

**Property Owner's Rights and Responsibilities on Failed REAC  
Inspections**

**Informational white paper by**

**Scott A. Precourt**

**President - U.S. Housing Consultants, LLC**

## **What is a REAC Appeal and How Do I File One? 4**

*What a REAC Appeal Is and Is Not* 4

*What Is a Database Adjustment?* 5

*What is a Technical Review?* 7

*What should an appeal look like?* 8

*Where do I send my appeal?* 8

**I have received a score less than 60, what are my next steps? 8**

*I have failed with a score between 31-59, and it is my consecutive first fail - what do I do?* 9

*My appeal was denied or did not change my score to above 60 - what should I do?* 11

*My Appeal was approved and I created a CDE Plan - what do I do with it?* 11

**I filed a CDE Plan on my first failed REAC and then failed the follow up inspection as well, what happens now? 12**

*Can I still appeal a second (follow-up) inspection?* 12

*What should I do once I fail twice consecutively, or with a score of 30 or lower?* 13

**The REAC Process Seems Unfair- Why Does it Seem to be Designed to Hurt Property Owners? 13**

## **Property Owner's Rights and Responsibilities on REAC Inspections with Scores Less Than 60**

Multifamily and Healthcare related assets that receive HUD financing or contract assistance (subsidies, etc) are subject to oversight from the Real Estate Assessment Center, or REAC. Part of this oversight includes physical inspections of the asset using an inspection code called "Uniform Physical Condition Standards" or UPCS, which is detailed in 24 CFR 902.20. Part of the inspection process includes possible enforcement when a property fails to achieve a score of "60" or higher. The scores are derived from an algorithm that assigns a value to each item and deductions are applied for items that do not meet the UPCS Inspection standard.

This white paper will discuss the consequences of a score less than 60, as well as what owners and property managers can do if they receive a score less than 60 and what sort of enforcement action(s) is possible. The purpose of this paper is to outline in one document all of the various rules that exist as of the date of the document, and phrase the rules in relatively easy to understand language and instruction. This document is provided purely as an informational tool from U.S. Housing Consultants - a private consulting firm working in matters of HUD and LIHTC Compliance. U.S. Housing Consultants is not a government entity or agency and has no direct relationship with HUD or any other government entity. This white paper includes rules and regulations pertaining to Multifamily HUD Housing, and does not in any way cover Public and Indian Housing.

The basic topics covered in this white paper include:

- I. What is a REAC Appeal and How Do I File One?
- II. I have received a score less than 60, what are my immediate next steps?
- III. What happens with scores 30 or lower or two consecutive fails?
- IV. The REAC Process Seems Unfair and Inequitable - Why Is It Designed to Hurt Owners of Properties?

## **What is a REAC Appeal and How Do I File One?**

An appeal of a REAC Inspection is a request for points that were deducted from the inspection to be returned for either (a) evidence of an approved mitigating condition or (b) technical errors made during the inspection. Owners can file either a (1) database adjustment, which must be submitted in 45 days of the date of the inspection report release date or a (2) technical review, which must be submitted within 30 days of the inspection release date. The final score is viewed the same as an inspection that received a score without the appeals process. In other words, if you receive a 75 and appeal to a 90, it is viewed, in the end, the same as a property that receives a 90 without the appeals process having been utilized.

### ***What a REAC Appeal Is and Is Not***

To begin the discussion, it is important to understand what a REAC inspection appeal is not, and what it can and cannot do. For example, many owners attempt to base their appeal on the behavior of their inspector; what the inspector did do, what he or she did differently than other inspectors. While this material may have merit, it cannot be used

in a REAC appeal to adjust the score. If an inspector was rude, belligerent, recorded items in a manner differently than inspectors in the past, or had other negative qualities; none of these factors adequately refute the existence of the deficiencies they may have observed and documented during their inspection.

### ***What Is a Database Adjustment?***

The types of appeals is important to understand. A “database adjustment” is an appeal where the issue cited by the inspector is not being refuted, instead you agree that the item was deficient, but met one of four mitigating factors which are outlined to follow. You have 45 days to file this type of appeal from the date of the official REAC report release date. In all cases, the information must be independently verified with a qualified third party.

