

TITLE 7 - AGRICULTURE

PART 1944 - HOUSING

Subpart L - Farmers Home Administration Tenant Grievance and Appeals
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Exhibit A - SUMMARY OF MEETING

PART 1944 - HOUSING

Subpart L - Farmers Home Administration Tenant Grievance and Appeals Procedure

§1944.551 Purpose.

The purpose of this subpart is to set forth uniform requirements for grievance and appeals procedures in all rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects financed by the Farmers Home Administration (FmHA) under Sections 514, 515, and 516 of the Housing Act of 1949. The objective of this subpart is to ensure the fair treatment of persons residing in multiple family projects while providing for an equitable manner by which borrowers can operate, maintain, and safeguard housing projects. The right to appeal under this subpart will also extend to persons who seek admission to the projects. (Revised 02-21-91, SPECIAL PN)

§1944.552 Definitions. (Revised 02-21-91, SPECIAL PN)

(a) Applicant. A person who has submitted an application for occupancy in a RRH, RCH, or LH project, and is not a tenant or member. This includes persons who have been denied an application for admission. (Revised 08-30-93, SPECIAL PN.)

(b) Borrower. The borrower (landlord) is the owner or the owner's authorized representative of a RRH, RCH, or LH project.

(c) Consumer cooperative. A corporation which (1) is organized under the cooperative laws of a State or Federally recognized Indian tribe; (2) will own and operate the housing on a cooperative basis solely for the benefit of the members; (3) will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with Subpart E to Part 1944 will not be considered gains or profits; and (4) will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

(d) Eviction. Dispossession of the tenant by judicial action pursuant to State or local law from a RRH or LH unit as a result of termination of the tenancy, including a termination before or at the end of the lease term.

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(Revision 2)

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(e) Grievance. A dispute which a tenant with the borrower's action, or failure to act, according to the lease and/or FmHA regulations which results or may result in denial, significant reduction, or termination of benefits (other than eviction by judicial action pursuant to State or local law).

(f) Hearing. An informal proceeding at which a tenant's grievance or appeal of a borrower's adverse action or decision, or an applicant's appeal of a rejected application, or denial of an application for admission is heard before an impartial hearing officer or hearing panel.

(g) Lease. The written agreement, approved by FmHA, between the borrower and tenant.

(h) Tenant. An eligible lessee/occupant of a RRH or LH project who has executed a lease agreement. For the purposes of this subpart, the term "tenant" will also mean "cooperative member."

(i) Termination of tenancy. The termination of the lease, either before or at the end of the lease term, as the result of material noncompliance with the terms of the lease, rules for occupancy, or violation of FmHA regulations applicable to conditions for occupancy.

§1944.553 Exceptions.

This Subpart does not apply to:

(a) Rent changes authorized by FmHA. Rent changes must be authorized by FmHA in accordance with the requirements of Exhibit C to Subpart C of Part 1930 of this chapter where tenants are provided an opportunity to provide comments to FmHA on a borrower's Notice of Proposed Rent Change.

(b) Discrimination complaints. Any tenant/member or prospective tenant/member seeking occupancy or use of RRH, RCH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital or familial status, handicap or national origin may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC, 20410, or any HUD office, or to the Secretary of Agriculture, Washington, D.C. 20250. If a complaint is made to an FmHA County, District or State Office, it must be directed to the Director of Equal Opportunity Staff, National Office, by the FmHA employee in

charge of that office. When a complaint is sent to FmHA-EOS by a county or district office, the State Director will be made aware of the complaint. (Revised 02-21-91, SPECIAL PN.)

(c) Projects in which an association of all tenants has been duly formed. In projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternate method of settling grievances, that method will be used.

(d) Changes in rules required by FmHA. Changes in rules required by FmHA in which proper notice and opportunity have been given according to law and the provisions of the lease.

(e) Notification of termination of tenancy and eviction. Notification of termination of tenancy and eviction is to be handled in accordance with paragraph XIV C of Exhibit B of Subpart C of Part 1930 of this Chapter and according to State or local law. (Revised 08-30-93, SPECIAL PN.)

