

# MEMORANDUM

September 15, 2017

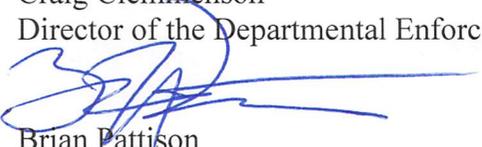


U.S. DEPARTMENT  
OF HOUSING  
AND URBAN  
DEVELOPMENT

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Subject: Final Report – The Office of Residential Care Facilities’ Use of Real Estate Assessment Scores, 2017-OE-0011

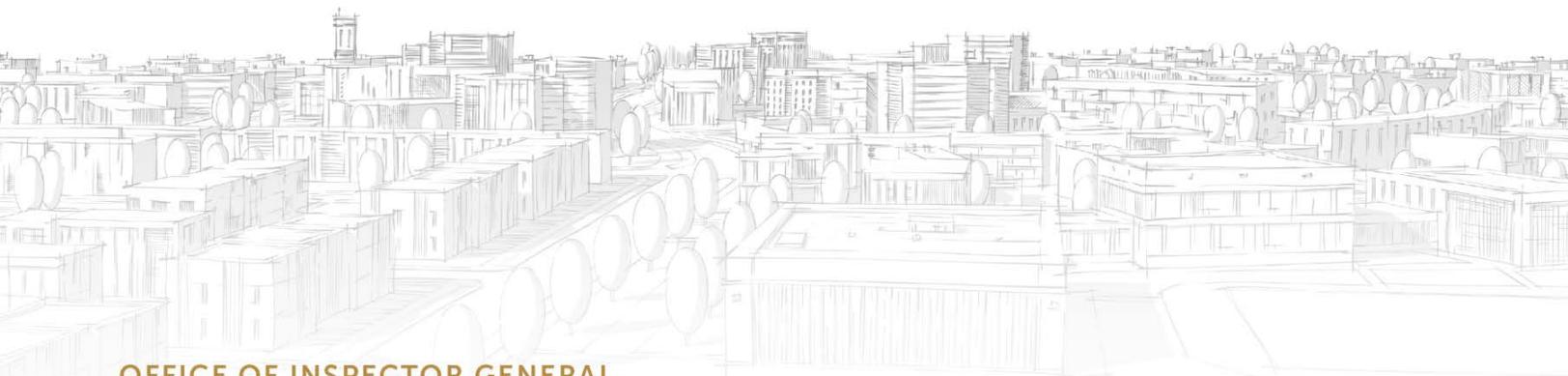
Please see the attached final report on the Office of Residential Care Facilities’ (ORCF) use of Real Estate Assessment Center (REAC) scores. We assessed REAC scores of residential care facilities (RCF) and described ORCF’s oversight process for RCFs. We identified four findings during the course of our evaluation. We made three recommendations to address our findings.

The Office of Healthcare Programs and REAC responded to our draft report, and both concurred with our recommendations. These comments, along with our response, are in appendix A. Recommendations 2 and 3 are resolved – open, and recommendation 1 is unresolved – open. We will reach out to your offices within 90 days to begin discussing your management decisions and action plans. We appreciate the assistance you and your staff provided throughout the evaluation.

cc:

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Attachment



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# OFFICE OF EVALUATION



U.S. DEPARTMENT  
OF HOUSING  
AND URBAN  
DEVELOPMENT

## The Office of Residential Care Facilities' Use of Real Estate Assessment Center Scores

Program Evaluations Division



# Executive Summary

## The Office of Residential Care Facilities' Use of Real Estate Assessment Center Scores

Report Number: 2017-OE-0011

September 15, 2017

### Why We Did This Evaluation

The National Housing Act of 1959 authorizes the U.S. Department of Housing and Urban Development (HUD) to offer mortgage insurance for residential care facilities (RCF). HUD's Office of Residential Care Facilities (ORCF) manages the performance of insured RCFs, and the Real Estate Assessment Center (REAC) performs physical condition inspections of these facilities to ensure that they are in safe, decent, and sanitary condition and in good repair.

A complainant from within HUD told us that some RCFs had received very low REAC scores. Between June 2016 and March 2017, at least 10 RCFs scored 31 or below, out of a possible 100, on their most recent REAC inspection, suggesting that those RCFs were being maintained in unsatisfactory condition.

In response, we assessed REAC scores of RCFs and examined ORCF's oversight of the physical condition of RCFs.

### Results of Evaluation

Very low REAC scores are not prevalent across ORCF's portfolio. The majority of RCFs that received a REAC score scored at least 80 on their last inspection, and more than three quarters scored at least 60. Despite the small percentage of RCFs that scored below 31, we noticed an overall decline in REAC inspection scores across ORCF's portfolio from 2000 to 2016.

REAC has adopted an inspection process that applies uniformly to all property types across HUD, including multifamily buildings, public housing buildings, and RCFs. This approach presents challenges when applied to certain RCFs. For example, RCFs may restrict window access for residents with Alzheimer's or dementia. However, REAC treats any window restriction as a deficiency. ORCF can improve this situation by ensuring that eligible RCFs obtain database adjustments before their REAC inspections. Even if a database adjustment is granted, we are concerned that REAC's process could result in an RCF's removing safety features in an attempt to remedy a REAC egress citation immediately, thereby exposing residents to potential harm.

Additionally, REAC inspections of RCFs have not always been timely. We identified RCFs that had not received timely routine REAC inspections. We also identified delays in inspecting RCFs that were supposed to receive followup inspections after receiving low REAC scores. Until recently, ORCF had not applied central oversight of followup inspections of RCFs that scored below 60 on their REAC inspections. According to ORCF, it is implementing initiatives designed to create a more standardized process for ORCF staff.

### Recommendations

We recommend that ORCF (1) identify and implement a method to ensure that eligible RCFs in its portfolio receive database adjustments when appropriate under local code, either by working directly with REAC or by instructing RCFs to apply for adjustments themselves, and (2) identify and implement a method that ensures the expeditious followup inspections of RCFs that have not been inspected in a timely manner after receiving their last below-60 REAC score. Finally, we recommend that REAC identify and implement a method to ensure that HUD does not instruct facilities to negate safety features.

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# Introduction

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## Objectives

Our objectives were to (1) assess Real Estate Assessment Center (REAC) scores of residential care facilities (RCF) and (2) describe the Office of Residential Care Facilities' (ORCF) oversight of RCFs' physical condition.

## Background

A complainant from within the U.S. Department of Housing and Urban Development (HUD) told the Office of Inspector General (OIG) that some RCFs had received very low REAC scores. Between June 2016 and March 2017, at least 10 RCFs scored 31 or below, out of a possible 100, on their most recent REAC inspection, suggesting that those RCFs were maintained in unsatisfactory condition. We initiated this evaluation to assess REAC scores for RCFs and describe ORCF's oversight of RCFs' physical condition, especially low-scoring RCFs.