- Item cited is part of an active modernization project: the issue cited by the inspector is included in an active contract for modernization. This does not include work orders. This means substantial repair, upgrade, or replacement of items. It cannot be “planned”, but must be actively underway during the inspection. Examples of this include roofing surface materials which are cited during an inspection as having a hole in the surface; if there is an active contract underway (started before the inspection, extending to after the date of the inspection), then the roofing issue can be appealed *after* the REAC inspection (never during the inspection, the process has nothing to do with the inspector) with a database adjustment. You will need to show the contract for the work including any Notice to Proceed sent to formally initiate the contract work, and you will need to prove

how the issue is part of the contract, and verify that the issue constitutes a “modernization” of existing components, rather than just deferred maintenance.

- Issues that are compliant with local building codes but not with REAC/UPCS: if an issue is cited by an inspector on a REAC inspection and the issue is compliant under local building codes, then the issue can be reversed with a database adjustment. In order for this to be completed properly, the property owner needs to verify that the issue does meet local building codes as it was at the time of the inspection. This has to be specifically verified with a local code official; this can also include anyone who has a verifiable local area (State or City regulated) trade license number in a relevant field. The code official needs to make a specific statement regarding the issue, vague or generalized statements will not be accepted. Examples of this include: in some jurisdictions an air condition in a window that is not “secured to the window frame” - in other words, not screwed into the frame, should not be considered to block egress in this specific jurisdiction (to clarify, this does not impact the deficiency on the day of the inspection in any situation, ever). To verify this, a verifiable expert in the building code for the jurisdiction would need to provide proper verification. To be clear, this is merely an example of a local code variance and is in no way a statement that such a condition is acceptable in any or all locations specifically. Remember that any applicable local area codes, supersede the Federal code in all cases.

- Issues that are outside the owner's control: this category of database adjustment is the most expansive, but can also be the most challenging to properly document. This category of database adjustment relates to any condition that has a specific factor that is preventing the owner from complying with UPCS standards on the date of the inspection.

This can include extreme weather events, vandalism or accidental damage directly before the inspection which is documented by police reports, historical zoning, design issues, and other factors that prevent the owner from meeting the physical condition standards. All of these factors need to have independent, licensed, professional third party verification to show how the issue cited represents a condition outside of the owner's control. This can be filed in advance of a REAC Inspection as well, and, if approved, could result in an automatic adjustment of the score prior to release.

- Issues related to ownership: If an item is not owned by the property and is cited by the inspector, it can be appealed based solely on the mitigating factor of a lack of ownership. To do this, you would need independent, licensed, qualified verification of the lack of ownership and/or a direct statement from the owner of the component in question (such as a fence or walkway) confirming that the component cited is owned and maintained by them.

### ***What is a Technical Review?***

A technical review is an appeal where the property owner states, and provides verifiable information to quantify the argument, how the inspector's citation is technical unsound. To put it plainly, if an inspector includes a citation for an item that is stated to "not work" and you say it "does work", this would be a technical appeal. You would need to provide verification from a licensed, professional, qualified third party clarifying how the item actually does work and how this determination was made. Photographs are not required to be submitted, but can be included if (a) the photo clearly identifies the location,

(b) the photo clearly identifies the date and time in proximity to the inspection date, (c) the photo clearly refutes the deficiency cited without any further explanation.

***What should an appeal look like?***

Though HUD does have a template form available for appeal submissions, there is no specific form required for an appeal, and generally speaking, the appeal submission should include the inspection number, the name of the property, it should be signed by the submitting party (owner or managing agent), and should include a basic description of what is being requested and what the backup material for each argument includes.

***Where do I send my appeal?***

Multifamily Housing appeals (both Database Adjustments and Technical Reviews) must be submitted to the following address:

U.S. Housing and Urban Development/PIH/REAC  
Attn: Technical Assistance Center/ TR/DBA  
550 12th Street S.W. Suite 100  
Washington, DC 20410

**I have received a score less than 60, what are my next steps?**

This question has two distinct answers depending on whether or not the score is less than 30 and if the property has failed two or more times consecutively. We will discuss how these distinctions are made and what happens in each situation and what the owner/agent needs to do in each. However, for all situations, the owner should take the instance of failure very seriously and avoid certain often-made mistakes.

One of the most common mistakes is to *personalize* the inspection: in other words: making it about the inspector - insisting that the issue solely revolves around a wayward or difficult inspector is a strategy that almost always results to very bad consequences. No matter how terribly unprofessional, rude, aggressive, or seemingly unfair the inspector may have appeared, this fact will only serve to obfuscate the situation. Many well-meaning owners and managers fall into this trap and find themselves in a very regrettable situation later.