(f) Termination of tenancy and eviction by judicial action as prescribed by State or local law. Termination of tenancy and eviction must be based on material violation of the lease terms or for other good cause as determined by the borrower or the project manager in accordance with paragraph XIV A of Exhibit B of Subpart C of Part 1930. The borrower shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of this Subpart.

(g) Disputes between tenants. This Subpart does not apply to disputes between tenants not involving the borrower.

(h) Displacement or other effects as a result of prepayment. This subpart does not apply to tenant displacement or other effects due to prepayment of the FmHA loan. Opportunities for tenant input into the prepayment process are outlined in Subpart E of Part 1965 of this chapter. (Added 08-20-93, SPECIAL PN.)

§1944.554 Reasons for grievance and appeal.

(a) Tenants. Grievance and appeal procedures provide a means for a tenant, in an FmHA financed rental project, to meet with a borrower and to obtain a hearing if the tenant has a grievance. This opportunity relates to a borrower's action, or failure to act, in accordance with the lease and/or FmHA regulations and results in a denial, significant reduction or, termination of benefits; or, when a tenant contests a borrower's notice of proposed adverse action as provided in §1944.555 (b) of this Subpart. This may include:

- (1) Failure to maintain the premises in such manner that provides decent, safe, and sanitary housing.
- (2) Violation of lease covenants and rules.
- (3) Modification of lease.
- (4) Rule changes.
- (5) Rent changes not authorized by FmHA according to Exhibit C of Subpart C of Part 1930 of this chapter.
- (6) Failure to maintain the premises according to State and local laws, statutes, or ordinances in effect at the date of final construction unless new or amended laws and ordinances are made retroactive to, or prior to, the date of final construction.
- (7) Denials of rental assistance.

(b) Applicant. Grievance and appeal procedure provides an appeal right for a person whose application for admission to occupancy in a RRH or LH project has been rejected, as well as for a person who has been denied an application for admission. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA regulations. (Revised 08-30-93, SPECIAL PN.)

§1944.555 Settlement of grievances and appeals.

(a) General. Borrowers and applicants/tenants are encouraged to attempt to settle disputes through informal meetings without resorting to the hearing process further described in this Subpart.

(b) Notice to applicant/tenant. In the case of a borrower's proposed adverse action including denial of admission to occupancy, the borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant, giving specific reasons for the proposed action. The notice must also advise the applicant or tenant of the right to respond to the notice within 10 calendar days after receipt, in accordance with paragraph (c) of this Section and of the right to a hearing in accordance with §1944.556 of this Subpart. In projects where there is a concentration of non-English speaking

individuals, the notice must also be in the non-English concentration language, when necessary, for the tenant's understanding.

(c) Presentation of grievances or responses to notice of proposed adverse actions. If the adverse action cannot be resolved otherwise, the applicant/tenant shall personally present to the borrower or borrower's designee any grievance or response, either orally or in writing, within 10 calendar days after occurrence of the grievance or receipt of a notice of proposed adverse action. If requested, the borrower shall meet with the tenant within 5 working days of the request in an attempt to resolve the grievance. The meeting shall be informal and the borrower shall be responsible for keeping appropriate notes relative to the meeting. If the grievance is not resolved to the applicant's/tenant's satisfaction, the borrower shall prepare a summary of the problem, including the borrower's position, the applicant's/tenant's position, and the results of the meeting (Exhibit A of this Subpart must be used as the format for the summary) within 10 calendar days after the informal meeting. Two copies of the summary must be given to the applicant/tenant, one retained in the borrower's files and one sent to the District Director.

§1944.556 Procedure for obtaining a hearing.

(a) Request for hearing. If the applicant or tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after receipt of the summary of any informal meeting. The written request must specify:

- (1) The reasons for the grievance or contest of the borrower's proposed action, and
- (2) The action or relief sought.

(b) Selection of hearing officer or hearing panel. In order to properly evaluate grievances and appeals, the borrower and tenant shall select a hearing officer or hearing panel. The hearing officer shall be an impartial, disinterested person selected jointly by the borrower and

the tenant. If the borrower and the tenant cannot agree on a hearing officer, they shall each appoint a member to a hearing panel and the members so selected shall select a third member. If within 30 days from the date of the request for a hearing the tenant and borrower, or their designee, have not agreed upon the selection of a hearing officer or hearing panel, the borrower shall notify the District Director by mail of the facts of the matter. The District Director shall, within 10 working days of receipt of the letter, appoint a person to serve as the sole hearing officer. The District Director's selection of a hearing officer is final. The person selected by the District Director should not be an individual previously considered by the tenant or borrower. Members of the hearing panel or the hearing officer must be willing to render their services without compensation. The hearing officer or hearing panel has the authority to reverse the borrower's decision.

