

## Chapter 8

### HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

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## 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 PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

HUD also requires PHAs 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 PHA 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 PHA 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 PHA 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**

See Exhibit 8-1 – Inspection Requirements. This is Chapter 16 of the former administrative plan inserted in its entirety.

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

See Exhibit 8-2 – HQS Compliance. This is Chapter 17 of the former administrative plan inserted in its entirety.

## **PART III: RENT REASONABLENESS [24 CFR 982.507]**

### **8-III.A. OVERVIEW**

No HAP contract can be approved until the PHA 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.

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

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA 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 PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD, and may be the unit of general local government for the PHA jurisdiction (unless the PHA 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 PHA 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 PHA (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the PHA 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.

#### PHA 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 PHA 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 PHA will consider unit size and length of tenancy in the other units.

The PHA will determine whether the requested increase is reasonable within 15 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 PHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

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

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

#### PHA Policy

In addition to the instances described above, the PHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the PHA determines that the initial rent reasonableness determination was in error or (2) the PHA 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**

### **Factors to Consider**

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

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

### **Units that Must Not be Used as Comparables**

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

### **Rents Charged for Other Units on the Premises**

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

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

## 8-III.D. PHA RENT REASONABLENESS METHODOLOGY

### How Market Data is Collected and Rents are Determined

PHA Policy

#### **Relationship to HUD Fair Market Rent (FMR)**

The FMR is not an explicit measurement in the rent reasonableness determination. The PHA must not include the FMR figure in any grade and/or point value calculation used in its formula for a rent reasonableness determination. Moreover, even if there is an apparent substantial decline in the local unassisted market rents, signaled by a fall in the FMR, the rent to owner for the particular assisted unit is not reduced unless the comparability analysis shows that the current unit rent exceeds the rent for comparable unassisted units.

#### **Elements of an Acceptable Rent Reasonableness Procedure**

The PHA must incorporate a grade and/or point value leading to a rental value for the unit leased or to be leased (the “contract unit”) in a format that considers the nine SEMAP criteria. The SEMAP criteria in broad categories are: (1) Location; (2) Quality; (3) Size; (4) Housing Type; (5) Age of Unit; (6) Amenities provided by Owner; (7) Housing Services/Facilities supplied by Owner; (8) Maintenance and Management Services provided by Owner; and (9) Owner-provided Utilities.

The purpose of examining comparative rents is to approve only those contract rents that reasonably reflect the characteristics of the Section 8 contract unit and the valuation of comparable units in the private, unassisted market. A dollar range must be uniformly factored into the analysis. The valuation of comparables may be conducted on a pragmatic basis that accounts for limited accessibility to information on the characteristics of unassisted units to be used as a comp (for example, unit quality and amenities/services provided by the owner). The PHA must maintain a written description of the methods and forms for valuation of comparables in a “documentation file/binder” to be made available for all monitoring visits, reviews, audits and inquiries by DHCD, HUD or independent auditors.

A PHA can utilize all nine SEMAP criteria in composite upon which information is available to obtain a grade and/or raw point value score to complete the rent reasonableness determination. HUD does not specifically define the nine SEMAP rent reasonableness criteria nor provide a model framework for determining rent reasonableness. DHCD seeks to promote maximum flexibility for PHA’s rent reasonableness procedures

#### **Updating of Comparables**

PHAs must use comparable rents that are less than one year old and maintain records of comps in an orderly manner. The documentation of these comparables can be either a PHA-updated database composed with consideration of reasonably available unit characteristics or a listing of specific units detailed in the tenant file. Using either of these sources of comps as a guide, the PHA should value units so that the determination

of reasonable rent rationally reflects the characteristics of the contract unit and the valuation of comparable unassisted units.

### **Owner Challenge to Rent Reasonableness Determination**

If an owner disputes the reasonableness of the offered rent level, the owner can prove that a higher rent is reasonable by submitting documentation such as current leases for other unassisted units subject to evaluation under the nine criteria established by SEMAP for rent reasonableness. A PHA does not need to accept information submitted by an owner that cannot be verified as accurate or genuine. The burden of proof is on the owner to establish comparability. A PHA will in its discretion determine the measure of acceptable documentation. For example, a current lease executed by the owner within the past six months is the best documentation that an owner can provide. With respect to verifying rent made by unsubsidized tenants-at-will (with no written lease) the PHA may request that the owner obtain a certified copy of the federal income tax Schedule E for rental income in the most recent year. Up to three units can be entered on Schedule E. For owners with multiple units the owner may submit a verified statement by a tax preparer to document the rent paid on a particular unit.

### **Requirement of Tenant File Documentation**

Rent Reasonableness is a weighty factor in SEMAP. The HUD method for scoring this indicator under SEMAP places primary emphasis on the results of each agency's supervisory quality control reviews of unbiased file samples. Consequently, the file audits conducted occupy a pivotal place in this process and a premium must be placed on consistency of file maintenance in order to enhance the chances of attaining the highest possible SEMAP score for Rent Reasonableness. Furthermore, the HUD framework for SEMAP retains the independent agency annual audit report as the decisive method of review to verify SEMAP ratings where HUD exercises its option to question the accuracy of any SEMAP scoring. Accordingly, all tenant files with determinations of rent reasonableness must contain a completed "DHCD SUMMARY FOR RENT REASONABLENESS" Form.

### **Retention of Records**

The PHA must keep past records to document the basis for each rent reasonableness determination. In the tenant-based programs, the required rent reasonableness comparability determination must be kept for at least three years.

### **Contract Unit with Other Subsidies**

In accordance with HUD Reg. 982.521, the PHA must also consider whether the contract unit is receiving other subsidies. These units may be subject to pertinent limits in addition to rent reasonableness.

### **Rent Increases in Subsidized Buildings**

In all cases the requested rent must meet the PHA's rent reasonableness test. Historically these subsidized units have rented below the published FMR with the result that a PHA had no issues around adhering to the HUD approved rent schedules. However, in some recent cases the approved rents have exceeded the published FMR and in those instances

the HA must treat the request in exactly the same way as any other owner request for an exception rent.

The owner must operate within the regulatory parameters of the building subsidy type and the Section 8 voucher regulations for in-place voucher tenants.

### 8-III-E. MTW OWNER INCENTIVE FUND PILOT PROGRAM

#### MTW Policy

Using its authority under the MTW Agreement, DHCD will establish an Owner Incentive Fund pilot program to promote upgrades to the housing stock in areas of the state with a large percentage of older, deteriorated housing stock. When this type of housing is the prevailing housing available to HCV participants in a community/region, it has several undesirable consequences including: 1) limiting the tenants' ability to secure better quality housing in neighborhoods of lower concentrations of poverty; 2) resulting in inefficient use of the HCV inspection staffs' time by continually having to re-inspect units that frequently fall out of compliance; 3) resulting in few, if any, handicapped accessible units; and 4) discouraging new owners with better quality housing from making their units available to HCV households.

The program goals for this activity are:

- 1) leasing higher quality units including incentivizing owners to upgrade existing housing at least one grade level, i.e. from a "C" to a "B" grade, or from a "B" to an "A" grade<sup>1</sup>;
- 2) increasing the number of units that are accessible to persons with disabilities;
- 3) expanding the number of units leased in currently underserved neighborhoods, and
- 4) encouraging new owner participation.

Initially, the program will be piloted in Berkshire County and, depending on the results achieved, DHCD may elect to expand it to other parts of the state. Participating owners will be eligible for a flat fee financial incentive (initially established at \$1,200) payable in 4 quarterly installments over the first year of the HAP contract. At the end of the first year under HAP contract, owners would be eligible for an additional one-time payment (initially established at \$500) if one or more of the following applied: the owner had not previously been part of the HCV program; the unit had not previously been under contract to an HCV participant; the unit was new construction or substantial rehabilitation; or, the unit was a foreclosed property prior to leasing and at least a "B"

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<sup>1</sup> DHCD grades each unit during initial, renewal and mid-lease inspections. Chapter Eight of DHCD's HCV Administrative Plan found on DHCD's website explains in detail the unit grading system employed.

grade level, and, the tenant remains in occupancy, or the owner has agreed to lease to another HCVP referral from the RAA.

In order to be eligible for incentive payments, the unit must be compliant with HQS at all times during the HAP term. An agreement will be signed certifying that the incentive payments are not part of the monthly rent to owner.

DHCD will establish an overall cap on the number of units eligible for the Owner Incentive Fund, including a cap on the number of units for individual owners. DHCD will adjust the program criteria and payment amounts as needed to respond to local market conditions. Implementation activities are scheduled to begin during calendar year 2010. DHCD may terminate this pilot program at any time.

## EXHIBIT 8-1: Inspection Requirements

Taken from Chapter 16 of DHCD's former Administrative Plan in its entirety.

### Inspection Requirements

These DHCD inspection requirements are supplemental to HUD's Housing Quality Standards for the Housing Choice Voucher and Moderate Rehabilitation Programs.

As described in HUD's Housing Inspection Manual,

"The HUD Housing Quality Standards are a basic 'floor' or minimum standards that apply across the country to units on the Section 8 Housing Choice Voucher Program. In areas with relatively higher quality housing available, PHAs will be able to adopt a higher standard".

DHCD utilizes both HUD's Housing Quality Standards as well as the additional DHCD Inspection Requirements as a basis for evaluating a unit each time it is inspected. These additional standards are as set forth in this section.

The Commonwealth of Massachusetts has a State Sanitary and Building Code (105 CMR 400.00 - 419.00 and 780 CMR respectively, hereinafter referred to as the Codes) that regulate all housing in the Commonwealth. In some instances the Codes supersede and are more comprehensive than HUD's Housing Quality Standards and DHCD's Inspection Requirements. State law stipulates that all property owners are expected to maintain their dwelling units in conformance with the Codes and to correct all Code violations in a timely manner. Although DHCD's Regional Administering Agency (RAA) inspectors will not specifically check for all violations of the State Sanitary and Building Codes (DHCD is not the appropriate enforcement agency for this responsibility), DHCD performs periodic Code training for its RAA inspectors to supplement the training which DHCD provides on HQS and DHCD's additional standards.

**Because of the wide variety of housing types, site conditions, evolving codes, and family compositions, not every conceivable building deficiency is represented in the DHCD HQS Inspection Requirements. DHCD and its regional administrating agencies reserve the right to review on a case-by-case basis all issues relating to safety and inspection compliance.**

**The following statement must be included with all Inspection Reports:**

"This inspection has been performed to determine compliance under the HUD\DHCD Section 8 Program. While some of the inspection requirements may be similar or identical to provisions of local Codes, this inspection does not certify compliance with said Codes. In all instances, it is the owner's responsibility to maintain property to meet all applicable state and local Codes and a tenant's right to request an inspection by the local Code Enforcement Agency."

Known violations and continued non-conformance with the Codes will be a factor in the RAA's determination of rent reasonableness, the provision of an annual rent adjustment at reexamination time and the scheduling of more frequent reinspections, consistent with DHCD's Marginal Unit Policy 0

Non-compliance with the HUD Housing Quality Standards and/or the DHCD Inspection Requirements and/or repeated and regular non-compliance in accordance with the Marginal Unit Policy are grounds for:

- Rejecting the unit at initial inspection
- Suspending or abating all or some percentage of the subsidy
- Terminating the HAP contract with the owner
- Termination of tenant participation in the program

## **DHCD Inspection Requirements**

In that these DHCD Inspection Requirements are supplemental to the HUD Inspection Requirements, please note that the numbering system used for the DHCD Inspection Requirements is designed to conform as closely as possible to the numbering system used in HUD's Housing Inspection Manual and the DHCD Standard Inspection Checklist.

## **Fair Housing Act of 1988—24 CFR 100**

Participating owners must permit persons with a disability, at their own expense, to make **reasonable** modification to the premises if such modification is necessary to allow full enjoyment of the unit. Documentation of need may be required. Owners may require tenants to pay into an escrow account funds necessary to restore the premises to its original condition, if the modification would interfere with the owner's or next tenant's full enjoyment of the premises. Such modification must be reasonable and not interfere with other tenant's enjoyment.

### ***All Habitable Rooms***

Living Room, Kitchen, Bathroom, All Other Rooms Used for Living or Sleeping and Interior Halls

## **Room Present (1-4.1)**

### **Ceiling Height**

Ceiling heights in all habitable rooms must not be hazardous for their use.

Is the ceiling height of any part of any habitable room less than 5' high? If so, such area of 5' or less ceiling height shall not be considered in computing the total floor area of either the room or the dwelling unit.

### **Below Grade Space**

Is any part of the dwelling unit below the average grade of the adjoining ground?

If so, no room or area in a dwelling may be used for living if such room or area has more than half its floor to ceiling height below the average grade of the adjoining ground and such room or area is subject to chronic dampness or interior air quality issues.

### **Screens (1-4.5)**

Upon initial inspection, is there at least one screen in each room used for living or sleeping? A screen door will meet this requirement.

Screens may be either permanently installed or expandable. The inspector shall make sure this requirement is met regardless of the time of year the inspection occurs. The inspector shall insure that screens are in the unit or otherwise available, and that the number of screens is appropriate to meet this requirement. During the time between October 31st and March 31st an extension of time to comply may be given to the owner. Tenants may be held responsible for damage to the screens caused by occupants under the Family Obligations. A bathroom with no vent fan must have a screen in the window.

RAAs may opt to require all screens in cooperation with local code enforcement if requested in writing by the locality, and tenants may be held responsible for repairs of malicious damage to screens.

## ***Kitchen***

All units are required to contain a kitchen for the storage and preparation of food. Space for this purpose must be available. Storage includes cabinets, pantries, and closets with shelves. If there is no such built in space a table for food preparation and a portable storage cabinet will satisfy the requirement. Such tables or cabinets must be covered by a resilient and easily cleanable surface. Regardless of the presence of children, all paint in kitchens must be maintained intact in all food service and storage areas.

### **Electricity (2.2)**

There must be at least **two** working electrical outlets in the kitchen. A permanently installed light fixture and at least two outlets are required for each kitchen. The presence of two outlets and no light fixture is not acceptable. Having two working outlets in a kitchen prevents circuit overloading, hazard use of extension cords, and can prevent damage to flooring if the only outlet were behind the refrigerator. Improper wiring and undersized wiring such as zip cord requires a fail rating.

### **Floor Condition (2.8)**

Is the floor surface covered by a smooth, non-corrosive, non-absorbent and waterproof material?

DHCD will allow kitchens and bathrooms to have permanently installed carpeting, provided that the carpet condition meets HQS, which assures that the carpeting is in decent condition, free from excessive mold, mildew or other unsanitary health hazard and that the sub floor below is not subject to chronic water damage.

Resilient sheet flooring, resilient tile and ceramic tile are acceptable materials. Flooring should be well adhered to the substrate and all seams in sheet material should be sealed.

