

117TH CONGRESS
1ST SESSION

S. _____

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

Mr. RUBIO (for himself and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on

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 Re-
5 form and Capital Improvement Act of 2021”.

6 **SEC. 2. DEFINITION.**

7 In this Act, the term “Secretary” means the Sec-
8 retary of Housing and Urban Development.

1 **SEC. 3. 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 on which the reduction takes
18 effect, receive the annual rate of pay appli-
19 cable to the reduced 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 on which the
21 Board 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.—Notwith-
8 standing any other provision of law,
9 including section 7703 of title 5,
10 United States Code, the decision of an
11 administrative law judge under sub-
12 clause (I) shall be final and shall not
13 be subject to any further appeal.

14 “(IV) DELAYED DECISION.—

15 “(aa) IN GENERAL.—In any
16 case in which the administrative
17 law judge cannot issue a decision
18 in accordance with the 45-day re-
19 quirement under subclause (I),
20 the reduction in grade or pay or
21 removal shall be final.

22 “(bb) EXPLANATION.—In a
23 case described in item (aa), the
24 Merit Systems Protection Board
25 shall, not later than 14 days

1 after the date on which the re-
2 duction in grade or pay or re-
3 moval becomes final, submit to
4 Congress a report that explains
5 the reasons why a decision was
6 not issued in accordance with
7 that requirement.

8 “(V) NO STAYS.—The Merit Sys-
9 tems Protection Board or administra-
10 tive law judge may not stay any re-
11 duction in grade or pay or removal ac-
12 tion under this paragraph.

13 “(VI) EFFECT OF APPEAL OF
14 REMOVAL.—During the period begin-
15 ning on the date on which a covered
16 employee appeals a removal from the
17 civil service under this paragraph and
18 ending on the date on which the ad-
19 ministrative law judge issues a final
20 decision on such appeal, the covered
21 employee may not receive any pay,
22 awards, bonuses, incentives, allow-
23 ances, differentials, student loan re-
24 payments, special payments, or bene-
25 fits.

1 “(v) WHISTLEBLOWER PROTEC-
2 TION.—In the case of a covered employee
3 seeking corrective action (or on behalf of
4 whom corrective action is sought) from the
5 Office of Special Counsel based on an al-
6 leged prohibited personnel practice de-
7 scribed in section 2302(b) of title 5,
8 United States Code, the Secretary may not
9 reduce the grade or pay or remove the cov-
10 ered employee under this paragraph with-
11 out the approval of the Special Counsel
12 under section 1214(f) of title 5, United
13 States Code.”.

14 (b) APPLICATION.—The authority under paragraph
15 (2) of section 7(c) of the Department of Housing and
16 Urban Development Act, as added by subsection (a), shall
17 apply to any covered employee (as defined in such para-
18 graph) appointed before, on, or after the date of enact-
19 ment of this Act.

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

22 (1) in section 4303(f)—

23 (A) in paragraph (3), by striking “or” at
24 the end;

1 (B) in paragraph (4), by striking the pe-
2 riod at the end and inserting “, or”; and

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

4 “(5) the reduction in grade or removal of an
5 employee under section 7(c)(2) of the Department of
6 Housing and Urban Development Act (42 U.S.C.
7 3535(e)(2)).”;

8 (2) in section 7512—

9 (A) in subparagraph (E), by striking “;
10 or” and inserting a comma;

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

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

14 “(G) a reduction in grade or pay or removal
15 under section 7(c)(2) of the Department of Housing
16 and Urban Development Act (42 U.S.C.
17 3535(e)(2)).”;

18 (3) in section 7521(b), in the matter following
19 paragraph (5)—

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

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

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

1 “(D) a reduction in grade or pay or removal
2 under section 7(c)(2) of the Department of Housing
3 and Urban Development Act (42 U.S.C.
4 3535(e)(2)).”; and

5 (4) in section 7542, by striking “or to a re-
6 moval under section 3592 or 3595 of this title” and
7 inserting “to a removal under section 3592 or 3595
8 of this title, to an action under section 713 of title
9 38, or to 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(e)(2))”.

