

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

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. Effective July 1, 2014, JHA may establish a policy for performing unit inspections biennially rather than annually. This policy could apply to some or all assisted units. JHA still have the option to inspect every unit annually. See Section 8-II.G for further details.

HUD also requires JHA 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 JHA 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 JHA 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 JHA 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.

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## 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 and Inspection Checklist, form HUD-52580-A, or handheld units;
- HUD PIH Notice 2010-26, Non-discrimination and Accessibility for Persons with Disabilities; and
- 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 JHA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the JHA must ensure that the unit contains the

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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.

#### JHA Policy

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

### **8.I.B. ADDITIONAL LOCAL REQUIREMENTS**

The JHA 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 the JHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

#### **These additional requirements are approved by the HA Board of Commissioners:**

The JHA may fail unsanitary units where food, garbage, excrement, filth, etc. exists to a degree where health can be damaged. They may also fail units where papers, clothes and trash are accumulated and cause fire/health hazard. These will be considered tenant violations

#### **Thermal Environment [HCV GB p.10-7]**

The JHA 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.

#### JHA Policy

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

The air conditioning system must, when present, be capable of maintaining an interior temperature of 74 degrees Fahrenheit between May 1 and October 1.

### **Clarifications of HUD Requirements**

#### JHA Policy

As permitted by HUD, the JHA has adopted the following specific requirements that elaborate or build 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 present and in good condition (applies only if screens are present).

Windows that are designed to be operable must be operable.

#### ***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 re-secured 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 acceptable.

All floors should have some type of baseboard, trim, or sealing for a "finished look." Vinyl baseboard 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.

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*Security*

If window security bars or security screens are present on exterior 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.

A simple “bolt lock” on exterior doors may be used along with a regular key lock.

**Double cylinder deadbolt locks are NOT allowed on any door.**

**The JHA has adopted local requirements of acceptability in addition to those mandated by HUD regulations:**

Require all holes in walls to be patched with the exception of minor nail holes.

All appliances provided by an owner must be kept in safe and working condition.

If cabinets are designed to have drawers and doors, all must be operational.

All doors designed with knobs should have all knobs present and in working condition.

All closets designed with doors should have all knobs present and in working condition.

All closets designed with doors must be in working condition.

All sliding patio doors must have proper rollers so that they are in easy working condition.

All plumbing fixtures must be free from drips and leaks.

All severely chipped or rusted sinks must be patched, repaired, or replaced.

All holes on the interior or exterior that could be a tripping factor must be leveled.

Smoke detectors must be present in all units according to local code in addition to the one per level condition of HQS.

Units must be clearly identified with house or apartment numbers.

Bars, grilles, grates, or similar devices may be installed on an emergency escape or rescue windows or doors, provided:

Such devices are equipped with approved release mechanisms which are openable from the inside without the use of a key or special knowledge or effort; and

The building is equipped with smoke detectors installed in accordance with Section 1210 of the Uniform Building Code.

There shall be no missing circuit breakers or openings in the circuit panel. The circuit panel (breaker box) shall be a dead front with no openings.

All damaged paint on the interior and exterior must be stabilized and covered with at least one coat of non-lead based paint.

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GFI electrical outlets are required on all outlets within 18” of a water source or other hazards

Electrical grounds, if present or appear to be present, will be inspected and tested and must work.

### **Special HQS Requirements of JHA for Electrical Receptacles (PIH 2010-8)**

The HCV program regulations at 24 CFR 982.401(f) set forth the HQS requirements and acceptability criteria with respect to illumination and electricity for the housing unit. The regulations state that a unit must include the following acceptability criteria for electricity.

- the kitchen and bathroom must have one permanent ceiling or wall light fixture in proper operating condition;
- the kitchen must have at least one electrical outlet in proper operating condition; and
- the living room and each bedroom must have at least two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets).

The inspector is responsible for determining whether the outlets are in “proper operating condition.” While the regulation does not define what the Department considers “proper operating condition,” HUD-Form 52580A cites examples of electrical hazards including:

- broken wiring;
- non-insulated wiring;
- frayed wiring;
- improper types of wiring, connections or insulation;
- wires lying in or located near standing water or other unsafe places;
- light fixture hanging from electric wiring without other firm support or fixture;
- missing cover plates on switches or outlets;
- badly cracked outlets;
- exposed fuse box connections; and
- overloaded circuits evidenced by frequently “blown” fuses (which the inspector determines by asking the tenant).

