

VILLAGE OF NYACK HOUSING AUTHORITY

Section 8 Informal Review; Informal Hearing & Administrative Review

I. INFORMAL REVIEW PROCEDURES FOR APPLICANTS

Preference Denials

If a preference is denied to an applicant, the applicant will be notified in writing of the specific reason for the denial and will be offered the opportunity for an informal meeting (not an informal review) with an employee of VNHA that is above the level of employee who made the decision.

Informal Review Procedures for Applicants

VNHA will give an applicant for the Section 8 program prompt notice of a decision denying assistance to the applicant. The notice will contain a brief statement of the reason(s) for the decision and will state that the applicant may request an informal review within ten business days of the denial and will describe how to obtain the informal review.

If an applicant does not appear for the scheduled informal review and has not requested a change in writing, the informal review will not be rescheduled. The applicant will be granted only one opportunity to reschedule an informal review. All informal reviews will be conducted within 30 days from the date of the notice.

When an Informal Review is Not Required

VNHA will not provide the applicant an informal review for following reasons:

1. a determination of family unit size under VNHA subsidy standards;
2. decision not to approve an extension or suspension of a voucher term;
3. decision not to grant approval to lease a unit under the program or to approve a proposed lease;
4. decision that a unit selected by the applicant does not comply with Housing Quality Standards (HQS), including reasons related to family size or composition;
5. general policy issues or class grievances; or
6. discretionary administrative determinations by VNHA.

Informal Review Process

A request for an informal review must be done in writing no later than the close of business, ten days from the date of the VNHA's notification of denial of assistance.

Applicants will be given an opportunity for an informal review of decisions denying assistance to the applicant. Reviews will be provided for applicants denied assistance before the effective date of the HAP contract. The exception is that when an applicant is denied assistance for citizenship or eligible immigrant status, the applicant is entitled to an informal hearing.

When it is determined that an applicant is ineligible for the program, the family will be notified of their ineligibility in writing. The notice will contain:

- the reason(s) they have been determined ineligible;
- the procedure for requesting a review if the applicant contests the decision; and
- the deadline or time limit for requesting a review.

When denying admission for criminal activity as shown by a criminal record, VNHA will give information to the applicant on the violations in question. However, it is not permissible for VNHA to provide the applicant with a copy of the information provided to VNHA by Microbilt Corp. The applicant will be given an opportunity to provide documentation from the jurisdiction in question stating that the information VNHA received is not correct, and there is no record of that activity in their jurisdiction.

Applicants will be provided the opportunity for an informal review for decisions denying :

- listing on the waiting list;
- issuance of a Voucher;
- participation in the program; and
- assistance under portability procedures.

Review Procedure

A request for an informal review must be received in writing by the close of the business day, no later than ten business days from the date of the notification of denial of assistance. The informal review will be scheduled within five business days from the date the request is received. The informal review will be conducted within 30 days from the notice of denial. The informal review will not be conducted by the person who made or approved the decision under review, nor a subordinate of such person. The review will be conducted by the VNHA Board's Tenant Selection Committee. The applicant will be given the option of presenting oral or written objections to the decision. Both the Section 8 representative and the family may present evidence and witnesses. The family may use an attorney or other representative to assist the family at its own expense. Any copies of documents requested by the applicant for the review will be supplied at the cost of .25 cents a copy. A notice of the review findings will be provided in writing to the applicant within fourteen days after the review. It will include the decision of the review

officer and an explanation of the reasons for the decision. All requests for a review, supporting documentation, and a copy of the final decision will be retained in the applicant's file.

Mitigating Circumstances for Applicants with Disabilities

When applicants are denied placement on the waiting list or their assistance is terminated, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

Examples of mitigating circumstances are:

- A person with a cognitive disorder may not have understood the requirement to report increases in income.
- A person may not understand the need to make regular repayments on a repayment agreement.