Congress authorized the Federal Housing Administration (FHA) to offer mortgage insurance "to assist the provision of urgently needed nursing homes for the care and treatment of convalescents and other persons who are not acutely ill and do not need hospital care but who require skilled nursing care and related medical services." The Department of Housing and Urban Development Act of 1965 transferred FHA to HUD. As a mortgage insurer, HUD does not directly loan money to finance RCFs but, instead, protects a third-party lender against losses that result if a borrower fails to repay an insured loan. Before 2008, the RCF insurance program was within the Office of Housing's Office of Multifamily Housing Programs. In 2008, HUD moved the RCF insurance program to the Office of Housing's Office of Healthcare Programs (OHP), which also oversees HUD's hospital mortgage insurance program. Within OHP, ORCF manages the RCF portfolio.

After ORCF commits to insure an RCF's mortgage, ORCF assigns an account executive within ORCF's Asset Management and Lender Relations Division to monitor the RCF's performance.

Four categories of RCFs exist within ORCF's portfolio:

1. Nursing homes are licensed or regulated by a State (or its political subdivision) and provide accommodations for people who are not acutely ill but are in need of skilled nursing care.
2. Assisted living facilities (ALF) are licensed or regulated by a State (or its political subdivision) and provide accommodations, including continuous protective oversight, for people at least 62 years old who are unable to perform at least three activities of daily living.
3. Intermediate care facilities are licensed or regulated by a State (or its political subdivision) and provide accommodations for people who require continuous care but do not need continuous medical care.

4. Board and care (B&C) homes are regulated in accordance with the Social Security Act and a State's eligibility requirements and provide room, board, and continuous protective oversight.

Skilled nursing facility (SNF) is a Medicare term. ORCF uses SNF to describe nursing homes in its portfolio. In this evaluation, we generally will refer to SNFs and non-SNFs (to include ALFs, intermediate care facilities, and B&Cs) as appropriate.

SNFs are ORCF's most prevalent type of facility, representing 68.2 percent of ORCF's portfolio. ALFs represent 29.3 percent of ORCF's portfolio, B&Cs account for 2 percent, and other categories account for the remaining 0.5 percent.<sup>1</sup>

### **Physical Condition Inspections Within HUD**

Properties that HUD insures or subsidizes may be subject to HUD's physical condition inspection program. The purpose of the physical inspection process is to provide HUD with the ability to assess whether such properties are in a safe, decent, and sanitary condition and are in good repair. The Office of Public and Indian Housing's REAC administers HUD's physical condition inspection program. Before REAC, individual program offices administered HUD's physical condition inspections. HUD created REAC to provide more uniformity in HUD's physical condition inspection process, among other reasons. REAC's mission is to

1. provide and promote the effective use of accurate, timely, and reliable information while assessing the condition of properties within HUD's portfolio;
2. provide information to help ensure safe, decent, and affordable housing; and
3. restore the public trust by identifying fraud, abuse, and waste of HUD resources.

To accomplish its mission, REAC created the Uniform Physical Condition Standards (UPCS) to establish a uniform objective protocol for performing physical inspections of all property types. UPCS identifies five inspectable areas, exigent health and safety (EH&S) hazards, and standardized deficiency definitions for inspectable items.<sup>2</sup> Inspectors use UPCS to determine whether the conditions at a facility are deficient. If the inspector identifies any EH&S deficiencies, the inspector will issue the facility a Notification of Exigent and Fire Safety Hazards Observed, which is commonly referred to as a "ticket." The ticket states, "The Offices of Housing and Public Housing require all exigent hazards be mitigated immediately. The Office of Housing requires a written report be filed with the local office within 72 hours of the date of the inspection."<sup>3</sup>

Upon completing the inspection, the inspector must electronically submit the inspection data to REAC within 24 hours. When REAC receives the inspection data, REAC engineers and analysts perform a two-level review. Any issue detected during this review may result in a REAC quality

<sup>1</sup> Ten RCFs are not categorized, five are categorized as both SNFs and ALFs, two are categorized both ALFs and B&Cs, and one is categorized as an SNF and B&C.

<sup>2</sup> Site, building exterior, building systems, common areas, and units

<sup>3</sup> The regulation provides 3 business days rather than 72 hours for facilities to file the report.

assurance inspection.<sup>4</sup> The quality assurance review could be completed within a day, or it may take weeks if issues are detected. When the quality assurance process is complete, REAC releases the report to the facility. The report includes a score and describes each deficiency.

REAC's scoring methodology is complex and beyond the scope of this evaluation. However, a facility starts an inspection with a score of 100, and each deficiency reduces the facility's score. In general, deficiencies that present a threat to residents' health and safety reduce a facility's score by a larger amount than deficiencies with less potential threat to residents' health and safety. The score determines the timeline for a facility's next REAC inspection according to a 3-, 2-, or 1-year schedule. If a property scores at least 90 on its inspection, the property's next routine inspection should be in 3 years. If a property scores from 80 to 89, the property's next routine inspection should be in 2 years. If a property scores less than 80, the property's next inspection should be in 1 year. In addition to the number, the score may include an asterisk or a letter "a," "b," or "c." The asterisk indicates the inspector observed health and safety deficiencies with respect to smoke detectors. The letters indicate whether the inspector observed health and safety (H&S) deficiencies. An "a" indicates that the inspector observed no H&S deficiencies, a "b" indicates that the inspector observed non-life-threatening H&S deficiencies, and a "c" indicates that the inspector observed life-threatening H&S deficiencies.

### **Physical Condition Inspections of RCFs**

In September 2012, HUD implemented a rule that exempted SNFs from routine REAC inspections.<sup>5</sup> When HUD proposed the rule in May 2012, it said its reason for making this change was to "assure that facilities surveyed frequently by state regulatory agencies, for physical condition matters related to resident care and safety, are not subject to duplicative inspections." HUD noted that the results of State inspections conducted according to standards the Centers for Medicare & Medicaid Services (CMS) issued are readily available to it and lenders.<sup>6</sup> As a result of this rule, most HUD-insured SNFs are not subject to routine REAC inspections.

All public comments on the proposed rule that addressed the amended inspection process supported the change. However, a REAC memorandum issued after the rule's implementation indicated that REAC did not support the rule change. REAC said the rule change reduced the uniformity and the level of objectivity in REAC's inspection process. REAC also said CMS standards focus more on patient issues, whereas REAC standards focus entirely on physical condition.