### **Types of Outlets and Their Proper Operating Condition**

In response to an OIG audit, HUD is issuing this Notice to clarify the proper operating condition of electrical outlets (110V/120V). There are two basic types of outlets: two-pronged (also called “two-slotted”) and three-pronged outlets. Three-pronged outlets have an additional hole for a ground wire, and are “grounded outlets.” Two-pronged outlets are “ungrounded.”

Generally, original two-pronged, ungrounded outlets and original three-pronged, grounded outlets are acceptable under the HQS. “Upgraded” outlets, which have been changed from two-pronged to three-pronged, are the major area of concern in this Notice.

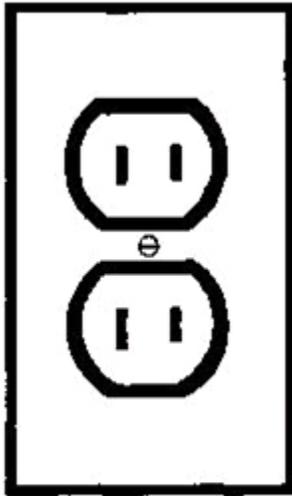


FIGURE 1 UNGROUNDED

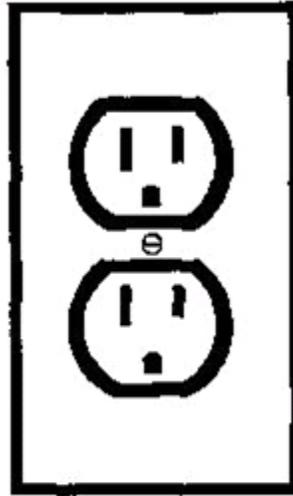


FIGURE 2 GROUNDED

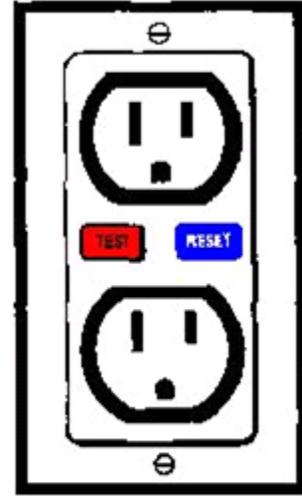


FIGURE 3 GFCI

### Ungrounded Outlets

Older construction (pre-1975) housing will usually have ungrounded two-pronged outlets, which is an acceptable type of outlet under the HQS. (Figure 1) Homes constructed with a two-wire electrical system include only a hot and neutral wire. Two-pronged ungrounded systems and outlets are acceptable under HQS as long as the outlet is in proper operating condition. An owner does not need to upgrade the electrical system of the unit (convert two-pronged outlets to three-pronged) in order for the unit to pass an HQS inspection.

### Grounded Outlets

Newer construction housing will usually have three-pronged outlets, which are acceptable under HQS if the outlets are grounded. (Figure 2) Newer units constructed with a three-wire electrical system include a hot, neutral, and ground wire. This Notice outlines traditional methods of testing grounded outlets for proper operating condition below.

### “Upgraded” Outlets

Many of the cords for today’s appliances contain three-pronged plugs, which can cause problems when an older home does not have three-pronged outlets for these grounded plugs. In the case of older homes, owners often replace two-pronged, ungrounded outlets with three-pronged, grounded type outlets in order to establish appropriate outlets for appliances that have cords with three-pronged plugs. However, in some cases, owners may replace two-pronged, ungrounded outlets with the three-pronged, grounded type outlets without the necessary rewiring that adds a ground wire to the newly installed, grounded type outlet.

Three-pronged, grounded type outlets should not be substituted for ungrounded outlets unless (1) a ground wire is connected to the outlet, or (2) a Ground Fault Circuit Interrupter (GFCI) protects the outlet. (Figure 3) Installing a new ground wire may require a licensed electrician

to install a new wire to the circuit breaker box and may be prohibitively expensive. A more cost-effective method is to protect the outlet with a GFCI, which provides protection to the outlet. If the GFCI senses a difference in current flow between the hot and the neutral terminals, it shuts off the flow of current to the outlet.

An older construction house with a grounded outlet (Figure 2) would be an indication that the unit may have undergone some upgrading. In such cases, the Department recommends testing a sample of outlets in the unit to determine if three-pronged outlets are in proper operating condition, in addition to verifying the proper operating condition of the required number of outlets per room.

### Testing of Outlets to Determine Proper Operating Condition

#### Two-pronged, Ungrounded Outlets

The traditional method of testing a two-pronged, ungrounded outlet is to plug an appliance into the outlet and verify that the appliance turns on. This simple method is acceptable for determining that the ungrounded outlet is in proper operating condition and meets HQS.