USCIS Determination of Ineligibility

If a family member claims to be an eligible immigrant and the USCIS SAVE system and manual searches do not verify the claim, the applicant will be notified within ten days of his/her right to appeal to the USCIS within thirty days or to request an informal hearing, either in lieu of or subsequent to the USCIS appeal. If the family appeals to the USCIS, they must provide us with a copy of the appeal and proof of mailing or VNHA may deny assistance. The time to request an appeal may be extended for good cause.

Restrictions on Assistance to Non-Citizens

Assistance to an applicant will not be delayed or denied if:

- on the basis of immigration status if the applicant, within all requirements and/or dates specified by Section 5.508 of program regulations, takes all necessary steps to provide required documentation;
- NHA has not completed primary and secondary verification of immigration documents submitted by the applicant in a timely manner;
- if the USCIS appeals process under Section 5.514 has not been completed;
- if the ineligible family member has left the household; or
- assistance to the applicant will be prorated;

Assistance to an applicant will be denied if:

- if a declaration of citizenship and eligible immigration status is not submitted by the date specified;
- USCIS primary and secondary verification does not support eligible immigration status of a family member;

- the applicant family does not pursue USCIS appeal or informal hearing rights; or
- USCIS appeal or informal hearing decisions are decided against the applicant or an individual family member.
-

Informal Review Regarding Citizenship Status

The request for a review from NHA must be made within 14 days of receipt of the notice offering the review; if an appeal was made to the USCIS, within fourteen days of receipt of that notice. The applicant will be notified that assistance will not be denied until the USCIS appeal process concludes but that assistance may be denied pending the informal hearing. After receipt of a request for an informal review, the hearing is conducted as previously described in this section. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members assistance the applicant will be denied.

Families denied for fraud for the non-citizens rule are entitled to a review or hearing in the same way as reviews for terminations for any other fraud.

II. INFORMAL HEARING PROCEDURES FOR PARTICIPANTS

Consideration of Circumstances

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

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

When a Hearing is Required

There is an opportunity for an informal hearing to consider whether the following decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and local policies:

1. determination of the family's annual or adjusted income, and using such income to compute the housing assistance payment;
2. determination of the utility allowance (if any) for tenant-paid utilities from the utility allowance schedule;
3. determination of the family unit size under the subsidy standards;
4. determination to terminate assistance for a participant family because of the family's action or failure to act; or

5. determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under this policy and HUD rules.

In cases described in items 4 and 5 above, the opportunity for an informal hearing will be given before housing assistance payments are terminated for the family under an outstanding HAP contract.

When a Hearing is Not Required

An opportunity for an informal hearing will not be provided for any of these reasons:

1. discretionary administrative determinations;
2. general policy issues;
3. establishment of the schedule of utility allowances;
4. determination not to approve an extension or suspension of a certificate or voucher term;
5. determination not to approve a unit or lease;
6. determination that an assisted unit does not comply with HQS.
7. determination that the unit is not in accordance with HQS because of the family size; or
8. determination by NHA to exercise or not exercise any right or remedy against the owner under a HAP contract.

NOTE: an informal hearing will be provided for a decision to terminate assistance for a breach of the HQS caused by the family

Notice to the Family

In the cases 1,2 &3 described in the Section above entitled "When a Hearing is Required," the family will be notified in writing they may ask for an explanation of the basis of VNHA's determination, and that if they don't agree with the determination, the family may request an informal hearing on the decision within ten business days of the notification.

In the cases 4 & 5 described in the Section above entitled "When a Hearing is Required", VNHA will give the family prompt written notice that the family may request a hearing. The notice will include

- a) A brief statement of reasons for the decision(s),
- b) State that if the family does not agree with the decision, the family may request an informal hearing on the decision,
- c) State the deadline for the family to request and informal hearing, and
- d) State how to request the informal hearing.

The hearing procedures will be provided in the briefing packet. The participant family will only be given one opportunity to reschedule an informal hearing. The informal hearing will be conducted within 60 days from the notice.

