

114TH CONGRESS
2D SESSION

S. 3398

To reform the inspection process of housing assisted by the Department of Housing and Urban Development, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2016

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To reform the inspection process of housing assisted by the Department of Housing and Urban Development, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “HUD Inspection Proc-
5 ess and Enforcement Reform Act of 2016”.

1 **SEC. 2. REDUCTION IN GRADE OR PAY OR REMOVAL FOR**
 2 **MISCONDUCT OR PERFORMANCE OF EM-**
 3 **PLOYEES OF THE DEPARTMENT OF HOUSING**
 4 **AND URBAN DEVELOPMENT.**

5 (a) IN GENERAL.—Section 7(c) of the Department
 6 of Housing and Urban Development Act (42 U.S.C.
 7 3535(c)), is amended—

8 (1) by striking “The Secretary is authorized”
 9 and inserting the following: “EMPLOYMENT, COM-
 10 PENSATION, AUTHORITY, AND DUTIES OF PER-
 11 SONNEL.—

12 “(1) IN GENERAL.—The Secretary is author-
 13 ized”; and

14 (2) by adding at the end the following:

15 “(2) REDUCTION IN GRADE OR PAY OR RE-
 16 MOVAL FOR MISCONDUCT OR PERFORMANCE OF EM-
 17 PLOYEES.—

18 “(A) DEFINITIONS.—For purposes of this
 19 paragraph—

20 “(i) the term ‘covered employee’—

21 “(I) means an individual holding
 22 a position in the civil service in the
 23 Department; and

24 “(II) does not include any indi-
 25 vidual—

1 “(aa) holding in a position
2 described under sections 5312
3 through 5316 of title 5, United
4 States Code (relating to the Ex-
5 ecutive Schedule);

6 “(bb) holding a position as a
7 limited term appointee, limited
8 emergency appointee, or non-
9 career appointee in the Senior
10 Executive Service, as defined
11 under paragraphs (5), (6), and
12 (7), respectively, of section
13 3132(a) of title 5, United States
14 Code; or

15 “(cc) holding a position of a
16 confidential or policy-determining
17 character under schedule C of
18 subpart C of part 213 of title 5,
19 Code of Federal Regulations;

20 “(ii) the term ‘grade’ means a level of
21 classification under a position classification
22 system;

23 “(iii) the term ‘misconduct’ includes
24 neglect of duty, malfeasance, or failure to
25 accept a directed reassignment or to ac-

1 company a position in a transfer of func-
 2 tion; and

3 “(iv) the term ‘pay’ means the rate of
 4 basic pay fixed by law or administrative
 5 action for the position held by a covered
 6 employee.

7 “(B) ACTIONS COVERED.—This para-
 8 graph—

9 “(i) applies to a reduction in grade or
 10 pay or removal; and

11 “(ii) does not apply to—

12 “(I) a reduction in grade or pay
 13 or removal under section 7512 of title
 14 5, United States Code;

15 “(II) a reduction in grade or pay
 16 or removal under section 7521 of title
 17 5, United States Code;

18 “(III) a removal under section
 19 7532 of title 5, United States Code;
 20 or

21 “(IV) a removal under section
 22 3592, 3595, or 7543 of title 5, United
 23 States Code.

24 “(C) CAUSE AND PROCEDURE.—

1 “(i) IN GENERAL.—Notwithstanding
 2 any other provision of law, under regula-
 3 tions prescribed by the Office of Personnel
 4 Management, the Secretary may, if the
 5 Secretary determines that the misconduct
 6 or performance of a covered employee war-
 7 rants such action—

8 “(I) remove the covered employee
 9 from the civil service;

10 “(II) reduce the grade of the cov-
 11 ered employee; or

12 “(III) reduce the pay of the cov-
 13 ered employee.

14 “(ii) REDUCTION IN GRADE.—A cov-
 15 ered employee subject to a reduction in
 16 grade under clause (i)(II) shall, beginning
 17 on the date that the reduction takes effect,
 18 receive the annual rate of pay applicable to
 19 such grade.

20 “(iii) APPEAL PROCEDURES.—

21 “(I) IN GENERAL.—Subject to
 22 subclause (II) and clause (iv), any re-
 23 duction in grade or pay or removal
 24 under this paragraph may be appealed
 25 to the Merit Systems Protection

1 Board under section 7701 of title 5,
2 United States Code.

3 “(II) TIME FOR APPEAL.—An
4 appeal under subclause (I) may only
5 be made if such appeal is made not
6 later than 7 days after the date of
7 such reduction in grade or pay or re-
8 moval.

