

CHAPTER 8. APPEAL PROCESS

8-1 Scheduling the Appeal

- A. In the event of a determination by HUD not to accept assignment of a mortgage, the borrower must contact the Field Office either in person, in writing, or by telephone within 15 days of the date of the Field Office Negative Decision Letter (Appendix A, ASGN-16).
- B. The appeal conference must be conducted within 25 days of the date of the negative decision letter.
- C. The Field Office may insist that the appeal conference be held during normal business hours; otherwise, the borrower may set the time.
- D. The Field Office may hold a conference at a mutually agreed upon location if the borrower is unable to travel to the Field Office.

8-2 Telephone and Mail-in Appeals

- A. If the borrower wants to hold the appeal conference by telephone or mail, HUD must inform the borrower that he or she would thereby lose his or her right to a face-to-face conference and secure confirmation of the borrower's decision in writing so that it is received by a specified date. A "note to the file" must be written to record that HUD so informed the borrower.
- B. HUD, at its expense, must arrange teleconferencing if needed.

8-3 Pre-Appeal Conference Responsibilities

- A. The Field Office MUST confirm in writing to the borrower the time (if held by telephone or face-to-face) and place of the conference.
- B. If the conference is by mail-in, the Field Office must confirm in writing the date (postmark date) by which the borrower must mail information to appeal the negative decision.
- C. The Field Office must NOT request additional documentation unless it had been requested previously in the Field Office Appeal Confirmation Letter (Appendix A, ASGN-17).
- D. Use the conference confirmation letter in Appendix A, ASGN-17 as a guide for the letter to the borrower.
- E. When a borrower calls to arrange a conference, the Field Office MUST tell the borrower of his or her right to examine the case file.

If the borrower requests a telephone or mail-in conference or is

ill, cares for a family member with a disability, or lives a considerable distance from the Field Office, the Field Office may copy the case file and mail it to the borrower.

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NOTE: The credit report may be copied and placed in the duplicate case file for review by the borrower.

8-4 Conducting the Appeal Conference

A. Participants

1. An attorney, HUD-approved housing counseling agency, or other party may represent the borrower. The borrower must designate his or her representative in writing if the borrower cannot attend or participate or if the conference is being held by telephone.
2. All co-borrowers may attend.
3. The borrower may bring persons knowledgeable of the borrower's circumstances, but HUD may exclude these people from the conference until their input is needed.
4. The Field Office counsel may be included if an attorney represents the borrower.
5. The HUD representative at the appeal conference may be of equal or higher rank than the individual who made the assignment decision. Whenever possible, the HUD representative at the appeal conference generally should be a different person than the one who reviewed the case initially.

B. Procedure

1. The appeal conference should be informal with no rules of procedure or evidence.
2. The borrower should be asked to state his or her position and present documentary materials.
3. Witnesses should be heard.
4. The discussion should be confined to criteria not met and avoid references to payment plans or lump sum payments.

C. Documentation of Appeal. Document the following information for the case file using the Field Office Appeal/Payment Plan Conference Log, form HUD-92201:

- 1.Names of all participants
- 2.Date and site of conference
- 3.All significant new information introduced at the appeal conference.

If the borrower introduces new information at the appeal conference which, if true, would affect the final decision, the Field Office must grant the borrower a reasonable amount of time to document the new information.

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NOTE:If it is learned at the appeal conference that the borrower failed to meet a criteria other than the criteria identified as not met in the negative decision letter, issue an amended negative decision letter citing all criteria not met. Borrower will then have the opportunity for a second appeal.

8-5Failure to Appear. If the borrower fails to appear for a scheduled conference and fails to reschedule or in the case of a mail-in conference fails to provide information within 25 days of the date of the negative decision letter (Appendix A, ASGN-16), the original decision is affirmed. The Field Office must:

A.Notify the lender and borrower of the decision using the Letter to Lender Terminating Assignment Evaluation (Appendix A, ASGN-12). Do not issue this letter until the 25 days have elapsed.

B.Close out the case as "Not Appealed" in the Automatic Assignment Processing System.

C.If a "good cause" is shown, the case should be handled according to paragraph 9-3.

8-6 Final Appeal Decisions

A.Activities relating to final appeal decision

1.The Loan Specialist must review the material presented at the conference and all other material in the case file.

2.The Loan Specialist must evaluate each criterion separately and document the findings on the Analysis and Documentation of Assignment Eligibility Criteria, form HUD-92209, "Appeal Decision" column.

3.Supervisory staff must review the case file to ensure that the Loan Specialist considered all facts and objectively

evaluated all criteria. See paragraph 2-6B for guidance in overturning a final decision.

B. Positive appeal decision notification. If, after the appeal conference, the Field Office determines that the borrower qualifies for assignment, the Field Office must:

1. Notify the borrower using the positive decision letter format in Appendix A, ASGN-14. Enclose a forbearance agreement for the borrower to sign and return with a pre-addressed envelope (see paragraph 7-1A).

2. Notify the lender of the decision using Appendix A, ASGN 15. (This letter also instructs the lender to assign the mortgage promptly.)

3. Refer to paragraph 9-9 for guidance on assigning mortgages.

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4. If the borrower has filed a bankruptcy petition and the automatic stay is in effect see paragraph 9-8 for assignment processing guidelines.

C. Post appeal negative decision notification. If, after the appeal, the Field Office determines that the borrower does not qualify for assignment, the Field Office must:

1. Notify the borrower immediately using the post-appeal negative decision letter format in Appendix A, ASGN-18. The letter must:

a. State the date of default in the subject line and in the body of the letter

b. State verbatim the criterion(a) not met

c. Explain the facts and reasoning used to determine the criterion(a) not met. Relate the facts to the criterion(a)

2. Send a copy of this letter to the lender along with instructions to proceed with foreclosure. (Post-Appeal Negative Decision Letter to Lender, (Appendix A, ASGN-19)).

3. Close out the case in the Automated Assignment Processing System.

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