Hearing Procedures

VNHA and participants will adhere to the following policies and procedures:

1. Discovery

- a. At least 14 calendar days before the hearing, the family will be given the opportunity to examine any documents that are directly relevant to the hearing. The family may copy any such documents at the family's expense. Any documents not made available for examination on request of the family may not be relied on at the hearing.
- b. VNHA will be given the opportunity, by the family, to review any documents that are directly relevant to the hearing at the office of VNHA at least 7 days prior to the hearing date. VNHA may copy the documents at their own expense prior to the hearing. If the family does not make the document(s) available for examination on the request of VNHA, the family may not rely on the document(s) at the hearing.

2. Representation of the Family

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

3. Hearing Officer

The hearing will be conducted by the Tenant Selection Committee (TSC) of the VNHA Board of Directors. The person who conducts the hearing will regulate the conduct in accordance with the hearing procedures.

4. Evidence

VNHA and the family will have the opportunity to present evidence and to question any witnesses.

5. Issuance of Decision

The TSC will issue a written decision within 14 calendar days from the hearing, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented.

6. Adjournment

Only one adjournment can be given by the VNHA and it is in the sole and absolute discretion of the VNHA hearing panel whether or not to grant an adjournment if so requested by the Grievant. Requests for adjournment must be in writing and either personally delivered to the VNHA or sent by certified mail, return receipt requested, or overnight mail, or recognized courier service, and must be transmitted to the VNHA and will be promptly forwarded to the hearing panel.

7. Other protocol

- a. When the Grievant attends the Hearing, the Grievant must be on time and prepared to proceed with the hearing.
- b. The Grievant should bring to the Hearing any written information and witnesses to support the Grievant's contentions.
- c. A Hearing will be held by a hearing panel comprised of at least three (3) members of the VNHA Board of Commissioners.
- d. The Tenant Selection Committee ("TSC") will be conducted by the Chair of the TSC.
- e. Any hearing will be governed by the regulations at 24 CFR _____ and applicable provisions thereof and the Procedures set forth herein.

8. Commencement of the Hearing

a. Opening the Hearing

The hearing will be conducted by the Tenant Selection Committee ("TSC") of the VNHA Board of Directors.

The Chair will be the Hearing Officer and will "open" the hearing by calling the hearing to order.

The Request for the Hearing by the Grievant will be entered into the "Record" as will the Recommendation of the VNHA. The contents will, if deemed appropriate by the Chair, be read into the record in full or in part. The Chair will advise that the proceedings are being recorded and may, if applicable, provide the record for court or legal action.

The Grievant will be given the opportunity to make an opening presentation which should be a short summary of the facts that the Grievant wishes the Board to consider.

An Opening presentation will be made by the VNHA. The statements shall not be longer than 5 minutes for each of the VNHA and the Grievant.

b. *The Hearing*

All witnesses will be “sworn in” or required to “affirm” the truth of their testimony. Other than the parties, all witnesses will be excluded from the hearing room until their turn to testify.

The Grievant has the opportunity to present witnesses and documents in support of its objection to the VNHA’s proposed determination or finding or action.

The Grievant will introduce any documents it believes relevant in support of its position. The documents will either be read aloud or summarized by the Grievant. A copy of the documents will be provided to the VNHA.

After the conclusion of the testimony of the Grievant or witness, the VNHA shall have the opportunity to cross examine the witness or the Grievant. After cross-examination, there will be one opportunity for rebuttal and cross rebuttal strictly limited to the preceding testimony and documents.

The VNHA will then present the facts, testimony and documents to support its proposed determination or action.

The VNHA will introduce any documents it believes relevant to support its position. The documents will either be read aloud or summarized by the VNHA. A copy of the documents will be provided to the Grievant.