9 “(iv) REVIEW ON APPEAL.—

10 “(I) IN GENERAL.—Upon receipt
11 of an appeal under clause (iii), the
12 Merit Systems Protection Board shall
13 refer the appeal to an administrative
14 law judge pursuant to section
15 7701(b)(1) of title 5, United States
16 Code. The administrative law judge
17 shall expedite any such appeal under
18 such section and, in any such case,
19 shall issue a decision not later than
20 45 days after the date that the Board
21 receives the appeal.

22 “(II) INFORMATION AND ASSIST-
23 ANCE.—To the maximum extent prac-
24 ticable, the Secretary shall provide to
25 the Merit Systems Protection Board,

1 and to any administrative law judge
2 to whom an appeal under this para-
3 graph is referred, such information
4 and assistance as may be necessary to
5 ensure an appeal under this para-
6 graph is expedited.

7 “(III) FINALITY.—Notwithstand-
8 ing any other provision of law, includ-
9 ing section 7703 of title 5, United
10 States Code, the decision of an admin-
11 istrative law judge under subclause (I)
12 shall be final and shall not be subject
13 to any further appeal.

14 “(IV) DELAYED DECISION.—In
15 any case in which the administrative
16 law judge cannot issue a decision in
17 accordance with the 45-day require-
18 ment under subclause (I), the reduc-
19 tion in grade or pay or removal is
20 final. In such a case, the Merit Sys-
21 tems Protection Board shall, within
22 14 days after the date that such re-
23 duction in grade or pay or removal is
24 final, submit to Congress a report
25 that explains the reasons why a deci-

1 sion was not issued in accordance
2 with such requirement.

3 “(V) NO STAYS.—The Merit Sys-
4 tems Protection Board or administra-
5 tive law judge may not stay any re-
6 duction in grade or pay or removal ac-
7 tion under this paragraph.

8 “(VI) EFFECT OF APPEAL OF
9 REMOVAL.—During the period begin-
10 ning on the date on which a covered
11 employee appeals a removal from the
12 civil service under this paragraph and
13 ending on the date that the adminis-
14 trative law judge issues a final deci-
15 sion on such appeal, the covered em-
16 ployee may not receive any pay,
17 awards, bonuses, incentives, allow-
18 ances, differentials, student loan re-
19 payments, special payments, or bene-
20 fits.

21 “(v) WHISTLEBLOWER PROTEC-
22 TION.—In the case of a covered employee
23 seeking corrective action (or on behalf of
24 whom corrective action is sought) from the
25 Office of Special Counsel based on an al-

leged prohibited personnel practice described in section 2302(b) of title 5, United States Code, the Secretary may not reduce the grade or pay or remove the covered employee under this paragraph without the approval of the Special Counsel under section 1214(f) of title 5, United States Code.”.

(b) APPLICATION.—The authority under paragraph (2) of section 7(c) of the Department of Housing and Urban Development Act, as added by subsection (a), shall apply to any covered employee (as defined in such paragraph) appointed before, on, or after the date of enactment of this Act.

(c) CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—

(1) in section 4303(f)—

(A) in paragraph (2), by striking “or” at the end;

(B) in paragraph (3), by striking the period at the end and inserting “, or”; and

(C) by adding at the end the following:

“(4) the reduction in grade or removal of an employee under section 7(c)(2) of the Department of

1 Housing and Urban Development Act (42 U.S.C.
2 3535(c)(2)).”;

3 (2) in section 7512—

4 (A) in subparagraph (E), by striking “or”
5 at the end;

6 (B) in subparagraph (F), by striking the
7 period at the end and inserting “, or”; and

8 (C) by adding at the end the following:

9 “(G) a reduction in grade or pay or removal
10 under section 7(c)(2) of the Department of Housing
11 and Urban Development Act (42 U.S.C.
12 3535(c)(2)).”;

13 (3) in section 7521(b), in the matter following
14 paragraph (5)—

15 (A) in subparagraph (B), by striking “or”
16 at the end;

17 (B) in subparagraph (C), by striking the
18 period at the end and inserting “, or”; and

19 (C) by adding at the end the following:

20 “(D) a reduction in grade or pay or removal
21 under section 7(c)(2) of the Department of Housing
22 and Urban Development Act (42 U.S.C.
23 3535(c)(2)).”; and

24 (4) in section 7542, by striking “or to a re-
25 moval under section 3592 or 3595 of this title” and

1 inserting “to a removal under section 3592 or 3595
 2 of this title, to an action under section 713 of title
 3 38, or to a reduction in grade or pay or removal
 4 under section 7(c)(2) of the Department of Housing
 5 and Urban Development Act (42 U.S.C.
 6 3535(c)(2))”.