#### Three-pronged Outlets

A three-pronged outlet must meet one of the following three standards for the inspector to consider the outlet in “proper operating condition” as required by HQS:

1. The outlet is properly grounded.
2. A GFCI protects the three-pronged, ungrounded outlet.
3. The outlet complies with the applicable state or local building or inspection code.

The inspector needs to use an outlet tester to determine whether the outlet is properly grounded. There are two types of outlet testers that an inspector can use to determine a properly grounded outlet: a two-wire tester or a three-pronged tester.

Two Wire Tester



Three Prong Tester



To test an outlet with a two-wire tester, an inspector inserts one probe into the hot slot (usually, the smaller slot) of the outlet and one probe into the ground hole (bottom hole). If the outlet is properly grounded, the indicator light should light brightly in the same manner

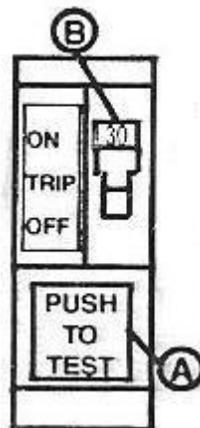
that the light shines when the inspector inserts the probes of the tester into the hot and neutral (right and left) slots.

To test an outlet with a three-pronged tester, the inspector should plug the device in and note the pattern of the lights. Usually there will be a legend printed on the device describing what the lights indicate. The instructions provided by the manufacturer of the tester should be followed.

If the inspector determines that the outlet is not properly grounded based on the results of the outlet tester, he/she may need to conduct some additional investigation to determine if a GFCI protects the outlet. A GFCI can be located at the outlet that is being tested or upstream on the circuit of the outlet. If the GFCI is at an outlet, it will look similar to Figure 3 above, and the inspector should accept the outlet as GFCI-protected after testing the functionality of the GFCI as indicated below.

As stated above, an ungrounded outlet may be protected by a GFCI at another outlet that is upstream from the ungrounded outlet. If the inspector suspects that this may be the case, there is an easy way to determine if the GFCI protects an outlet. The inspector should “trip” all of the GFCIs in the unit; both at the outlet and in the circuit breaker box and determine if there is power to the ungrounded outlet. If the power to the outlet is off, then one of the GFCIs protects the outlet.

Occasionally, a GFCI may be located on the circuit breaker at the load center (circuit breaker box). The following image depicts a GFCI breaker: the distinctive indicator is the “Test” button mounted on the breaker. An inspector may want to “trip” the GFCI in order to identify that the power shuts off to any ungrounded outlet that is protected by the breaker. To “trip” the GFCI, the inspector would press the test button (A) and the switch (B) will move and shut off power to the circuit. This allows the inspector to verify that the outlet is GFCI- protected.



GFCI Breaker

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### Testing of Ground Fault Circuit Interrupters (GFCIs) To Determine Proper Operating Condition

If an outlet contains a GFCI, the GFCI must work as designed in order for the inspector to consider the GFCI in proper operating condition. However, a GFCI can be in proper operating condition even if it is not grounded. A GFCI is in proper operating condition if pressing the "TEST" button on the GFCI trips the circuit and shuts off power through the receptacle. It is important to note that some three-prong testers have a GFCI test button function built into the tester. The test button on a three-prong tester only works to trip a grounded GFCI. Therefore, if the GFCI is not grounded, the circuit tester will erroneously indicate that the GFCI is malfunctioning. As a result, inspectors cannot depend solely on three-prong testers to determine if a GFCI is in proper operating condition. Instead, the inspector should press the "TEST" button, and if the button trips the circuit and shuts off the power through the receptacle, the GFCI is in proper operating condition.

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

HUD requires the JHA 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 JHA notification.

#### JHA 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
- 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
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors (there must be an operable smoke detector on each level (floor) of the unit. All smoke detectors that are present, must be operable.
- When required, inoperable carbon monoxide detector
- Inoperable refrigerator or stove
- Inoperable emergency equipment
- Conditions that present the imminent possibility of injury

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If an owner fails to correct life-threatening conditions as required by the JHA, 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 the JHA, the JHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the JHA determines 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 that could not be charged against the tenant's security deposit under state law or court practice.

The JHA may proceed with termination of assistance, regardless as to whether the owner is enforcing the provisions of the lease for violations.

#### **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 JHA 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, the JHA 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 and tenant 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 and tenant.

Within 30 days after receiving the risk assessment report from the JHA, 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

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35.1330]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the JHA will take action in accordance with Section 8-II.G.

JHA 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 the JHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the JHA must issue the family a new voucher, and the family and JHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the JHA must terminate the HAP contract in accordance with its terms.