After the conclusion of the testimony by individual witnesses for the VNHA, the Grievant will be given the opportunity to Cross-Examine each witness. Cross Examination will follow the testimony of each witness. Cross Examination will be limited to the testimony and documents provided. There will be one opportunity for rebuttal and cross rebuttal strictly limited to the preceding testimony and documents.

Only documents relevant to the issues will be admissible and considered.

If the board anticipates many witnesses wishing to testify, it may want to limit the time for each witness’ testimony. Limiting statements to 3-5 minutes encourages witnesses to be focused and direct and permits more people to testify. Provisions may

be made so extra time may be given, should the board consider it necessary.

The Chair should call the witnesses in the order requested by the VNHA and Grievant.

When a witness testifies, it is the Chair's responsibility to prevent the witness from straying too far from the subject, and to remind the witness to speak clearly or to speak into the microphone. The Chair should instruct the witness to present his/her testimony to the board, not to the public. The Chair should also prevent others from interrupting the testimony.

The board members may want to ask questions of witnesses to clarify facts and opinions in their testimony. Members of the public, if allowed to attend the particular hearing, may not question witnesses at the hearing nor may they participate in the Hearing. The Chair may direct any person who creates a disturbance to leave the hearing.

After the VNHA has presented its case, it ends its case and states "nothing further."

The Grievant may then present rebuttal witnesses and then the VNHA may present rebuttal witnesses.

The rebuttal witnesses shall be the final presentation of witnesses and documents.

The testimony and document presentation portion of the hearing shall then be closed by the Chair.

c. Conclusion of the Hearing

Upon the closing of the hearing, the VNHA shall be entitled to make a closing statement of no more than 5 minutes and thereafter, the Grievant shall be entitled to make a closing statement of no more than 5 minutes.

The Chair will then formally close the hearing.

Post - Hearing Procedure

The Board of Commissioners will issue a written decision within 14 calendar days from the date of the closing of the Hearing, which will be sent by regular mail to

both the tenant and the tenant's representative, stating briefly the reasons for the decision. Factual determinations relating to the issues at the hearing or the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

Effect of the Decision

The Section 8 Program is not bound by a hearing decision:

- concerning a matter for which the program does not have to provide an opportunity for an informal hearing under this section, or
- contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

If the Section 8 Program determines that it is not bound by a hearing decision, the family will be notified within 14 calendar days of the determination and of the reasons for the determination.

III. Mitigating Circumstances for Participants with Disabilities

When the assistance is terminated, the family will be informed that presence of a disability may be a mitigating circumstance during the informal hearing process.

Examples of mitigating circumstances are:

- a person with a cognitive disorder may not have understood the requirement to report increases in income;
- a person may not understand the need to make regular repayments on a promissory note; or

IV. Hearing Provisions for Restrictions on Assistance to Non-Citizens

Assistance to a participant will not be terminated:

1. on the basis of immigration status if the participant, within all requirements and/or dates specified by Section 5.508 of program regulations, takes all necessary steps to provide required documentation;
2. if the NHA did not completed primary and secondary verification of immigration documents submitted by the participant in a timely manner;
3. if the USCIS appeals process under Section 5.514 has not been completed;
4. if the ineligible family member has left the household;
5. if assistance to the participant will be prorated;
6. if assistance for a mixed family is continued under Sections 5.514 and 5.518 of program regulations;
7. if the NHA deferred termination of assistance under Sections 5.516 and 5.518 of program regulations.

Assistance to a participant will be terminated if:

1. a declaration of citizenship and eligible immigration status is not submitted by the date specified;
2. USCIS primary and secondary verification does not support eligible immigration status of a family member;
3. the participant family does not pursue USCIS appeal or informal hearing rights; or
4. USCIS appeal or informal hearing decisions are decided against the participant or an individual family member.