Wood flooring is acceptable only if it has a durable and water-resistant finish with no cracks large enough to allow the accumulation of dirt, food or the harborage of insects and does not present a splinter hazard.

### **Stove or Range with Oven (2.9)**

#### **Substituting a Microwave for an Oven, Stove or Range**

A microwave oven may be substituted for a stove provided that the RAA is informed and approves and that the substitution is agreeable to both the owner and tenant. If not RAA

approved an incorrect utility calculation could result. A microwave oven shall not be considered adequate where either the owner or the tenant fail to maintain a required utility. The appliance may be either owner supplied or tenant supplied. If the microwave is owner supplied, the owner must offer the same option to all other tenants in the building. If owner supplied and not present, a fail rating is required. If tenant supplied and not present on initial inspection, mark the item inconclusive and follow up as needed. Hotplates are not acceptable substitutes. If tenant supplied and not present after the initial inspection, a fail rating is required for tenant supplied appliance.

### **Space for Storage and Preparation of Food (2.12)**

The space for storage and surface for preparation of food must be in good condition and impervious to water damage. Cabinets that are not securely attached to the wall will fail inspection. Pantry closets, shelves, counter tops and under sink storage areas must be free from defects which make them difficult to keep clean or encourage infestation.

Space for preparation of food (counter tops, etc.) must be free of damage, holes, defective paint, plaster, and lifting surfaces that allow contamination, food build up, or insects. All such surfaces must be easily cleanable. (Also see Mass. State Sanitary Code 410.100).

### **Sink (2.11)**

HQS Requirements:

A permanently attached sink with properly working faucets connected to a hot and cold water supply and connected to a properly connected drain with gas trap is required. The sink cannot be, or double as the bathroom sink. If hot water is not on for initial inspection record as inconclusive and follow up as required.

Water supply sufficient in quantity and pressure to meet ordinary needs is required. Hot water temperature must not create a scald hazard. 110 - 130 degrees F is acceptable. (Mass. State Sanitary Code 410.180 and 410.190 also see 410.750 A + O (1)). Supply and drain lines must be free of leaks, and sink basins must have a finished surface that is free of rust and can be easily kept sanitary.

### **Refrigerator (2.10)**

HQS Requirements:

A working refrigerator capable of maintaining a temperature low enough so that food does not spoil over a reasonable time and capable of storing frozen foods is required. The refrigerator must be adequate in size relative to the needs of the family. An undersized refrigerator will fail. If owner

supplied it must be present at initial inspection. If tenant supplied, record as inconclusive and follow up as required. After the initial inspection, if tenant supplied, a fail rating for tenant supplied appliances is required.

### **Optional Equipment**

Owner installed optional equipment may include but is not limited to dishwasher, laundry facilities, air conditioner, garbage disposal, microwave, and range hood.

Owner installed optional equipment usually adds to the value of the unit and is a consideration in determination of rent reasonableness. The working condition of owner installed optional equipment must be noted on the initial inspection report. Thereafter, the owner is responsible to maintain all optional equipment in working condition. However, if upon annual inspection optional equipment fails due to the tenants' misuse, the unit will not fail inspection or cause the tenant's termination, but should be noted as a recommended repair (Also see Mass. State Sanitary Code 410.351 (B) and 410.352 (A) + (B)). Inoperable dishwashers must be removed. If not replaced, wiring and plumbing must be properly eliminated and the vacant space finished.

### **Range Hood**

A range hood ventilation fan must be covered by either a filter that is designed to cover the fan, or other protective covering in order to prevent injury from exposed fan blades provided the hood is designed to have one. The filter should be checked for excessive grease build-up that may be a fire hazard. All wiring must be properly installed and connected to the range hood or a fail rating is required.

### ***Bathroom (3.1-12)***

At least one working bathroom is required for the exclusive use of the occupant. There must be an operational toilet, washbasin, and tub or shower each connected to an approved water supply and disposal system. (Also see Mass. State Sanitary Code 410.350)

It is allowable for the fixtures to be located in separate areas of the unit. At a minimum the toilet is required to be surrounded by an enclosure for privacy. (Also see Mass. State Sanitary Code 410.150 (A) + (D)).

All fixtures must be securely attached. (Not loose)

Surfaces of fixtures must be free of rust and defects that make them difficult to keep clean (Mass. State Sanitary Code 410.150 (D)). Flawed porcelain or a defective painted surface in a sink or bathtub requires a fail rating.

Water temperature must not present a scald hazard. (Mass. State Sanitary Code 410.190)

### **Wall Condition (3.7)**

Walls around the tub area must be covered by a smooth, non-corrosive, non-absorbent and waterproof material up to a height of 48". Where there is an installed showerhead or shower compartment, the walls must be covered up to a height of 6'. A circular shower curtain rod that encloses the tub is acceptable.

### **Floor Condition (3.8)**

The floor surface of every room containing a toilet, shower or bathtub must be covered by a smooth, non-corrosive, non-absorbent and waterproof material or permanently installed carpet that is free from mold, mildew or other unsanitary condition.

Resilient sheet flooring, resilient tile and ceramic tile are also acceptable materials. Flooring should be well adhered to the substrate and all seams in sheet material should be sealed. Carpet may be installed over a well-sealed floor.

Wood flooring is acceptable only if it has a durable and water resistant finish with no cracks large enough to allow the accumulation of dirt, food or the harborage of insects.

### **Toilet (3.9)**

A working toilet must be available for the exclusive use of the occupants of the unit. Facilities, which are used by other occupants of other units, are not acceptable. The toilet must be contained in a separate room in the unit that provides for privacy. Toilets must be adequately secured to the mounting flange. Loose toilets may fail inspection. Toilet seats are required and must not pose a risk of cut hazard.

### **Ventilation (3.12)**

Does the bathroom have chronic dampness as evidenced by regular and/or periodic appearance of moisture, water, mold, mildew or fungi?

If plumbing and ventilation are in good repair and properly used, there should not be chronic dampness. If chronic dampness, mold, mildew, or fungi is present, it may require special cleaning and treatment with mildewcide and paint or replacement.

**In order to prevent the accumulation of unhealthful odors, sewer gas, and the build up of mold on surfaces, an openable window or a working ventilation system is required in bathrooms. The types of ventilation systems that are allowable are electric vent fan either wall or ceiling mounted, gravity flow vents, and shafts that allow air to escape to the outside. The absence of approved ventilation requires a fail rating. If a window is present in a bathroom, a screen is required.**

### **Space for Storage and Optional Equipment**

The space for storage in the bathroom must be in good condition and free from water damage. Cabinets that are not securely attached to the wall will fail inspection. Shelves, counter tops and under sink storage areas must be free from defects which make them difficult to keep clean or encourage infestation.

Owner installed optional equipment may include but is not limited to medicine cabinet, towel bars, soap dish and other accessories.

### ***Other Rooms Used For Living***

#### **Space and Use - Square Footage (4.1)**

Every room that may be used for sleeping must contain at least 70 sq. feet for one occupant, or at least 50 sq. feet per person for two occupants.

#### **Security (4.4)**

##### **Bedroom and Other Interior Door Locks:**

All egress and interior room doors shall be readily openable from the side from which egress is to be made without the use of a key or special knowledge. This means that padlocks, slide bolts, and hook and eye locks are not allowed on the outside of bedroom or other interior room doors.

Doors may be equipped with a night latch, hook and eye, slide bolt or security chain provided such devices are openable from the inside without the use of a key or tool and mounted at a reasonable height for the occupant.

**No room, which contains the unit entry or exit door or fire escape window, may be lockable. If the windows in a unit are equipped with security bars at least one set is required to be openable for fire egress.** (Also see *Mass. State Sanitary Code 410.480.*) If a unit door provides access to a common basement it must be fitted with key lock hardware with the key side facing the basement. Also, remember that if the unit has a stair or hatch to a common attic the same need for security applies. For stairway doors, a keyed lockset or padlock is required. In the case of an attic hatch, since inspectors are not always able to ascertain if the attic has fire or partition walls, it is a good practice to ask the owner or agent and have them initial the inspection checklist to attest that there are partition walls. If the attic is a common space locking or screwing closed the hatch is required.

### **Exits**

HQS Requirements:

To ensure that the occupants have an acceptable means of exit that is not blocked in case of fire. Acceptable fire exit means that the building has an alternate means of egress that meets local or state requirements. Blocked means that the exit is unusable due to conditions such as debris, storage, air conditioner in egress window, door nailed shut, door swelled shut, or broken lock or excessive ice hanging from roofs. A fail rating is required if there is no acceptable means of fire exit. (Also see *Mass. State Sanitary Code 410.450 + 410.451 + 410.452*) Exits blocked by the tenant may fail as tenant caused. Inspectors should require that the exit be cleared immediately if possible.

Regardless of local approval, RAAs may make the final determination as to the acceptability of any fire egress system considerate of the family composition.

### **Natural Light Requirement (4.9)**

All bedrooms or any other rooms used for sleeping must have at least one openable window fitted with a screen, if so designed.

Acceptable under certain conditions are windows in rooms used for sleeping that open onto common areas rather than to the outside. These are acceptable provided the windows allow adequate natural light to permit normal indoor activities. For example: a bedroom window which faces onto a common area with a large vaulted glass ceiling, or which faces onto an enclosed sun porch may pass. The emphasis of this requirement is to provide adequate natural light in the bedroom.

## *All Secondary Rooms Not Used For Living*

### **Garage**

If the garage door opens directly into the unit, it must be a solid core fire rated wood or metal door. A hollow wood or plastic "panel style" door is not acceptable. A carbon monoxide detector is required in the adjoining space from the garage (527 CMR 31.00).

A door from a garage cannot enter directly into a sleeping room. Tenants may not elect to use such a room for sleeping.

### **Laundry**

A gas dryer must be vented to the outdoors, shaft or crawlspace. An electric dryer is not required to be vented to the outdoors but they must be properly vented to a lint trap to prevent the build up of combustible dust and prevent excessive moisture problems like mold and mildew. Check behind the dryer whenever possible for excessive lint and dust build-up which could be a fire hazard.

Washing machine drain standpipes must be capped if not in use. Although a trap is usually present, if not used for an extended period of time, the water in the trap will eventually evaporate which may allow the escape of sewer gases.

**Washing machines and dryers are not portable or hand held appliances. They constitute a motored load and DHCD does not require GFCI protection for the outlets serving them. It is allowable for the outlet and the drainpipe to be in close proximity to one another. RAAs may require approval of the local wiring inspector or evaluation by a licensed electrician if the installation appears not to have been professionally installed.**

## *Building Exterior*

### **Condition of Stairs, Rails and Porches (6.2)**

#### **Protective Railings**

There must be a wall or protective railing at least 36" high around every porch, balcony, loft or roof which is more than 30" from the ground and intended for use by the occupant. (*Mass. State Sanitary Code 410.50 (A) through (D)*)

Waivers for railing height and baluster spacing may also be requested when the building is an historic structure or an ornately decorated Victorian home where the current railing and balusters are

in excellent condition and do not require repair. Only first floor porches no more than 5 feet from the ground could be considered, and the tenant and owner must request the waiver in writing. This does not apply to homes with no railings

In order to pass inspection a handrail must be graspable. This means that a solid wall cap that exceeds 4 inches wide will not serve as a handrail and so must be fitted with a graspable handrail. Handrail stock up to 2x4 inches or other size approved by the local building department is acceptable.

A railing or other protective structure is required when retaining walls with a difference in grade level in excess of 4 feet are located within 2 feet of a walk, path, parking lot or driveway on the high side.

The top step or landing shall be counted as a step when determining if a handrail is required. Counting 4 or more risers will always assure this requirement is met.

A basement bulkhead requires a handrail if used by the tenant on a regular basis.

### **Foundations - Porch, Deck, Stairway (6.1-2)**

Are porches, decks and stairways structurally sound? Does every porch or exterior stair have an adequate foundation to ensure stability?

Wood post sitting on pavement, concrete block, ground or asphalt without a foundation may not be acceptable if the structure is subject to excess sway or movement.

The following Building Code guidelines should be considered in determining the structural soundness of all porches, decks, and stairways. Since many existing homes pre-exist the current Building Code some variation is permissible. Tenants may be allowed input into determinations. Incidents that present a hazard are required to be corrected or RAAs may allow owners to submit written approval of the condition from the local building department. All such documentation is to be maintained in the tenant file.

- Generally, joist spacing for porches and decks should be 12-24 inches.
- Ledger boards (*the board that connects the structure to the house*) should be bolted to the framing, not just nailed.
- All porches, decks, stairs and railings should be adequate to support a 200 lb. load; consider the ability to support a refrigerator.

- 8 1/4" is the maximum riser height, with no more than 1/4" difference between each riser. Further, 9" is the minimum tread width. Stairways that do not conform to these requirements may present a tripping hazard.
- No more than 15 treads between landings on a stairway are generally acceptable for adequate structural support and fire exit safety.
- Support stringers must be adequate to support stair treads. Generally, 2"x12" stringers are acceptable.

### **Balusters on Decks, Porches and Lofts, and Decks Over 30" From the Ground**

All decks, porches and lofts must have balusters spaced at no more than 6" intervals (that is, so a six-inch sphere cannot pass through the opening) in all units occupied by children less than six years of age. Waivers for railing height and baluster spacing may also be requested when the building is an historic structure or an ornately decorated Victorian home where the current railing and balusters are in excellent condition and do not require repair. Only first floor porches no more than 5 feet from the ground could be considered and the tenant and owner must request the waiver in writing. This does not apply to homes with no railings. Remember to inspect for railings and balusters or fall bars on both open sides of the stairs if applicable. RAAs may require elimination of "ladder effect" horizontal railings and installation of vertical balusters or other method. Porch height and family composition may be considered.

### **Condition of Roof and Gutters (6.3)**

The roof must be structurally sound and capable of protecting the tenant's unit from the outside elements. If the roof cannot be seen, record as unobservable and pass the item so long as there is no evidence of water penetration in the unit.

Gutters and downspouts are not required by the HQS. If gutters and downspouts are present and their poor condition causes significant amounts of water to enter the dwelling by rotting an exterior wall, a fail rating is required. Lack of gutters and downspouts often contribute to paint failure, rot, deterioration of foundations and sills, wet basements, and interior air quality issues. A fail rating may result (see 16.7.3.1 Dampness).

### **Condition of Exterior Surfaces (6.4)**

**All exterior walls must be sound and free from hazards to assure that the tenant is not exposed to any danger of structural collapse and that the walls are weather tight.**

### **Excessive Chipping and Peeling Paint**

Regardless of the family composition, whenever excessive chipping and peeling paint allow rot of substrate, or areas of missing siding allow weather to damage the framing or sheathing or allow wind, water or moisture to penetrate the walls, the inspection will fail.

### **Seasonal Repairs**

Sometimes there are seasonal considerations that make treatment of exterior chipping and peeling paint or cement repairs to chimneys difficult to implement.

