

Chapter 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits BHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and BHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

HUD also requires BHA to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and BHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the BHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the BHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

8-I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires the BHA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the BHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

BHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the BHA for review. BHA will review the restoration agreement for the following two elements only:

1. To ensure that the owner has presented a separate agreement, and
2. That no illegal side payments are included in the agreement.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

BHA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if BHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

BHA Policy

The following standards are added to HUD's HQS:

1. If the unit/property is secured by a gate, electronic control entry system or other devise that restricts access, said system must be maintained in proper working order..
2. The water heater must be properly strapped in accordance with California Health and Safety Code Section 19210-19217 to prevent it from failing in an earthquake
3. Water heaters must be braced (securely attached, bolted) to the studs in a wall. The pipes for water and gas connected to the water heater must be flexible. Methods for bracing water heaters include: (a) purchasing and installing a State Architect certified strap or bracing kit from your local hardware store; (b) having a licensed plumber

strap your water heater according to code; (c) using metal tubing or heavy metal strapping and lag screws and washers to secure the water heater to the wall studs. For a video on how to strap water heaters, visit the website of the Association of Bay Area Governments at: <http://quake.abag.ca.gov/residents/contents/>. Note: there are different recommendations based on whether the water heater is against a flat wall or in a corner.

4. Each unit shall have a permanently affixed heater/heating system (not portable) capable of heating the entire unit.
5. In addition to the Federal requirement of one smoke detector per floor, one smoke detector must be installed inside each bedroom (a missing or inoperable smoke in a bedroom is not cause for a 24-hour fail provided that there exists at least one smoke detector in the unit).
6. The property shall include a private mail box/slot for each unit.
7. Beginning July 1, 2011, every unit must have a carbon monoxide detector located on each level of the unit. Exception: none is required if both heating and cooking are powered by electricity rather than gas.
8. If the kitchen stove has no overhead vent, there must be a window with a screen in the kitchen area to allow for (a) proper venting while cooking and (b) inability for pests (such as flies) to enter the unit while ventilating the unit while cooking.
9. Definition of a bedroom. All rooms considered bedrooms must, at a minimum, must:
 - a. Be a “private” room, including four floor to ceiling walls, of at least 70 square feet in size
 - b. Be a room, by commonly accepted housing standards, intended to function as a bedroom
 - c. Have a door with no holes and open-able without use of a key
 - d. Have a ceiling height of at least 7 feet
 - e. Contain at least one window, lock-able if on first floor or access from street
 - f. Have a closet to store clothing and other belongings
 - g. Have two working electrical outlets or one working outlet, plus one working, permanently installed light fixture.
10. All doors leading to the exterior (except sliding glass doors) must be solid core.
11. All electrical outlets within 3 feet of accessible water in the bathroom or kitchen must be GFI outlets

Additionally, BHA may request evidence of permitted work done to reconfigure any room currently called a “bedroom” that was not previously a bedroom, if landlord requests that a room is recognized as a bedroom that does not comply with current definition.

BHA will use this definition when considering the Payment Standard and the utility allowance. Other rooms (e.g. a den used for sleeping) can be considered when determining if a unit is overcrowded.

Thermal Environment [HCV GB p.10-7]

BHA must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

BHA Policy

The heating system must be capable of operating when the exterior temperature is below 65 degrees Fahrenheit.

Additionally, all heaters must be operable by properly functioning thermostat, as opposed to need for opening a heating unit to ignite heater with a match or pressing an “on” switch/button within the unit, as these options may pose a safety hazard to the family.

Clarifications of HUD Requirements

BHA Policy

As permitted by HUD, BHA has adopted the following specific requirements that elaborate on HUD standards.

Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Windows

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be open-able without the use of a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be resecured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

8-I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires BHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life threatening conditions within 24 hours of BHA notification.

BHA Policy

The following are considered life threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire (including a missing cover plate or light fixture with no light bulb, if located within 6 feet of the floor)
- Absence of a working heating system when outside temperature is below 65 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Unit lacks at least one operable smoke detectors

If an owner fails to correct life threatening conditions as required by BHA, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life threatening condition as required by BHA, BHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless BHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice. Performance and/or payment for such repairs may only be undertaken by the family with prior approval of the owner, or as prescribed by state law.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If BHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, BHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from BHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and BHA will take action in accordance with Section 8-II.G.

BHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

If BHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, BHA must issue the family a new voucher, and

the family and BHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, BHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

BHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* BHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual Inspections.* HUD requires BHA to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be reinspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Inspection of BHA-owned Units [24 CFR 982.352(b)]

BHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a BHA-owned unit. A BHA-owned unit is defined as a unit that is owned by BHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by BHA). The independent agency must communicate the results of each inspection to the family and BHA. The independent agency must be approved by HUD, and may be the unit of general local government for BHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another public housing authority.