#### JHA Policy

A unit meets HQS space standard if the dwelling unit has at least one bedroom or living/sleeping room for each two persons. A living/sleeping room must meet the condition of a bedroom and is considered space that is not a kitchen or a bathroom.

## **PART II: THE INSPECTION PROCESS**

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

#### **Types of Inspections**

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

- *Initial Inspections.* The JHA 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/Biennial Inspections.* HUD requires the JHA to inspect each unit under lease at least annually/biennially 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, JHA, 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 re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors. Quality Control Inspections will be independently conducted on the initial, annual and special inspections.

#### **Inspection of JHA-owned Units [24 CFR 982.352(b)]**

The JHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a JHA-owned unit. A JHA-owned unit is

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defined as a unit that is owned by the JHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the JHA). The independent agency must communicate the results of each inspection to the family and the JHA. The independent agency must be approved by HUD, and may be the unit of general local government for the JHA jurisdiction (unless the JHA is itself the unit of general local government or an agency of such government).

### **Inspection Costs**

The JHA may not charge the family for an initial inspection or reinspection of the unit.

The JHA 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. The JHA may establish a reasonable fee to owners for a reinspection if an owner notifies the JHA that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing was not corrected. The owner may not pass this fee along to the family. Fees collected under this paragraph will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of Section 8 Tenant-Based Rental Assistance.

In the case of inspections of JHA-owned units, the JHA may compensate the independent agency from ongoing administrative fee for inspections performed. The JHA 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 the JHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

#### JHA 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 8:00 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 JHA will give as much notice as possible, given the nature of the emergency.

### **Attendance at inspections by owner and family.**

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

#### JHA Policy

When a family occupies the unit at the time of inspection an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

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At initial inspection of a vacant unit, the JHA will inspect the unit in the presence of the owner or owner's representative. An adult family member of the household must be present at the initial inspection unless other arrangements have been made approved by JHA.

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

### **Timing of Initial Inspections**

HUD requires the unit to pass HQS 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 (RFTA). 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)].

#### JHA Policy

The JHA 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 (RFTA).

### **Inspection Results and Re-inspections**

#### JHA Policy

If any HQS violations are identified, the owner/tenant will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner or tenant, the time frame for correcting the deficiencies may be extended by the JHA for good cause. The JHA will re-inspect the unit within 10 business days of the date the owner/tenant notifies the JHA the required corrections have been made.

If the time period for correcting the deficiencies (or any JHA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the JHA will notify the owner and the family the unit has been rejected and, if not tenant damage, the family must search for another unit. The JHA may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, 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.

### **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.

#### JHA Policy

If utility service is not available for testing at the time of the initial inspection, JHA will re-inspect the unit to confirm that utilities are operational and the unit meets HQS requirements before the HAP contract is executed by the JHA.

## Appliances

### JHA Policy

If the family is responsible for supplying the stove and/or refrigerator and they are not present on the initial inspection, the JHA will conduct the inspection and then re-inspect the unit to confirm that the appliances are in the unit and meet HQS standards. The required appliances must be in place before the HAP contract is executed by the JHA.

## 8.II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]

### Scheduling the Inspection

Each unit under HAP contract must have an annual inspection no more than 12 or 24 months after the most recent inspection.

### JHA Policy

If an adult family member cannot be present on the scheduled date, the family should request that the JHA reschedule the inspection. The JHA and family will agree on a new inspection date that generally should take place within 10 business days of the originally scheduled date. The JHA may schedule an inspection more than 10 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the JHA will automatically schedule a second inspection. If the family misses two scheduled inspections without JHA approval, the JHA 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.

If the family is unable to be present but authorizes an adult representative, in writing, to be present, and the adult presents valid photo ID, the inspection will be conducted.

### JHA Implementation of Biennial Inspections in lieu of Annual Inspections

JHA will explore the opportunity as of July 1, 2014 and streamlining process to review the biennial inspection for any unit under HAP contract where the JHA has conducted an HQS inspection within the 12 months preceding July 1, 2014. If JHA has conducted an HQS inspection in that time period, the JHA will not be required to re-inspect until the lapse of 24 months following their last inspection. In making that determination of inspecting the unit every two years- JHA will use a factor that the unit passed the annual inspection the first review and without the need for follow-up. If the most recent inspection occurred prior to the 12 months preceding the effective date of this notice, then the JHA is required to conduct an annual HQS inspection for that unit and is afforded no relief from that annual inspection responsibility as a result of the change in the law. However, once that unit has been inspected, the JHA will then have the option to wait up until two years before the next inspection is required.