(c) Standing hearing panel. In lieu of the procedure set forth in paragraph (b) of this section for each grievance or appeal presented, a borrower may provide that a standing panel be organized for each project. Such a panel may be organized soon after initial rent-up or at any time in the case of existing projects. Such a panel will be selected and have a membership as follows:

(1) Standing panelist(s) of the tenants would be elected by a majority of the tenants. Either two alternates could be elected or three panelists of the tenants could be elected with equal status. The tenant, in this latter case, would designate one of the three tenant panelists to participate in the hearing. All tenants would be notified of the time, date, and purpose of the meeting to elect permanent hearing panelists at least two weeks before the appointed date. The notice must be conspicuously posted in the rental office and in each apartment building or structure. The meeting must be held at a place which is convenient and accessible to the tenants.

(2) Standing borrower panelist(s) selected by the borrower. One or two alternates may also be designated.

(3) A standing mutual panelist, to serve as the chair, selected by the other two persons or groups, including alternates, in which case each "group" gets one vote.

(4) All standing hearing panel members serve one year and may be re-elected. They must be willing to render their services without compensation.

(5) A panel for a hearing shall consist of 3 members, one tenant panelist, one borrower panelist and the chair.

RD Instruction 1944-L
§1944.556 (Con.)

(d) Examination of records. When the borrower has provided the applicant/ tenant with a notice of proposed adverse action, the borrower shall allow the tenant to have the opportunity, at a reasonable time before the hearing and, at the expense of the tenant, to examine and/or copy all documents, records, and regulations of the borrower which the borrower intends to use at the meeting unless otherwise prohibited by law.

(e) Scheduling of hearing. A hearing shall be scheduled to be held within 15 days after receipt of the tenant's request for a hearing at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(f) Escrow deposit. Provided the tenant's rental payments are otherwise current, an escrow deposit of rental payments may be used by the tenant in the case of a grievance involving a rent increase not authorized by FmHA, or if the borrower fails to maintain the property in a decent, safe, and sanitary manner. When an escrow deposit is used, the tenant shall deposit into escrow, when the rent is due, the amount required by the lease. The escrow deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel. The rent must be deposited in a federally insured financial institution or with a bonded independent agent. Failure to make timely escrow payments will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease. Receipts of deposit must be available for examination by the borrower or the borrower's designee.

(g) Failure to request a hearing. If the applicant/tenant does not request a hearing within the time provided by paragraph (a) of this section, the borrower's disposition of the grievance or appeal will become final.

§1944.557 Procedures governing the hearing.

(a) Subject to paragraph (b) of this section, the hearing will be an informal proceeding before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(b) The hearing must be structured so as to provide the basic safeguards for both the borrower and the tenant, which must include:

(1) The right of both parties to be represented by counsel or another person(s) chosen as their representative.

(2) The right of the applicant/tenant to a private hearing unless a public hearing is requested.

§1944.557 (b) (Con.) RD Instruction 1944-L

(3) The right of the applicant/tenant to present oral or written evidence and arguments in support of their grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies.

(4) The right of the borrower to present oral or written evidence and arguments in support of the decision, to refute evidence relied upon by the applicant/tenant, and to confront and cross-examine all witnesses on whose testimony or information the tenant relies.

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) At the hearing the applicant/tenant must present evidence that he/she is entitled to the relief sought, and thereafter, the borrower shall present evidence showing the basis of its action or failure to act against that which the grievance or appeal is directed.

(d) The hearing officer or hearing panel shall require that the borrower, the applicant/tenant, counsel and other participants or spectators conduct themselves in an orderly manner. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings, or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(e) If the applicant/tenant (or his/her representative) fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his or her right to a hearing under this Subpart. Both the applicant/tenant and the borrower shall be notified of the determination of the hearing officer or hearing panel.