Inspection Costs

BHA may not charge the family or owner for unit inspections [24 CFR 982.405(e)]. In the case of inspections of BHA-owned units, BHA may compensate the independent agency from ongoing administrative fee for inspections performed. BHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

Notice and Scheduling

The family must allow BHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

BHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 48 hours (most likely in the case of a special or abate re-inspection); all other inspections shall be given 10-14 days notice. Inspections may be scheduled between 8:30 and 4:30 p.m. Generally inspections will be conducted on business days only. In the case of a life threatening emergency, BHA will give as much notice as possible, given the nature of the emergency. Emergency reinspections are to occur the day after the first emergency fail, unless that falls on a Friday, a weekend, or holiday. In that case, the emergency reinspection will occur on the following workday.

Owner and Family Inspection Attendance

HUD permits BHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

BHA Policy

When a family occupies the unit at the time of inspection an adult (over the age of 18) identified by the Head of Household must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, BHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

These appointments are subject to BHA's appointment policy.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Timing of Initial Inspections

HUD requires the unit to pass HQS (on or) before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

BHA Policy

BHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Reinspections

BHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the BHA for good cause. BHA will

reinspect the unit within 5 business days of the date the owner notifies BHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any BHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, BHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. BHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

A “passed” inspection can be utilized for a new Housing Assistance Payment Contract for a maximum of 60-days, provided the owner certifies in writing that the unit (a) has not been occupied, and (b) there is no change in any of the conditions since the date of the inspection.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

BHA Policy

All utilities must be placed in service at the time of initial inspection.

Appliances

BHA Policy

If the family is responsible for supplying the stove and/or refrigerator, BHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by BHA. BHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

8-II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)]

Scheduling the Inspection

Each unit under HAP contract must have an annual inspection no more than 12 months after the most recent inspection.

BHA Policy

There is no requirement for the head of household to be present for the inspection. BHA only requires that a person 18 years or older be present to allow access to the unit for inspection purposes.

If no person 18 or older can be present on the scheduled date, the family should request that BHA reschedule the inspection. BHA and family will agree on a new inspection date that generally should take place within 5 business days of the originally-scheduled date.

BHA may schedule an inspection more than 5 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, BHA will automatically schedule a second inspection. If the family misses two scheduled inspections without BHA approval, BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.D. SPECIAL INSPECTIONS [HCV GB, p. 10-30]

The BHA will conduct a special inspection if the owner, family, or another source reports potential HQS violations in the unit, so long as the household has given sufficient notice/time to allow for the owner to remedy the potential issue. In general two attempts to contact the owner, with no follow up by the owner to remedy will constitute the scheduling of a Special Inspection.

BHA Policy

During a special inspection, BHA generally will inspect only those deficiencies that were reported; confirm working smoke and carbon monoxide detectors; and any other life threatening conditions. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled BHA may elect to conduct a full annual inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]

HUD requires a BHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, BHA will determine whether or not the failure is a life threatening condition ("emergency" fail item).

BHA Policy

When life threatening conditions are identified, BHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the BHA's notice.

When failures that are not life threatening are identified, BHA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify the time frame within which the failure must be corrected. Generally not more than 28 days will be allowed for the correction.

The notice of inspection results will: (1) inform the owner that if life threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any BHA-approved extension), the owner's HAP will be abated in accordance with BHA policy (see 8-II.G.); (2) In the case of family caused deficiencies, inform the family that if corrections are not made within the specified time frame (or any BHA-approved extension, if applicable) the family's assistance will be terminated in accordance with BHA policy (see Chapter 12); (3) encourage the parties to cooperate in completing all the required repairs.

Extensions

For conditions that are life-threatening, BHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, BHA may grant an exception to the required time frames for correcting the violation, if BHA determines that an extension is appropriate [24 CFR 982.404].

BHA Policy

Extensions will be granted in cases where BHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.
- Notwithstanding proper notice, the family denies owner and/or owner agent access to the unit.

The request for an extension must be made at least 5 business days prior to the re-inspection date. The length of the extension will be determined on a case by case basis in 30 day increments, or up to 60 days as approved by management. Granted extensions will not exceed 60 days, except in the case of delays caused by weather conditions or other extreme circumstances such as major repairs requiring permits. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

If an extension has been granted and the fail item(s) have not been remedied upon re-inspection, the unit will automatically go into abatement.

Reinspections

BHA Policy

BHA will conduct a re-inspection immediately following the end of the corrective period, or any BHA approved extension.

Where 24-hour fail items are cited on the last work day of a week (or prior to a holiday), BHA may confirm correction of 24-hour fail items by oral or email confirmation from the owner and/or tenant, and verify the correction the next business day.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, BHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with BHA policies. If BHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

Self-Certification of Fail Items

As per HUD Notice 2012-15 *Streamlining Administrative Practices in the Housing Choice Voucher Program*, PHAs are allowed to accept an owner's certification, a receipt from a vendor, or a photo of the repair or tenant confirmation that required repairs are complete.

BHA Policy

BHA will accept self-certification for repaired fail items in the form of receipts from contractors performing repair work, photos, video.

