e) Non-compliance of a landlord with HQS
- (f) A determination of an applicant's family unit size under the DCHA subsidy standards, except in cases where a reasonable accommodation may have been denied under Chapter 74 hereof;
- (g) Determination not to approve an extension of a voucher term for an applicant, except in cases where a reasonable accommodation may have been denied under Chapter 74 hereof;
- (h) Determination to suspend an unexpired voucher term for an applicant, other than in cases unrelated to programmatic or fiscal determinations;
- (i) Expiration of a voucher;
- (j) Exercise of any remedy against an owner under a HAP contract,
- (k) Actions or inactions of owners or managers of properties under a HAP contract.

8901.3 DCHA shall give the participant or applicant written notice of determinations within thirty days (30) days of any determination that is subject to the provisions of Section 8901.1. Termination notices under 8901.1(i) shall be sent by both certified and regular mail to the most recent address provided in writing to DCHA by the participant. All notices shall include:

- (a) The action or decision of DCHA;
- (b) The date the action or decisions has or will take place;
- (c) The basis for DCHA's decision;
- (d) The procedures for requesting an informal hearing if the family or applicant disputes the action or decision; and
- (e) The time limit for requesting the informal hearing;

- (f) The form by which families or applicants can request an informal hearing; and
- (g) A stamped, self-addressed envelope for returning the form to DCHA.

8901.4 Copies of the informal hearing request forms will be available at DCHA offices.

8901.5 No action will be taken on DCHA termination determinations identified at Subsections 8901.1(i) and benefits shall continue under an outstanding HAP contract during the notification period in 8903.1(c) and until the later of:

(a) the expiration of the notice period, or,

(b) if a hearing has been requested, such time as a final decision is made in accordance with the procedures at 8905 provided herein.

8902 HCVP MEDIATION PROCESS

8902.1 Complaints, of the following types, which are not subject to the informal hearing process of these regulations should be submitted to the HCVP Ombudsman for an informal review:

- (a) Complaints from an owner when the owner disagrees with an action or inaction of DCHA or a family or applicant; and
- (b) Complaints or referrals from persons in the community in regard to DCHA, a family or applicant, or an owner.

8902.2 An applicant or participant Family may elect to request HCVP conduct an informal mediation process prior to or simultaneously with a request for an informal hearing, but such a request will not toll the time required for making a request for hearing. Requests for additional information or mediation with respect to calculations of total tenant payments and housing assistance payments may be submitted to the HCVP compliance department.

8903 REQUESTS FOR A HEARING AND RIGHTS TO DOCUMENTS

8903.1 Requests for an informal hearing are subject to the following requirements:

- (a) Requests for an informal hearing or extension of time must be reduced to writing. DCHA shall assist applicants or participants to reduce any request for an informal hearing to writing to comply with this Subsection 8903.1, which writing must then be signed by the applicant or participant.
- (b) Applicants and participants must either mail or deliver to DCHA their request for an informal hearing or request an extension of time under Subsection

8903.1(d).

- (c) If the request for an informal hearing is mailed to DCHA, the request must be postmarked within thirty (30) days of the postmark date of DCHA's notification under Section 8901 and if personally delivered to DCHA delivered within such same period.
- (d) An applicant or recipient may request, in writing, an extension of the time limits for requesting hearings in 8903.1(c) above, prior to the expiration of the period, as a reasonable accommodation or for other good cause as defined in Subsection 8908.3.

8903.2 Upon request by a participant, applicant or representative designed in writing by the participant or applicant, documents in the applicant's or participant's file may be reviewed or copied. DCHA shall make such documents available to the participant, applicant or their representative for review and/or copying within three (3) business days of such request. DCHA shall, when feasible, provide documents to an applicant or participant proceeding *pro se* without a representative in less than three (3) days.

8903.3 DCHA shall make copies of requested documents for the participant or applicant. DCHA shall provide the first fifty (50) such copies to the participant or applicant at no charge and shall charge thirty-five (35) cents per copy for each copy in excess of fifty (50).

8903.4 In no case shall the participant, applicant or their representatives, be allowed to remove a file from DCHA's offices.

8904 INFORMAL HEARING NOTICE AND SCHEDULING

8904.1 Upon a request for an informal hearing:

- (a) DCHA must mail notice to the parties of the date and time of the informal hearing within ten (10) business days of the date of the written request for an informal hearing.
- (b) The notice will be mailed to any representative of the applicant or participant who is identified by name and address on the request for an informal hearing.
- (c) The date of the informal hearing shall be no sooner than fifteen (15) days and no later than thirty (30) days after the postmark date of the notice to the participant or applicant of the date and time of the informal hearing.