**DHCD requires RAA staff to exercise good judgment and to weigh the interests of the household against the seasonal requirement to prevent the loss of decent, safe, and sanitary housing. A letter of intent or accepted contractor proposal from the owner agreeing to complete the repairs with a start and completion date included should be filed, and follow up reinspection must be made. This exception does not apply to lead paint on units housing children under 6 years old.**

### **Condition of Chimney (6.5)**

Masonry chimneys are required to be free of the potential for collapse that could result in the occupants being injured by falling bricks. The chimney must be capable of safely carrying smoke, fumes, and exhaust gasses to the outdoors. On the exterior, loose bricks or deteriorated mortar joints can allow bricks to fall off the roof or down into the chimney where flue gasses may be prevented from escaping safely. If the chimney cannot be observed from the ground, inspectors should check inside the basement for a clean out hatch so that the ability of the chimney to allow exhaust gasses to exit the building can be confirmed. If the clean out hatch contains bricks and cement debris, it may be necessary to observe the chimney from a position farther away, like the next street over.

**Also, advise clients against strapping antennas or other such devices to the chimney because of the effect of the added wind load. On the interior of the home, look for deterioration of the base of the chimney in the form of soft chalking brick. This condition is known as spalling. This is often caused by soot (particularly from an oil-fired heating system) collected in the bottom of the chimney mixing with rainwater coming down an uncapped chimney. The result is constant moisture and corrosive elements in the soot eating away the brick. An obstructed chimney or a dangerous loose brick hazard will constitute a 24-hour violation.**

### **Metal Chimney:**

**If the chimney is metal, check that all the parts are connected and fit tightly together and that it is properly attached to the building and high enough to clear the wall and roof. Also ensure that metal chimneys are not in ground contact.**

Plastic or Direct Vent Inlets and Outlets:

**Check for bird or wasp nests obstruction. A fail rating is required. Always recommend screen/grate coverings.**

### *Heating and Plumbing*

#### **Adequacy of Heating (7.1)**

HQS Requirements:

The heating equipment is required to be capable of providing heat either directly or indirectly to all rooms used for living.

- Directly means that each room used for living has a heat source such as a radiator, working hot air register, or baseboard heat. (Direct heat source)
- Indirectly means that if there is no heat source present in the room, heat can enter the room easily from a heated adjacent room or from below through a floor grate. (Indirect heat source)
- Adequate heat means that the heating system is capable of delivering enough heat to assure a healthy living environment in the unit appropriate to the climate.

**If there is no direct or indirect heat source(s) in a room used for living, a fail rating is required. If there is heat, its adequacy must be determined. If the unit is occupied, questioning the tenant as to the adequacy of the heat is acceptable. If the unit is not occupied or the tenant has not lived in the unit long enough to require the heat being used, a follow-up inspection may be needed to satisfy the requirement. In certain cases the adequacy of the heat can be determined by simply comparing the size of the heating system to the area to be heated. For example, a small, vented space heater in a living room is probably inadequate for heating anything larger than a small apartment or mobile home.**

In areas where the climate requires regular heating, portable electric room heaters as the primary source of heat are not acceptable and a fail rating is required. Similarly, a kitchen stove with a built in space heater should not be considered adequate for the primary heat in areas where the climate requires regular heating.

## **Unit Temperature Requirement**

The owner must provide (i.e. supply and pay for) and keep in good working order the facilities capable of heating every habitable room and every room containing bathroom facilities. [410.200]

Between September 15 and June 15, these rooms must be heated to a temperature of not less than 68° Fahrenheit (20° C) between 7:00 a.m. and 11:00 p.m. and 64° Fahrenheit (17° C) between 11:01 p.m. and 6:59 a.m., unless the occupant has agreed to supply the fuel under a written lease. [410.201]

The temperature may not exceed 78° Fahrenheit (25° C) during the heating season. The number of days per year during which heat must be provided may be increased or decreased through a variance granted locally by the board of health. [410.200 and 410.048]

## **Safety of Heating Equipment (7.2)**

### **HQS Requirements:**

The heating system must be designed to properly vent combustion gasses outdoors and be free of other types of unsafe heating conditions to assure that the occupants are not exposed to hazards of fire or escaping exhaust gasses. (*See Housing Inspection Manual pages 106 through 113 and 208 through 210*) If there is a question as to the safety of the heating system operation inspectors should require the system be checked and approved in writing by the local building dept. or a licensed heating professional.

### **HQS fail rating required for:**

- Escaping gasses from disconnected or broken vent pipes.
- Unvented fuel burning space heaters (*except electric heaters*).
- Improper fuel storage and supply lines. (*Oil tanks should be 5 feet away from heating appliance*)
- Fuel storage tanks must be raised off the floor on a stable base to prevent leaks from movement.
- A shut off valve must be located at the base of the tank.
- Fuel lines running across floors must be protected by conduit or cement.
- Fuel leaks. (*Check for containers catching leaks or excessive stains around tanks and lines*)
- A fuel tank not vented and not filled from outside the building.
- The lack of a manual shut-off device for a gas-burning appliance.
- Presence of combustible material around heating equipment.
- Lack of a proper vent. (*Flue pipes should be fit tightly together and pitched slightly up toward the chimney*).

- A flue pipe or collar that does not fit tightly against a wall or chimney. (*Check to see that flue pipes are well cemented and no gaps are present where they meet the chimney.*)
- Flue pipes not being properly directed from the appliance to the chimney. (*Should be a straight run with slight upward pitch.*)
- Inadequate clearance between a flue pipe and combustible materials or walls.
- Improper installation of the equipment.
- Improper maintenance of the equipment.
- Heavy build up of soot and creosote around the chimney and flue connections.
- Inadequate source of clear return air in a forced warm air system.
- Inadequate make-up or free air to support draft and combustion.
- Return air not drawn from an area separate from the furnace area in a warm air system.
- Major leaks in radiators or duct work which may promote heat loss and affect the heating system capability to satisfactorily heat all habitable rooms in the unit.
- Missing radiator valve.
- A circular burn on the appliance cabinet opposite side of the oil or gas burner gun indicates failed combustion chamber—may require 24-hour correction.

Pass with comment:

- Dirty heat registers.
- A hissing radiator valve. (*Unless a scald hazard or contributes to chronic dampness.*)
- Covers missing from baseboard radiation. (*Unless in a traffic area and a cut hazard.*)

DHCD Requirements:

Safety of Heating Equipment 0: (*Also see Mass. State Sanitary Code 410.200 A + B and 410.202.*) DHCD requires that pressure relief valves on boilers be fitted with overflow tubes or downspouts to prevent injury during operation. (*The lack of downspouts on boilers was cited as failed by HUD at audit.*) The operating pressure of the relief valve on a boiler (generally 30 lbs.) and the increased water temperature (180° F. to 220° F.) can make injury as, or more severe than that caused by a water heater. (Mass. Plumbing Code M.G.L. c. 142. s. 19. (b)) The length of the tube should be approximately 12 inches above the floor or reasonable to prevent an injury. It is often in an owner's best interest to have the tube long enough to prevent damage and corrosion of the appliance's enclosure cabinet. Look for cabinet deterioration. All heating systems except electric are required to be properly connected to a chimney or otherwise properly exhausted to the outdoors.

- All units utilizing fuel burning heating equipment are subject to the Mass. Carbon Monoxide Law (527 CMR 31.00)

**Prohibited and Unsafe Heating Equipment and Conditions**

Is the unit free from prohibited and unsafe heating equipment?

Gas space heaters are never allowed in a room used for sleeping or a bathroom, unless they are direct-vented appliances that draw intake air from outside of the unit.

The following types of heaters are considered unsafe:

- All unvented heaters
- All portable space heaters
- Parlor heaters
- Cabinet heaters
- Any room heater where the fuel tank is located less than 42" from the burner
- Unvented floor furnaces also known as joist heaters
- Heaters that use kerosene, range oil, #1 fuel oil, or any portable wick-type heater

### **Wood, Coal, or other Solid Fuel-Burning Stoves**

**At initial inspection, if the unit is equipped with a working wood, coal, or other solid fuel-burning stove, the owner must document inspection by a qualified professional, with cleaning if necessary. If the tenant uses the wood, coal, or other solid fuel-burning stove regularly during heating season, inspection and / or cleaning is required once every two years at annual inspection. Owners must educate tenants on the proper use of the equipment and disposal of ash.**

**All units utilizing such fuel-burning equipment are subject to the Mass. Carbon Monoxide Law (527 CMR 31.00).**

### **Floor Furnaces**

Floor furnaces that are properly vented and installed are not prohibited and DHCD does not require waivers for them. To do so would unduly restrict tenant access to otherwise acceptable housing. DHCD does require that floor furnaces be checked or serviced by licensed technicians in the event of trouble or complaint. Advise clients to take precautions for safety.

### **Oil Supply Lines**

All oil supply lines that may be subject to damage and in direct contact with the earth or concrete shall be covered with protective concrete or enclosed in a continuous protective sleeve. Plastic (PVC) tubing that does not create a trip hazard shall be one method of enclosing the oil line. Overhead oil lines do not require such protection.

## **Certification**

DHCD and its RAAs reserve the right to require current documentation of proper heating system operation by licensed technicians, heating contractors, local code inspectors, or utility company at any time in the event of tenant complaint or if the inspector has any reason to suspect improper or hazardous operation of any heating system. Emergency situations such as no heat during heating season (September 15 through June 15 inclusive), gas or oil leaks, carbon monoxide hazards, or other life threatening circumstance shall be treated as 24 hour violations. All non-emergency repairs such as improper operation, built up soot, inconsistent operation, or poor overall condition requiring heating system certification by licensed professionals shall allow the owner 30 days (or within a documented RAA approved extension) to provide the required current documentation regardless of the age or type of the appliance. Failure to provide current heating system certification may result in rent withholding and/or contract termination. All unvented heating appliances are prohibited by HUD. All non-electric heating appliances including floor furnaces, gas logs, or gas on gas stoves are required to be properly connected to a chimney by means of a flue pipe or otherwise properly exhausted to the outdoors.

## **Ventilation and Adequacy of Cooling (7.3)**

### **HQS Requirements:**

Units are required to have adequate ventilation and cooling by means of openable windows or a working cooling system to assure that there is adequate air circulation.

If there are at least two properly operating openable windows present, it is fairly safe to assume that the unit meets the definition of “some openable windows “. The final decision on adequacy of airflow depends upon the size and placement of the windows and the size of the unit. If the building is very close to other buildings, (*such as pictured on page 114 of the Housing Inspection Manual*) inquire as to whether or not airflow is seriously affected.

The phrase “working cooling equipment” includes central fan ventilation systems, evaporative cooling systems, and room or central air conditioning. Ask the tenant or owner / manager if the equipment is working properly.

## **Dampness**

Does any habitable room have chronic dampness as evidenced by regular and/or periodic appearance of moisture, mold, mildew or fungi?

If plumbing and ventilation are in good repair and properly used, there should not be chronic dampness. If chronic dampness, mold, mildew or fungi, it may require special cleaning and treatment with mildewcide and paint or replacement.

*Here are some suggestions for reducing the amount of moisture in homes.*

- Install adequate mechanical ventilation to outdoors in kitchens.
- Keep rainwater out by using drainage planes (overlaps to shed water) and appropriate flashing. Also protect all siding and trim from moisture penetration by painting all 6 sides of the boards.
- Keep ground water out by maintaining gutters and downspouts to divert water away from the building, properly grade around the foundation to direct water away, or install perimeter drains. *(The more you know about gutters and downspouts, the more important they become.)*
- Reduce moisture in attics and crawlspaces. Vent roofs and do not vent crawlspaces.
- Vent interior moisture sources to outdoors. Do not vent dryers indoors. Do not vent bath fans into attics. \*Properly vent all gas burning appliances and heaters.
- Insulate ductwork located outside of conditioned spaces or locate it within conditioned spaces.
- Install energy efficient windows to reduce the amount of condensation on the glass.

## **Water Heater (7.4)**

### **Hot Water Temperature**

The temperature of hot water supplied to all faucets should be between 110 degrees F. and 130 degrees F.

If water is too hot or too cold, check proper operation of hot water heater and general condition of hot water heater and its piping. In cases of tenant complaint it may be necessary to check actual water temperature.

### **HQS fail rating required for:**

- Location that presents a hazard: Gas water heaters may not be located in bedrooms or other living areas where safety hazards may exist. Exceptions may be made if safety dividers or shields are installed or the installation is approved by the local building dept.
- Combustible materials piled around or against the water heater are fire hazards. *(solids and liquids)*
- Gas leakage. *(Strong gas smells may indicate gas leaks.)*
- Flooding danger.
- Seriously cracked or broken vent / flue pipes on gas or oil fired water heaters that will allow exhaust gasses to escape into the unit.

- Absence of a temperature and pressure relief valve with a proper overflow tube or downspout attached to direct any hot water discharge from creating a scald hazard. ***(Remember that a blocked or plugged pressure relief valve can have the effect of turning a water heater into a very powerful bomb. There are instances when an exploding water heater blows, like a rocket, right through the floors and out through the roof of a house.)***
- Improper flues for venting exhaust gasses. *(Remember a slight upward pitch, tightly fit connections, and no gaps around the connection to the chimney are required.)*
- Flue pipes must have proper clearance from combustible walls or materials. *(See page 112 Housing Inspection Manual - Figure 38) Flue pipes can become very hot. If there is not enough clearance at points where the flue enters or runs through a wall, over time the combustibility of the surrounding material will increase creating a fire hazard. Also, look for wires in contact with flue pipes to prevent shock hazards. Electric hot water heaters do not require flue pipes.*
- Serious leaks from the tank or supply piping.
- **Tagged by the local building dept. or utility company for unsafe condition.**

#### **Gas Fueled Hot Water Heaters (7.4)**

No gas-fueled hot water heater may be located in a room used for sleeping or a bathroom, unless they are direct-vented appliances or draw intake air from outside of the sleeping room and the local building department has approved the installation.

Documentation of approval may be required to pass inspection.

#### **Approvable Water Supply (7.5)**

HQS Requirements: *(Page 116 Housing Inspection Manual)*

To guarantee that the occupant has adequate clean water the unit must be served by an approved public or private sanitary water supply. If a municipality supplies the water, it passes. If water is supplied by means of a private well, inquire as to the nature of the water and ask if it has been tested in the past by the appropriate public agency as an approvable source of water. Do not require that a current test be obtained. In cases where water quality is questionable, (discolored, foul smelling, tenant complaint) it may be necessary to require the water to be tested.

#### **Water Pressure**

Water pressure supplied to all faucets should be sufficient to meet the ordinary needs of the occupants.