As of July 1, 2014, the notice does not require the JHA to wait two years from the last inspection before conducting an inspection. If the JHA desires to make inspections on a more frequent basis, it may do so.

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The HUD's Section 8 Management Assessment Program (SEMAP) evaluates PHAs on the frequency with which they conduct inspections. HUD will score PHAs based on their compliance with the statutory requirement that they conduct inspections at least biennially.

### **Alternative Inspections for the Biennial Inspection**

The JHA may comply with the biennial inspection requirement through reliance upon an inspection conducted for another housing assistance program. If the JHA relies on an alternative inspection to fulfill the biennial inspection requirement for a particular unit, then the JHA must identify the alternative standard in its administrative plan. Such a change is not considered a significant amendment to the PHA Plan, however, the JHA will include provisions in the following PHA Plan.

Compliance with the biennial inspection requirement may be met by reliance upon an inspection of housing assisted under the HOME Investment Partnerships (HOME) program (under Title II of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701 note) or housing financed via the Treasury Department's Low-Income Housing Tax Credit program (LIHTC), taking into account the standards employed by those programs. The JHA will use these standards by relying upon an inspection performed by HUD, for example an inspection performed by HUD's Real Estate Assessment Center. JHA is permitted to rely upon inspections conducted for the HOME or LIHTC program or performed by HUD with no action other than amending its administrative plan.

In order for an inspection to qualify as an "alternative inspection method," a property inspected pursuant to such method must "meet the standards or requirements regarding housing quality or safety" applicable to properties assisted under the program that employs the alternative inspection method (e.g., HOME, LIHTC). For purposes of this notice, HUD is implementing this statutory element as follows:

- If a property is inspected under an alternative inspection method, and the property receives a "pass" score, then the JHA may rely on that inspection to demonstrate compliance with the biennial inspection requirement.
- If a property is inspected under an alternative inspection method, and the property receives a "fail" score, then the JHA may not rely on that inspection to demonstrate compliance with the biennial inspection requirement.
- If a property is inspected under an alternative inspection method that does not employ a pass/fail determination--for example, in the case of the LIHTC program, where deficiencies are simply noted--then the JHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a "fail" score under HQS.
- If no such deficiency exists, then the JHA may rely on the inspection to demonstrate compliance with the biennial inspection requirements; if such a deficiency does exist, then the JHA may not rely on the inspection to demonstrate such compliance.

Under any circumstance described above in which a JHA is prohibited from relying on an alternative inspection methodology, the JHA must conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies. The HQS inspection must take place within a reasonable period of time. HUD

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will solicit input through rulemaking on circumstances under which a JHA could rely upon corrective actions taken under an alternative inspection method to assure that the property is brought into compliance with the standards or requirements regarding housing quality or safety applicable to the alternative inspection method.

As with all other inspection reports, and as required by 24 CFR 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be retained for at least three years.

### **Interim Inspections for Biennial Inspection Protocol**

If a family or government official reports a condition that is life-threatening (i.e., the JHA would require the owner to make the repair within no more than 24 hours in accordance with 24 CFR 982.404(a)(3)), then the JHA must inspect the housing unit within 24 hours of when the JHA received the notification. If the reported condition is not life-threatening (i.e., the JHA would require the owner to make the repair within no more than 30 calendar days), then the JHA must inspect the unit within 15 days of when the JHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

### **Mixed-Finance Properties for the Biennial Inspection Protocol**

Section 220 and the streamlining process gives HUD the authority to alter the frequency of inspections for mixed-finance properties assisted with project-based vouchers to facilitate the use of an alternative inspection method. A unit under HAP contract must be re-inspected at least biennially, through either the regular inspection process or the alternative inspection method.

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

The JHA will conduct a special inspection if the owner, family, JHA, or another source reports HQS violations in the unit.

#### JHA Policy

During a special inspection, the JHA 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 60 days of the date the special inspection is scheduled, the JHA 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 JHA 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 Inspection Supervisor will conduct the quality control inspections by a stratified sample of selecting units that have been inspected within the previous two months. The selection will be

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from inspections performed as annual, special, and initial. The quality control inspections will include inspections from all JHA inspectors, and also include a cross section of neighborhoods.

The unit sample must include only units that have been inspected within the preceding 2 months.

Quality control inspections will be logged in a manner that is reviewable and retained for SEMAP confirmation. Any deficiencies noted during the inspection process will be corrected.

## **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 failed inspections. When an inspection identifies HQS failures, the JHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

#### JHA Policy

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

When failures that are not life threatening are identified, the JHA 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. No more than 30 days will be allowed for the correction unless an extension for good cause is determined by the Section 8 Manager.