13 **SEC. 4. ENFORCEMENT OF PHYSICAL CONDITION STAND-**
14 **ARDS AND TENANT PROTECTION.**

15 Section 8(o) of the United States Housing Act of
16 1937 (42 U.S.C. 1437f(o)), as amended by section
17 101(b)(2)(B) of division Q of the Consolidated Appropria-
18 tions Act, 2021 (Public Law 116–260), is amended by
19 adding at the end the following:

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

1 “(A) maintain decent, safe, and sanitary
2 conditions at those dwelling units, as deter-
3 mined by the Secretary; and

4 “(B) comply with any standards under ap-
5 plicable State or local laws, rules, ordinances, or
6 regulations relating to the physical condition of
7 those dwelling units.

8 “(23) ENFORCEMENT OF PHYSICAL CONDITION
9 STANDARDS.—

10 “(A) IN GENERAL.—The Secretary shall
11 take action under subparagraph (C) against an
12 entity with a housing assistance payments con-
13 tract for project-based assistance with respect
14 to a multifamily housing project if—

15 “(i) the project receives a Uniform
16 Physical Condition Standards (in this
17 paragraph referred to as ‘UPCS’) inspec-
18 tion score of not more than 45;

19 “(ii) the entity fails to certify in writ-
20 ing to the Secretary within 3 days of re-
21 ceiving the score under clause (i) that all
22 exigent health and safety deficiencies iden-
23 tified by the inspector at the project have
24 been corrected; or

1 “(iii) the project receives a UPCS in-
2 spection score of more than 45 and less
3 than 59 and has received consecutive
4 scores of less than 60 on UPCS inspec-
5 tions.

6 “(B) APPLICABILITY.—Subparagraph (A)
7 shall—

8 “(i) apply with respect to insured and
9 noninsured projects with dwelling units re-
10 ceiving assistance under this section other
11 than under paragraph (13); and

12 “(ii) not apply to dwelling units re-
13 ceiving assistance with capital or operating
14 funds under section 9.

15 “(C) NOTIFICATION AND ENFORCE-
16 MENT.—

17 “(i) IN GENERAL.—If an entity vio-
18 lates clause (i), (ii), or (iii) of subpara-
19 graph (A), the Secretary shall notify the
20 entity and provide an opportunity for re-
21 sponse not later than 15 days after the
22 date on which the results of the UPCS in-
23 spection are issued.

24 “(ii) PLAN AND NOTICE OF DE-
25 FAULT.—If violations remain at a project

1 after the 15-day period described in clause
2 (i), the Secretary shall—

3 “(I) develop a plan to bring the
4 project into compliance not later than
5 30 days after the date on which the
6 results of the UPCS inspection are
7 issued; and

8 “(II) provide the owner, the ten-
9 ants of the property, the local govern-
10 ment, any mortgagees, and any con-
11 tract administrator of the project with
12 a Notice of Default with a specified
13 timetable, determined by the Sec-
14 retary, for correcting all deficiencies.

15 “(iii) WITHDRAWAL OF NOTICE OF
16 DEFAULT.—If an appeal submitted by the
17 entity results in a UPCS inspection score
18 of not less than 60, the Secretary may
19 withdraw a Notice of Default issued under
20 clause (ii)(II).

21 “(iv) PENALTIES.—If, at the end of
22 the timetable described in clause (ii)(II),
23 the entity fails to fully correct all defi-
24 ciencies in the project, the Secretary
25 may—

1 “(I) require immediate replace-
2 ment of project management with a
3 management agent approved by the
4 Secretary;

5 “(II) impose civil money pen-
6 alties, which—

7 “(aa) shall be used solely for
8 the purpose of supporting safe
9 and sanitary conditions at the
10 property, as designated by the
11 Secretary, with priority given to
12 the tenants of the property af-
13 fected by the penalty; and

14 “(bb) shall not be payable
15 out of project income;

16 “(III) abate the housing assist-
17 ance payments contract under this
18 section, including partial abatement,
19 as determined by the Secretary, until
20 all deficiencies have been corrected;

21 “(IV) pursue transfer of the
22 project to an owner, approved by the
23 Secretary under established proce-
24 dures, which will be obligated to
25 promptly make all required repairs

1 and to accept renewal of the housing
2 assistance payments contract as long
3 as such renewal is offered;

4 “(V) transfer the existing hous-
5 ing assistance payments contract
6 under this section to another project
7 or projects and owner or owners;

8 “(VI) pursue exclusionary sanc-
9 tions, including suspensions or
10 debarments from Federal programs;