7 **SEC. 3. ENFORCEMENT OF PHYSICAL CONDITION STAND-**
 8 **ARDS AND TENANT PROTECTION.**

9 Section 8(o) of the United States Housing Act of
 10 1937 (42 U.S.C. 1437f(o)) is amended by adding at the
 11 end the following:

12 “(21) MAINTENANCE OF PROPERTY.—Any enti-
 13 ty receiving housing assistance payments with re-
 14 spect to dwelling units covered by a housing assist-
 15 ance payments contract shall—

16 “(A) maintain decent, safe, and sanitary
 17 conditions at those dwelling units, as deter-
 18 mined by the Secretary; and

19 “(B) comply with any standards under ap-
 20 plicable State or local laws, rules, ordinances, or
 21 regulations relating to the physical condition of
 22 those dwelling units.

23 “(22) ENFORCEMENT OF PHYSICAL CONDITION
 24 STANDARDS.—

1 “(A) IN GENERAL.—The Secretary shall
 2 take action under subparagraph (C) against an
 3 entity with a housing assistance payments con-
 4 tract for project-based assistance with respect
 5 to a multifamily housing project if—

6 “(i) the project receives a Uniform
 7 Physical Condition Standards (in this
 8 paragraph referred to as ‘UPCS’) inspec-
 9 tion score of not more than 30;

10 “(ii) the entity fails to certify in writ-
 11 ing to the Secretary within 3 days of re-
 12 ceiving the score under clause (i) that all
 13 exigent health and safety deficiencies iden-
 14 tified by the inspector at the project have
 15 been corrected; or

16 “(iii) the project receives a UPCS in-
 17 spection score of more than 30 and less
 18 than 59 and has received consecutive
 19 scores of less than 60 on UPCS inspec-
 20 tions.

21 “(B) APPLICABILITY.—Subparagraph (A)
 22 shall—

23 “(i) apply with respect to insured and
 24 noninsured projects with dwelling units re-

ceiving assistance under this section other than under paragraph (13); and

“(ii) not apply to dwelling units receiving assistance with capital or operating funds under section 9.

“(C) NOTIFICATION AND ENFORCEMENT.—

“(i) IN GENERAL.—If an entity violates clause (i), (ii), or (iii) of subparagraph (A), the Secretary shall notify the entity and provide an opportunity for response not later than 15 days after the date on which the results of the UPCS inspection are issued.

“(ii) PLAN AND NOTICE OF DEFAULT.—If violations remain at a project after the 15-day period described in clause (i), the Secretary shall—

“(I) develop a plan to bring the project into compliance not later than 30 days after the date on which the results of the UPCS inspection are issued; and

“(II) provide the owner, the tenants of the property, the local govern-

1 ment, any mortgagees, and any con-
2 tract administrator of the project with
3 a Notice of Default with a specified
4 timetable, determined by the Sec-
5 retary, for correcting all deficiencies.

6 “(iii) WITHDRAWAL OF NOTICE OF
7 DEFAULT.—If an appeal submitted by the
8 entity results in a UPCS inspection score
9 of not less than 60, the Secretary may
10 withdraw a Notice of Default issued under
11 clause (ii)(II).

12 “(iv) PENALTIES.—If, at the end of
13 the timetable described in clause (ii)(II),
14 the entity fails to fully correct all defi-
15 ciencies in the project, the Secretary
16 may—

17 “(I) require immediate replace-
18 ment of project management with a
19 management agent approved by the
20 Secretary;

21 “(II) impose civil money pen-
22 alties, which shall be used solely for
23 the purpose of supporting safe and
24 sanitary conditions at the property, as
25 designated by the Secretary, with pri-

1 ority given to the tenants of the prop-
2 erty affected by the penalty;

3 “(III) abate the housing assist-
4 ance payments contract under this
5 section, including partial abatement,
6 as determined by the Secretary, until
7 all deficiencies have been corrected;

8 “(IV) pursue transfer of the
9 project to an owner, approved by the
10 Secretary under established proce-
11 dures, which will be obligated to
12 promptly make all required repairs
13 and to accept renewal of the housing
14 assistance payments contract as long
15 as such renewal is offered;

16 “(V) transfer the existing hous-
17 ing assistance payments contract
18 under this section to another project
19 or projects and owner or owners;

20 “(VI) pursue exclusionary sanc-
21 tions, including suspensions or debar-
22 ments from Federal programs;

23 “(VII) seek judicial appointment
24 of a receiver to manage the property
25 and cure all project deficiencies or

1 seek a judicial order of specific per-
2 formance requiring the owner to cure
3 all project deficiencies;

4 “(VIII) work with the owner,
5 lender, or other related party to sta-
6 bilize the property in an attempt to
7 preserve the property through compli-
8 ance, transfer of ownership, or an in-
9 fusion of capital provided by a third
10 party that requires time to effectuate;
11 or

12 “(IX) take any other regulatory
13 or contractual remedies available as
14 deemed necessary and appropriate by
15 the Secretary.