CMS physical condition standards are defined by Federal Regulation and CMS contracts with State governments to inspect SNFs according to CMS standards. We did not attempt to compare these regulations with UPCS to assess whether they comparably protect residents' well-being and HUD's interest. Non-SNFs also are subject to State inspections, although States perform

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<sup>4</sup> There are two types of quality assurance inspections. A limited quality assurance inspection assesses the validity of the previous inspection by retracing the footsteps of the original inspection but does not replace the original score. A collaborative quality assurance inspection is performed with the original inspector and will replace the original score if there is a sufficiently large discrepancy from the original inspection.

<sup>5</sup> The Federal Register notice was published in September 2012, and the rule became effective in October 2012.

<sup>6</sup> CMS is part of the U.S. Department of Health and Human Services.

these inspections in accordance with their own standards, not those of CMS. Under the 2012 rule change, ORCF can exempt non-SNFs from REAC inspections when it finds that the State or local government has a reliable and adequate inspection system in place with results that are readily available to HUD.

Following the 2012 rule change, ORCF adopted a program policy that SNFs that were already in its portfolio would be exempt from routine REAC inspections if their last REAC score was 60 or above. SNFs that have not met this requirement are subject to REAC inspections until they achieve a score of at least 60.

An agreement among OHP (ORCF's parent organization), REAC, and the Departmental Enforcement Center (DEC) outlines the protocol the offices use for certain events, including low REAC scores.<sup>7</sup> Under the agreement, REAC automatically refers to DEC those RCFs that score under 31 or between 31 and 59 three consecutive times.<sup>8</sup> REAC refers RCFs scoring between 31 and 59 to OHP. Since January 2011, REAC has made 108 automatic referrals to DEC. The agreement also allows OHP to make elective referrals to DEC. Since January 2011, OHP has made an additional 32 elective referrals to DEC.

### **Role of DEC**

DEC is part of HUD's Office of General Counsel. Its mission is to restore the public trust by protecting residents; improving the quality of housing; and eliminating fraud, waste, and abuse. One of the ways DEC accomplishes this mission is by working with HUD program offices to ensure that funds are used according to program guidelines and Federal regulations. DEC has several enforcement tools it can use when guidelines or regulations are not followed. These include

- debarment, which blocks an individual or entity from conducting any business with any Federal Executive Branch program;
- limited denial of participation, which usually lasts 1 year and applies only to a defined program area and a defined geographic area;
- civil monetary penalties, which are permitted for actions meeting requirements defined by statute and Federal regulations; and
- notices of violations, which inform the facility that it is in violation of standards and provide a 60-day cure period for the recipient to bring the facility into compliance.

When DEC receives a referral from REAC or OHP, it reviews the REAC inspection report to determine whether the property is decent and safe in accordance with HUD regulations. DEC generally does not pursue debarments, limited denials of participation, or civil monetary penalties based only on the physical condition of an RCF. Notices of violation are more common. For RCFs, the notice instructs the facility to follow up with its account executive. After DEC sends the notice, it asks OHP to request a followup inspection from REAC but generally does not take further action.

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<sup>7</sup> The current protocol was signed in 2011, but a new protocol is being circulated for comment.

<sup>8</sup> Under ORCF's handbook, ORCF makes a referral after the second consecutive below-60 REAC score.

## Scope and Methodology

### Scope

This evaluation covered three HUD program offices – ORCF, REAC, and DEC. Because REAC inspections relate to the physical condition of an RCF, we focused on how ORCF monitors facilities' physical conditions, including its relationship with REAC and DEC. We also gained a general understanding of REAC's and DEC's operational involvement with ORCF.

### Methodology

To address our objectives, we conducted interviews with appropriate officials from ORCF, REAC, and DEC. We reviewed relevant statutes, regulations, and Federal Register notices. We reviewed relevant program documentation describing the roles and processes of ORCF, REAC, and DEC. We also analyzed data capturing RCFs' REAC inspection scores from March 8, 1999, to April 14, 2017, as well as a snapshot of current REAC inspection for each RCF in ORCF's portfolio as of June 1, 2017. Figure 1 and the calculations in finding 3 are based on data ORCF provided us. Figure 2 is based on data we obtained from HUD's Housing Enterprise Real Estate Management System (HEREMS) and Multifamily Portfolio Reporting Database (MPRD) databases. We did not adjust the scores to account for any changes to REAC's scoring methodology.

To determine compliance with 24 CFR (Code of Federal Regulations) 200.857, we determined the appropriate number of days as described below.

- 1-year inspection – 476 days. This is the sum of 365 days, which represents 1 year; 90 days, which represents the 3-month window from the ideal future date; and 21 days, which is a buffer we added to account for the period between an inspection and the score release.
- 2-year inspection – 841 days. This is the sum of 365 days  $\times$  2, which represents 2 years; 90 days, which represents the 3-month window from the ideal future date; and 21 days, which is a buffer we added to account for the period between an inspection and the score release.
- 3-year inspection – 1,206 days. This is the sum of 365 days  $\times$  3, which represents 3 years; 90 days, which represents the 3-month window from the ideal future date; and 21 days, which is a buffer we added to account for the period between an inspection and the score release.

We found that 61 facilities were overdue for routine inspection using these criteria. We determined that 12 of these facilities had refinanced their loan during fiscal years 2013 – 2016. We excluded these 12 from the pool of overdue routine inspections. Additionally, we found 26 facilities that scored below 60 on their last inspection and had not received a followup inspection within the 476 days. We determined that two of these facilities had refinanced their loan after receiving their most recent REAC score. We excluded these two from the pool of untimely followup inspections.

We completed this evaluation under the authority of the Inspector General Act of 1978 as amended and in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency (January 2012).

**Limitations**

There were no limitations to the completion of this evaluation.

## Findings

### Few RCFs Receive Very Low Scores, Yet Lower Scores Are Occurring More Frequently

We initiated this evaluation in response to information we received showing that 10 RCFs scored below 31 on their most recent REAC inspection. Our analysis shows that the majority of RCFs that received a REAC score scored at least 80 on their last inspection and over three quarters, scored at least 60.<sup>9</sup> Very low REAC scores are not prevalent across ORCF's portfolio. A small percentage of all RCFs, 0.3 percent or 11 out of 3,311 facilities, have a most recent REAC score below 31.<sup>10</sup> Figure 1 shows a breakdown of all RCFs by inspection score range, including those that have not received scores because they are exempt from inspections by regulation or are new to the program.<sup>11</sup>

Despite the small percentage of RCFs that scored below 31, we noticed a decline in REAC inspection scores across ORCF's portfolio from 2000 to 2016.<sup>12</sup> In fiscal year 2000, the average REAC inspection score for an RCF was 82.0. In 2016, the average score had fallen to 72.2. In 2000, 90.6 percent of RCF inspections resulted in REAC scores of at least 60. In 2016, 78.5 percent of inspections resulted in similar scores. The percentage of RCF inspections resulting in the highest scores has also declined. In 2000, more than 45 percent of RCF inspections resulted in scores of 90-100. In 2016, 16.1 percent of inspections resulted in similar scores. Across the same period, the percentage of RCF inspections that resulted in the lowest scores more than doubled to 1.5 percent. The decline in scores has continued during the first half of fiscal year 2017. Only 68.9 percent of REAC inspections of RCFs have resulted in scores of at least 60, and 4.4 percent have resulted in the lowest scores.<sup>13</sup> Figure 2 shows the percentage of REAC inspection scores that fell within certain score ranges.