11 “(VII) seek judicial appointment
12 of a receiver to manage the property
13 and cure all project deficiencies or
14 seek a judicial order of specific per-
15 formance requiring the owner to cure
16 all project deficiencies;

17 “(VIII) work with the owner,
18 lender, or other related party to sta-
19 bilize the property in an attempt to
20 preserve the property through compli-
21 ance, transfer of ownership, or an in-
22 fusion of capital provided by a third
23 party that requires time to effectuate;
24 or

1 sisted Housing Reform and Affordability
2 Act of 1997 (42 U.S.C. 1437f note) and
3 environmental conditions that cannot be
4 remedied in a cost-effective fashion, the
5 Secretary may, in consultation with the
6 tenants of the property, contract for
7 project-based rental assistance payments
8 with an owner or owners of other existing
9 housing properties, or provide other rental
10 assistance.

11 “(E) REPORT.—

12 “(i) IN GENERAL.—The Secretary
13 shall, on a quarterly basis, issue a publicly
14 available report on all properties covered
15 by this paragraph that—

16 “(I) are assessed through UPCS
17 inspections; and

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

20 “(bb) received an unsatisfactory
21 management and occupancy review
22 during the 36-month period preceding
23 the report.

24 “(ii) CONTENTS.—Each report issued
25 under clause (i) shall—

1 “(I) include, for each property
2 covered by the report—

3 “(aa) the UPCS inspection
4 score and date of inspection; and

5 “(bb) the ownership interest
6 and management of the property;

7 “(II) identify—

8 “(aa) the enforcement ac-
9 tions being taken to address the
10 physical conditions of the prop-
11 erties covered by the report, in-
12 cluding imposition of civil mone-
13 tary penalties and termination of
14 subsidies; and

15 “(bb) properties that have
16 been identified multiple times as
17 having the physical conditions de-
18 scribed in item (aa);

19 “(III) identify actions that the
20 Secretary is taking to—

21 “(aa) remediate all health
22 and safety concerns; and

23 “(bb) protect tenants of the
24 properties covered by the report;

1 “(IV) include any administrative
2 or legislative recommendations to fur-
3 ther improve the living conditions at
4 each property covered under a hous-
5 ing assistance payments contract.

6 “(24) 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 the 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. 5. REPORTS ON REAL ESTATE ASSESSMENT CENTER**
4 **INSPECTIONS.**

5 (a) ANNUAL HUD REPORT.—Not later than 90 days
6 after the date of enactment of this Act, and annually
7 thereafter, the Secretary shall issue a publicly available
8 report on the website 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 during 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-inspected 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 website of the Government Accountability Office with rec-
4 ommendations for how REAC inspections of all properties
5 assisted, insured, or both, under a program of the Depart-
6 ment should be reformed and improved.

7 **SEC. 6. BUDGET-BASED RENTAL ADJUSTMENTS FOR CER-**
8 **TAIN PROPERTIES RECEIVING PROJECT-**
9 **BASED RENTAL ASSISTANCE THAT UNDER-**
10 **WENT MARK-TO-MARKET.**

11 (a) DEFINITION.—In this section, the term “eligible
12 property” means a property that—

13 (1) receives project-based rental assistance
14 under section 8 of the United States Housing Act of
15 1937 (42 U.S.C. 1437f);

16 (2) underwent a mortgage restructuring under
17 subtitle A of the Multifamily Assisted Housing Re-
18 form and Affordability Act of 1997 (42 U.S.C.
19 1437f note; title V of Public Law 105–65); and

20 (3)(A) has been transferred to a different owner
21 due to the failure of a prior owner to meet Uniform
22 Physical Condition Standards;

23 (B) received a failing Uniform Physical Condi-
24 tion Standard score under a prior owner; or

1 (C) requires substantial rehabilitation, including
2 the replacement of major systems, in order to ensure
3 the long term sustainability of the property, as de-
4 termined by a capital needs assessment and as ap-
5 proved by the Secretary.

6 (b) **AUTHORITY.**—The Secretary may, at the request
7 of the owner of the property, approve the adjustment of
8 rent on a budget basis (within the meaning of section
9 401.412(b) of title 24, Code of Federal Regulations, or
10 any successor regulation) for an eligible property if the
11 owner—

12 (1) demonstrates that—

13 (A) the available operating revenue is in-
14 sufficient to operate and maintain the property;
15 and

16 (B) a rent adjustment is necessary to sup-
17 port financing for rehabilitation; and

18 (2) submits a rehabilitation plan to extend the
19 useful life of the property for not less than 25 years,
20 including remediation of all existing health, sanita-
21 tion, and safety concerns.