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 JHA-approved extension), the owner's HAP will be abated in accordance with JHA 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 JHA-approved extension, if applicable) the family's assistance will be terminated in accordance with JHA policy (see Chapter 12).

### **Extensions**

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

#### JHA Policy

Extensions will be granted in cases where the JHA 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.

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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.

### **Re-inspections**

#### JHA Policy

The JHA will conduct a re-inspection immediately following the end of the corrective period, or any JHA approved extension. It is the responsibility of the landlord to notify the inspector the repairs have been completed. The Housing Authority will consider the unit “passed” based on the day the landlord reported to the inspector the unit is ready for re-inspection and all conditions “pass”.

If the deficiencies have not been corrected by the time of the re-inspection, the JHA 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 JHA policies. If the JHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the JHA 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 JHA 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 JHA, HUD requires the JHA 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.

#### JHA Policy

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

The JHA 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

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as cause for eviction. The landlord is not entitled to any back rent from the JHA for units that have been abated due to a failed HQS.

### **HAP Contract Termination**

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

### JHA Policy

The maximum length of time the HAP may be abated is 90 days. However, if the owner completes corrections and notifies the JHA before the termination date of the HAP contract, the JHA 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 JHA 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 JHA (and any extensions), the JHA 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- HOME-assisted units, or RAD conversions, no HAP contract can be approved until the JHA 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. The JHA will use E-Z Rent or other electronic systems that meet the HUD requirements to conduct rent reasonableness as allowed by HUD.

### **JHA-owned Units [24 CFR 982.352(b)]**

In cases where an HCV family is receiving assistance in a JHA-owned unit, the JHA 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

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requests assistance. A JHA-owned unit is defined as a unit that is owned by the JHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the JHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the JHA. The independent agency must be approved by HUD, and may be the unit of general local government for the JHA jurisdiction (unless the JHA is itself the unit of general local government or an agency of such government).

**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 JHA 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 JHA for the unit size involved.

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

**Owner-initiated Rent Determinations**

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

JHA 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 JHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. Three comparable units will be used, wherever available, for each new contract executed.

Rent reasonableness is determined by analyzing the local rental market and through contact with owners and property managers of rental property.

The market area for rent reasonableness comparable is broad, but units will be compared on a neighborhood basis wherever possible.

The data for other unassisted units the owner owns will be gathered from Apartment Guide information, newspapers, realtors, professional associations, and inquiries of owners.

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The JHA will maintain books or computer records that include comparable data on unassisted units in the market. Staff in making their rent reasonableness determinations will use this data. The books will be updated on an annual basis.

The JHA 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 by the inspector either in writing or orally.

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

### **JHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the JHA 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 the JHA to make a determination at any other time. The JHA may decide that a new determination of rent reasonableness is needed at any time.

#### JHA Policy

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

### **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

The JHA will determine and document on a case-by-case basis that the approved rent is reasonable in comparison to rent for other comparable unassisted units in the market. This applies to all programs.

The JHA will not approve a lease until the JHA determines that the initial rent to owner is a reasonable rent. The JHA must redetermine the reasonable rent before any increase in the rent to owner, and if there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary.

The JHA must redetermine rent reasonableness if directed by HUD and based on a need identified by the JHA's auditing system. The JHA may elect to redetermine rent reasonableness at any other time. At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the JHA

The owner will be advised that by accepting each monthly housing assistance payment s/he will be certifying that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises.

If requested, the owner must give the JHA information on rents charged by the owner for other units in the premises or elsewhere. **The JHA will only request information on the owner's units elsewhere if the JHA has cause to demonstrate that the owner has a tendency to**

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**charge higher rents to program participants or if needed for rent reasonableness comparables.**

The data for other unassisted units will be gathered from **newspapers, Internet Realtors, professional associations, inquiries of owners, market surveys, and other available sources.**

The market areas for rent reasonableness are **census tracts and/or neighborhoods** within the JHA's jurisdiction. Subject units within a defined housing market area will be compared to similar units within the same area.

These items will be used for rent reasonableness documentation:

- Square Feet
- Number of Bedrooms
- Number of Bathrooms
- Location
- Unit Type
- Quality
- Amenities
- Facilities
- Date Built
- Management and Maintenance Services

### **Rent Reasonableness Methodology**

In accordance with the regulations and PIH 2003-12, the voucher program regulation at 24 CFR 982.507 requires the JHA to certify that the rent charged to the housing choice voucher tenant is not more than the rent charged for other unassisted comparable units. Section 982.507(c) states that the owner must give the JHA information requested by the JHA on rents charged by the owner for other units in the premises or elsewhere. The RFTA, Form HUD-52517 was revised to add information from owners of multifamily properties on the rents charged for three (3) recent rentals of comparable unassisted units in the same complex. The owner supplies this information in Section 12a of the revised RFTA. JHA can use the information provided in Section 12a of the form to determine and document rent reasonableness for comparable unassisted units in the same apartment complex.