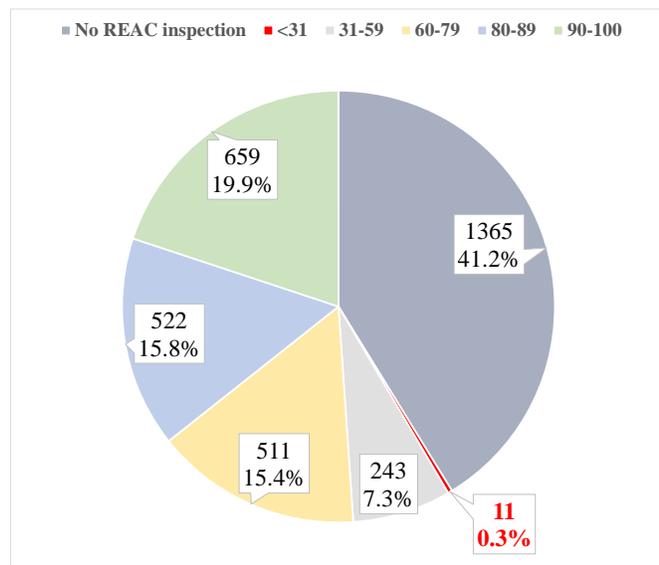


Figure 1 – Most recent REAC scores

<sup>9</sup> Of RCFs that have a REAC inspection history, 60.7 percent scored at least 80, and 86.9 percent scored at least 60.

<sup>10</sup> Considering only those RCFs that have a REAC inspection history, 0.6 percent of RCFs scored below 31 on their last REAC inspection. Considering all REAC inspections since 1999 rather than a snapshot of current scores, 0.9 percent of REAC inspections of RCFs have resulted in scores below 31.

<sup>11</sup> As discussed earlier, many SNFs are exempt from routine REAC inspections and thus do not have a current REAC score. Non-SNFs are not inspected for approximately 2 years after entering the program.

<sup>12</sup> We use 2000 and 2016 as start and end points because these are the first and last years of full REAC inspection data.

<sup>13</sup> Through April 14, 2017

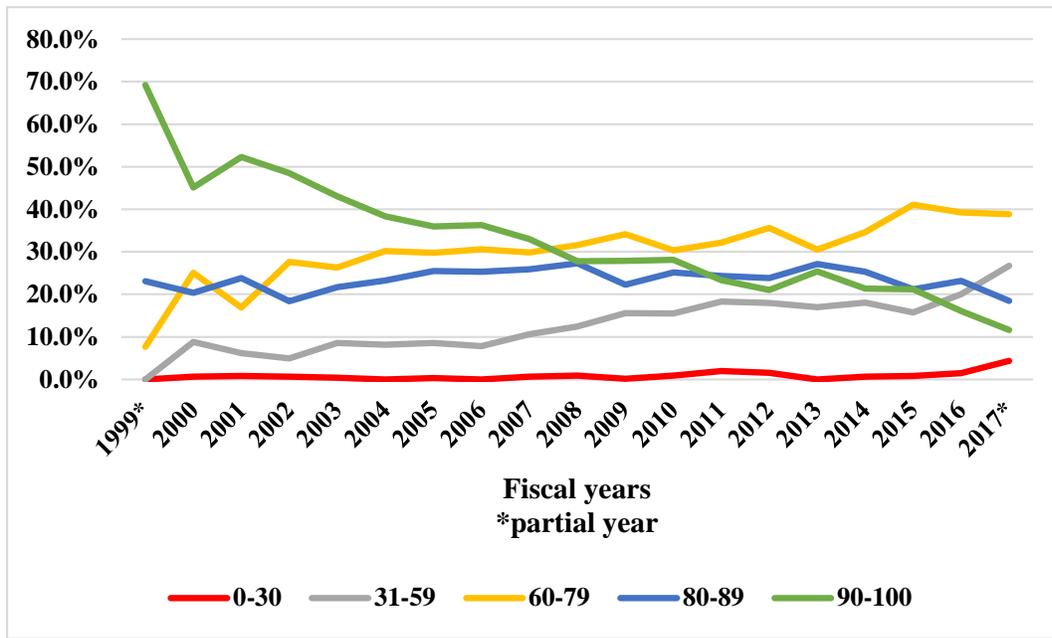


Figure 2 – REAC inspection scores by score range

## REAC Uses a Universal Inspection Approach That Does Not Account for Unique Conditions at RCFs

REAC has adopted an inspection process that applies uniformly to all property types across HUD, including multifamily buildings, public housing buildings, and RCFs. Although REAC adopted its approach to remove subjectivity, its standardized approach presents challenges when applied to certain RCFs. Blocked egress is the most common of these challenges, though not the only one.

### Unless a Database Adjustment Has Been Granted, REAC Will Consider Blocked Egress as a Deficiency, Even if Blocked Egress Is Allowed Under Local Code

REAC’s UPCS requires that “all buildings must have acceptable fire exits that are...operational.... These can include operable windows on the lower floors with easy access to the ground....” One of the deficiencies associated with this requirement is “Blocked/Unusable (Emergency/Fire Exits),” which is cited when “the exit cannot be used or exit is limited because a door or window is nailed shut...or other conditions.” Some RCFs use window restrictions to prevent certain residents, including those with Alzheimer’s or dementia, from wandering. These restrictions may be permissible under the RCF’s State or local code. However, a REAC inspector will apply UPCS definitions and thus will consider the restriction as blocked egress, which would cause REAC to deduct points from the facility’s score.

To prevent this point reduction, an RCF can ask REAC for a database adjustment before or after an inspection. To receive a database adjustment, the RCF must submit documentation showing that its State or local code permits blocked egress. REAC will accept documentation for a database adjustment only from a disinterested party. Usually the documentation comes from the fire marshal.

REAC and ORCF have discussed this issue since at least 2011. In August 2016, ORCF agreed to provide REAC information relating to facilities that should receive the adjustment, but ORCF did not provide the information. An ORCF official said ORCF had not understood the type of information REAC wanted at the time of the agreement. ORCF later determined that producing the information REAC required would be labor intensive so it did not provide the information. An ORCF official said ORCF has been rethinking this decision and now plans to do the research needed to determine which facilities need a database adjustment allowing blocked egress.