V. USCIS Determination of Ineligibility

If a family member claims to be an eligible immigrant and the USCIS SAVE system and manual search do not verify the claim, the participant will be notified the participant within ten days of his/her right to appeal to the USCIS within 30 days or to request an informal hearing with VNHA, either in lieu of or subsequent to the USCIS appeal. If the family appeals to the USCIS, it must provide VNHA with a copy of the appeal and proof of mailing or VNHA may proceed to deny assistance. The time period to request an appeal may be extended by VNHA for good cause.

VI. Informal NHA Hearing re: USCIS Determination

The request for a VNHA hearing must be made within 10 days of receipt of the notice offering opportunity for the hearing or, if an appeal was made to the USCIS, within 14 days of receipt of that notice. The participant will be notified that assistance will not be terminated until the USCIS appeal process concludes. After receipt of a request for an informal hearing, the hearing is conducted as previously described in this section. If the hearing officer decides that the individual is not eligible and there are no other eligible family members, VNHA will:

- defer termination if the participant family qualifies for deferral; or
- terminate the participant if the family does not qualify for deferral.

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be terminated for failure to provide. Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination. Participants whose assistance is pro-rated (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 hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of tenant rent and Total Tenant Payment. Families terminated for fraud for the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other fraud.

VII. Administrative Reviews

It is the practice of the VNHA board to require all complaints and/or request for an informal review or hearing first be reviewed by the Executive Director.

Upon receipt of any complaints and/or request for an informal review or informal hearing the Executive Director will notify the Grievant within 7 calendar days of this practice and provide directions to proceed with the process.

The administrative review must be completed within 14 calendar days from the Grievant's notification to move forward with an administrative review. Upon completion of the Administrative Review, the Executive Director will notify the Grievant in writing of the determination, the reason for the determination, and if the Grievant is not satisfied with the determination, he/she may move forward with the complaint, informal review, or informal hearing.

VIII. Complaints

- **Complaints from participants or applicants:** If a participant family disagrees with an action or inaction by a representative of NHA or owner, complaints will be referred to the Executive Director of the representative (unless that is the same person who the complaint was lodged against) for an administrative review. If a complaint is not resolved, the family may be referred to the VNHA Board of Directors for resolution. The Executive Director will inform the Board in writing of any unresolved complaints prior to referring participant to the board for review.
- **Complaints from owners:** If an owner disagrees with an action or inaction of the VNHA representative or the family, complaints from the owners will be referred to the Housing Manager.
- **Complaints from staff:** If a staff person reports an owner or family either violating or not complying with program rules, the complaint will be referred to Executive Director for resolution.
- **Complaints from the General Public:** Complaints or referrals from persons in the community regarding the Section 8 Program, a family or an owner will first be referred to the Executive Director. If a complaint is not resolved, it may be referred to the VNHA Board of Directors for review and ultimate resolution.

IX. Definitions

Grievance: (1) Any dispute which an applicant or participant (as defined herein) may have with respect to any VNHA action; or (2) any claimed VNHA failure to act in accordance with the Section 8 Regulations or the law; (3) any VNHA action which adversely affects the individual applicant or participant's rights or privileges; or (4) an administrative denial

of an application for admission to Section 8 Housing Choice Voucher Program.

Participant: "Participant" will include any participant in the Section 8 Housing Choice Voucher Program administered by the VNHA. The term "participant" is used interchangeably with "family" .

Applicant: "Applicant" shall include any person that has applied to be considered for the Section 8 Housing Choice Voucher Program as defined above who has requested review of a determination as provided herein.

Service of the Notice: Written notice to the Tenant or the VNHA will be deemed as received on the third day after transmittal by hand delivery to the VNHA or by recognized overnight courier service or on the fifth day after mailing by regular and certified mail, return receipt requested, postage prepaid. Failure to accept the copy of the notice from the recognized courier service or the certified mail will not be effective to extend the time of the receipt of the notice which will be deemed served as set forth hereinabove.

Notice: A written statement by the VNHA or the applicant or participant.

VH: Voucher Holder

VNHA: Village of Nyack Housing Authority