#### **Plumbing (7.6)**

HQS Requirements:

To assure that the unit is free of serious plumbing problems involving leaking or corroded pipes that could present a hazard to the occupants, the plumbing must be free of leaks or corrosion that could result in contamination of the drinking water (*Also see Mass. State Sanitary Code 410.350 A and B*). Plumbing cross connections created when a faucet or valve outlet is below the rim of a sink require a fail rating.

HQS fail rating required for:

- Leaking pipes. (*Inspect for water on the floor or water in buckets under pipes.*)
- Pipe corrosion causing contamination of the drinking water. (*Seriously corroded pipes and persistent levels of rust or contamination of the drinking water can be determined by observing the color of the water at several taps. Be sure the condition is persistent and not a temporary condition caused by city or town maintenance of water lines.*) If the conditions are serious, the owner must contact a licensed plumber for repairs.

### **Water Submetering**

All units utilizing water submetering shall comply with MGL 186 § 22, and Board of Health inspection and approval in writing shall be required. Tenants shall be responsible only for water costs associated with their use of water under their exclusive control.

### **Sewer Connection (7.7)**

HQS Requirements:

To guarantee that the unit is connected to a properly working sewer system the plumbing is required to be connected to an approvable public or private disposal system that is free from sewer back up. If the unit is connected to a municipal sewer system and is properly functioning the requirement is satisfied. If it is connected to a private system, ask the owner about the type and whether it meets local health and safety standards. Documentation of approval may be required if problems occur repeatedly.

HQS fail rating required for:

- Not connected to an approvable sewer system.
- Sewer leaks or frequent back ups.
- Strong sewer gas smells or marsh areas caused by sewer or septic back up.
- Regularly clogged or slow drains.

### **General Health and Safety**

This is a very broad category that requires inspectors to use good judgment and common sense. The basic objectives are to ensure the following:

- The tenant has direct access to her / his own unit assuring privacy of the living quarters.
- The tenant has an acceptable alternate means of exit from the building in the event of a fire relative to the family composition.
- The tenant will not be exposed to chronic infestation of rats, mice, or insects.
- The tenant will not be exposed to unhealthful conditions from accumulation of garbage.
- The tenant has adequate means of storage and disposal of garbage and refuse.
- Interior and exterior stairways and common halls of the building are safe and adequately lighted.
- The interior of the unit is free from any other hazards not specified elsewhere.
- Elevators, when present, are operating so as not to present a hazard to occupants.
- The occupant is not exposed to abnormally high levels of harmful gasses or other pollutants.
- The occupants are not exposed to any dangerous site or neighborhood conditions.

### **Access to Unit (8.1)**

#### **HQS Requirements:**

All units are required to ensure privacy of the living quarters. You must be able to access the unit without passing through another unit and tenants of other units must not have to pass through the unit to gain access to their units.

### **Security**

According to the building location, common practice, and at the discretion of the RAA based on knowledge of the neighborhood, every entry door to a building that provides direct access to the outside shall be fitted with a working keyed lockset. Accessible means windows with sills less than 6 feet off the ground, windows or doors leading onto a fire escape, porch or other outside place that can be reached from the ground.

All egress doors must be easily openable from the inside without the use of a key, special knowledge or effort.

A chain lock, slide bolt or hook and eye lock is not adequate as the only lock for any unit entry doors.

If the unit provides direct access to a common basement, be sure the unit door is lockable with the keyed side facing the basement and provides security for the tenant.

A hatchway to a common attic must be secured or lockable.

Replacing a loose or ill-fitting lock or striker plate may require providing new, solid, wood blocking at the doorframe or at the door itself in order to install the lockset securely.

### **Accessibility**

Are all areas of the building accessible to allow the inspector to inspect all critical areas in order to assure compliance with all HQS and DHCD Inspection Requirements? To avoid possible rent stoppage a doorbell may be required if inspector access is routinely problematic (See Mass. State Sanitary Code 410 480)

Occasionally, certain areas of a building are not readily available for inspection. Most common are locked basements and utility rooms of large buildings. While the owner is within his/her rights to deny tenants access to certain spaces, it is imperative that the inspectors are allowed to inspect all of the building. An owner's refusal to grant access to a space is grounds for denying or withholding subsidy to the owner and/or termination of the HAP contract.

### **Evidence of Infestation (8.3)**

#### HQS Requirements:

All units are required to be free of rats or severe infestation by mice or vermin. (*Includes squirrels, skunks, raccoons, possums and other wild animals*) Rats may be evidenced by the presence of larger droppings, rat runs, or numerous settings of rat poison. Mice may be evidenced by the presence of smaller droppings, mousetraps, or holes chewed into food boxes. If roach infestation is persistent and severe the unit may fail inspection.

#### DHCD Requirements:

If infestation is chronic the owner must provide documentation to verify professional extermination. (*Also see Mass. State Sanitary Code 410.550*). If a professional exterminator is called in, the tenant will need to cooperate and provide access. Very often the entire building will need to be treated for the treatment to be effective. This applies to severe flea infestations as well. Very often professional exterminators will need to treat the building multiple times to eradicate the problem. If the tenant's housekeeping is creating or contributing to the problem, the unit can fail for tenant caused.

### **Garbage and Debris (8.4)**

#### HQS Requirements:

The unit must be free of heavy accumulation of garbage and debris both inside and out. “Heavy accumulation” means large piles of trash, garbage, discarded furniture, and other debris. (*This could include car parts or construction debris*) This is a level of accumulation that cannot be picked up by an individual in 1 to 2 hours. (*See page 122 of Housing Inspection Manual figure 4I*). Accumulations of this type generally result in severe levels of rats and / or infestation of vermin.

The owner is ultimately responsible for the final collection, disposal or incineration of all garbage and debris.

The owner is required to provide trash receptacles (barrels or bins with tight fitting covers, dumpsters, etc.) adequate in capacity and safety to temporarily contain the trash for all units between periodic contracted or municipal pick-ups.

The owner must make every attempt to locate receptacles so that no objectionable odors enter the dwelling unit.

The occupant is responsible for placing garbage and debris in designated receptacles or other point of collection. The occupant's failure to do so will constitute a fail rating for tenant-caused violations.

The occupant is responsible to maintain the unit free of garbage, debris, filth or cause of sickness. The occupant's failure to do so will constitute a fail rating for tenant-caused violations.

### **Refuse Disposal (8.5)**

#### HQS Requirements:

To assure the tenant has adequate means of storage and disposal of garbage covered facilities for temporary storage and disposal of food wastes are required. “Adequate covered facilities” include trashcans with covers, garbage chutes, dumpsters with lids, and trash bags if approved by the local health or sanitation dept. In most areas of the country the landlord is expected to provide the refuse disposal facilities in multi family buildings, but in some instances it is the tenant’s responsibility to contain the garbage and/or take it to the dump. If this is the agreement and the tenant does not comply the unit may fail as tenant caused.

### **Interior Stairs and Common Hallways (8.6)**

#### HQS Requirements:

All interior stairs and common halls are required to be free of safety hazards to the occupant, such as: loose, broken or missing steps on stairways; absent or insecure railings; inadequate lighting; or other hazards.

HQS fail rating required for:

- Loose, broken or missing steps.
- Absent or insecure railings. (*A loose or broken handrail or railing can be more dangerous than a missing one because it allows a false sense of security*).
- Missing railing at unprotected height over 30 inches.
- Inadequate lighting or absence of lighting for treads and risers.
- Accumulation of items or debris on steps or blocked fire exits.
- Ripped, torn, or frayed trip hazard stair coverings such as carpets or mats.
- A large number of missing sections of vertical railing called balusters. (*If balusters are missing, look for the remnant nail exposed under the handrail*).
- Handrail missing on section of 4 or more steps. (*Count the risers*).
- Electrical hazards.
- Broken windows.

DHCD Requirements

- Excessive defective paint, plaster, or unsanitary conditions.

**Common Area Lighting**

The owner must provide operating light bulbs in all required light fixtures in all interior and exterior common areas of the building. (*Also see Mass. State Sanitary Code 410.253 and 410.254*)(*Also, Mass. Building Code 6th Edition 3603.13.7 on page 479*).

**Other Interior Hazards (8.7)**

HQS Requirements:

The unit is required to be free of any other hazards not specifically identified previously. The types of hazards that may be present but not addressed prior to this item are:

- A nail protruding in a cut hazard fashion.
- A broken bathroom fixture with a jagged edge at a level that presents a cut hazard.
- A door that may fall due to loose or broken hinges. (*Sometimes removal of the door, such as on a closet, is the best solution. Remember, there is no requirement for closets to have a door*).

Use good judgment in determining hazards not listed.

### **Circuit Panel Box/Fuse Box**

There must be no open spaces or missing circuits in the electrical panel box, require open spaces be covered with blank inserts to prevent accidental shock. Face covers must be safely secured.

### **Storage of Flammables**

DHCD and its RAAs will allow the responsible storage of yard and building maintenance equipment such as lawn mowers, trimmers, chain saws, and snow blowers in the basement. Storage of these items shall not be allowed in the unit or common areas. These items shall be stored as far as is practical from any heating appliances. DHCD and its RAAs reserve the right to prohibit storage of these items anywhere due to their proximity to heating equipment or the presence of fumes. It is recommended that the equipment be depleted or run out of gas prior to storage. Other items with gas tanks such as motorcycles or other motor vehicles, propane tanks for grills, gasoline or kerosene cans shall not be allowed to be stored anywhere indoors. The following exceptions are permissible by DHCD.

- Storage is in an outbuilding or shed.
- If the owner can provide written approval for storage from the Local Fire Department.
- If the storage area is a separate area only accessible through an exterior entrance
- If the area is enclosed with fireproof grade gypsum wall board and ventilated.

Outdoor storage of gasoline or kerosene cans shall not be allowed under any stairs that comprise any part of the fire egress and they shall not be placed so as to create a hazard within a child play area or within the reach of children.

### **Storage of Pollutants**

Improper storage or disposal of used motor oil and pollutants. Improper disposal of used motor oil is a serious environmental problem. (1 quart of motor oil pollutes 1 million gallons of groundwater. That is more than a year's supply of potable water for 50 people). Retailers of motor oil are required to accept used oil for recycling. Storage is to be considered a hazard if the container is not sealed or properly covered and there is evidence of seepage or overflow. Clean up must be required. If offenders do not comply, incidences may be reported to the Massachusetts Department of Environmental Protection (MADEP).

Record instances of improper storage of oil and other automotive fluids as a violation, especially if children can access it. Advise clients to return used oil to the store where it was purchased for recycling free of charge. Retailers are required to accept up to 2 gallons per person per day if you have the purchase receipt. To report retailers who refuse to accept used oil from patrons who

have a receipt call the Used Oil Hotline at 617-556-1022. Mass. Dept. of Environmental Protection.

### **Optional Equipment**

Owner installed optional equipment usually adds to the value of the unit and is a consideration in the determination of rent reasonableness. The working condition of owner installed optional equipment must be noted on the initial inspection report. Thereafter, the owner is responsible to maintain in working condition.

Owner installed optional equipment may include, but is not limited to doorbells and buzzer system, air conditioner, dishwasher, garbage disposal, laundry facilities, etc.

### **Elevators (8.8)**

Each RAA must adopt a follow-up procedure that ensures that all elevators receive a current inspection certificate prior to the next annual inspection. Subsequently, upon the next annual inspection, if the elevator has not been inspected in accordance with local requirements, the unit must receive a fail rating. Documentation or a copy of a maintenance contract from a qualified elevator maintenance company may also meet this requirement. RAAs need not collect copies of maintenance contracts but must see them and advise they be kept available on site.

#### **HQS Requirements:**

To assure that elevators, when present, are operating in a manner that does not pose a safety hazard to the occupant, refer to local licensing practices for elevators.

If the unit being inspected contains multiple elevators, base your rating on the one in which you are riding. Ask the tenant if there are any problems with the other elevators, such as stopping between floors and doors opening.

### **Interior Air Quality (8.9)**

#### **HQS Requirements:**

To assure that the occupant is not exposed to abnormally high levels of harmful gasses or other noxious pollutants the unit must be free of abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants. "Abnormally high" means that the levels of pollution are consistently present in amounts that would constitute a continuing health hazard to the occupant. Air quality can be affected by external sources such as refineries, pulp or paper plants, chemical industries, proximity to heavy traffic, or proximity to truck or bus garages. It

can also be affected by internal sources such as sewer or cooking gas, or fumes from improperly operating heating systems.

You will probably be powerless to effect change in pollution from external sources; therefore, if levels are high enough to be dangerous to the tenant, the unit should fail. If the pollution is due to a malfunctioning gas appliance such as stoves or heating systems, the landlord or utility company should be notified at once and the appliance turned off until repairs are made (*This may constitute a 24-hour violation*).

Excess moisture, mold, mildew, or a serious asbestos hazard may be considered when determining pass or fail status.

### **Site and Neighborhood Conditions (8.10)**

#### **HQS Requirements:**

The site and immediate neighborhood must be free from conditions that would seriously endanger the health and safety of the residents. Examples of conditions that would seriously and continuously endanger the health and safety of the residents are:

- Other buildings, on or near the property, which pose serious hazards, (e.g., dilapidated shed, garage, or neighboring building with the potential for structural collapse).
- Evidence of flooding or major drainage problems.
- Proximity to open sewage.
- Fire hazards.
- Abnormal air pollution or smoke that continues throughout the year.
- Continuous or excessive vibration of vehicular traffic. (If unit is occupied, ask the tenant).
- A vacant and vandalized building adjacent to the tenant unit.
- **No fence along an unprotected height, watercourse, or railway bed.**
- A dead or damaged tree with potential for injury or damage due to limbs falling.
- High crime, gunfire, bullet holes, and/or drug activity in close proximity to property.

If excessive garbage, trash, debris, or other obvious hazard is present on property adjacent to or providing access to the property being inspected and the family composition includes children under 6 years old or elderly or disabled individuals, a fail rating is required. Even if the landlord of the inspected property does not own the littered property he may be required to pursue one of the following remedies:

- Construct a fence that will separate the property in question. (*Suggest a low-cost fence such as roll wire garden fencing and steel posts available at larger home and garden centers and installed fairly easily*).
- Notify, in writing, the local board of health referencing *Mass. State Sanitary Code 410.602 (A)* and provide copies of the letters, which demonstrate the attempt to report the condition to the owner of the adjacent property. The letters should remain in the tenant file.

- Some marginally acceptable conditions require inspectors to use good judgment to determine the acceptability of the site and neighborhood. Examples of marginally acceptable conditions that may pass but should be noted on the form are:
- Unimproved space such as a nearby vacant lot with some trash.
- Large bare patches on the ground around the building.
- Evidence of a general lack of maintenance (some litter or lawn in need of care).

In making judgments about the site and neighborhood conditions consider the family composition. If small children are included, many of the above-mentioned items would require a fail rating. If older children or elderly adults comprise the family, many of these conditions would not necessarily present a danger.