The database adjustment for egress can have a substantial effect on an RCF's REAC score. For example, one RCF's score increased from a 30 to a 63 based only on the database adjustment for egress. HUD takes a number of actions in response to low REAC scores, especially those below 31. ORCF can ensure that HUD's resources associated with these actions, including ORCF's own resources, are not used when the RCF is entitled to a database adjustment.

### **An Exigent Health and Safety Hazard Ticket Instructs Some RCFs To Remove Certain Safety Features**

As previously discussed, at the conclusion of the REAC inspection, the REAC inspector will issue a ticket to an RCF when he or she observes EH&S issues during the inspection. The ticket instructs the facility to repair the EH&S defects immediately and submit a signed certification that the facility made repairs within 72 hours. REAC issues the ticket regardless of whether the facility already has received a database adjustment. A REAC official said the inspector must mark the egress issue because REAC does not want inspectors making decisions onsite.

As a result, RCFs whose local code allows them to restrict windows for resident safety receive a ticket instructing them to remove window restrictions immediately. When asked about the issue, REAC officials said their expectation is that RCFs know not to change egress conditions. REAC's website provides additional information about egress issues cited on an EH&S ticket. The website encourages facilities to apply for a database adjustment. It also says facilities that have received a database adjustment and been issued a ticket for egress should contact their program office to determine how they should respond to the ticket. However, the ticket itself does not provide comparable information or the website's address. We are concerned that REAC's ticket process could result in an RCF's removing safety features in an attempt to remedy the egress cited by REAC immediately, thereby exposing its residents to potential harm.

On June 12, 2017, we issued a management alert addressed to REAC that discussed this issue. The alert is included as appendix B. REAC responded to the alert by amending the ticket language to include a notice to RCFs that they are not required to mitigate blocked egress when local code permits this condition.

## RCFs Had Not Been Inspected in a Timely Manner

### Routine Inspections

We identified 49 non-SNFs that had not received a routine REAC inspection timely. A facility's previous score determines the timing of REAC's routine inspection, with the routine inspection occurring within 1, 2, or 3 years after the previous inspection, depending on whether the facility scored over 90, over 80, or below 80.

For RCFs, REAC provides the lender that financed the mortgage the ideal future date, and the lender schedules the inspection within 90 days of the ideal future date.

#### SNFs

- SNFs entering the portfolio after the 2012 rule change are exempt from routine REAC inspection.
- SNFs in the portfolio at the time of the 2012 rule change receive followup inspections until they receive a score of at least 60 and then are exempt.

#### Non-SNFs

- Non-SNFs scoring at least 60 follow REAC's routine inspection schedule.
- Non-SNFs scoring below 60 receive followup inspections.

### Followup Inspections

REAC scores below 60 trigger the need for expedited followup inspections, yet these inspections were not completed quickly. REAC refers RCFs scoring below 31 to

DEC. An ORCF official said OHP generally requests followup inspections for these facilities at the same time DEC sends the notice of violation. The notice includes a 60-day deadline to survey and correct all deficiencies. ORCF will request that REAC schedule a followup inspection approximately 60 days after DEC sends the notice to coincide with the deadline for addressing deficiencies. For RCFs scoring between 31 and 59, ORCF should request followup inspections when it believes the facility is ready for the inspection. However, ORCF lacked a policy establishing a deadline to survey and correct all deficiencies REAC identified.

Of the 254 RCFs for which the most recent REAC inspection score was less than 60, 129 were non-SNFs, and 125 were SNFs. While ORCF did not have a standardized timeline for followup inspections for some of these RCFs, Federal regulations require annual inspections for facilities scoring under 80. However, 24 of the 129 non-SNFs that scored below 60 on their last inspection had not received followup inspections within the permitted timeframe for annual inspections and thus were overdue.

For the 125 SNFs with below 60 scores, an average of 1,461 days had elapsed since their last inspection. One had not been inspected since 2007. These delayed inspections are not contrary to Federal regulations due to the rule change in 2012. However, the delayed inspections are contrary to ORCF's policy that SNFs must receive a REAC inspection score of at least 60 before they are no longer inspected routinely. An ORCF official said the delays may have been the result of variance in how individual account executives requested followup inspections.

## ORCF Is Making Changes to Its Oversight Process for RCFs

According to ORCF's handbook, account executives work in partnership with RCF borrowers and lenders to ensure that FHA-insured loans are financially and operationally strong for the loan to remain viable for the term of the mortgage. The handbook specifies that REAC inspection results are one of the tools account executives should use to monitor RCFs' performance. An ORCF official said REAC inspections raise valid issues and cited electrical issues as an example. This official said REAC inspections also provide supplemental information to help ORCF identify facilities that have consistently low scores over time. However, this official also said claims against HUD generally have been the result of issues with operators, quality of care, or finances rather than physical condition.

Until recently, ORCF had not applied central oversight to RCFs that scored below 60 on their REAC inspections. There was no standardized process, and account executives were responsible for monitoring how their assigned RCFs responded to REAC inspections. According to ORCF, it is implementing a REAC inspection-tracking log for RCFs that score below 60. Under this process, account executives create a report and send it to a designated email inbox where an ORCF staff member centrally stores and maintains the information. This staff member presents the combined REAC information to ORCF management. An ORCF official said the centralized tracking will ensure that information relating to REAC inspection followup is on everyone's radar.

Additionally, since spring 2017, ORCF has been implementing other initiatives designed to create more standardized processes for account executives. Among these initiatives are

- The development of a rapid response team, which oversees RCFs that receive a REAC inspection score of below 31. The team performs a site visit with the RCF's lender.
- Revision of its centralized data tracking system, now referred to as a dashboard. The dashboard provides a snapshot of the status of ORCF's portfolio. It is updated monthly and assigns weighted numerical point values based on reported asset management data elements.<sup>14</sup>
- Updated "punch lists," which identify actions staff must take when monitoring the physical and financial conditions of RCFs.

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<sup>14</sup>Asset management data elements include but are not limited to delinquency and default ratings, REAC inspection scores, debt ratios, and CMS star ratings.

# Recommendations

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Based on our analysis, we found two instances in which ORCF and REAC could take action to reduce problems associated with REAC's inspections of RCFs. We also found that some inspections of RCFs had not been performed in a timely fashion.

## **1. Identify and Implement a Method To Ensure That Eligible RCFs Receive Database Adjustments When Appropriate Under Local Code**

We recommend that ORCF identify and implement a method to ensure that eligible RCFs in its portfolio receive database adjustments when appropriate under local code, either by working directly with REAC or by instructing RCFs to apply for adjustments themselves. As stated in the report, ORCF previously considered taking such action. Given the findings in this report, we believe such action is warranted.

OHP concurred and discussed two steps it has taken to facilitate database adjustments. ORCF said it has provided REAC with language about database adjustments to include on the REAC inspection report. ORCF also said it has trained account executives to inform RCFs of their right to request database adjustments and that account executives will provide assistance to RCFs requesting database adjustments. REAC concurred and described a meeting it had with OHP, during which the two offices discussed database adjustments.