The other common mistake is to look to the past to explain today's failure. Many owners and managers have a desire to point to a previous inspection score or an experience with a prior inspector as proof of ability to perform well on an inspection. This is essentially viewed as conjecture or, even worse - proof that the previous inspector was not performing to an optimal level. In short, if you receive a failing score, everything that may have happened before becomes irrelevant; you need to plan to create a compliance plan and move forward.

***I have failed with a score between 31-59, and it is my consecutive first fail - what do I do?***

Even if you are going to file an appeal, the first step should be to start the process of developing what HUD refers to as a Compliance Disposition and Enforcement (CDE) Plan, which is, in short, your plan to show that all issues on the property, not just those cited by the REAC Inspector are going to be addressed within 60 days. This means all units, all common areas, all exteriors, all systems, and the entire site needs to be brought to full

compliance (i.e. repaired) or a plan for how the issues will be addressed needs to be written (i.e. contracts for modernization, etc).

Step One: a complete inspection of the property. This should be prepared by an individual or professional firm who has a complete understanding of the UPCS Inspection code. This should include several years of experience on a variety of properties, experience with distressed assets is preferred in this scenario. Many owners make the mistake of assigning the same staff who oversaw the preparation of the property prior to the failing score. Unless the staff receives significant direction and training, it is not good practice to entrust the same staff who failed to adequately prepare the property previously. This complete survey needs to include all areas of the property, all units, and all common facilities and areas, exterior, site, and systems, and should include any and all UPCS findings. This survey will provide the backbone of the CDE plan.

Step Two: Develop a plan to make all repairs in a timely manner or assign major deferred items to a contract to be assigned for completion. Every item on the survey needs to have an associated action assigned to it - either it is going to be fixed now or later - both eventualities must be identified and discussed in detail.

Step Three: Prepare the CDE plan, which will show the activity mentioned above. All of the completed work orders, all contracts assigned to address deferred items, proof of completion of work, proof of training with a qualified firm, proof of a survey from a qualified vendor - all of this should create the appearance that the issues identified on the REAC inspection, and much, much more, have been identified. You will receive a notice of

default from your Field Office with instruction on to whom to submit the CDE plan. If you do not receive this; submit the CDE plan via registered mail to your HUD Project Manager.

***My appeal was denied or did not change my score to above 60 - what should I do?***

If it is your first consecutive failure, and you file an appeal but it does not change your score to passing, or if you do not file an appeal at all - then your timely submission of the CDE plan can still remove the “flag” on the owner and manager’s APPS (Active Partner Participation System) until the property is reinspected. Submitting the completing the required components of and documenting the CDE Plan to HUD within the required 60 days of notification to do so, will allow the owner and manager to continue to “do business” with HUD until the next inspection. The preparation of the CDE plan is a good practice regardless of the outcome of the appeal decision, but if the score is to remain under 60, then the CDE plan prevents (a) immediate re-inspection, and (b) filing of a flag against the owner and management agent.

***My Appeal was approved and I created a CDE Plan - what do I do with it?***

If you adjusted your score to passing via an appeal, this is good news, but it should also be taken as a sign that actions still need to be taken in your organization moving forward. You should show that you have completed the CDE Plan, and see that your staff receives training. Alternately, you can outsource REAC preparation to a qualified firm with a good track record, but be sure to check references, ensure that the consultant has worked with distressed properties or other enforcement actions, and has a variety of experience outside of working directly for HUD REAC. You should be prepared to show your HUD

Project Manager or Contract Administrator just what steps are being taken to ensure that the next score represents a significant improvement.

## **I filed a CDE Plan on my first failed REAC and then failed the follow up inspection as well, what happens now?**

According to a HUD memo (Notice H 2015-02, Issued March 2, 2015), enforcement actions are now *required* for scores less than 60 on two consecutive fails having occurred after January 17, 2014. At this point, the property is subject to (a) foreclosure, (b) reassignment of management or ownership (or both), (c) civil money penalties (a fine assigned to items on the inspection determined to be “below the failing threshold”), or (d) assignment of a judicial receiver to oversee the property until such a time that the property has been restored to full compliance. None of these are positive, but some are definitely worse than others. The best an owner or management agent can hope for is a temporary overseer of the property to get the property back into compliance. If the HUD field office or enforcement center determines that the owner and management should be removed or have penalties assessed, or a combination of both, the owner will be notified at the time of the second fail.

