

Hearing Procedure

Adopted from the SFHA Administrative Plan

15.0 Complaints, Informal reviews for applicants, and informal hearings for participants

15.1 Complaints

The SFHA will investigate and respond to complaints by participant families, owners, and the general public. The SFHA may require that complaints other than HQS violations be put in writing. Anonymous complaints are investigated whenever possible.

15.2 Informal Hearing for the Applicant

A. Informal Review for the Applicant

The SFHA will give an applicant for participation in the Section 8 Existing Program prompt notice of a decision denying assistance to the applicant. The notice will contain a brief statement of the reasons for the SFHA decision. The notice will state that the applicant may request an informal review within 10 business days of the denial and will describe how to obtain the informal review.

B. When an Informal Review is not Required

The SFHA will not provide the applicant an opportunity for an informal review for any of the following reasons:

1. A determination of the family unit size under the SFHA subsidy standards.
2. A SFHA determination not to approve an extension or suspension of a voucher term.
3. A SFHA determination not to grant approval to lease a unit under the program or to approve a proposed lease.
4. A SFHA determination that a unit selected by the applicant is not in compliance with HQS.
5. A SFHA determination that the unit is not in accordance with HQS because of family size or composition.
6. General policy issues or class grievances.
7. Discretionary administrative determinations by the SFHA.

C. Informal Review Process

The SFHA will give an applicant an opportunity for an informal review of the SFHA decision denying assistance to the applicant. The procedure is as follows:

1. The review will be conducted by any person or persons designated by the SFHA other than the person who made or approved the decision under review or a subordinate of this person.

2. The applicant will be given an opportunity to present written or oral objections to the SFHA decision.

3. The SFHA will notify the applicant of the SFHA's decision after the informal review within 14 calendar days. The notification will include a brief statement of the reasons for the final decision.

D. Considering Circumstances

In deciding whether to terminate assistance because of action or inaction by members of the family, the Housing Authority may consider all of the circumstances in each case, 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 who were not involved in the action or failure.

The Housing Authority 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 will not reside in the unit. The Housing Authority may permit the other members of a participant family to continue receiving assistance.

If the Housing Authority seeks to terminate assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the Housing Authority provides notice to the family of the Housing Authority determination to deny or terminate assistance. In determining whether to terminate assistance for these reasons the SFHA will consider evidence of whether the household member:

1. Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;
2. Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or
3. Is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.

E. Informal Review Procedures for Denial of Assistance on the Basis of Ineligible Immigration Status

The applicant family may request that the SFHA provide for an informal review after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. This request must be made by the applicant family within 30 days of receipt of the Notice of Denial or Termination of Assistance, or within 30 days of receipt of the INS appeal decision.

For applicant families, the Informal Review Process above will be utilized with the exception that the applicant family will have up to 30 days of receipt of the Notice of Denial or Termination of Assistance, or of the INS appeal decision to request the review.

15.3 Informal Hearings for Participants

A. When a Hearing is Required

1. The SFHA will give a participant family an opportunity for an informal hearing to consider whether the following SFHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations, and SFHA policies:

- a. A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
- b. A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the SFHA utility allowance schedule.
- c. A determination of the family unit size under the SFHA subsidy standards.
- d. A determination that a Voucher Program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the SFHA subsidy standards, or the SFHA determination to deny the family's request for an exception from the standards.
- e. A determination to terminate assistance for a participant family because of the family's action or failure to act.
- f. A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under the SFHA policy and HUD rules.
- g. Denial of Assistance on the Basis of Ineligible Immigration Status.

2. In cases described in paragraphs 15.3(A)(1)(d), (e), and (f), of this Section, the SFHA will give the opportunity for an informal hearing before the SFHA terminates housing assistance payments for the family under an outstanding HAP contract.

B. When a Hearing is not Required

The SFHA will not provide a participant family an opportunity for an informal hearing for any of the following reasons:

1. Discretionary administrative determinations by the SFHA.
2. General policy issues or class grievances.
3. Establishment of the SFHA schedule of utility allowances for families in the program.
4. A SFHA determination not to approve an extension or suspension of a voucher term.
5. A SFHA determination not to approve a unit or lease.
6. A SFHA determination that an assisted unit is not in compliance with HQS. (However, the SFHA will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family.)
7. A SFHA determination that the unit is not in accordance with HQS because of the family size.
8. A determination by the SFHA to exercise or not exercise any right or remedy against the owner under a HAP contract.

C. Notice to the Family

1. In the cases described in paragraphs 15.3(A)(1)(a), (b), and (c), of this Section, the SFHA will notify the family that the family may ask for an explanation of the basis of the SFHA's

determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

2. In the cases described in paragraphs 15.3(A)(1)(d), (e), and (f), of this Section, the SFHA will give the family prompt written notice that the family may request a hearing within 10 business days of the notification. The notice will:

a. Contain a brief statement of the reasons for the decision; and
b. State this if the family does not agree with the decision, the family may request an informal hearing on the decision within 10 business days of the notification.

3. In the event that a Notice of Decision to Propose Termination is issued, a presumption of innocence will be invoked and the tenant will continue to receive assistance until a final decision is made by the Hearing Officer or Appeal Officer. However, in the interest of not burdening a prospective owner, the tenant will not be permitted to transfer to another unit until the final hearing decision is made by the hearing officer or the Appeal Officer.