This recommendation is unresolved – open pending our assessment of the various actions relating to database adjustments. Please see appendix A for more information.

## **2. Identify and Implement a Method To Ensure That HUD Does Not Instruct Facilities To Negate Safety Features**

We recommend that REAC identify and implement a method to ensure that HUD does not instruct facilities to negate safety features. At a minimum, REAC should alter the notice sent to RCFs, letting them know not to take immediate action if they have a database adjustment on file or if local code allows them to seek such an adjustment. We are encouraged by the planned action REAC shared with us. We offer this recommendation as a means to ensure that REAC follows through with this action.

REAC concurred and provided new language that provides guidance to RCFs that it has cited for blocked egress. REAC is testing tickets with the revised language, and it expects final deployment within 60 days.

This recommendation is resolved – open pending final deployment of the revised language. Please see appendix A for more information.

### **3. Identify and Implement a Method That Ensures the Expeditious Followup Inspection of RCFs**

We recommend that ORCF identify and implement a method that ensures the expeditious followup inspection of RCFs that have not been inspected timely after receiving their last below-60 REAC score. We are encouraged by the planned steps ORCF shared with us. We offer this recommendation as a means to ensure that ORCF follows through with these steps.

OHP concurred and described actions it has taken to provide additional centralized oversight of the followup inspection process. REAC concurred and said it would work with OHP to try to ensure that facilities are inspected in line with their ideal inspection dates.

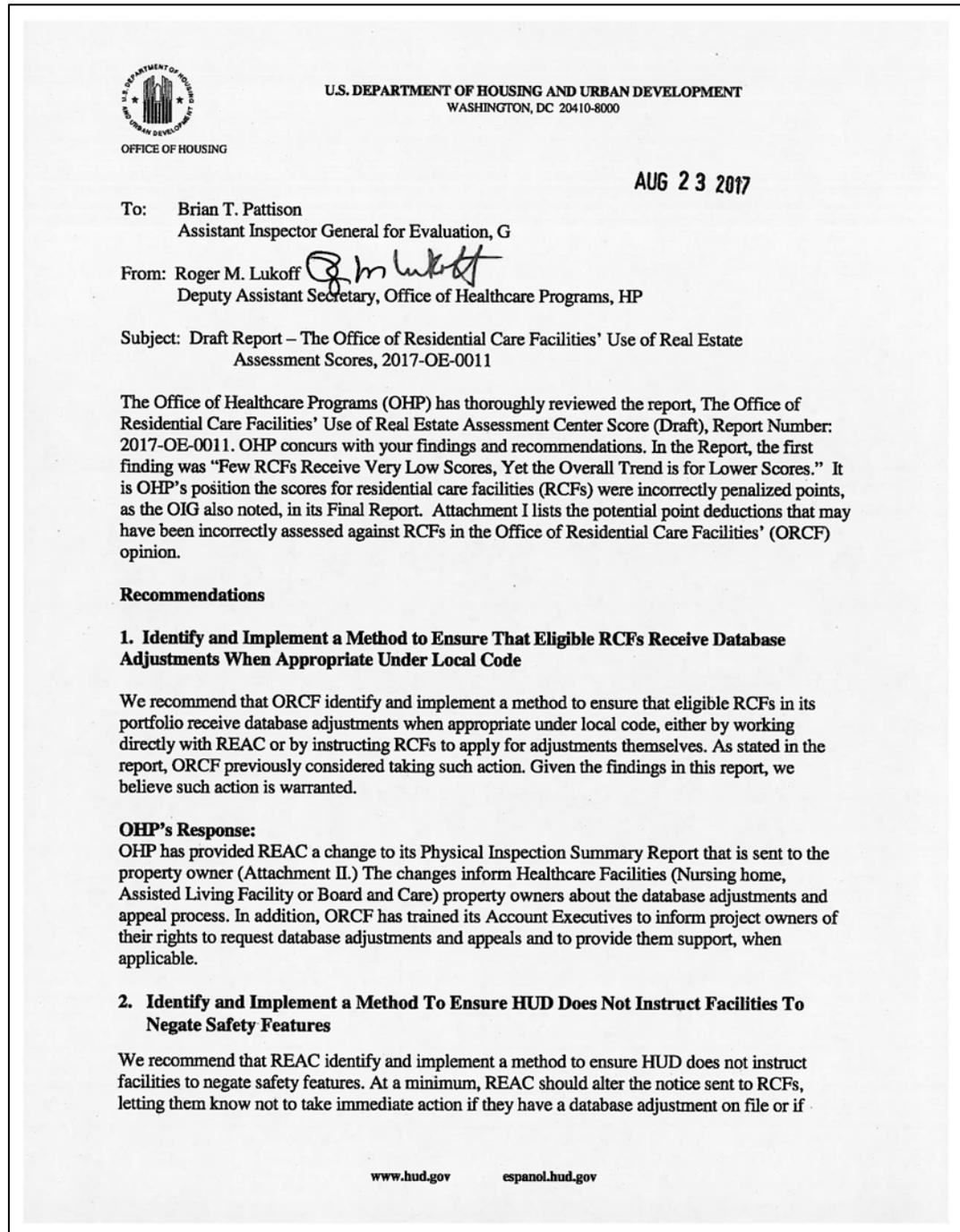
This recommendation is resolved – open pending our assessment of progress made in addressing untimely followup inspections. Please see appendix A for more information.

# Appendixes

## Appendix A – Agency Comments and OIG Response

OHP<sup>15</sup>

Reference to  
OIG  
Response



Comment 1

<sup>15</sup> OHP's response to our draft report included documents as attachments. We include the response here but not the documents that were attached to it.

Reference to  
OIG  
Response

local code allows them to seek such an adjustment. We are encouraged by the planned action REAC shared with us. We offer this recommendation as a means to ensure that REAC follows through with this action.

**REAC Response**

Reserved

**3. Identify and implement a method that ensures the expeditious follow up inspections of RCFs that have not been inspected timely after receiving their last below 60 REAC score.**

We recommend that ORCF identify and implement a method that ensures the expeditious follow-up inspection of RCFs that have not been inspected timely after receiving their last below-60 REAC score. We are encouraged by the planned steps ORCF shared with us. We offer this recommendation as a means to ensure that ORCF follows through with these steps.