8904.2 Requests to reschedule an informal hearing by a participant or applicant must be made in writing and are also subject to the following conditions:

- (a) A participant or applicant may make one request to reschedule an informal hearing for the convenience of the participant or applicant up to three (3) days prior to the first scheduled informal hearing date, with or without a showing of good cause as defined in Subsection 8908.3.
- (b) All other requests to reschedule must be made no later than two (2) business days following any scheduled or rescheduled informal hearing and must demonstrate a showing of good cause in order to be considered.
- (c) Notwithstanding paragraph (b) above, DCHA will reschedule an informal hearing as a reasonable accommodation pursuant to Chapter 74 herein, if the participant or applicant can demonstrate that a disability prevented them from rescheduling within the prescribed time periods.

8904.3 If the participant or applicant misses an appointment or deadline ordered by the hearing officer, and has failed to reschedule in accordance with 8904.2 (a) (b) or (c) above, the action of DCHA shall take effect in accordance with the provisions of 8906.2 below.

8904.4 The notification of informal hearing shall contain:

- (a) The date and time of the informal hearing;
- (b) The location where the informal hearing will be held;
- (c) The participant's or applicant's right to bring evidence, witnesses, and legal or other representation at the participant's or applicant's expense;
- (d) The right to view or obtain, or have their counsel or other representative view or obtain, subject to a timely request under Subsection 8903.2, any documents in the applicant's or participant's file, or any evidence in the possession of DCHA, upon which DCHA based the proposed action;
- (e) DCHA shall provide the first fifty (50) such copies to the participant or applicant at no charge and shall charge thirty five (35) cents per copy for each copy in excess of fifty (50).

8905 INFORMAL HEARING PROCEDURES

8905.1 Participant Families or applicants have the right to:

- (a) Examine any document in the applicant's or participant's file and any other documents that DCHA submits to the Hearing Officer;
- (b) Present written or oral objections to the DCHA's determination;
- (c) Present any information or witnesses pertinent to the issue of the informal hearing; and
- (d) Be represented by legal counsel, advocate or other designated representative at their own expense, provided that if the family has not notified DCHA in writing at least three business days in advance of their intention to be represented, the hearing officer shall grant any request from DCHA for a continuance.

8905.2 In addition to other rights contained in this Chapter, DCHA has a right to:

- (a) Present evidence and any information pertinent to the issue of the informal hearing;
- (b) Have its attorney present; and
- (c) Have staff persons and other witnesses familiar with the case present documents and provide testimony.

8905.3 The informal hearing may be conducted by any person designated by the DCHA, other than a person who made or approved the decision under review, a subordinate of that person or a person who is an employee in the Housing Choice Voucher Program. The designated hearing officer shall regulate the conduct of the informal hearing in accordance with these regulations.

8905.4 The informal hearing shall be conducted as follows:

- (a) The informal hearing shall concern only the issues for which the participant or applicant has received a notice in conformance with Subsection 8901.3.
- (b) DCHA and the participant or applicant shall be given the opportunity to present evidence and question any witnesses;
- (c) Evidence presented at the informal hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;
- (d) The hearing officer may request the submission of additional documentation, verification or briefs or letters of explanation from the parties or their representatives, provided such request is responded to within five (5) business

days or such additional time as the hearing officer may find necessary;

- (e) The hearing officer shall have the power to grant appropriate relief, not in conflict with controlling law and regulations, including:
 - (i) Remanding to a program specialist for further review or recalculation,
 - (ii) Granting a voucher or voucher extension,
 - (iii) Requiring recertification of a participant
 - (iv) Adjustment to the total tenant payment or housing assistance payments;
 - (v) Denial or reversal of a termination,
 - (vi) Ordering the scheduling of a briefing;
 - (vii) Scheduling continuances and rescheduling appointments or hearing dates.

8906 PROPOSED AND FINAL DECISIONS

8906.1 The hearing officer shall, within 14 days of the hearing, make a proposed decision as follows:

- (a) Whether or not the hearing officer has jurisdiction under these regulations to hear the case;
- (b) Factual determinations relating to the individual circumstances of the participant or applicant based on a preponderance of the evidence and testimony presented at the informal hearing; and
- (c) Whether the action, inaction, or determination of DCHA is in accordance with applicable federal and local law, including applicable HUD and DCHA regulations and the HCVP Administrative Plan.

8906.2 The proposed decision shall include, the following:

- (a) A brief reasoned decision including an assessment of the factual basis and explanation of the legal reasoning in support of the decision;
- (b) If the decision involves money owed, the amount owed;
- (c) A review of the calculation of any monies owed;

- (d) The effective date of the decision;
- (e) The implementation date for any actions ordered to be taken by either of the parties;
- (f) The parties' rights to request a final decision from the Executive Director; and
- (g) The time limit and procedure for filing a request for the Executive Director to make a final decision.