### **Lead paint, Owner Certification (8.2)**

All inspections for new units which will be occupied by a child under 6 years old and built prior to 1978 must include obtaining from the prospective property owner (or agent) a Letter of Compliance (LOC), a Letter of (Re) Occupancy (Re) Inspection Certification, Certification of No Interior Dwelling Unit Violations, Letter of Unauthorized Deleading, or a Letter of Interim Control stating that the unit meets the requirements of the Massachusetts Lead Poisoning and Prevention Control Act, as amended. All project based units (including Mod Rehab and other project based initiatives) must have full Lead Compliance documentation (no Re-Occupancy or Interim Control) since it is not known when a child under 6 years old will reside in these units and families with children must be allowed equal access to these units. HUD soil testing requirements are applicable to project-based units when bare soil in excess of 9 square feet is identified. The only exceptions may be for those project-based units specifically designated as “elderly housing” or single room occupancy (SRO).

### **Rotted or damaged substrate may require replacement prior to the surface maintenance.**

All units housing children under 6 years old currently under lease must have compliance documentation. The Section 8 inspectors at RAAs do not perform lead inspections. Inspectors must, however, complete the HUD Visual Assessment Training.

Buildings constructed after 1978 do not require certification regarding lead paint. The owner is required to submit a copy of the original Building Permit in order to verify the age of the building. A permit to rehab or alter shall not substitute for an LOC. If, however, the building is built prior to 1978, in the absence of a lead inspection report issued by a Mass. licensed lead inspector showing that the paint does not contain unsuitable levels of lead, the only assumption must be that the defective paint represents a lead hazard.

During the lease term, upon notification or knowledge of a new or additional child under 6 years old in the unit, the owner shall be given written notice by the RAA allowing 90 days to submit an LOC. A 30-day extension may be granted if deleading is currently in process.

DHCD requires that RAAs schedule new unit inspections that require an LOC only after the LOC has been received and screened. All RAAs must ensure that at the time of inspection, inspectors are aware of the type of compliance documentation and the date of issue.

### **When Was the LOC Issued?**

Lead inspections performed between July 1988 and July 1, 1990 must have been performed by an inspector registered with the Department of Public Health. Any lead inspection performed after July 1, 1990 must be performed by an inspector licensed by the Department of Public Health.

Any LOC issued prior to July 1988 must be accompanied by written approval of “grandfather” status from the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP). In order to obtain “grandfather” status, owners must be advised to forward all lead related information to:

CLPPP  
250 Washington Street  
Boston, MA 02108

**With a pre-1988 LOC, a Post Compliance Assessment Determination (PCAD) is required when any cited defective paint is found on windows.**

**No LOC issued prior to July 1988 is acceptable for HCVP Project-Based Assistance units (excludes Mod rehab).**

### **Time Sensitive Lead Documentation**

### **Letter of Reoccupancy or Certification of No Interior Dwelling Unit Violations**

Letters of Reoccupancy: There is **no Post Compliance document for Reoccupancy or Certification of No Interior Dwelling Unit Violations Letters.**

Although these are not Letters of Compliance, provided the unit passes all of HUD's HQS requirements, these documents are acceptable and a lease may begin. A Letter of Re-Occupancy or Certification of No Interior Dwelling certifies that only the interior of the unit is in compliance. According to Massachusetts law, the tenant may take (or resume) occupancy once a licensed lead inspector has issued this certification. At this point, the owner is allowed no more than 120 days from the date of issue to provide a Letter of Compliance that confirms that all common area and exterior work has been done. RAAs must develop a tracking procedure to ensure that expired (more than 120 days since issued) Letters of Re-Occupancy or Certification of No Interior Dwelling Unit Violations are not accepted. Inspections for these units must remain active with an on-site reinspection scheduled prior to the expiration of the 120-day term in order to ensure compliance with DHCD regulations approved by CLPPP.

**There is no certification of maintained or restored compliance for these lead documents.**

A Letter of Interim Control certifies that there are no urgent lead hazards present, such as chipping and peeling paint in the unit; therefore, according to Massachusetts law the unit is considered safe for occupancy. A Letter of Interim Control is valid for one year, at which time the owner may renew for an additional year with the approval of a licensed lead paint inspector. After a maximum of two years from the date of issue the owner must submit a Letter of Compliance if the unit is still occupied by a child under the age of six. Each RAA is responsible for developing a tracking system for units under Interim Control.

**No time-sensitive lead documentation shall be accepted for participation in any Project Based Assisted units (includes mod rehab) unless specifically designated for the elderly or SRO (single room occupancy). If the unit falls out of compliance under Interim Control, the Mass. deminimus standards shall be applied and Post Compliance Assessment Determination (PCAD) (See 16.8.8.6) is applicable. A Letter of Maintained or Restored Interim Control is required from a Mass. Licensed lead inspector.**

#### **Accept Original LOCs Whenever Possible**

Accept only original LOCs as valid documentation whenever possible. A noted copy of the original is acceptable as well as temporarily accepting a facsimile copy contingent upon viewing the original in order to expedite a new lease or continue the HAP.

#### **Conducting an Inspection**

Prior to conducting any inspection, RAA inspectors must be informed of the presence of any children less than six years of age in the unit. Project-based programs must also be clearly identified on all RAA Inspection Reports.

The Inspection Checklist must also include a section that indicates whether or not there is a valid Lead Documentation on file, if required, the type of documentation, and date issued to ensure follow up on any time-sensitive lead documents within required time frames.

Whenever an inspection fails for defective paint the inspection report shall indicate, “treat defective paint”. DHCD strongly advises RAAs to encourage participating owners to obtain Moderate Risk Authorization from CLPPP.

### **Conducting an Annual Inspection When an LOC is already on File**

During an annual inspection of a unit that already has compliance documentation on file; the unit must be inspected for defective paint. In accordance with CLPPP policy, once the unit is in compliance with the Lead Law, the owner may, under certain circumstances, perform the work necessary in order to maintain compliance without employing a licensed deleader. In instances where the cited defective paint is below the Mass. deminimus standards (*See 16.8.8.6*), this will afford owners the convenience of correcting insignificant defects in the paint themselves. It is important to advise owners to obtain Moderate Risk Authorization from CLPPP. The owner is responsible to follow appropriate work practices and safety precautions and must be notified by the RAA whenever a unit fails for defective paint. The tenant must also be notified and encouraged to co-operate with the owner in order to assure corrective work is performed safely.

### **Mass. Deminimus Standards and Post Compliance Assessment Determination**

DHCD and RAAs adhere to the Massachusetts Lead Law as an equitable level of protection to the HUD lead paint regulations. DHCD does, however, require that RAA inspectors complete HUD Visual Assessment Training. The Massachusetts deminimus standards shall be observed.

Mass. deminimus standards are defined as:

- 10 sq. ft. of defective lead paint on combined exterior surfaces within the lot line. (includes fences, out buildings, etc.)
- 2 sq. ft of defective lead paint per room on interior large surface areas combined. (walls, ceiling, floors, trim)

If RAA inspectors determine that the area of defective lead paint is within (less than) the Mass. deminimus standards, the owner/agent shall be allowed to treat and clean up the area on their own. Owners should be encouraged to obtain Moderate Risk Authorization from CLPPP.

If the RAA inspector determines that the area of defective lead paint is beyond (more than) the Mass. deminimus standards, a Post Compliance Assessment Determination (PCAD) by a Massachusetts licensed lead inspector must be required. Owners must consult the lead inspector

prior to undertaking any correction. The protocols of Post Compliance Assessment Determination require dust wipe sampling by the licensed lead inspector after clean up, which satisfy the HUD and Mass. requirements for "Clearance".

**With a pre-1988 LOC, a Post Compliance Assessment Determination (PCAD) is required when any cited defective paint is found on windows.**

Only those units that have valid lead compliance documentation already on file with CLPPP are eligible for Post Compliance Assessment Determination (PCAD). Once the requirements are satisfied, the licensed lead inspector will issue a "Letter of Maintained Compliance" if the owner made the correction or a "Letter of Restored Compliance" if the correction was completed by an authorized person. The RAA must have the Maintained or Restored Compliance document on file before the inspection can pass.

#### **Owner Options:**

When cited for defective paint in excess of Mass. de minimus levels, the owner shall be afforded three options:

1. Provide a copy of the original Lead Inspection Report showing the surface cited is not a lead hazard. Any surface recorded as not accessible (NA) or inconclusive shall be assumed to represent a lead hazard.
2. Obtain a Lead Determination of the surfaces cited from a Mass. licensed lead inspector stating that surface does not represent a lead hazard.
3. Obtain a Post Compliance Assessment Determination (PCAD) from a Mass. licensed lead inspector prior to the treatment of the defective paint.

**In cases where a child under six is known to have an elevated blood lead level at 10 micrograms per deciliter or higher, a Post Compliance Assessment Determination (PCAD) shall be required. All deleading and lead paint activities must be completed by Authorized Persons per CLPPP directive.**

#### **Inspecting Where a Child Has an Elevated Blood Lead Level**

When it is determined that a resident child has developed an elevated blood lead level there are specific actions that RAAs and PHAs must undertake. **Tenants may refuse to answer specific questions regarding their medical information. If this occurs, program staff must record that the tenant refused to answer.**

**If the level exceeds HUD Elevated Blood Intervention Lead Level of 15 to 19 micrograms per deciliter in 2 tests taken at least 3 months apart or a single test of 20 micrograms per deciliter RAAs and PHAs must:**

- Get a copy of the lead inspection report from the owner.
- Determine whether sodium sulfide or an XRF machine conducted the lead inspection.
- If the lead inspection was done by sodium sulfide a new lead inspection by XRF is required because HUD does not recognize sodium sulfide testing.
- The XRF test must indicate that all applicable surfaces below 5 feet with lead content at or exceeding 1.0 mg/cm have been abated.
- Failure to comply must result in contract termination. Owners must take action or be in process within 30 days to prevent termination.
- **Authorized persons must do all deleading work and lead paint maintenance to achieve or restore compliance.** This means that owner/agents must complete training for Low- or Moderate-Risk de-leading prior to treating the defective paint, or utilize High-Risk authorized/licensed persons. **Moderate-Risk Authorization is required in order to make loose lead-based paint below Mass. de minimus levels intact.**

**EBL cases of 10 micrograms per deciliter or higher but below 15 micrograms per deciliter:** Clients should be advised to cooperate with CLPPP in all matters relating to lowering the child's blood lead level.

**Known EBL cases at 10 micrograms per deciliter or higher shall require a Post Compliance Assessment Determination. All de-leading and lead paint maintenance activities must be completed by Authorized Persons per CLPPP directive.**

**A lead inspection report by sodium sulfide testing remains acceptable until the EBL reaches 15 to 19 micrograms per deciliter in 2 tests taken at least 3 months apart or a single test at 20 micrograms per deciliter. At this point an XRF lead inspection must be required.**

The RAA must ensure that there is coordination between program representatives and inspectors to ensure that the number of children with an EBL is filled out on the inspection form. Frequently this information is provided to the program representatives by the family but is not subsequently conveyed to the inspector.

### **Unauthorized Deleading and Fraudulent LOCs**

## Unauthorized Deleading

At times an inspector may suspect illegal deleading or unsafe work practices or a staff person may suspect a forged or altered LOC. Whenever any such activity is suspected it should be reported in writing to the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP) with a copy to DHCD's Housing Inspection Coordinator.

## Letter of Unauthorized Deleading or Document of Full Compliance Status or Documentation of Compliance Status:

This letter is issued when it is determined by CLPPP that de-leading work has been conducted by persons not authorized or licensed for the work in an effort to obtain an LOC. **DHCD allows acceptance of these letters because they clearly state that the unit currently meets the conditions for compliance with the Mass. Law and dust wipe samples have been determined to pass.** As in all other cases, compliance is required to be maintained. If any defective surface is in excess of Mass. de minimus levels an assessment determination by a Mass. licensed lead inspector is required. **There is no formal letter of maintained or restored compliance. A letter from a Mass. licensed lead inspector on letterhead showing his name and license number stating that the unit currently meets the standards for compliance of the Mass. Lead Law shall be acceptable.**

## Smoke Detectors (8.482)

HUD's Housing Quality Standard effective October 30, 1992 requires that each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit and in the basement. Smoke detectors should be located adjacent to sleeping areas whenever possible. Additional smoke detectors shall be required and maintained to afford adequate protection for all sleeping rooms. DHCD further requires at least one battery-operated or hard-wired smoke detector be installed in common hallways. Any level is acceptable, however the top level is recommended.

If the unit is to be occupied by a hearing impaired person who requests that the owner install a smoke detector designed for the hearing impaired, and if the owner is willing, it must be installed in the bedroom occupied by the hearing impaired person, adjacent to or outside the bedroom. Such an accommodation by the owner shall be a consideration in the grading of the unit for use in determination of rent reasonableness.

If the tenant has access to the attic for storage on a regular basis, a smoke detector is required in the attic.

### **Carbon Monoxide Detectors**

All units incorporating fossil fuel burning equipment shall install carbon monoxide detectors in accordance with 527 CMR 31.00. Attached parking areas must be considered. If any alternative compliance system is unfinished or inoperable, battery units shall be required as interim protection. Local fire departments approve installations. Documentation may be required.

### **Asbestos (8.353)**

Every owner shall maintain all asbestos material which is used as insulation or covering on a pipe, boiler or furnace, in good repair, and free from defects such as holes, cracks, tears, or looseness which may allow the release of asbestos dust or which may allow the release of any powdered, crumbled or pulverized asbestos material. The citation on the Inspection report must read: "Asbestos material must be maintained in good condition and free from defects". RAAs may require documentation of asbestos abatement in conformance with 453 CMR 6.00.

### ***Determining the Severity of Violations***

#### **Sending a 24-Hour Notice for Violations**

Violations that present an immediate threat to the health and life safety of the family must be corrected within twenty-four hours. The RAA must contact the owner by phone within 24 hours of citing the violation. The phone call must be followed-up in writing. If the RAA is unable to contact the owner or agent by phone or in person, the written notice must be sent by certified mail.

Confirmation that the owner or agent has proceeded to make corrective repairs or made a sufficient good faith effort to repair must take place on the next business day following the 24-hour correction period. On-site reinspection at the next reasonable scheduling opportunity is the only acceptable definitive verification that the unit is in compliance with HQS.

The Inspection Form Addendum for 24 Hour Notice (Attachment 16-C) must be used to provide written notice to the owner with a copy to the tenant. Refer to HQS Compliance for more information regarding determining the severity of violations and the course of action when violations are discovered.