**OHP's Response:**

- a) ORCF is now using a centralized process for tracking and to follow-up on all projects with REAC inspection scores below 60. Each step of ORCF's follow-up is tracked – i.e. E H & S, Database Adjustment and Appeal request, lender involvement, DEC involvement, owner plan for addressing deficiencies and completion of such, REAC re-inspection ordered, REAC inspection scheduled date and date actual inspection occurred.
- b) ORCF has developed a Standard Work Protocol (standardized work forms the baseline for kaizen or continuous improvement. As the standard is improved, the new standard becomes the baseline for further improvements) for projects with REAC scores below 60 and above 30 (Attachment III) and REAC scores of 30 and below (Attachment IV). Each project will have a comprehensive review of its history with FHA and administrative actions to be taken.
- c) ORCF has created a "Rapid Response Team" to conduct site visits on all properties with REAC scores below 31. Prior to scheduling the site visit, the team will perform the due diligence described in the Standard Work Protocol.

After the site visits, the following actions will occur:

1. The Rapid Response Team will coordinate with the DEC on the issuance of any NOV and on any further follow-up – if such NOV has not already been issued.
2. Either within the NOV process or prior to that process, HUD will require that the project Owner submit a written plan of action within a specified timeframe.
3. After submittal of the plan of action, the project Owner will be required to report monthly on its progress in addressing its plan.
4. After all items in the plan have been completed, the Rapid Response Team will work with the ORCF REAC Coordinator to schedule a follow-up REAC inspection.

Comment 2

**Reference to  
OIG  
Response**

**Conclusion**

OHP concurs with the findings and recommendations in The Office of Residential Care Facilities Use of Real Estate Assessment Center Scores (Draft) Report number: 2017-OE-0011.

REAC<sup>16</sup>Reference to  
OIG  
Response

U.S. Department of Housing and Urban Development  
550 12<sup>th</sup> Street, SW  
Suite 100  
Washington, DC 20410

AUG 24 2017

OFFICE OF PUBLIC AND INDIAN HOUSING  
REAL ESTATE ASSESSMENT CENTER

MEMORANDUM FOR: Brian Pattison, Assistant Inspector General for Evaluation, G

FROM: Donald J. La Voy, Deputy Assistant Secretary, Real Estate Assessment Center,  
PX

SUBJECT: Draft Report – The Office of Residential Care Facilities’ Use of Real Estate Assessment  
Center Scores, 2017-OE-001

Thank you for your draft report dated August 15, 2017. A review of the draft report has been conducted. We are in agreement with the three recommendations and the following comments are provided for each respective recommendation.

**1. Identify and Implement a Method to Ensure That Eligible RCFs Receive Database Adjustments When Appropriate Under Local Code**

We recommend that ORCF identify and implement a method to ensure that eligible RCFs in its portfolio receive database adjustments when appropriate under local code, either by working directly with REAC or by instructing RCFs to apply for adjustments themselves. As stated in the report, ORCF previously considered taking such action. Given the findings in this report, we believe such action is warranted.

**Comment:** On August 16, 2017 key REAC staff to include the REAC Director, [REDACTED] and Program Manager of the Physical Assessment Subsystem, [REDACTED] met with Office of Residential Care Office of Healthcare Program staff that included Acting Deputy Assistant Secretary, [REDACTED] Senior Account Executive, [REDACTED] and Senior Account Executive, [REDACTED]. The requirements of Database Adjustments (DBAs) are codified within regulation. They afford properties with code variances an opportunity to submit a DBA to REAC in order to receive a restoration of any points that are deducted from a property’s physical inspection score report when the cited deficiency is allowed by a property’s local code. DBAs are available because thousands of local jurisdictions throughout the country do not have consistent code violations and variances even though they may share some in common. In addition, many jurisdictions update and change their local code violations and variances from time-to-time and only publish the changes locally. For this reason, the REAC inspection is not a code inspection. Given that a significant number of Office of Health Care Program properties/owners do not submit a DBA specifically for windows that are intentionally restricted from raising in excess of six inches, a trend which has persisted in excess of over 10 years, the REAC Director informed OHP staff at the August 16, 2017 meeting that if they submit a memorandum from the Acting OHP DAS on behalf of their OHP properties that certifies that all OHP properties are entitled to this

## Comment 1

<sup>16</sup> REAC’s response to our draft report included documents as attachments. We include the response here but not the documents that were attached to it. Within REAC’s response, it included employee names and contact information. We removed all contact information. We removed names when they are associated with actions individuals took.

**Reference to  
OIG  
Response**

variance throughout the United States REAC will enter a DBA in the system for all OHP properties for the six-inch window restriction. Upon submitting the memorandum OHP assumes responsibility and any possible liability that may be associated with the six-inch window restriction DBA. The REAC Director further stated that if the OHP Acting DAS would submit the memorandum the following week (week of August 21, 2017) that REAC would start to enter the DBAs immediately. OHP staff agreed to submit the memorandum.

**2. Identify and Implement a Method to Ensure HUD Does Not Instruct Facilities to Negate Safety Features**

We recommend that REAC identify and implement a method to ensure HUD does not instruct facilities to negate safety features. At a minimum, REAC should alter the notice sent to RCFs, letting them know not to take immediate action if they have a database adjustment on file or if local code allows them to seek such an adjustment. We are encouraged by the planned action REAC shared with us. We offer this recommendation as a means to ensure that REAC follows through with this action.

**Comment 3**

**Comment:** REAC revised the Exigent Health and Safety (EH&S) form so that it clearly instructs OHP property owners and managers not to remove the six-inch window lift restrictors where they are required by their local and/or state code. The revised form was developed in mid-June 2017 and forwarded to you on approximately June 16, 2017. It is currently being tested with REAC's quality assurance inspector staff and will be rolled out to contract inspectors within the next 30 – 60 days, if not earlier. Prior to implementing the revised form all certified inspectors will be trained on the updated form ensuring that OHP property owners know that they should not remove the six-inch window lift restrictors. A copy of the revised form is attached.

**3. Identify and Implement a Method That Ensures the Expedient Follow-up Inspection of RCFs**

We recommend that ORCF identify and implement a method that ensures the expedient Follow-up inspection of RCFs that have not been inspected timely after receiving their last below-60 REAC score. We are encouraged by the planned steps ORCF shared with us. We offer this recommendation as a means to ensure that ORCF follows through with these steps.

**Comment 2**

**Comment:** Protocol between REAC and OHP that established an agreement between the two offices calls for OHP to provide REAC with a list, on a regular basis, of OHP properties needing inspection. REAC is committed to ensuring that OHP properties are inspected timely and will make every effort to obtain a list from OHP of properties that need an inspection. Our REAC OHP liaison, [REDACTED] will work with the OHP liaison, [REDACTED] collaborating together and ensuring that OHP properties are inspected as close as possible to their *ideal future dates* for their follow-on inspection in accordance with established protocol (3-2-1 rule).

We appreciate your efforts and recommendations associated with this draft report. If you have questions please contact Delton Nichols, Director, at [REDACTED]

Attachment:

**DEC**

DEC did not provide a response to our draft report.