§1944.558 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within 10 calendar days after the hearing. The written decision must be specific as to the facts presented which were the basis upon which the decision was rendered. Copies of the decision must be sent to the borrower, the applicant/tenant, and the FmHA District Director.

(b) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the District Director that the decision violates FmHA regulations. The notification of the District Director will specify the FmHA regulation that the decision violates. The hearing officer or hearing panel shall amend the decision to comply with the regulation(s) within 10 days of receipt of the notice. (However, the decision of the hearing officer or hearing panel does not preclude either party's right thereafter to seek judicial relief through the courts.)

RD Instruction 1944-L
§1944.558 (Con.)

(c) Upon receipt of written notification from the District Director that the decision is in compliance with FmHA regulations, the decision is binding upon the borrower and tenant, and the borrower and tenant shall take the necessary action, or refrain from any actions, necessary to carry out the decision.

§1944.559 Responsibilities of the FmHA District Director.

(a) The District Director shall assure that a copy of this Subpart is sent to each borrower with a requirement that the regulations be permanently posted in a conspicuous place for the information of tenants, such as the rental offices, laundry areas, activities rooms, or other places where it will be noticed by tenants. The District Director shall also require that the borrower maintain copies of this Subpart at all times for inspection by the tenants and FmHA upon request. The District Director shall assure that where there is a concentration of non-English speaking individuals, the regulation is made available in both English and the non-English concentration language.

(b) The District Director shall encourage the borrower and applicant/tenant to resolve grievances and appeals through informal discussion; however, upon receipt of a summary of informal discussion as required by §1944.555 (c) of this Subpart, the District Director shall immediately review the summary to ascertain that the applicant/tenant has received a copy of the summary and a copy of the procedures to obtain a hearing, if matters could not be resolved through informal discussion.

§§1944.560 - 1944.600 [Reserved]

oOo

SUMMARY OF MEETING

NAME AND ADDRESS OF BORROWER: _____

NAME AND ADDRESS OF PROJECT: _____

NAME AND ADDRESS OF COMPLAINANT: _____

SPECIFIC NATURE OF COMPLAINT: _____

DATE OF MEETING: _____

PARTICIPANTS IN MEETING:

DECISION AND SPECIFIC REASONS THEREFORE:

Borrower's Signature

I hereby acknowledge receipt of a copy of this summary and have been advised of my rights to use the attached procedures to obtain a hearing if I so choose.

TENANT'S ACKNOWLEDGEMENT: _____
Tenant's signature

oOo

PROCEDURES FOR OBTAINING A HEARING:

The following procedures may be used to obtain a hearing if you are not satisfied with the decision made as a result of our discussion on _____.
(date)

1. REQUEST FOR A HEARING. Send a written request for a hearing within ten days after you receive this notice to the project address shown in the summary. Indicate specifically (1) the reason for your grievance or challenge of our proposed action, and (2) the action or relief you seek.

2. SELECTION OF HEARING OFFICER OR HEARING PANEL. (Strike out paragraph not needed).

a) As you probably already know, a Standing Hearing Panel is available to conduct the hearing.

b) We need to meet soon after your request for a hearing is received to select a hearing officer/hearing panel.

3. SCHEDULING OF HEARING: The hearing will be scheduled to be held within 15 days after we receive your request for a hearing. It will be held at a time and place convenient for both of us. If we cannot agree on a time and place, the hearing officer/hearing panel will designate the time and place.

4. EXAMINATION OF RECORDS: You have the opportunity before the hearing to examine and, at your own expense, to copy all documents, records, and regulations that are relevant to the hearing unless otherwise prohibited by law.

5. PROCEDURES GOVERNING HEARING:

a) The hearing will be an informal proceeding before a hearing officer or hearing panel at which both parties will have an opportunity to present their sides of the dispute.

b) Both parties may be represented by legal counsel or another person of one's choice.

c) You have a right to a private hearing, unless you request a public hearing.

d) Both parties have the right to present evidence, arguments, and witnesses to support their sides of the dispute, to refute evidence relied upon by the other party, and to confront and cross-examine all witnesses.

e) A decision will be based solely and exclusively upon the facts presented at the hearing.

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(12-19-83) SPECIAL PN