

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 the SJCHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and SJCHA-established requirements.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS. HUD also requires SJCHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and SJCHA 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 SJCHA 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 SJCHA 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 Exhibit 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 SJCHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the SJCHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 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.

SJCHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the SJCHA for review.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

The SJCHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

The SJCHA 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.

SJCHA Policy

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements .

SJCHA Policy

As permitted by HUD, the SJCHA has adopted the following specific requirements that elaborate on HUD standards. The SJCHA adheres the acceptability criteria in the program regulations, HUD Inspection Booklet and local codes.

Walls

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

Any exterior or interior surfaces with peeling or chipping paint must be scraped and painted with two coats of unleaded paint or other suitable material.

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).

Any room used for sleeping must have an operable window.

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 openable 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 sinks must have functioning stoppers.

Toilets

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

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.

Owners are required to provide a smoke detector on each floor level (including the basement).

Bathroom

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

The sanitary facilities must be usable in privacy.

The bathroom must be located in a separate private room and have a flush toilet in working condition.

The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water.

Bedrooms

Each bedroom must have a window, either two electrical outlets or a single outlet, an overhead fixture, and a direct heat source.

If a basement sleeping room is proposed, in addition to the above, there must be two exits. One exit must open directly to the outside, either a door or a window with a five square foot area and no side less than twenty-two inches. The second exit may be a door leading up to the rest of the unit.

The minimum bedroom ceiling height must be seven feet six inches or local code, whichever is greater. Sloping ceilings may not slope to lower than five feet in a 70 square foot area.

8-I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a); FR Notice 1/18/17]

HUD requires the SJCHA 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 SJCHA notification.

SJCHA 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

A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled

Any electrical problem or condition that could result in shock or fire

A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed

A light fixture is hanging by its wires

A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit

A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed

An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses

A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections

Any nicks, abrasions, or fraying of the insulation that exposes conducting wire

Exposed bare wires or electrical connections

Any condition that results in openings in electrical panels or electrical control device enclosures

Water leaking or ponding near any electrical device

Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition

Absence of a working heating system when outside temperature is below 60 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

Any components that affect the function of the fire escape are missing or damaged

Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency

The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency

Absence of a functioning toilet in the unit

Inoperable or missing smoke detectors

Inoperable carbon monoxide detector (if in unit)

Missing, damaged, discharged, overcharged, or expired fire extinguisher (where required)

Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting

The chimney or venting system on a fuel-fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting or gases

A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside

A fuel-fired space heater is not properly vented or lacks available combustion air

A non-vented space heater is present

Safety devices on a fuel-fired space heater are missing or damaged

The chimney or venting system on a fuel-fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gas

Deteriorating paint as defined at 24 CFR 35.110 in a unit built before 1978 that is to be occupied by a family with a child under six years of age if it would prevent the family from moving into the unit

If an owner fails to correct life-threatening conditions as required by the SJCHA, the SJCHA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family-caused life-threatening condition as required by the SJCHA, the SJCHA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the SJCHA 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 appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in a breach of the HQS. "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.

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 ELEVATED BLOOD LEAD LEVEL [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]

If a SJCHA 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 six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the SJCHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation 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 environmental investigation report from the SJCHA, 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 the SJCHA will take action in accordance with Section 8-II.G.

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

8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.401, 24 CFR 982.403]

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded*.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One window
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If the SJCHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the SJCHA must issue the family a new voucher, and the family and SJCHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the SJCHA 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

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

- *Initial Inspections.* The SJCHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual/Biennial Inspections.* HUD requires the SJCHA to inspect each unit under lease at least annually or biennially, depending on SJCHA policy, 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 inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the HQS.

Inspection of SJCHA-Owned Units [24 CFR 982.352(b)]

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

Inspection Costs [Notice PIH 2016-05]

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

The SJCHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the SJCHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the SJCHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the SJCHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

SJCHA Policy

The SJCHA will charge owners a fee of \$50 on the 3rd re-inspection of a failed annual or bi-annual inspection. No fee will be charged for tenant caused damages or in the cases where the owner has a SJCHA approved extension to make repairs. All fees collected will be added to the SJCHA administrative fee reserves and maintained according to established HUD accounting rules.

Notice and Scheduling

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

SJCHA 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. Inspections may be scheduled between 9:00 a.m. and 5:00 p.m. Generally inspections will be conducted on business days only. In the case of a life-threatening emergency, the SJCHA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

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

SJCHA Policy

When a family occupies the unit at the time of inspection the SJCHA will conduct the inspection if either an adult family member or an owner's representative is present.

At initial inspection of a vacant unit, the SJCHA 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.

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

Initial Inspections [FR Notice 1/18/17]

The SJCHA may, but is not required to, approve assisted tenancy and start HAP if the unit fails HQS inspection, but only if the deficiencies identified are non-life-threatening. Further, the SJCHA may, but is not required to, authorize occupancy if a unit passed an alternative inspection in the last 24 months.

SJCHA Policy

The unit must pass the HQS inspection on or before the effective date of the HAP contract.

The SJCHA will not rely on alternative inspections and will conduct an HQS inspection for each unit prior to executing a HAP contract with the owner.

Timing of Initial Inspections

HUD requires SJCHAs 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 SJCHAs 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)].