## OIG's Response to Comments

**Comment 1** OHP said it provided REAC with language describing database adjustments and score appeals it would like included on the REAC inspection report. It also said it has trained account executives about database adjustments and appeals and account executives would support RCFs' requests for adjustments and appeals. These actions may facilitate RCFs in requesting database adjustments. Although this would be a beneficial result, an ideal solution would proactively identify RCFs that are eligible for database adjustments and ensure that these RCFs receive adjustments. This measure will ensure that HUD does not use resources addressing RCFs that score below 60 due to preventable deductions for conditions permitted by local code but prohibited by UPCS. REAC's description of OHP and REAC cooperation is encouraging. However, we are concerned that the proposed solution may create additional problems if it allows ineligible RCFs to block window egress. For these reasons, we consider the associated recommendation (recommendation 1) to be unresolved – open until we can further assess these actions upon submission of the management decision and action plan package.

**Comment 2** Although not included in OHP's comments above, OHP attached to its comments documentation for some of the actions it describes in its comments. One of the documents details all steps ORCF will take in response to a REAC inspection score between 31 and 59. The other document details all steps ORCF will take in response to a REAC inspection score below 31. The latter document was an updated version of a document we reviewed during our fieldwork. In addition, during our fieldwork, we reviewed a document used to track all RCFs that received REAC scores below 60. REAC said it would collaborate with OHP to try to ensure that facilities are inspected in line with their ideal inspection dates. Although we believe these actions may facilitate more timely followup inspections, we consider the associated recommendation (recommendation 3) to be resolved – open until we can assess how the actions are being implemented and whether they are reducing the number of untimely followup inspections.

**Comment 3** Although not included in REAC's comments above, REAC attached to its comments the revised ticket. The relevant text from the ticket is as follows:

FOR NURSING HOME PROPERTIES ONLY: If local or state code requires that windows either not open or open only a prescribed number of inches (e.g., 6 inches) to prevent residents with Alzheimer's, dementia, or other conditions from injury or leaving the premises, the nursing home property is not required to mitigate the deficiency "blocked egress/inoperable" window(s) when recorded on this form as an observed EH&S deficiency. If local or state code allows for this restriction and the property has not filed a pre-database adjustment with the REAC, please submit an appeal immediately (within 45 days of the inspection report's release date) and indicate it should also be processed as a pre-database adjustment.

REAC said the ticket with the revised language is in testing and REAC expects to deploy the revised language within 60 days. We consider the associated recommendation (recommendation 2) resolved – open pending final deployment of the revised language.

## Appendix B – Management Alert

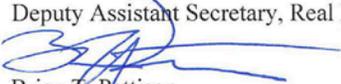
### MEMORANDUM

June 12, 2017



U.S. DEPARTMENT  
OF HOUSING  
AND URBAN  
DEVELOPMENT

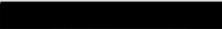
To: Donald Lavoy  
Deputy Assistant Secretary, Real Estate Assessment Center, PX

From:   
Brian T. Pattison  
Assistant Inspector General for Evaluation, Office the Inspector General, G

Subject: Management Alert – Potentially Improper Notifications of Correction for Blocked  
Secondary Egress Infractions at Certain Residential Care Facilities

The purpose of this memorandum is to alert you to potential safety risks stemming from notices of correction resulting from inspections of certain residential care facilities where local code allows for restrictions of window openings. These restrictions are allowed to prevent residents with Alzheimer's, dementia, or other conditions from falling or leaving. While allowed by local code, these windows are considered blocked by REAC's inspection standards, the Uniform Physical Condition Standards. Consequently, when a REAC inspector finds that a window cannot fully open, the inspector issues a notification instructing the facility to "correct" this issue within 72 hours. This notice is issued even if a database adjustment was applied to the facility prior to the inspection. Residential care facilities that are allowed by local code to restrict their window openings would be putting their residents at risk of harm if they followed REAC's order.

While we are not aware of any incidents of resident harm resulting from facilities responding to a notice of correction, we encourage you take action as soon as practicable to ensure inspectors do not instruct facilities to remove features designed to protect residents from harm. We also ask Office of Healthcare Programs to provide whatever assistance is required to facilitate this action. A formal recommendation on this topic may be included in a forthcoming evaluation report on REAC's physical inspections of facilities insured by the Office of Healthcare Programs' Office of Residential Care Facilities.<sup>1</sup> However, there is no need for you to wait to take action until we issue our report.

Please do not hesitate to contact me at  or  or Paul Bergstrand, Director of the Program Evaluations Division, at  or  with any questions or concerns.

cc:  
Delton Nichols, Director, Real Estate Assessment Center, PX  
Peter S. Schmiedel, Financial Management Specialist, Office of Public and Indian Housing, PF  
Roger Lukoff, Deputy Assistant Secretary, Office of Healthcare Programs, HP  
Vance Morris, Acting Associate Deputy Assistant Secretary, Office of Residential Care Facilities, HP  
Diane A. Stewart, Management Analyst, Office of Housing, HRO

<sup>1</sup> Please refer to our April 18, 2017 memorandum with the subject "The Office of Residential Care Facilities' Use of Real Estate Assessment Center Scores, 2017-OE-0011," that notified you of our evaluation.

## **Appendix C – Acknowledgements**

This report was prepared under the direction of Brian T. Pattison, Assistant Inspector General for Evaluation, and Paul H. Bergstrand, Director of the Program Evaluations Division. The Office of Evaluation staff members who contributed are recognized below.

### **Major Contributors**

Brendan Bacon, Senior Evaluator and team leader  
Christa Kidd, Evaluator  
Rashee Nelson, Evaluator  
Sonia Pena, Senior Forensic Auditor  
Josh Rowell, Senior Evaluator

### **Other Contributor**

Lindsay Clarke, Senior Evaluator

## Appendix D – Acronyms

Acronym	Definition
ALF	assisted living facility
B&C	board & care
CMS	Centers for Medicare & Medicaid Services
DEC	Departmental Enforcement Center
EH&S	exigent health and safety
FHA	Federal Housing Administration
H&S	health and safety
HUD	U.S. Department of Housing and Urban Development
OHP	Office of Healthcare Programs
OIG	Office of Inspector General
ORCF	Office of Residential Care Facilities
RCF	residential care facility
REAC	Real Estate Assessment Center
SNF	skilled nursing facility
UPCS	Uniform Physical Condition Standards



The Office of Inspector General is an independent and objective oversight agency within the U.S. Department of Housing and Urban Development. We conduct and supervise audits, evaluations, and investigations relating to the Department's programs and operations. Our mission is to promote economy, efficiency, and effectiveness in these programs while preventing and detecting fraud, abuse, and mismanagement.

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Faxing the OIG hotline: (202) 708-4829

Sending written information to

U.S. Department of Housing and Urban Development  
Office of Inspector General Hotline (GFI)  
451 7th Street SW, Room 8254  
Washington, DC 20410

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