### ***Tenant Caused Violations***

**Ultimately Housing Court not the RAA makes the final determination of tenant responsibility for damages and perimeters of normal wear and tear. RAAs may cite tenant caused conditions requiring the tenant to correct or face termination from the program. Owners may**

**elect to correct the condition and seek remedy under Mass. Law or from any security deposit rather than absorb rent loss and possible eviction costs. RAAs may consider tenant responsibility within the interior of the unit but not in common areas or exterior.**

The family is responsible for a breach of HUD's HQS that is caused by any of the following:

- Failure to pay for tenant supplied utilities;
- Failure to provide and maintain a stove and/or refrigerator if required in accordance with the lease;
- Damage caused by the family or guest to unit or premises beyond ordinary wear and tear.
- Disabling smoke alarms and carbon monoxide detectors.

In instances where it is not clear or obvious that the violation is tenant caused, the burden of proof is on the owner. An owner is required by law to provide a Statement of Condition to the tenant whenever a security deposit is collected. Ask to review the Statement of Condition. If the Statement of Condition is not available, the initial inspection report may be helpful. An execution for eviction may also demonstrate that the court agrees that the tenant may be evicted and is responsible for damages to the unit. Also take into consideration whether the owner has a history or practice of violating HQS or DHCD Inspection Requirements

The Inspection Form Addendum For Tenant Caused Violations (Attachment 16-D) must be used to provide written notice to the tenant. The owner must also receive a copy of the notice along with a letter of explanation (Attachment 16-E). See HQS breach caused by family for more information regarding enforcement procedures and proper course of action when tenant caused violations are discovered.

### ***Repeated Tenant "No Shows"***

A different type of accessibility issue also occurs with some frequency. In this instance, the tenant is notified of the requirement to make his/her unit available for an inspection, and the tenant repeatedly fails to have someone home to allow the inspector access to the unit. The tenant's failure to allow access to the unit after two "no-shows", where proper advance notice has been given by the RAA and the tenant has failed to contact the agency if a conflict exists with the proposed schedule for the inspection, may result in the tenant's termination from the program.

### ***Procedure to Follow for Inconclusive Inspections***

At times the inspector cannot conclude whether an item passes inspection, and must classify an item as Inconclusive. **The unit does not pass inspection if any item is Inconclusive.** In certain cases a

new lease may begin provided an on-site reinspection is performed once the tenant is in occupancy. In other cases, inspections are Inconclusive and subject to written approval by the appropriate, qualified professionals (See 0).

### **Vacant**

Frequently, at initial inspection the unit is vacant and the utilities are turned off. The owner shall be urged to have the utilities turned on for the purpose of inspection. Once the unit otherwise passes inspection, the lease may begin and HAP payment can be either released or withheld until verification by an on-site reinspection to confirm the good working order of the inconclusive utility. The on-site confirmation must be performed no later than 30 days after the lease start date. Failure to comply may result in HAP suspension or contract termination.

### **Tenant Supplied Appliance(s)**

In the case of tenant-supplied appliances, such as a refrigerator or stove, the lease may begin and the housing assistance payment can be made the date the unit otherwise passes inspection. Verification by an on-site reinspection to confirm the presence and good working order of the appliance must be performed no later than 30 days after the lease start date. Failure to correct within 5 days of notification may result in rent suspension and/or tenant termination from the program. The size of the appliances shall be appropriate for the family composition. Substituting a microwave oven for a stove shall not be acceptable unless previously approved by the RAA.

### **Subject to Approval**

An inspector may also fail or note an item Inconclusive subject to the inspection and approval by appropriate qualified professionals such as local health, building, plumbing, electrical or fire inspectors, licensed heating/plumbing contractors, local utility companies, licensed lead paint inspectors, state certified elevator inspectors or licensed elevator maintenance companies, and licensed extermination companies. Any such written approval must be currently dated and specifically approve the questionable condition. If at any time the RAA disagrees with the decision rendered by the appropriate qualified professional or believes that the condition requires further evaluation, the RAA shall notify DHCD.

- **Certification Regarding the Safe Operating Condition of the Heating System and/or All Heating Appliances** - In accordance with Section 0 all heating systems must be certified as safe. The certificate may be posted on the heating unit.
- **Written Approval from a Local Official or a Posted Building Permit** may be required in situations where systemic or structural repairs or rehab are in progress. Approval may also

be required when systemic or structural potential hazards or other questionable conditions may exist, such as knob and tube wiring.

- A Building Permit may also verify the date the building was built. Properties built after 1978 do not require a Letter of Compliance with the Lead Law.
- A **Letter of Compliance**, a **Letter of Re-Occupancy** or a **Letter of Interim Control or Certification of No Interior Dwelling Unit Violations** is required in accordance with Section 0.
- A **Post Compliance Assessment Determination** required in accordance with 0.
- Fire Department approval of smoke detector or carbon monoxide detector systems.
- An **Elevator Inspection Certificate** must be posted or on file. Frequently elevator inspections are not up to date. Follow up is required in accordance with Section 0.
- **Certification** from a licensed Elevator Maintenance Company may be required to confirm the safety of an elevator that fails inspection.
- A **receipt** to verify professional extermination in cases of chronic infestation.
- Board of Health approval of appropriate low-flow devices and/or fixtures required for water submetering.

### *Adopting a Uniform Grading System for Determining Unit Quality*

Unit grading is a process that aids considerably in the determination of the value of a rental unit for the purpose of reasonable rent determination. Inspectors assign grades and policy must be implemented uniformly and fairly without regard to personal preference but rather backed up with facts about the current condition of the property inspected.

DHCD requires that unit grades be entered into the Internet Based Inspection Audit Reporting System. It is required that RAAs document and maintain this information on file. Once this uniform grading system has been adopted and implemented by a RAA, the current participating owners and tenants must be notified of the grading criteria and the unit grade upon inspection. New participants shall be informed at initial briefing session of the grading system. If a new unit is rejected on the basis of a D grade, the prospective owner shall be informed of the grade along with the grading criteria.

A personal preference may be to say that a nice single-family house on a pretty lot in the country is desirable and of high value as opposed to a three-family on a main street in the city. But the needs of the client are important factors to consider. Perhaps the client needs access to public transportation or health or other services that are more readily available in the city unit. The point is that what makes a unit desirable to one person may not be a consideration to another person with different priorities.

Two primary goals of the Section 8 Voucher Program both tenant-based and project-based are:

1. That tenants and their families live in units that are safe, decent and sanitary.
2. That participating owners receive reasonable rent for these units.

Since HUD regards rent reasonableness as a high SEMAP point category, DHCD requires all RAAs to adopt fair and consistent practices for grading units as accurately as possible.

The unit grading criteria outlined ahead gives guidance on factors that impact unit value and so must be considered. It is not necessary for any unit to meet all of the criteria in any category for it to be so graded, but a **reasonable combination of some factors within each category**, when fairly applied, will give an accurate reflection of the value of the unit.

Not every possible factor could be listed, so it is important for inspectors to seek guidance from their Inspection Supervisor when it is needed.

**Plus** or **minus** grades may be used to more adequately **fine tune** the perceived value of the unit for rent negotiations when factors present are logically determined to fall between two differing unit grades. **C- Grades are NOT to be considered or used** (See C Grade). Similarly, **A+ Grades** are generally unnecessary as well.

**In order to be considered for the Section 8 Project Based Assistance Voucher Program (PBA), units MUST meet criteria for Grade B+ at a minimum.**

**THE FINAL DETERMINATION OF THE UNIT GRADE SHALL BE THE RESPONSIBILITY OF THE INSPECTOR.**

### **DHCD UNIT GRADING CRITERIA**

#### **“A” Unit**

- Unit/building interior, exterior and common areas are in excellent condition, newly or recently constructed or rehabbed with good quality materials and workmanship and provide an excellent thermal environment with direct heat sources in living/sleeping rooms.
- Appliances and fixtures are owner supplied and are new and/or of good quality. Tenant supplied appliances will not affect grade if owner supplied were offered and declined in favor of the tenant's own.
- Flooring is in excellent condition at move in.
- Unit has sufficient cabinets and closets and/or common area storage in an accessible basement or attic.
- There are no existing asbestos or lead based paint hazards and there is pro-active maintenance if either material is present.
- Electrical system and number of outlets per room demotes the need to use extension cords.
- Fire exits meet current standards (full door and stairway) and are properly maintained. Smoke detectors and carbon monoxide detectors are hard wired with battery back-up.
- Good roof water management prevents icing of stairways and prevents interior air quality issues relating to moisture and/or mold.
- There are no structural issues within the building or porches, and stairs, walkways, drive and parking areas are free of trip hazards.
- Has numerous extra amenities that clearly add to the desirability of the unit such as:

- ✓ Off-street or designated parking
  - ✓ Additional bathrooms
  - ✓ Large or additional rooms
  - ✓ Washer/dryer hook up or laundry facility
  - ✓ Enclosed porch or patio/deck
  - ✓ Tenant access to pool, gym or other amenity
  - ✓ Modern and efficient climate control
  - ✓ On-site maintenance / security personnel or device
  - ✓ Has been adapted for persons with disabilities
- Obvious on-going maintenance of the unit and building as well as good tenant selection practices by the owner or management.
  - No evident site and/or neighborhood conditions that could adversely impact the tenant considering family composition.

In general, required work is completed most often with one but not more than two re-inspections, considerate of seasonal repairs and/or weather. Owner is responsive to inspection comment items. Trash containment and pick up as well as snow removal is provided as needed. **A- Grade** may be considered for fine tuning the unit value for rent negotiations. **A+ Grade** is generally unnecessary.

## “B” UNIT

- Unit/building is in good condition. Appliances, fixtures and other features are modern and fully functional.
- Recent renovation including interior, exterior and common area spaces with average quality materials does not substantially increase the overall value of the unit or building.
- Overall condition of the unit/building is above average and provides a better than average thermal environment (windows, direct heat sources in each living/sleeping room). If indirect heat sources are utilized, the owner is receptive to utilizing options such as louvered doors and/or ceiling fans if needed.
- Electrical system and number of outlets may preexist current standards but are adequate to demote the use of extension cords.
- Fire exits and smoke detectors may preexist current standards but are well maintained and are functional to meet the needs of the occupants considerate of the family composition. Carbon monoxide detectors are properly located and maintained.
- Any asbestos and/or lead based paint is proactively maintained.
- Unit/building is free of evidence of excess moisture, mold and/or interior air quality issues. (Older homes with stone/brick foundations may exhibit some limited water penetration in the basement at times.)

- Has at least one extra feature that adds to desirability (porch, yard, security system, near recreational area or other facility, extra large rooms, adequate closets and/or storage).
- Could otherwise be an A unit except for the quality of renovation work and/or the need for more aggressive preventive maintenance by the owner. Perhaps would be an A unit if the appliances or utilities were owner supplied.
- Site conditions are adequate but some neighborhood conditions may exist but do not pose an imminent risk to the tenant/family.
- Owner may or may not occupy the property but posts emergency contact and is responsive. Services such as trash pick up and snow removal is adequate.

**B** units are of above-average quality and are generally well maintained. (Example: Could be a **C+** unit that has been adapted for a person with disabilities.) Often two or sometimes three re-inspections are required to complete required repairs, but rent withholds for inspection non-compliance are not routine. **B+ or B- Grades** may be used to more adequately fine tune the perceived value of the unit for rent negotiation.

**B+ Grade:** May be used when a reasonable combination of B factors and A Grade extra amenities are present. **At minimum, this grade must be met for consideration for HCVP Project-Based assistance.** Direct heat sources are required for B+ grade criteria.

## “C” UNIT

- Unit is in average condition, but with normal wear and tear, two or more HQS fail items will likely occur within the inspection pass date and the next annual inspection.
- Appliances and unit features are dated but functional.
- The electrical system is adequate but lacking sufficient outlets to demote the use of extension cords.
- Fire exits and smoke detector systems are adequate and functional considerate of the family composition. Carbon monoxide detectors are properly located and maintained.
- Maintenance appears to be performed on an as-needed basis with little or no evidence of preventive maintenance. Tenant selection and screening may be minimal. The unit may not be well prepared between tenants.
- The thermal environment is average or somewhat below average with old windows and/or older, less efficient heating system likely to result in higher utility costs.
- If present, asbestos and/or lead based paint is not proactively maintained but owner will cooperate if required.
- The condition of porches, stairs and walkways may show signs of age and may require repairs.
- Common areas are often lacking sufficient lighting and cleaning.

- Trash containers may be lacking and the basement may contain excess debris and some old appliances that need to be discarded.
- The possibility of pest infestation exists.
- Gutters/downspouts may be lacking, damaged or missing and the roof may be nearing the end of its service life.
- Site and neighborhood conditions exist but do not directly impact the tenant/family and the owner is willing to or has taken preventive safety measures.

While some **C Grade** units appear sparse but solid, some others may appear to have once been beautiful apartments. In a lower end **C unit** the effects of tenant wear and tear are evident. It is likely that three or more re-inspections may be required and rent withholds are not uncommon. A **C unit grade** represents a solid average rental unit. **C+ Grades may be used** to fine tune the unit value for rent negotiations, but **C- Grades may not be used** as they are too prone to subjective compromises and frequently become a **D Grade** before the next annual inspection. **Inspectors must give guidance to achieving at minimum a C Grade.**

#### **“D” UNIT**

- Unit is in unsatisfactory condition and in need of renovation to be considered safe, decent and sanitary for lease to the program.
- Major building systems (roof, siding, plumbing, electrical, heat, etc) are at the end of their service life and/or are suspect.
- Little or no ongoing maintenance of the property by the owner and multiple layers of poor quality repairs exist.
- Structural problems are apparent or progressing in the building or porches such as bowing, excess settlement or leaning, and/or masonry failure
- Air quality issues relating to lack of maintenance of lead based paint, unkeyed or failing plaster, asbestos or excess moisture and mold.
- Poor quality rehab, crossed utilities, questionable fire exits or other evidence of unprofessional rearrangement of the building.
- A poor quality thermal environment that will generate high utility costs to the tenant such as drafty old windows or poorly fit replacements, holes or rot in the exterior siding.
- Site and neighborhood conditions that present a risk to the tenant considering the family composition such as a lack of security, unsecured abandoned buildings, history or evidence of high crime, drug or gang activity, bullet holes and vagrants in the building.
- Deteriorated outbuildings, excessive amounts of debris in basement or on grounds and fire hazards.
- Owner-supplied utilities or water may have been shut off to the detriment of the tenants. (If possible, ask other occupants)
- Conditions that will likely result in a fail condition within the next ninety days that will ultimately affect the agency audit fail rate and create increased costs due to excess re-inspections.

**D Grade units** represent a lack of value to the client, agency and taxpayer. **DHCD does not authorize leasing of units that merit this grade.** Owners are often uncooperative, and terminations often result putting the client under pressure to relocate. Rent requests often far exceed the value of the unit. See Attachment F, sample letter to decline lease up of marginal units.

Inspection staff should give the owner clear guidance on what repairs are required for the building/unit to meet a grade C or better. It is important that this be done as politely and professionally as possible. Increased unit value may cover the cost of repairs over time. The goal is to help the owner maintain the value of the property, stabilize the tax base and maintain viable affordable housing resources.