8906.3 A copy of the proposed decision shall be provided by the hearing officer to the participant or applicant, and their representative, if any, with a copy to the Director of the Housing Choice Voucher Program and the counsel representing DCHA

8906.4 The proposed decision will become final on the tenth (10th) day following the postmark of the proposed decision unless one of the parties has submitted a written request to the Executive Director requesting the Executive Director to reconsider the proposed decision before issuing a final decision and stating the basis for such review.

8906.5 The Executive Director will render a final written decision within fifteen (15) days of receipt of a written request under 8906.4 above, which final decision shall include DCHA's reasons for the final decision.

- (a) The final decision shall include notification that final decisions are not precedent setting for DCHA or the courts and cases thereafter taken to Superior Court of the District of Columbia are not an appeal of an administrative decision, are not based on the record of the informal hearing or review and are in all cases *de novo* without reliance on any proposed or final decision issued hereunder.
- (b) The Executive Director may modify or set aside, in whole or in part, the decision of the hearing officer which
 - (i) concerns a matter for which DCHA is not required to provide an informal hearing, or that otherwise exceeds the authority of the hearing officer, or
 - (ii) is contrary to applicable HUD regulations or requirements, or is otherwise contrary to federal or local law, including the provisions of Title 14 of the DCMR and the HCVP Administrative Plan.

8906.6 All requests for an informal hearing, supporting documentation and a copy of the proposed and final decisions shall be retained in the participant's or applicant's file.

8907 **INFORMAL HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS**

- 8907.1 Assistance to a family or applicant shall not be terminated based on immigration status at any time before receipt of a decision on the INS appeal except as hereinafter provided.
- 8907.2 Assistance to a family or applicant may not be terminated while the DCHA pre-hearing conference or informal hearing is pending.
- 8907.3 If a family member or applicant claims to be an eligible immigrant and the INS SAVE system and a manual search does not verify the claim, DCHA shall notify the participant or applicant within ten (10) days of his or her right to appeal to the INS within thirty (30) days or to request an informal hearing with DCHA either in lieu of or subsequent to the INS appeal.
- 8907.4 If the family or applicant appeals to the INS, it must give DCHA a copy of the appeal and proof of mailing, or DCHA may proceed to terminate assistance.
- 8907.5 The time period to request an appeal may be extended by DCHA for good cause.
- 8907.6 The request for a DCHA informal hearing must be made within fourteen days of receipt of the notice offering the informal hearing or, if an appeal was made to the INS, within fourteen (14) days of receipt of that notice.
- 8907.7 After receipt of a request for an informal hearing, the pre-hearing conference and/or informal hearing are conducted as described in Section 8904 for participants or applicants.
- 8907.8 If DCHA decides that the applicant or participant is not eligible, and there are no other eligible family members, DCHA shall:
- (a) Defer termination if the family is a participant and qualifies for deferral; or
 - (b) Terminate the participant if the family does not qualify for deferral.
- 8907.9 If there are eligible members in the family, DCHA shall offer to prorate assistance or give the family the option to remove the ineligible members.
- 8907.10 For other complaints related to eligible citizen/immigrant status:
- (a) If any family member or applicant fails to provide documentation or certification as required by the regulations, that member is treated as ineligible.
 - (b) If all family members fail to provide documentation, the family shall be terminated.
 - (c) Participants whose termination is carried out after temporary deferral may not

request an informal hearing since they had an opportunity for an informal hearing before the termination.

- (d) Participants whose assistance is prorated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and informal hearing rights described above) are entitled to an informal hearing based on the right to an informal hearing regarding determinations of Tenant Rent and TTP.
- (e) Families terminated for fraud in connection with the non-citizens rule are entitled to an informal hearing in the same manner as terminations for any other type of fraud.

8908 DEFINITIONS

For purposes of Chapter 89, the following terms shall have the meanings ascribed:

- 8908.1 Applicant (Applicant Family) - refers to a family that has applied for admission to a program but is not yet a participant in the program.
- 8908.2 Family - A person or group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program.
- 8908.3 Good cause - is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family or applicant, including a verified illness or disability.
- 8908.4 Head of Household - The person who serves as the basis for income eligibility and rent determination as well as assumes legal responsibility for the household.
- 8908.5 Housing Quality Standards (HQS) - The HUD minimum quality standards for housing assisted under the tenant-based programs.
- 8908.6 Landlord - Landlord and Owner are used interchangeably.
- 8908.7 Participant (Participant family) - A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).
- 8908.8 Reasonable Accommodation - is defined at Chapter 74, Section 7400.2
- 8908.9 Tenant - the person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the

D.C. Register. Comments should be filed with the Office of the General Counsel, DCHA, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599. Copies of these proposed rules may be obtained from the DCHA at that same address.