16 “(D) CONTRACTS.—

17 “(i) IN GENERAL.—The Secretary
18 shall take appropriate steps to ensure that
19 project-based contracts remain in effect,
20 subject to the exercise of contractual
21 abatement remedies to assist relocation of
22 tenants for major threats to health and
23 safety after written notice to and informed
24 consent of the affected tenants and use of
25 other remedies under this paragraph.

1 “(ii) OTHER ASSISTANCE.—To the ex-
2 tent the Secretary determines, in consulta-
3 tion with the tenants and the local govern-
4 ment, that a property is not feasible for
5 continued rental assistance payments
6 under this section or other housing pro-
7 grams, based on consideration of the costs
8 of rehabilitating and operating the prop-
9 erty and all available Federal, State, and
10 local resources, including rent adjustments
11 under section 524 of the Multifamily As-
12 sisted Housing Reform and Affordability
13 Act of 1997 (42 U.S.C. 1437f note) and
14 environmental conditions that cannot be
15 remedied in a cost-effective fashion, the
16 Secretary may, in consultation with the
17 tenants of the property, contract for
18 project-based rental assistance payments
19 with an owner or owners of other existing
20 housing properties, or provide other rental
21 assistance.

22 “(E) REPORT.—

23 “(i) IN GENERAL.—The Secretary
24 shall, on a quarterly basis, issue a publicly

1 available report on all properties covered
2 by this paragraph that—

3 “(I) are assessed through the
4 Real Estate Assessment Center; and

5 “(II)(aa) have a UPCS inspec-
6 tion score of less than 60; or

7 “(bb) received an unsatisfactory
8 management and occupancy review
9 during the 36-month period preceding
10 the report.

11 “(ii) CONTENTS.—Each report issued
12 under clause (i) shall include—

13 “(I) the enforcement actions
14 being taken to address the physical
15 conditions of the properties covered in
16 the report, including imposition of
17 civil money penalties and termination
18 of subsidies, and identify properties
19 that have those conditions multiple
20 times;

21 “(II) actions that the Depart-
22 ment of Housing and Urban Develop-
23 ment is taking to protect tenants of
24 those properties; and

1 “(III) any administrative or leg-
 2 islative recommendations to further
 3 improve the living conditions at each
 4 property covered under a housing as-
 5 sistance payments contract.

6 “(23) TENANT PROTECTION.—

7 “(A) IN GENERAL.—The Secretary may
 8 provide tenant-based assistance for dwelling
 9 units covered under a project-based assistance
 10 subsidy contract if—

11 “(i) the owner of the dwelling units
 12 has received a Notice of Default; and

13 “(ii) the dwelling units pose an immi-
 14 nent health and safety risk to the tenants
 15 of those dwelling units.

16 “(B) REIMBURSEMENTS.—To the extent
 17 that the Secretary determines that dwelling
 18 units described in subparagraph (A) are not
 19 feasible for continued rental assistance pay-
 20 ments or transfer of the project-based assist-
 21 ance subsidy contract associated with those
 22 dwelling units to another project or projects
 23 and owner or owners, any remaining amounts
 24 associated with those dwelling units shall be re-
 25 captured and used to reimburse amounts used

1 for tenant-based assistance under subparagraph
2 (A).”.

3 **SEC. 4. REPORTS ON REAL ESTATE ASSESSMENT CENTER**
4 **INSPECTIONS.**

5 (a) HUD REPORT.—Not later than 90 days after the
6 date of enactment of this Act, the Secretary of Housing
7 and Urban Development shall issue a publicly available re-
8 port on the Web site of the Department of Housing and
9 Urban Development (in this section referred to as the
10 “Department”) regarding Real Estate Assessment Center
11 (in this section referred to as “REAC”) inspections of all
12 properties assisted, insured, or both, under a program of
13 the Department, which shall include—

14 (1) the percentage of all inspected properties
15 that received a REAC-inspected score of less than
16 65 within the 48-month period preceding the report;

17 (2) the number of properties in which the most
18 recent REAC-inspected score represented a decline
19 relative to the previous REAC score;

20 (3) a list of the 10 metropolitan statistical
21 areas with the lowest average REAC-inspected
22 scores for all inspected properties; and

23 (4) a list of the 10 States with the lowest aver-
24 age REAC-inspected scores for all inspected prop-
25 erties.

1 (b) GAO REPORT.—The Comptroller General of the
2 United States shall issue a publicly available report on the
3 Web site of the Government Accountability Office regard-
4 ing areas in which REAC inspections of all properties as-
5 sisted, insured, or both, under a program of the Depart-
6 ment should be reformed and improved.