### *Marginal Unit Policy*

DHCD and its RAAs reserve the right to refuse to lease new units deemed marginal.

- **A work plan outlined in section 17.1.6.1.2 may be required when correcting the problems in a marginal unit.**

### **Responding to the Problems of Marginal Units Under Lease**

HUD defines marginal units to be those that are likely to fall below HQS within a year. DHCD and its RAAs recognize the problem of maintaining marginal units on the Section 8 Program. Frequently, an inspector will return to a unit and note the same condition of one or more aspects of the unit that do not cause a fail condition outright, but clearly pose the likelihood of deterioration or where a fail condition could easily occur prior to the next annual inspection. Often, repairs are made, but are themselves marginal. Failure to maintain compliance may be due to inadequate attention on the part of the owner or management agent, excess or undue wear and tear on the part of the tenant, and/or the impact of neighborhood conditions.

Tackling the problem of marginal units is difficult for several reasons. A tight housing market limits the number of units available to Section 8 tenants. Imposing more stringent inspection standards may result in owners refusing to participate making it very difficult for tenants to find housing even when available.

The following outline defines a concrete strategy to deal with issues around marginal units and identify the specific factors that contribute to these conditions (See 16.13.1.4 “D” Unit). The goal of this policy is to eliminate units that only barely meet HUD's Housing Quality Standards and DHCD Inspection Requirements. These are units that remain undesirable because of how quickly they are likely to fall out of compliance. RAAs may elect to terminate the HAP contract or

conduct additional marginal unit inspections and may consider an owner or tenant history of non-compliance when making this decision.

### **Identifying Marginal Units**

This procedure must be utilized by all RAAs when the unit clearly poses the likelihood of falling out of compliance in a short period of time and/or earns a poor grade.

16.13.1.4 “D” Unit identifies a combination of conditions that shall be used to identify and designate a unit as marginal. These conditions are due to poor owner management and/or maintenance that must be improved by the owner. Each RAA shall add to the checklist whenever necessary to address specific conditions not listed. The RAA must also notify owners of the 2 additional required inspections that will be performed no more than 3 months apart. The consequences of repeated and regular non-compliance will be contract termination.

### **Steps to Follow**

1. **Annual or Audit Inspection:**

**PASS** - even though the unit passes inspection it may still be determined marginal. The tenant must be given a moving packet and counseled regarding relocation at this time. See Step 3 to proceed.

**FAIL** - owner is given the usual 30-day opportunity to correct. The quality and extent of improvement is unknown until reinspection.

2. **Annual or Audit Reinspection:**

The reinspection must take place no more than 30 days after the Annual or Audit Inspection. Once the unit has passed the reinspection yet is determined to be marginal, the unit is subject to additional compliance inspections. The tenant must be given a moving packet and counseled regarding relocation at this time.

3. **1st Marginal Unit Inspection:**

This inspection must be scheduled no more than 3 months after the Annual or Audit reinspection has passed. Use the regular Inspection Checklist. Indicate the inspection results in the space

provided at the bottom. Note any improvements under comments on the Inspection Checklist. If no change - indicate no change.

4. 1st Marginal Unit Reinspection:

The reinspection must take place no more than 30 days after the first Marginal Unit inspection. Indicate the inspection results in the space provided at the bottom. Note any improvements under comments on the Inspection Checklist. If no change - 1st Marginal Unit Inspection. Use the regular Inspection Checklist to indicate no change. The RAA has the discretion to schedule the reinspection sooner, 10 or 15 days for example.

5. 2nd Marginal Unit Inspection:

This inspection must be scheduled no more than 3 months after the 1st Marginal Unit Reinspection has passed. Use the regular Inspection Checklist. Indicate the inspection results in the space provided at the bottom. Note any improvements under comments on the Inspection Checklist. If no change - indicate no change.

6. Termination or Additional Optional Marginal Unit Inspections:

Finally, after the second Marginal Unit Inspection is complete, the RAA must assure a review by a designated staff member.

If the two additional inspections have **FAILED** with no change in marginal unit conditions and the owner has failed to respond or take action to the satisfaction of the RAA, the subsidy contract must be terminated with no follow-up reinspection.

However, if an owner can show good cause for failure to correct, termination at this time may be too extreme a result. An owner should not be unfairly penalized where violations are attributable to an abusive tenant and the owner can demonstrate efforts to work with the tenant. Units that show marked improvement, evidence of a more prompt management pattern, or where the owner submits a documented long-term improvement plan, further follow-up inspections may be allowed.

### *Conducting an Initial Inspection While the Unit is Still Occupied*

Sometimes it is just not possible or practical to wait until a unit is vacant to perform an inspection. In this instance, which is left to the judgment of the RAAs, DHCD will permit occupied units to be inspected. The following conditions must be met:

- Since the tenant in occupancy may have no affiliation with the Section 8 program, it is recommended that the owner/management agent be present during the inspection.
- In order to begin a lease, a complete inspection must be performed. In accordance with HUD's HQS, all checklist items must be confirmed as pass. No lease can begin on a contingency basis. Under limited circumstances HUD has approved an Inconclusive rating for specific items as outlined in Section III
- If the occupants' possessions prevent a complete inspection, inaccessible areas must be rated "fail". It is the owner's responsibility to assure that all areas are accessible in order to complete the inspection.
- If necessary, a reinspection may be performed while the unit is still occupied. If the unit passes the reinspection, a lease may begin as soon as possible. Bear in mind this will depend on the tenant's ability to take occupancy.
- Once a lease has begun or the unit has become vacant a complete inspection must be performed again in no more than 30 days in order to confirm that the previous tenant left the unit without damage which would cause the unit to fail and to review any conditions the tenant may have concerns about.

### *Waivers*

The WAIVER REQUEST FORM (Attachment 16-G) must be used to request a waiver of any HQS or DHCD Inspection Requirement.

DHCD **cannot** waive any of HUD's Housing Quality Standards; however, DHCD will review any request for such waiver and when appropriate DHCD will seek HUD permission to waive certain requirements, in order to facilitate a lease-up that would not compromise the health or safety of the occupants. These waiver requests **must** be made through DHCD.

DHCD **can** waive its own DHCD Inspection Requirements. Waiver requests should be forwarded to DHCD's Housing Inspection Coordinator. As a general rule, DHCD will not readily provide waivers to its inspection requirements, unless a compelling case can be argued in favor of granting such a waiver.

It is mandatory that both the owner and the tenant sign the Waiver Request acknowledging that approval of the waiver request does not in any way negate the owner's responsibility under the law and that in all circumstances it is the owner's responsibility to maintain the property to meet all applicable state and local Codes and not to interfere with a tenant's right to request an inspection by the local Code Enforcement Agency.

Waiver Requests must be approved and signed by the RAA Inspection Supervisor or the Program Manager prior to submission to DHCD. Although the circumstances of owners and tenants often determine approval or disapproval of a waiver request, it is not up to owners and tenants to decide when the request for a waiver from DHCD is warranted. The Inspection Supervisor or Program Manager must concur that a request for a waiver is warranted and beneficial for the family.

### *Audits*

Three percent (3%) of all units under lease are audited each year. DHCD's Inspection Coordinator conducts audits and also requires each RAA to perform internal audits of units each quarter. DHCD includes an RAA's internal audit inspections as counting toward its 3% annual audit goal. The results are used to determine which RAAs need additional training, and when necessary which RAAs must be sanctioned for failure to improve in this area of program operation.

Audits are selected either from units recently brought onto the program or from units recently reinspected and passed inspection. Along with individual unit audit inspections, DHCD recommends regular "windshield tours" whereby individual unit selections can be made based on a preliminary viewing of building exterior, common areas and neighborhood conditions. DHCD fixes the number of unit audits that must be performed and the DHCD Inspection Coordinator may increase or decrease the required number for any RAA based on the previous year's performance. RAA unit audits must be conducted in the same manner and format as a DHCD unit audit.

To select units for the audit inspection each RAA must submit a complete list of units that have passed inspection each quarter to the DHCD Inspection Coordinator for random selection. Tenants who remain in the same unit previously audited may be excluded for up to 2 years so as

not to create an imposition to the tenant. After DHCD has made selections the RAA may select from the remaining list for in-house audits.

All audit results by both DHCD and RAAs must be entered quarterly into the DHCD internet-based Audit Reporting System. All violations must show a designation for either "Staff Oversight" or "Maintenance Fail". RAAs are required to enter all follow-up reinspection results as a pass or termination date for both DHCD and themselves as the inspections close out. Both quarterly and annual audit reports of results are available from the system showing both staff and maintenance fail totals as a percentage of the units audited. The system also allows results to be generated for individual inspectors. Unit grades are required to be entered so that the quality of the housing stock participating in the program can be monitored.

All RAAs are required to furnish the following information for all selected audit inspections:

- The inspection checklist filled out with both tenant and owner information and address including zip code.
- A copy of the previous inspectors report and identity.
- The type of lead paint documentation and date issued if applicable.
- The current family composition of record.
- The specific program designation.

The inspection checklist and attendant correspondence must be maintained separately in an audit file.

The RAA must report its results on the DHCD Quarterly Management Report.

As with DHCD Inspection Audits, internal audits must be reviewed with staff inspectors and analyzed in order to determine areas of weakness, need for additional training or other administrative action.

All fail items must be categorized as "Staff Oversight" or "Maintenance Fail". (The numbers of fails due to staff oversight are the primary measure of an inspector's effectiveness.)

Overall and individual "S" and "M" failure rates are calculated within the audit reporting system.

Whenever poor audit results are a trend, the number of audit inspections must be increased.

Any comments disputing DHCD audit determinations should be submitted in writing within 7 days prior to the completion of the Quarter.

### ***Sanctions***

HUD reserves the right to impose administrative fee sanctions on any RAA which receives greater than 20% audit failure rate on HUD audits. If HUD sanctions any DHCD RAA, DHCD will withhold the designated amount of money from the RAA, and will use the money to satisfy the HUD sanction. DHCD also reserves the right to impose administrative fee sanctions on any RAA maintaining consistently poor DHCD unit audit results (that is greater than 25% unit audit failure); that fails to follow the required inspection format established by DHCD; that consistently fails to respond to DHCD audit findings in a timely manner; or that fails to maintain current data in DHCD's Audit Reporting System. DHCD will provide prior notice to any RAA being considered for DHCD-imposed sanctions, and will provide a prescribed period of time in which the RAA can demonstrate improved performance.

### ***Training***

The DHCD Inspection Coordinator performs training programs throughout the year. These sessions will focus on those areas that the DHCD inspection audit results indicate additional follow-up is required as well as provide more advanced inspection training in significant areas of housing quality standards. Additionally, DHCD may request that the RAA inspector who performed the original (re)inspection of an audited unit, accompany DHCD during the audit. This time may be used to do one-on-one training, answer questions, and discuss issues. Periodically, DHCD may invite HUD staff to participate in training sessions in order to provide a HUD perspective and methodology.

DHCD will make an effort to be available upon request to train new RAA inspectors as they come on board. However, if the DHCD Inspection Supervisor is unavailable, it is the RAA's responsibility to train new inspection staff before they may do inspections on their own and it is the responsibility of each RAA to ensure that all new inspectors complete the required HUD Visual Assessment Training for Lead Based Paint.

### ***Additions and Amendments***

Additional DHCD Inspection Requirements, HUD's Housing Quality Standards, and amendments to this plan may be added from time to time. Further, modifications to existing DHCD Housing Quality Requirements may be made from time to time. Any additional unusual circumstances should be referred to DHCD in order that DHCD and the RAA can together make the most reasonable determination on how to resolve such matters.



***List of Attachments***

- 16-A      Inspection Checklist (2 pages)
- 16-B      Sample Letter of Full Deleading Compliance
- 16-C      Inspection Form Addendum for 24 Hour Notice (Owner Notification)
- 16-D      Inspection Form Addendum for Tenant-Caused Violations (Tenant Notification)
- 16-E      Letter to Owner With Notice of Tenant-Caused Violations
- 16-F      Declined Marginal Unit Letter
- 16-G      Waiver Request Form

## **EXHIBIT 8-2: HQS Compliance**

Taken from Chapter 17 of DHCD's former Administrative Plan in its entirety.

### **HQS Compliance**

#### ***Determining the Severity of the Violation(s)***

Each unit must pass inspection once a year, at least 30 days before the anniversary date of the lease. At any other time, inspections can occur at the request of the tenant or owner, or as a result of unit audit inspections performed by the RAA, DHCD or HUD. There are FOUR types of violations that could be discovered during a unit inspection.

#### **Serious HQS Violations**

Violations that present an immediate threat to the family's health or safety and must be corrected within twenty-four hours. The unit is uninhabitable until the repairs are completed.

#### **Other HQS Violations**

Violations that could affect the family's health or safety if not corrected within a reasonable amount of time, or other violations that do not affect health or safety.

#### **New HQS Violations**

Violations cited subsequent to the initial, failed annual, or other inspection. The new fail item(s) must be treated as a separate failed inspection, with all the ensuing remedies or sanctions, without impacting the prescribed course of action in progress.

It is extremely important that the RAA communicate to the owner that any new violations noted at each re-inspection must be cited. The RAA must make every effort to ensure that initial inspections are thorough, to minimize the possibility of finding new HQS violations upon re-inspection.

#### **Other Deficiencies or Comment Items**

Other deficiencies are those that are not HQS violations; are not life threatening; and, do not affect the family's health & safety. These deficiencies should be corrected at some reasonable future date or they could easily deteriorate into more serious violations. Other deficiencies should always be noted to help avoid security deposit claim issues that may arise when the family vacates.

#### ***Course of Action When Violations are Discovered***

This section addresses violations the owner is responsible for correcting. Treatment of tenant caused HQS violations is addressed in section 16.10 Tenant Caused Violations. An owner is not required to correct tenant caused HQS violations caused by any of the following:

- Failure to pay for tenant-supplied utilities
- Failure to provide and maintain tenant-supplied appliances

- Malicious damage caused by family or guest to unit or premises (beyond ordinary wear & tear). **Common areas are not considered. Housing Court is the final determiner of responsibility.**

These procedures must be followed by the RAA at any time staff discovers that one or more HQS are not being met. When a unit is out of compliance several key factors should be collectively considered to determine an appropriate course of action:

- Severity of the violations;
- Number of violations;
- Length of time violations remain outstanding;
- Owner's or tenant's good faith effort to make repairs;
- Past repair history of owner, and/or tenant; and,
- Whether the non-compliance is tenant-caused.

### **Serious Violations**

The RAA must contact owner or agent by phone and inform them of need to make the repairs within 24 hours. The phone call must be followed-up in writing. If the RAA is unable to contact the owner or agent by phone or in person, written notice must be sent by certified mail.