22 (c) **REPORTING REQUIREMENT.**—During the period
23 during which a property for which a budget-based rental
24 adjustment is approved under subsection (b) is being reha-

1 bilitated, the owner of the property shall submit to the
2 Secretary a quarterly report that includes—

3 (1) a description of the progress made on, and
4 expenses incurred for, capital improvements and
5 debt service;

6 (2) a detailed list of outstanding improvements;

7 (3) the expected completion date for each out-
8 standing improvement described in paragraph (2);
9 and

10 (4) any other information required by the Sec-
11 retary.

12 **SEC. 7. CODIFICATION OF UNIFORM PHYSICAL CONDITION**
13 **STANDARDS INSPECTION TIMELINES FOR**
14 **UNITS RECEIVING PROJECT-BASED RENTAL**
15 **ASSISTANCE.**

16 (a) DEFINITION.—In this section, the term “covered
17 property” means a property that receives project-based
18 rental assistance under section 8 of the United States
19 Housing Act of 1937 (42 U.S.C. 1437f).

20 (b) SCORING AND RANKING OF PHYSICAL CONDI-
21 TION.—The Secretary shall score and rank the physical
22 condition of covered properties in accordance with this sec-
23 tion.

24 (c) METHODOLOGY FOR RANKING.—

1 (1) IN GENERAL.—The Secretary shall score
2 each covered property on the basis of a 100-point
3 scale.

4 (2) FRACTIONS.—In scoring a covered property
5 under paragraph (1), the Secretary shall round—

6 (A) a score that includes a fraction below
7 one half point to the next lower full point; and

8 (B) a score that includes a fraction of one
9 half point or higher to the next higher full
10 point.

11 (d) DESIGNATIONS AND FREQUENCY OF INSPEC-
12 TIONS.—

13 (1) STANDARD 1 PERFORMING PROPERTY.—
14 The Secretary shall—

15 (A) designate a covered property that re-
16 ceives a score of not less than 90 points on its
17 physical condition inspection as a standard 1
18 performing property; and

19 (B) conduct a physical inspection of a
20 standard 1 performing property once every 3
21 years.

22 (2) STANDARD 2 PERFORMING PROPERTY.—
23 The Secretary shall—

24 (A) designate a covered property that re-
25 ceives a score of not less than 80 points and

1 less than 90 points on its physical condition in-
2 spection as a standard 2 performing property;
3 and

4 (B) conduct a physical inspection of a
5 standard 2 performing property once every 2
6 years.

7 (3) STANDARD 3 PERFORMING PROPERTY.—

8 The Secretary shall—

9 (A) designate a covered property that re-
10 ceives a score of less than 80 points on its
11 physical condition inspection as a standard 3
12 performing property; and

13 (B) conduct a physical inspection of a
14 standard 3 performing property every year.

15 (e) SPECIAL REQUIREMENTS.—If a covered property
16 receives a score in the range of a standard 1 performing
17 property or standard 2 performing property on its physical
18 condition inspection and has been cited by the Secretary
19 as having an exigent health and safety deficiency, the
20 property—

21 (1) shall only shall be designated as a standard
22 1 performing property or standard 2 performing
23 property, respectively, if the owner resolves the defi-
24 ciency; and

1 (2) shall be designated as a standard 3 per-
2 forming property if the owner does not resolve the
3 deficiency.

4 (f) AUTHORITY TO DELAY INSPECTIONS.—

5 (1) IN GENERAL.—Notwithstanding subsection
6 (d), the Secretary may delay the physical inspection
7 of a covered property that is undergoing a substan-
8 tial rehabilitation.

9 (2) DEFINITION.—For purposes of this sub-
10 section, the term “substantial rehabilitation”, with
11 respect to a covered property, means a physical re-
12 habilitation for the long-term sustainability of the
13 property where the costs of the rehabilitation exceed
14 25 percent of the property’s replacement cost (cal-
15 culated based on fair market value) after completion
16 of all required repairs, replacements, and improve-
17 ments.