In determining the reasonableness of rents for units located in a multifamily project that is not substantially assisted, the JHA may base its determination on the rents charged for the three comparable unassisted units identified by the owner on the RFTA. In such cases, the JHA does not have to obtain additional rent comparables in other multifamily housing in the area.

There has been some confusion regarding the interpretation of 24 CFR 982.507(b) of the voucher program regulation. According to Section 982.507(b):

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*“Comparability.* The JHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the JHA must consider: (1) The location, quality, size, unit type, and age of the contract unit; and (2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.”

Previously, JHA was under the impression that they have to routinely consider and justify rent reasonableness individually for each of the nine criteria listed in Section 982.507(b) to “fully comply” with the regulation. HUD realizes that, in the wake of the Section Eight Management Assessment Program (SEMAP) implementation, commercial trainers have stressed the need for JHAs to consider all nine factors stated in the regulation, causing JHA to expend excessive administrative resources for rent reasonableness determinations. HUD notified JHA (PIH 2003-12) that this was a misconception and to clarify the misconception. HUD never intended that PHAs must consider each of the nine criteria to determine rent reasonableness of each assisted unit in order to “fully comply” with the regulation.

The preamble to Subpart K, Rent and Housing Assistance Payment, in the April 30, 1998, Federal Register provides that “determination of rent reasonableness for Section 8 tenant-based assistance does not call for a special or unusual valuation in accordance with detailed procedures prescribed by HUD.” The Rule “contains [only] a brief and simple statement of the basic standards to be applied by a PHA in determining rent reasonableness for the Section 8 tenant-based programs.” The Rule acknowledges, “PHAs have extensive experience in determining rent reasonableness” and instructed, “each PHA should use appropriate and practical procedures for determining rental values in the local market.”

In any determination about the reasonableness of rent for a particular unit, a prospective tenant should consider factors such as location, quality, size, type, age, amenities, housing services, maintenance and utilities to be supplied by the owner. Since program inception, the criteria were meant to assist JHA in developing a common sense approach to valuing a unit. It remains important to note that HUD places a high priority on accurate rent reasonableness determinations and requires that such determinations be performed in a documented, reasonable, and consistent manner. In any determination about the reasonableness of the rent for a particular unit, a renter (and whoever is conducting the comparability determination) implicitly or explicitly considers the nine comparability criteria specified in HUD’s regulations.

It is not, however, necessary or cost-effective to try to quantifiably document or separately evaluate each of these criteria. To the extent possible, rent comparability should be based on rents paid for similar units in the same general location that are also generally similar in terms of the overall quality of housing services provided. Any procedures or documentation used should reflect this approach.

With this in mind and in adherence with HUD requirements, the JHA utilizes a simplified rent reasonableness system that compares similar units and includes and considers the HUD factors listed above. This system on multi-family shall be as outlines in the previous paragraphs. The

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system on single family or other units that are not part of a multifamily housing complex shall include at least 2 comparable units.

Information is gathered on unassisted rental units in the JHA market area, and each unit is rated, using the JHA's rent reasonableness system. Using an automated method, the average rents are identified for units of like size and type within the same market area. Attempts will be made to localize the unit within a small jurisdiction (under a 2 mile radius). As many defined factors of the items listed above on the unit to be assisted will be compared, to those factors of comparable unassisted units in the database. The average will be adjusted up or down based on the estimated dollar value of the comparable items in comparison with the total database.

### **Unassisted Units on the Premises (PIH 2009-51)**

In determining that the rent to owner does not exceed the rents charged for comparable unassisted units on the premises, the JHA takes into consideration the rents for those units in the premises that are not assisted under a Federal, State, or local government program.

Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the premises must be considered in determining if an HVC rent to owner is reasonable.

In addition, the JHA must take into consideration the real value of the rents charged by the owner for unassisted comparable units in the premises when determining rent reasonableness. For example, if the rent recorded on the lease for comparable unassisted units on the premises is the same as the rent for an HCV family but an owner is reducing the amount that is actually required to be paid by the unassisted tenants, the JHA takes the actual amount into consideration. For example, unassisted tenants might be receiving a credit each month, or a "rent-back", or free rent some months, or some other type of subsidy from the owner. All of these actions reduce the true value of the charged rent, and the JHA must use these reductions to determine the actual 'rent' the owner is charging for the unassisted units.