Confirmation that the owner or agent has proceeded to make corrective repairs or made a sufficient good faith effort to repair must take place on the next business day following the 24-hour correction period. On-site re-inspection at the next reasonable scheduling opportunity is the only acceptable definitive verification that the unit is in compliance with HQS.

If the violations have not been corrected satisfactorily, the owner and family should be notified that the HAP payment will terminate immediately, i.e., as of the date of the re-inspection. The notice will state that the HAP payment will resume only after repairs have been satisfactorily corrected; and, that the HAP payment will be pro-rated on the number of days the unit is in compliance beginning with the date of a subsequent satisfactory re-inspection. If the unit is in compliance upon re-inspection and the owner can document an earlier repair completion date, the HAP payment may resume as of that actual compliance date.

When termination of HAP payment occurs, the family should be immediately advised:

- To seek competent legal counsel relative to continued payment of their rent share. RAA's must not attempt to provide legal advice to tenants.
- That the RAA may have to terminate the HAP contract and that if the HAP Contract is terminated, the RAA will issue the family a new subsidy and provide the family with a list of available units on file at the RAA.
- That the family may assume responsibility for the full rent amount and lease the unit in question without further assistance by the RAA.

If the repairs are completed on or before the next HAP payment date, the payment should be reduced by the per diem amount of the rent that reflects that period of time in which the unit was not in compliance. For example:

- April HAP payment of \$300 has been paid.

- April 4, inspector verifies serious leak in ceiling from an upstairs apartment where pipe had burst.
- Owner notified, in person and in writing, to correct within 24 hours.
- On April 6, inspector returns and notes that only minimal work has been done to repair damage to family's unit, and leak still continues.
- Owner is sent a notice that the HAP payment will be terminated, effective immediately, and continuing until the repairs are completed.
- Family is advised to seek legal counsel relative to their rent share.
- On April 15, unit is re-inspected and all work is completed.
- Owner is notified that the HAP payment for May will be reduced by \$100.00, that is \$10 per day ( $\$300/30 = \$10$ ) for the 10 days the unit was in non-compliance (from April 6-15).
- Family's legal counsel should advise family of any further action on tenant's share.

If repairs are not completed before the next HAP payment check is to be mailed, no payment may be sent to the owner. When the owner indicates that repairs have been completed and the inspector can verify this, a pro-rated share of the subsidy may be paid from the date the inspector approved the unit.

Depending upon the nature of the serious violation, if repair(s) are not completed promptly, the RAA should terminate the HAP contract when it becomes apparent that the owner will not cooperate in making the necessary unit corrections. The RAA should not allow more than 10 days for serious HQS violations.

### **All Other HQS Violations**

Immediately upon completion of the inspection, the owner must be provided with written notice outlining the corrective action to be taken and possible penalties for failure to comply. If the owner is present at the inspection any fail items and the necessary corrective action should be discussed at that time.

The owner should be given a reasonable amount of time to make the necessary repairs, usually 30 days. During this time, the HAP payment continues without penalty.

Re-inspect the unit on, or immediately after, the required completion date. An on-site re-inspection is the only acceptable verification of HQS compliance.

If work has been completed no further action is necessary and the HAP payment will continue uninterrupted.

If work has not been completed, the inspector should attempt to determine why. Does the owner have a legitimate need for more time? Is the owner making a good faith effort to meet his obligations, but having difficulty meeting the RAA schedule? Are there seasonal considerations? Is the family cooperating? Depending upon the inspector's assessment of the situation relative to the RAA's written policy and required criteria four options are available:

## **Options When Work is not Completed Satisfactorily**

**All required work is expected to be completed in a workmanlike manner. Poor quality repairs may prevent the unit passing inspection.**

### **Terminate HAP Payment**

The RAA will notify the owner, in writing, that:

- a) The HAP payment will stop effective immediately;
- b) Payments will not resume until the repairs are completed; and,
- c) No retroactive payment will be made for the period of time the HAP payment is terminated.

(See discussion of HAP payment termination in part 0, Serious Violations.)

### **Work Plans and/or a "No-penalty" Extension of Time to Complete Repairs**

**Some repairs require additional time for the owner to complete. It may be that the scope of the repair is beyond the owner's ability and a contractor is needed. The contractor's schedule then becomes a factor to consider when recognizing the good faith of the owner. In this instance the RAA may require the owner to provide a signed and accepted proposal from the contractor showing the approximate start and completion dates of the work. This allows the scheduled reinspections in a cycle other than the 30 day cycle for efficiency and to avoid unnecessarily inconveniencing tenants.**

- **RAAs determine the acceptability of the timeframes of the plan.**
- **Temporary repairs to stabilize the condition can be required prior to acceptance of the plan.**
- **RAAs may reject a plan when the time frame is excessive. Other more available contractors may be needed.**
- **At Initial Inspection RAAs may halt the inspection and decline to lease the unit without offering a work plan option.**
- **At Annual Inspection the RAA may elect to terminate the contract if it is determined that occupancy would present a risk to the tenant during the work.**
- **Work plans may be used in conjunction with the Marginal Unit Policy outlined in section 16.14.**

**Other repairs may be within the owner's ability to complete without reliance on a contractor. Instead of an accepted proposal the RAA may accept a Letter of Intent from the owner agreeing to complete the repairs within reasonable timeframes. This may also include seasonal repairs that require an extension until weather allows the work. In either scenario a reasonable schedule of reinspections to monitor progress and adherence to the plan are required.**

- **Letters of Intent may be used in conjunction with the Marginal Unit Policy 16.14.**

**During the extension period, the HAP payment may either continue uninterrupted OR be withheld until completion of repairs and paid retroactively. Abatements could be applied to rents that are withheld. Failure of the owner to honor the agreement is grounds for contract termination.**

### **Pay Full HAP payment**

In very limited (RAA-predetermined) circumstances, an owner may continue to receive the full subsidy during the course of an approved "No Penalty" extension. At the end of the extension period, if work is not completed, the RAA has the following options:

- Terminate the HAP payment; or
- Grant an additional "with penalty" extension; or
- Grant an additional "no penalty" extension; or
- Terminate the HAP contract.

Generally, mitigating circumstances are the only reason for granting an additional "no-penalty" extension. The Owner must be able to document the mitigating circumstances. The documentation must be attached to the inspection supervisor's approval, and maintained in the family's file.

### **Withhold HAP payment and reimburse in full when all work is completed**

In limited (RAA-predetermined) circumstances, the HAP payment may be withheld and paid in full retroactively if the unit is brought into compliance by the repair deadline. At the end of the extension period, if work is not completed, the inspection supervisor must decide whether to:

- Grant an additional "no penalty" extension; or
- Terminate the HAP contract; or,
- Grant an additional "with penalty" extension and withhold and reduce the HAP payment in accordance with section 0.

### **Grant a "With Penalty" Extension of Time to Complete Repairs**

During a "with penalty" extension period, the HAP payment **must** be withheld. Upon completion of repairs a partial, retroactive HAP payment will be made to the owner. If the owner does not complete the repairs, the HAP payment will be terminated as described in 0 above.

Generally, the appropriate response to a failed re-inspection is to withhold and reduce the HAP payment during the extension period. The HAP payment reduction may range from 2% to 100%. When the repairs are complete, the RAA may make a partial retroactive payment. If the repairs are not completed by the end of the extension period, either the HAP contract will terminate **or**, if the owner can show cause why additional time is needed, the subsidy will continue to be withheld until the repairs are made.

Withholding HAP payment during an extension period is a good inducement for an owner to complete the repairs. It demonstrates that the RAA is serious about seeing the repairs are completed. Instead of rewarding the owner with the full HAP payment during an extension, the HAP payment is withheld and the owner is able to receive a reduced portion only when the repairs are made. This mechanism recognizes a "diminished value" of the rental property while the repairs are outstanding, consistent with Massachusetts state law.

If the subsidy is withheld, the family should be advised to seek legal counsel with respect to appropriate rent withholding procedures under Massachusetts state law.

Sixty days from the date of the initial fail, or approved extension, if the unit remains in non-compliance **and an accepted work plan has not been implemented**, steps should be taken to

terminate the HAP contract. The RAA must send written notice to both the family and the owner advising them of the date of the contract termination (give an effective date of not more than 30 days from the date of the notice), at which point the family will become a tenant-at-sufferance and the RAA will no longer be responsible for the rent. Again, the family needs to be made aware that once the contract is terminated, if they wish to retain their assistance, they must locate a Section 8 approvable unit within the voucher term stated in Section 4.1 or an approved extension of the termination effective date. They should also be again urged to seek legal counsel regarding their rights and responsibilities as a tenant-at-sufferance in a non-compliant unit.

When considering whether to withhold the HAP payment, the RAA must make the following decisions:

### **How much to withhold?**

There is no one formula to follow when making this determination. It is a good idea to check with the closest regional Housing Court to determine how judges make these same determinations. Or, an RAA may establish a schedule of percentages that reflect the approximate worth of individual features in an apartment, and use these percentages when calculating a reduced subsidy payment. In addition, an owner who demonstrates a history of inspection non-compliance may be subject to a proportionately higher abatement percentage to promote client safety and ensure compliance. Each RAA must ensure that any schedule it develops is fair and that a consistent procedure is followed. Each RAA must develop a written policy that defines its method of making these determinations. This policy must be approved by DHCD and incorporated into the RAA's administrative plan.

### **During an extension how does an RAA decide whether to keep making the full HAP payment or to withhold the HAP payment?**

Each DHCD Section 8 Program Director must ensure that these decisions are being thoughtfully, reasonably, and consistently implemented. Having more than one option to rely upon if required work is not completed in a timely manner is one of the key features of DHCD's Section 8 program. This option allows each RAA to comply with HUD and DHCD requirements without having to take a rigid, bureaucratic position each time repairs are not made as required. It allows RAAs to encourage owners to get their work done, without having to cut off their HAP payment entirely. This is consistent with the rental owner's expectations under Massachusetts's law.

### **Terminate the HAP Contract**

Although the HAP payment is suspended immediately, a 30-day notice of intent to terminate the HAP contract for non-compliance is recommended to alert the family to the impending condition of being "on the clock". The family must be issued a new subsidy and informed that in order to retain their rental assistance they must locate a new, approvable unit generally within the voucher term as stated in Section 4.1 of the contract termination date. The notice must also advise the family to seek legal counsel regarding their rights and responsibilities as a tenant-at-sufferance in a non-compliant unit. Provided that the HAP payment had not been terminated, the owner may receive a partial payment of the withheld subsidy pro-rated from the date of suspension to the effective date of the contract termination: this is consistent with our recognition of the "diminished value" of the property.

The owner and family must be notified, in writing, of the selected course of action and the new repair deadline and re-inspection date, or contract termination date included therein.

### **New Violations**

A violation that is cited for the first time at a re-inspection (regardless of whether it had previously been overlooked by an inspector **or** had occurred subsequent to the initial failed inspection) does not automatically trigger an extension. The owner and tenant must be notified, in writing, of the new fail item(s), the new fail repair deadline, and the new fail re-inspection date **without** impacting the progress of the initial fail.

### **Other Unit Defects that are not HQS Violations**

There are no sanctions or penalties for these unit conditions. These conditions will likely negatively impact the unit grading and should be noted on the inspection form as comment items to give guidance to the owner. A copy should be given to both the family and owner for their records. Owners should be encouraged to make the repairs so that rent offers are not affected and they will not turn into violations at a later date.

### ***HQS - Unit Remains in Extended Non-compliance***

1. When a unit fails inspection, the RAA must notify the owner immediately of the time allotted to perform the repairs.
2. The unit must be re-inspected to determine if the repairs have been done. On-site re-inspection is the only acceptable means of verification.
3. If repairs have not been completed, the procedures outlined in section 0 should be followed. The owner must be notified in writing of any action being taken.
4. The RAA must have an internal review system for cases where the unit has been in extended non-compliance (even if a no-penalty extension has been granted). The internal review system should allow certain decisions to be examined by someone in the RAA not previously involved in the case when non-compliance exceeds three months.
5. All HAP suspensions of over three months must be listed on the quarterly report to DHCD.
6. When a decision is made to suspend HAP payments, the case must be reviewed on a monthly basis. The person who originally made the decision to suspend the subsidy may do the monthly review.
7. After three months of suspended HAP payment, if the repairs have not been completed, the HAP Contract should be terminated. If there are mitigating circumstances **or a work plan has been accepted and is being honored**, a decision may be made not to terminate the HAP Contract. The decision should be discussed with a staff person not previously involved in the case, to strategize over future action if the suspension will be continued for longer than three months.
8. After six months of suspended HAP payments, the case must be submitted to DHCD for review. A history of the case should be submitted, including what steps have been taken to

review the case internally, and an explanation of why the HAP Contract has not been terminated.

9. Whenever the HAP payment is suspended the family must be notified in writing. The notice to the family must state that:
  - a) The HAP payment has been suspended.
  - b) If the owner continues to neglect the repairs, the RAA may terminate the HAP Contract.
  - c) If the HAP contract is terminated the RAA will cease to be responsible for the contract rent. If the family remains in place after the effective date of the HAP contract termination, it will be as a tenant-at-sufferance. The family will be issued a subsidy and given the maximum amount of time (See Section 4.1) to find a new unit. If the family remains in place and the subsidy expires, they will lose all rental assistance benefits. The family must move in order to retain its assistance. The family may move prior to the effective date of the contract termination, provided proper notice is given to the owner and the RAA.
  - d) The family is advised to seek legal counsel on paying its rent share during the period of suspension. It is advisable that the family continues to pay rent if it chooses not to consult an attorney.
  - e) If the family pursues a court action against the owner instead of moving, it must notify the RAA. If the family chooses not to move because of a pending court action, and subsequently loses in court, the RAA should seek DHCD guidance on how to handle the case. If the family prevails in court, DHCD will reinstate the family in the unit in question, not in another unit (provided the unit passes inspection).
  - f) The family remains obligated to give proper notice to both the owner and the RAA before moving.
10. When a decision is made to terminate a HAP Contract, the family should be issued a subsidy. The effective date of the subsidy should coincide with the effective date of the HAP Contract termination, although the subsidy may be issued prior to the termination date. The family should again be advised to seek legal counsel regarding payment of rent.

If a case is in litigation, or if the Board of Health is taking action against the owner, but the HAP Contract would otherwise be terminated, DHCD will refer the case to its Counsel for a decision on whether to terminate the HAP Contract. The RAA should send written request for such referral to DHCD's Bureau of Federal Rental Assistance. The referral should include a brief summary of the case.

An RAA may be reluctant to terminate a HAP Contract because of the consequences for the family. While DHCD realizes that termination of the HAP Contract will probably force the family to move, we **can** not allow assisted tenants to live in substandard housing indefinitely. If a vacant unit fails inspection, we do not allow a family to live there: our standards for in-place tenants should not be significantly different. Furthermore, it is unfair to tie up a subsidy beyond the prescribed time if it cannot be utilized according to program requirements.