### ***Can I still appeal a second (follow-up) inspection?***

Absolutely. The follow up inspection from REAC follows the same rules as any other inspection, and as such, the owner can appeal the findings. If the score is adjusted to a score greater than 60, then the enforcement actions will be ceased. Unlike the first failure, the owner does not have the opportunity to submit a CDE and make corrections and repairs to stop enforcement actions and APPS flags. In certain rare instances, a third inspection may

be granted, but this is typically arranged by experienced legal counsel who can cite some actions by the owner that are extraordinary or find errors that can be used to encourage a third and final inspection.

***What should I do once I fail twice consecutively, or with a score of 30 or lower?***

A property owner or management agent with a property with a second consecutively failed property, or with a score of 30 or lower (even on the first failure) should immediately determine if an appeal that could increase the score above the passing 60 threshold is possible. In order to determine this, the owner/agent is advised to seek the advice and assistance of an experienced consultant or attorney (or both). The consequences at this point are severe and good advice and experience in similar situations should be sought. While many owners and managers may not have the cash flow thought to be needed at this point, professional advice, in whatever capacity is an absolute necessity.

**The REAC Process Seems Unfair- Why Does it Seem to be Designed to Hurt Property Owners?**

While the REAC inspection process, and specifically its scoring mechanisms, may seem strange to owners and management agents, the process is simply rating items on the property and determining those items that do not meet a simple standard. This simple standard is quite literally: all items present must operate as intended. The UPCS Inspection code is replete with complexities, but a property that has items that function properly and as designed and have made reasonable attempts to repair those items that don't, will typically pass their inspection. The problem with the application of the UPCS Inspection

code, in our opinion, is a lack of transparency and inconsistent training of inspectors and property staff alike.

The challenges for the industry have remained seemingly unchanged in the last fifteen years:

- The math used to determine the deficiency values is complex and hard to understand.
- The inspectors are inconsistent in their application of the code, but mostly in that certain inspectors are more lenient or simply non-observant than others.
- Management agents and owners are not properly trained. For many, training on physical compliance is left solely to maintenance staff who may fail to understand intricacies of rules and regulations, or effectively communicate them to the Owners and/or Management staff.

Establishing a minimum standard for all housing that is assisted by the Department of Housing and Urban development is a laudable goal, and the overall improvements in the housing stock since 1999 are immense. In the opinion of those who work at my firm, U.S. Housing Consultants, HUD should seek to ensure that the inspections are more consistent, and that inspectors are trained better in the inspection code as well as customer service. But the end result of better training would be inspections that are *more stringent, not less stringent*. The ideal should be friendly, polite professionals who cite everything that is a deficiency, and miss nothing. Erasing the inequities of the system means eliminating inspector incompetence and/or undocumented discretion. In short, inspections should be conducted without fear or favor, without ego or inconsistency.

## Property Owner's Rights and Responsibilities on Failed REAC Inspections

HUD REAC inspections are a tool to measure the professionalism of an Owner/ Agent, as well as the livability of the housing. Just as with health-code inspections of restaurants, we should applaud that something is done to ensure that housing is safe and sanitary (to borrow the language from the original legislation). We all want to dine at restaurants with clean kitchens, and tenants all want to live at housing that is well managed and clean. The goal of all inspections should be to make the process more consistent, transparent, and professional.

For those who fail at the process, being aware of your rights and responsibilities is the first step, and the second is to do everything to comply with the rules applicable to everyone. In the event that an Owner or Management Agent finds their property in jeopardy, they can reach out to us at U.S. Housing Consultants for assistance, advice, and services to help them get back on their feet.

### **References**

Federal Register: August 9, 2012 - Scoring Notice. [Docket No. FR-5526-N-02]:

<http://portal.hud.gov/hudportal/documents/huddoc?id=pass4.oscoringnoticefr.PDF>

Notice H 2015-02, March 2, 2015: Required Actions for Multifamily Housing Projects

Receiving Failing Scores from HUD's Real Estate Assessment Center (REAC)

<http://portal.hud.gov/hudportal/documents/huddoc?id=15-02hsgn.pdf>