

PROCESS FOR REQUESTING CERTAIN REVIEW OF UNIFORM PHYSICAL CONDITION STANDARDS (“UPCS”) INSPECTION SCORES

The Texas Department of Housing and Community Affairs (the “Department”) will consider a request for a technical review of an initial UPCS inspection score using a process similar to that established by The U.S. Department of Housing and Urban Development (“HUD”) Real Estate Assessment Center (“REAC”).

Property owners/agents have the option to request a technical review of a UPCS physical inspection score for reasons such as a belief that the inspection was not conducted in accordance with the UPCS inspection protocol, that certain inspection data may have been recorded in error, or that cited deficiencies are related to extraordinary events such as a natural disaster, that. If the UPCS score is corrected/adjusted, this will result in an improvement in the property's overall score. There are two different processes available to address these issues relating to UPCS physical inspection scores: technical reviews and database adjustments.

Technical Reviews (“TR”) A technical review may be requested if, during the physical inspection, an objectively verifiable and material error(s) occurred that, if corrected, would result in an improvement in the property's overall score. TRs and development of any appropriate requested database adjustments will be performed by the Compliance Division staff and reviewed by a management level panel appointed by the Executive Director. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

- Building Data Errors - The inspection includes the wrong building or a building that is not owned by the property.
- Unit Count Errors - The total number of units considered in scoring is incorrect as reported at the time of the inspection.
- Non-Existent Deficiency Errors - The inspection cites a deficiency that did not exist at the time of the inspection.

What Does NOT Qualify for a Technical Review? The Department will not consider the following for a technical review:

- Disagreements over the severity of a defect, such as deficiencies rated Level 3 that the Owner believes should be rated Level 1 or 2;
- Deficiencies that were repaired or corrected during or after the inspection; or
- Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, FHEO).

Steps for Submitting a Technical Review: An Owner can initiate the technical review process by contacting the Department in writing within 45 days of the written notice from the Department notifying the Owner of the results of the review. The owner must supply objective and verifiable documentation that a deficiency was recorded in error. Email and/or the Department’s Compliance Monitoring and Tracking System’s Electronic Document Attachment System may be used for all communication regarding Technical Reviews.

Examples of objective and verifiable documentation are dated pictures or video, signed and dated written material from an objective source such as a local fire marshal or building code official, or similar evidence. Written documentation, other than from the fire marshal or local code official, must be from a professional who possesses any required licenses or other credentials and whose expertise corresponds to the inspectable item for which review has been timely requested. This written documentation must be

signed by the licensed expert and include his/her license number. For example, a fire sprinkler defect must be inspected and verified/certified for non-deficiency by a fire suppression company or a foundation crack non - deficiency must be verified by an engineer whose discipline corresponds with the noted deficiency, *i.e.*, geotechnical engineer for defects caused by soil/earth movement; structural engineer for structural defects not caused by soil/earth movement. Verification from a mechanical engineer attesting to the structural integrity of the building will not be honored.

Database Adjustment (DBA): A request for database adjustment initiates a review of the results of a physical inspection. A database adjustment may be requested for circumstances affecting the inspected property that are out of the ordinary, reflect an inconsistency with ownership, or are allowed by city/county/state codes. Circumstances that may be addressed by a database adjustment are as follows:

- **Local Conditions and Exceptions** - Circumstances include inconsistencies between local code requirements and the UPCS inspection protocol, such as conditions permitted by local variance or license (*e.g.*, child guards permitted on sleeping room windows pursuant to local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.
- **Ownership Issues** - Items that were captured and scored during the inspection that are not owned or the responsibility of the Owner. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner. The Owner must have notified the owner or proper authorities regarding the deficient item and any appliances provided to the tenant must be noted in the lease agreement.
- **Adverse Conditions Beyond the Owner's Control** - Deficiencies negatively affecting the score were caused by circumstances beyond the Owner's control such as damage from a natural disaster or a third party private or public entity working near a property. The responsibility to correct such conditions still belongs to the Owner. Requests for DBA for casualty loss or natural disaster will only be considered if the Owner has notified the Department of the loss or disaster using the Department's Disaster Relief/Casualty Loss system. Notification must be made within the thirty day limit defined in 10TAC §10.605(a) (2).
- **Modernization Work In Progress** – Property/projects undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for a database adjustment. All elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to The Department's physical inspection protocol without adjustment. Any request for a Database adjustment for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department. Housing Tax Credit developments undergoing modernization during the development's Compliance Period must be reported to the Internal Revenue Service, but associated points will be added back to the UPCS score.

What Does NOT Qualify for a Database Adjustment? The Department will not accept any database adjustment requests without appropriate documentation. Deficiencies noted during the inspection that were corrected during or after the inspection do not qualify for a database adjustment. Database adjustments do not apply to circumstances addressed in the technical review process.

What are the Steps for Submitting a Database Adjustment? An Owner can initiate the database adjustment process by notifying the Department, in writing, 45 days of the written notice from the Department notifying the owner of the results of the review. The owner must submit proper

documentation (*i.e.*, signed letter from local/ building/ fire code official for code variance; etc) to support the request. Email and/or the Department's Compliance Monitoring and Tracking System's Electronic Document Attachment System may be used for all communication regarding Database adjustments.

What Can Be Expected in Response to a Request for a Technical Review or Database Adjustment?

If the Department's evaluation determines that the request is justified and, if corrected, would result in an improvement in the property's overall UPCS score, the Department will take one or a combination of the following actions:

- Correct the physical inspection report;
- Issue a corrected physical condition score.

Notification will be sent to the Owner explaining what action, if any, has occurred and why the technical review or database adjustment request is accepted or denied. The UPCS score is not considered final until all changes have been completed. If the Department cannot make a determination regarding the technical review or database adjustment before the expiration of the Corrective Action Period, an extension may be granted until a determination is made. Such an extension cannot exceed an additional ninety days from the initial Corrective Action Deadline.

Time for Submitting a Request for Technical Review: A request for a technical review must be submitted to The Department within 45 calendar days of transmission of the initial UPCS inspection report and score.

Submission of Requests and Documentation: The request and all required documentation must be submitted to the Department's Compliance Monitoring and Tracking System's Electronic Document Attachment System.

Requests for technical review or database adjustment submitted by the owner, management agent and /or lawyers retained by owners are the only acceptable requests in this regard that will be considered. The Department is not required to review a request made after the specified number of days has expired so it is important to note the time period available for making a request.