

CHAPTER 9. APPEALS

9-1. Appeal To INS. ['812.9(e); 950.310(n); 912.9(e)]

- a. Submission of request for appeal. Upon receipt of notification that INS secondary verification failed to confirm eligible immigration status, the HA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the HA's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the HA with a copy of the written request for appeal and proof of the mailing. For good cause shown, the HA shall grant the family an extension of the time within which to request an appeal.
- b. Documentation to be submitted as part of the appeal to INS. The family shall submit the following to the designated INS office for appeal to INS decision:
 - (1) Copy of original Form G-845S received from INS annotated at the top center in bold print: HUD APPEAL.
 - (2) Include two stamped envelopes, one addressed to the applicant or tenant family and one addressed to the HA.
 - (3) Attach any and all documentation available to support the reason or basis for the appeal. This should include legible copies of both sides of the document. Failure to submit legible copies may result in a delay in the appeal process.
- c. Result of INS Appeal.
 - (1) When result will be issued. The INS will issue the results of the appeal to the family, with a copy to the HA, within 30 days of its receipt. If, for any reason, the INS is unable to issue a response within the 30-day time period, the INS will inform the family and the HA of the reasons for the delay.
 - (2) Notification of INS's findings and of the HA's informal hearing procedures. When the HA receives a copy of the INS response, the HA shall notify the family of its right to request an informal hearing on the HA's ineligibility determination in accordance with the procedures of paragraph 9-2.

Note: The INS response will be indicated in Section B of Form G-845S, Document Verification Request, which is returned to the family and HA. The INS response will be indicated in Section B by a mark in one of the following boxes: 1, 2, 5, 6, 8, 11, 12, 15, or 18.

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- d. No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS. Pending the completion of the INS appeal under this paragraph, assistance may not be delayed, denied or terminated on the basis of immigration status.

9-2. Informal Hearing With HA. ['812.9(f); 950.310(o); 912.9(f)]

- a. When request for hearing is to be made. After notification of the results of the INS appeal, or in lieu of request of appeal to the INS, the family may request that the HA provide a hearing. This request must be made either within 14 days of the date the HA mails or delivers the notice under paragraph 8-4, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph 9-1 (established by the date of the postmark).
- b. Extension of time to request hearing. The HA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.
- c. Informal hearing procedures.
 - (1) For tenants, the procedures for the hearing before the HA are set forth in 24 CFR '812.9 for Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation; 24 CFR '950.340 for Native American programs; and 24 CFR Part 966 for public housing.
 - (2) For applicants, the procedures for the informal hearing before the HA are as follows:
 - (a) Hearing before an impartial individual. The applicant shall be provided a hearing before any person(s) designated by the HA (including an officer or employee of the HA), 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;
 - (b) Examination of evidence. The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the HA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;
 - (c) Presentation of evidence and arguments in support of eligible immigration status. The applicant shall be provided the opportunity to present evidence and arguments in support of eligible immigration status.

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Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

- (d) Controverting evidence of the project owner. The applicant shall be provided the opportunity to controvert evidence relied upon by the HA and to confront and cross-examine all witnesses on whose testimony or information the HA relies;
- (e) Representation. The applicant shall be entitled to be

represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

- (f) Interpretive services. The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or HA, as may be agreed upon by both parties;
- (g) Hearing to be recorded. The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required, to be provided by the HA); and
- (h) Hearing decision. The HA shall provide the family with a written final decision based solely on the facts, presented at the hearing within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

9-3. Judicial Relief. A decision against a family member under the INS appeal process or the HA informal hearing, issued in accordance with paragraphs 9-1 or 9-2, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures. ['812.9(g); 950.310(p); 912.9(g)]