SJCHA Policy

The SJCHA 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

SJCHA 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 SJCHA for good cause. The SJCHA will reinspect the unit within 5 business days of the date the owner notifies the SJCHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any SJCHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, the SJCHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The SJCHA 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 after the owner has made repairs, if they are unable to locate another suitable unit.

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.

SJCHA Policy

If utility service is not available for testing at the time of the initial inspection, the SJCHA will not inspect the unit.

Appliances [Form HUD-52580]

SJCHA Policy

If the family is responsible for supplying the stove and/or refrigerator, the SJCHA will not complete the inspection if appliances are not on and working.

8-II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]

SJCHA Policy

Each unit under HAP contract must be inspected biennially within 24 months of the last full HQS inspection. All new units will be inspected annually until the unit passes a full inspection without deficiencies and then will be placed on a biennial schedule. Annual inspections will be conducted on units that fail a full inspection for any reason until the unit passes without deficiencies and then will be placed on a biennial schedule. The SJCHA reserves the right to require annual inspections of any owner at any time.

The SJCHA will not rely on alternative inspection standards.

Scheduling the Inspection

SJCHA Policy

While not required, the SJCHA encourages an adult family member to be present during an inspection. If an adult family member cannot be present on the scheduled date, the family can request that the SJCHA reschedule the inspection. The family may also choose to give permission for the inspection to take place with only the owner's representative present. If a request to reschedule the inspection is made, the SJCHA and family will agree on a new inspection date.

If the family misses the first scheduled appointment without requesting a new inspection date, the SJCHA will automatically schedule a second inspection. If the family misses two scheduled inspections without SJCHA approval, the SJCHA 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 [24 CFR 982.405(g)]

If a participant or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the SJCHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the SJCHA must inspect the unit within 15 days of notification.

SJCHA Policy

During a special inspection, the SJCHA generally will inspect only those deficiencies that were reported. 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 the SJCHA 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 SJCHA 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, the SJCHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

SJCHA Policy

When life-threatening conditions are identified, the SJCHA 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 SJCHA's notice.

When failures that are not life-threatening are identified, the SJCHA 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 who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally not more than 30 days will be allowed for the correction.

The notice of inspection results will 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 SJCHA-approved extension), the owner's HAP will be abated in accordance with SJCHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any SJCHA-approved extension, if applicable) the family's assistance will be terminated in accordance with SJCHA policy (see Chapter 12).

Extensions

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

SJCHA Policy

Extensions will be granted in cases where the SJCHA 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.

The length of the extension will be determined on a case by case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. 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.

Reinspections

SJCHA Policy

The SJCHA will either conduct a reinspection immediately following the end of the corrective period, or any SJCHA approved extension; or the SJCHA will allow verifications of deficiencies to be verified by means other than a physical re-inspection. A SJCHA may accept an owner's certification, a receipt from a vendor, a photo of the repair or family confirmation that required repairs have been completed and the Section 8 inspector will then verify that action at the next on-site inspection. The SJCHA will take into account the severity of corrections needed and/or its experience with the owner and property.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the SJCHA 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 SJCHA policies. If the SJCHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the SJCHA 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.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the SJCHA 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 the SJCHA, HUD requires the SJCHA 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.

SJCHA Policy

The SJCHA will make all HAP abatements effective the first of the month following the expiration of the SJCHA specified correction period (including any extension).

The SJCHA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes 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

The SJCHA must decide how long any abatement period will continue before the HAP contract will be terminated. The SJCHA 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. The SJCHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

SJCHA Policy

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the SJCHA before the termination date of the HAP contract, the SJCHA 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 the SJCHA 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 the SJCHA (and any extensions), the SJCHA 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

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the SJCHA 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. This part explains the method used to determine whether a unit's rent is reasonable.

SJCHA-Owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a SJCHA-owned unit, the SJCHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A SJCHA-owned unit is defined as a unit that is owned by the SJCHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the SJCHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the SJCHA. The independent agency must be approved by HUD, and may be the unit of general local government for the SJCHA jurisdiction (unless the SJCHA is itself the unit of general local government or an agency of such government).

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

Owner-Initiated Rent Determinations

The SJCHA 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. The SJCHA (or independent agency in the case of SJCHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the SJCHA 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.

SJCHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the SJCHA 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 the SJCHA will consider unit size and length of tenancy in the other units.

The SJCHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the SJCHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

SJCHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires the SJCHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the SJCHA to make a determination at any other time. The SJCHA may decide that a new determination of rent reasonableness is needed at any time.

SJCHA Policy

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

LIHTC- and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the SJCHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the SJCHA for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires SJCHAs to take into consideration the factors listed below when determining rent comparability. The SJCHA 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.

Note: Notice PIH 2011-46, issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

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 the SJCHA 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 the SJCHA information regarding rents charged for other units on the premises.

8-III.D. SJCHA RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

SJCHA Policy

The SJCHA will collect and maintain data on market rents in the SJCHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents Are Determined

SJCHA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The SJCHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the SJCHA may make adjustments to the range of prices 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 rental 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 .

The SJCHA will notify the owner of the rent the SJCHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The SJCHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of the SJCHA'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 within 30 days when identified by the SJCHA
- 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
- Maintain covered housing without deteriorated paint if there is child under six in the family

For units occupied by elevated blood lead level (lead poisoned) children under six years of age, an environmental investigation must be conducted (paid for by the SJCHA). If lead hazards are identified during the environmental investigation, the owner must complete hazard reduction activities within 30 days.

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.