Note, however, in some rental markets it is common practice for certain employees of the property management company (e.g., a resident manager) to reside in the property rent-free or at a significantly reduced rent as part of their employment compensation. The JHA should not take the rent or lack of rent for units in which a resident manager or similar type employee resides into consideration in making a rent reasonableness determination. The rent for these units does not represent the rent that is charged or would be charged for a comparable unassisted unit, but rather reflects some or all of the owner's compensation for his or her employee(s).

In the case of a family moving into a multifamily property, the JHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new tenants routinely pay higher rents than the rents that longer time tenants in comparable units may be paying (often due to local rent stabilization programs or ordinances that limit rent increases for existing tenants).

However, in determining if subsequent rent increases result in rents that are reasonable for units occupied by families under voucher Housing Assistance Payments (HAP) contracts, the JHA should take any rent setting policies by the owner for existing tenants into consideration. Any

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increases in rent for HCV tenants over time should be similar to increases charged to unassisted tenants who have lived in their units for approximately the same amount of time. In other words, rents for existing HCV tenants may not exceed the rents charged to unassisted tenants in comparable units who have been in a property for approximately the same amount of time.

Similarly, in the case of a multifamily property undergoing a Housing conversion action, the families receiving vouchers as result of the action are existing tenants of the property, and the rents charged those families that choose to remain at the property with their HCV assistance must not exceed the rents charged for those existing tenants that do not qualify or do not accept the HCV assistance, even if the owner intends to eventually charge new tenants higher rents.

**The unit and the comparables shall be maintained in the file.**

The JHA maintains database that includes data on unassisted units for use by staff in making rent reasonableness determinations. The data is updated on an ongoing basis and purged when it is more than 12 months old

**Units that Must Not be Used as Comparables (PIH 2010-18 and PIH 2009-51)**

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. If a unit to be assisted is located in a complex that is regulated by a government entity- HUD, IRS, etc.; then the JHA shall use the rent determined by the government entity as being reasonable.

As noted in HUD Notice PIH 2009-51, in determining rent reasonableness, the JHA must ensure that the rents paid for HCV assisted units do not exceed the rents for comparable units that are not assisted under a Federal, State, or local government program. Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the property must be considered to establish if an HVC rent to owner is reasonable.

However, in addition to units assisted under a Federal, State or local government program, the following units are also considered to be assisted units on the premises and would not be taken into consideration for rent reasonableness determinations:

- Units where the rents and/or rent increases are controlled or restricted by law or a court order, so long as the law or court order does not also apply to voucher participants. The JHA is responsible for verifying the existence and applicability of the law or court order prior to excluding the units from the rent reasonableness determination.

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- In cases of a property undergoing a Housing Conversion Action, units occupied by tenants on the date of the eligibility event who do not receive vouchers are considered assisted if the owner chooses to continue below market rents to those families by offering lower rents or other rent concessions to the impacted families. If the owner of such a property intends to charge lower rents to the non-voucher tenants living in the property at the time of conversion, the owner must provide written notice to the JHA and a list of the covered families, a description of the concession, the duration of the lower rents or concessions, the units in which the families are residing, and copies of the families' leases.

Owners of multifamily properties that underwent a Housing Conversion Action prior to the issuance of this Notice may also provide such a notice to the JHA at the time of a subsequent rent increase for voucher families, identifying families that resided in the property on the date of the eligibility event that did not receive a voucher. The owner must provide the same information and documentation that is required for new conversion actions, including evidence that the covered families resided in the property on the date of the eligibility event. The JHA, upon verifying the information submitted by the owner, must then exclude those units from future rent reasonableness determinations for the duration of the lower rents or concessions.

### **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. JHA will use the RTA as a method to determine rent reasonable for multifamily units in accordance with HUD's PIH Notice 2003-12 and the current RTA.

By accepting the JHA 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 JHA information regarding rents charged for other units on the premises.

### **8-III.D. JHA RENT REASONABLENESS DATA BASE METHODOLOGY**

#### **How Market Data is Collected**

##### JHA Policy

The JHA will collect and maintain data on market rents in the JHA'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. In the cases where a comparable is required, the JHA shall provide for at least 2 comparable units.

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<b>EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS</b>
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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 and Inspection Checklist, form HUD-52580-A

### **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 JHA
- 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 JHA). 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.

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### 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.

<p style="text-align: center;"><b>EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY</b></p>
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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 and Inspection Checklist, form HUD-52580-A

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.

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- *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 door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs.
- (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 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.