1. BHA may accept self-certification from an owner provided there is no history of non-compliance by the owner and
 - a. The repair can be documented to BHA's satisfaction via a photo or receipt; or
 - b. The repair is documented via certification of the Building Official that work done under permit has been completed; or
 - c. The repair is documented via a written statement/receipt from the qualified contractor or repair person or licensed professional (i.e. exterminator) that performed the repair; or
 - d. There is evidence from a utility company that service has been restored, or an appliance (i.e. stove or heater) is functioning properly.

2. BHA will not accept self-certification of repairs:
 - a. That were cited in a unit with Project based assistance; or
 - b. That are emergency fail items; or
 - c. That are related to life-safety systems (smoke detectors and carbon monoxide detectors)

BHA reserves the right to require a re-inspection on any and all units with fail items, regardless of whether landlords submit self-certification documentation, and to deny the option of self-certification (and require a re-inspection) where any question remains regarding the integrity of the documentation provided, where there is not full documentation (i.e. fail items where no receipts or other evidence reflect repair), or where landlord/property has a repeated history of regular/repeat fails in the past.

8-II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, BHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by BHA, HUD requires BHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

BHA Policy

For life-threatening “emergency” fail items, BHA will abate HAP effective the day of a second 24-hour emergency fail.

For non-life-threatening fails, BHA will abate HAP effective the first of the month following the expiration of BHA specified correction period (including any extension).

BHA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective the day before the unit passes inspection as it is assumed the work was completed at least on the day before the scheduled inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination

BHA must decide how long any abatement period will continue before the HAP contract will be terminated. BHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. BHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

BHA Policy

The maximum length of time that a HAP may be abated is 180 days. However, if the owner completes corrections and notifies BHA before the termination date of the HAP contract, BHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by BHA is 30 days.

8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by BHA (and any extensions), BHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

No HAP contract can be approved until BHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law (CFR. 982.509).

This part explains the method used to determine whether a unit's rent is reasonable and in accord with Berkeley Rent Control, Measure P.

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-initiated Rent Determinations

BHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. BHA (or independent agency in the case of BHA-owned units) will assist the family with the negotiations upon request. At initial occupancy BHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

BHA Policy

After the initial occupancy period, the owner may request one rent adjustment during any 12 month period. For rent increase requests after initial lease-up, BHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to

other units on the premises BHA will consider unit size and length of tenancy in the other units.

BHA will respond within 15 business days of receiving the request from the owner.

1. If the rent requested does not exceed the applicable payment standard, BHA will approve or deny the request based on rent reasonableness.
2. If the rent requested exceeds the applicable payment standard:
 - a. BHA will give the owner an opportunity to modify (lower) the request to the applicable payment standard;
 - b. If the owner is unwilling to reduce the request, BHA will refer the case to the Rent Board for a rent ceiling determination.

If the unit is in failed HQS status, the rent adjustment will not be approved. All rent adjustments will be effective the first of the month following 60 days after BHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

BHA and HUD-Initiated Rent Reasonableness Determinations

HUD requires BHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct BHA to make a determination at any other time. BHA may decide that a new determination of rent reasonableness is needed at any time.

BHA Policy

In addition to the instances described above, the BHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) BHA determines that the initial rent reasonableness determination was in error; (2) BHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect; (3) the owner supplied amenities or services are significantly reduced.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires BHA to take into consideration the factors listed below when determining rent comparability. BHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting BHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give BHA information regarding rents charged for other units on the premises.

8-III.D. BHA RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

BHA Policy

BHA will require that every owner submit a “Unit Characteristics Form” and a minimum of three unassisted unit rent comparables for every Request for Tenancy Approval submitted, and every request for a rent increase.

BHA, while utilizing the GoS8 system for rent comparability, will require that the comps be updated at least semi-annually, more frequently if necessary.

BHA will also obtain semi-annual information from the Rent Stabilization Program showing the rents for new tenancies in the prior 6 month period for non-assisted rental units in the City of Berkeley.

How Rents are Determined

BHA Policy

BHA uses a unit-to-unit comparison, by which the rent for a unit proposed for HCV assistance is directly compared to the rents for one or more unassisted units selected as comparables within the same market area. Mapping technology used in the GoS8 system will be used to identify unsubsidized units in closest proximity to the subject unit, as well as amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

- Because units may be similar, but not exactly like the unit proposed for HCV assistance, BHA may make adjustments to account for these differences.

- The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).
- Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).
- The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rents units are presumed to have functioning roofs).
- When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \488 .

BHA will notify the owner of the rent BHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. BHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations.

BHA will further advise the owner when a requested rent, although determined reasonable, may trigger compliance with provisions of the City of Berkeley Rent Control Ordinance (i.e. the gross rent exceeds the applicable Payment Standard)..

The owner must submit any additional information within 5 business days of BHA's request for information or the owner's request to submit information.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
 - *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
 - *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
 - *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
 - *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- (6) *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

(9) *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.