

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **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.—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.—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-



1           leged prohibited personnel practice de-  
2           scribed in section 2302(b) of title 5,  
3           United States Code, the Secretary may not  
4           reduce the grade or pay or remove the cov-  
5           ered employee under this paragraph with-  
6           out the approval of the Special Counsel  
7           under section 1214(f) of title 5, United  
8           States Code.”.

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

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

17                 (1) in section 4303(f)—

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

20                         (B) in paragraph (3), by striking the pe-  
21                         riod at the end and inserting “, or”; and

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

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

1 Housing and Urban Development Act (42 U.S.C.  
2 3535(e)(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(e)(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(e)(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-

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

3 “(ii) not apply to dwelling units re-  
4 ceiving assistance with capital or operating  
5 funds under section 9.

6 “(C) NOTIFICATION AND ENFORCE-  
7 MENT.—

8 “(i) IN GENERAL.—If an entity vio-  
9 lates clause (i), (ii), or (iii) of subpara-  
10 graph (A), the Secretary shall notify the  
11 entity and provide an opportunity for re-  
12 sponse not later than 15 days after the  
13 date on which the results of the UPCS in-  
14 spection are issued.

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

19 “(I) develop a plan to bring the  
20 project into compliance not later than  
21 30 days after the date on which the  
22 results of the UPCS inspection are  
23 issued; and

24 “(II) provide the owner, the ten-  
25 ants of the property, the local govern-



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  
22 debarments 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 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 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 website of the Government Accountability Office regarding  
4 areas in which REAC inspections of all properties assisted,  
5 insured, or both, under a program of the Department  
6 should be reformed and improved.