The Administrator reserves the right to review requests to move on a case by case basis to assess whether a safety or financial hardship matter is requiring a move.

D. Hearing Procedures

The SFHA and participants will adhere to the following procedures:

1. Discovery

a. The family will be given the opportunity to examine before the hearing any SFHA documents that are directly relevant to the hearing. The family will be allowed to copy any such document at the family's expense. If the SFHA does not make the document(s) available for examination on request of the family, the SFHA may not rely on the document at the hearing.

b. The SFHA will be given the opportunity to examine, at the SFHA's offices before the hearing, any family documents that are directly relevant to the hearing. The SFHA will be allowed to copy any such document at the SFHA's expense. If the family does not make the document(s) available for examination on request of the SFHA, the family may not rely on the document at the hearing.

Note: The term document includes, but is not limited to, writings, photographs, emails, audio recordings, and records and regulations. Representation of the Family

The family has the right to be represented or assisted by an attorney or any other person. The family will bear the expense of such representation.

3. Hearing Officer

a. The hearing will be conducted by any person or persons designated by the SFHA, other than a person who made or approved the decision under review or a subordinate of this person.

b. The person who conducts the hearing will regulate the conduct of the hearing in accordance with the SFHA hearing procedures. Notwithstanding actual employees of the SFHA, the Hearing Officer will be an impartial third party who has no other contract obligations with the San Francisco Housing Authority (SFHA) or is otherwise engaged for services by the SFHA that would potentially pose a conflict of interest to the hearing officer's duties on behalf of the SFHA.

Conduct of Hearing

The SFHA and the family must have the opportunity to present evidence and may question any witnesses.

In hearings arising out of a proposed voucher termination, the SFHA has the initial burden of persuasion and must initially present sufficient evidence to establish the alleged violation of program rules. Once the SFHA makes its showing, the burden shifts to the family to produce evidence to contradict the violation or show relevant mitigating circumstances.

Factual determination made at an informal hearing shall be based on a preponderance of the evidence presented at the hearing. This means that, in order for either party to prevail, the hearing officer must be persuaded by the evidence, which includes witness testimony, that the facts presented by that party are more probably true than not true.

Evidence

All witnesses shall be asked to swear or affirm that the information they are about to provide is true.

All relevant evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Record of Hearing

The record of the hearing shall include the documentary evidence presented at the hearing and the recording or transcript of the proceedings (if a recording or transcript was used).

The record shall be closed at the conclusion of the hearing unless the hearing officer determines that it should remain open for a specified period of time for the receipt of additional documentary evidence. Any documentary evidence provided to the hearing officer after the hearing shall also be provided to the other party.

There will be a recording of the hearing in order to preserve the record. Copies of the recording will be made available to the family at a cost of \$5.00. The family may also bring, at their own expense, a recording device or court reporter, provided that the family notify the SFHA of their intent to do so and make a copy of the recording or transcript available to the SFHA.

Issuance of Decision

The hearing officer must issue a written decision within 14 calendar days from the date of the hearing, (or the date the record is closed, if later). The decision must be based on the record and must state briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing.

Effect of the Decision

The SFHA is not bound by a hearing decision:

- a. Concerning a matter for which the SFHA is not required to provide an opportunity for an informal hearing under this Section, or that otherwise exceeds the authority of the person conducting the hearing under the SFHA hearing procedures.
- b. Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State, or local law.
- c. If the SFHA determines that it is not bound by a hearing decision, the SFHA will notify the family within 14 calendar days of the determination, and of the reasons for the determination.

E. Considering Circumstances

In deciding whether to terminate assistance because of action or inaction by members of the family, the Housing Authority may consider all of the circumstances in each case, 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 who were not involved in the action or failure.

The Housing Authority 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 will not reside in the unit. The Housing Authority may permit the other members of a participant family to continue receiving assistance. The Housing Authority may terminate assistance or uphold the appeal and permit continued participation in the subsidy program. If the Housing Authority seeks to terminate assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the Housing Authority provides notice to the family of the Housing Authority determination to deny or terminate assistance. In determining whether to terminate assistance for these reasons the SFHA will consider evidence of whether the household member:

1. Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;
2. Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or
3. Is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.

The participant family may request that the SFHA provide for an informal hearing after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. This request must be made by the participant family within 30 days of receipt of the Notice of Denial or Termination of Assistance, or within 30 days of receipt of the INS appeal decision. For the participant families, the Informal Hearing Process above will be utilized with the exception that the participant family will have up to 30 days of receipt of the Notice of Denial or Termination of Assistance, or of the INS appeal decision.

F. Appeal Of Hearing Officer's Decision

In the event a participant wishes to appeal the hearing officer's decision, they must submit a written request for Administrative Review by the Executive Director or his designee along with all supporting documentation. The Administrative Review will not include another hearing. The decision of the Executive Director will be final.

- If your eligibility is denied and you would like an informal review, [click here](#) or make a request in writing and send it to the Office of the Ombudsman and Communications at the address provided below.
- If you are a participant in the Section 8 program and would like to request an informal review, [click here](#) or make a request in writing and send it to:

The San Francisco Housing Authority
Office of Ombudsman and Communications
Attn: Linda Martin
1815 Egbert Avenue, 3rd Floor
San Francisco, CA 94124