



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**



Portfolio and Asset Management Division



IRS Notice 2020-53

August 11, 2020

Dear Affordable Housing Professionals:

The Department of Housing and Community Development (DHCD) greatly appreciates your ongoing efforts to provide affordable housing to an increasingly vulnerable population, particularly during the COVID-19 public health crisis. Please refer to the information below for agency guidance regarding monitoring and the use of electronic signatures for properties under the purview of DHCD.

On-site Monitoring: Federal Guidance

The Internal Revenue Service (IRS) has issued Notice 2020-53, which provides COVID-19-related relief and revenue procedures for issuers, owners, operators, and tenants of residential rental properties financed with LIHTCs (Housing Credits) and the Tax Credit Exchange (Section 1602) program monitored by the Department of the Treasury.

This notice allows certain time-sensitive actions (such as the 10 percent test for carryover allocations, the 24-month minimum rehabilitation expenditure period and reasonable period of casualty loss restoration or replacement) that were due April 1, 2020, through December 30, 2020, with a deadline of December 31, 2020.

Additionally, the notice states that owners of properties are not required to perform certain income recertifications or adjust the eligible basis of a building due to temporary closure of common areas or amenities due to the pandemic and state agencies are not required to conduct compliance monitoring of those properties.

On-site Monitoring: DHCD Advisory

Under Section 1.42-5, DHCD is not required to conduct compliance-monitoring inspections or tenant file reviews during the period beginning April 1, 2020 and ending on December 31, 2020. DHCD will resume compliance-monitoring inspections and tenant file reviews as due under Section 1.42-5 effective January 1, 2021. If your property was scheduled for a compliance-monitoring review in FY2020, the review will be suspended until January 1, 2021. If your property is scheduled for a compliance-monitoring review in FY2021, the review will take place as scheduled.

DHCD is working with the District Office of Risk Management to ensure safe and appropriate measures will occur, consistent with the latest health guidelines, when on-site visits do resume; look for further correspondence from the agency toward the end of calendar year 2020.

Use of Electronic Signatures and other Monitoring Guidance for Affordable Housing Programs:

Electronic signatures (E-Signatures) may be used on tenant certification forms, lease addendums, or other documents requiring signatures in the monitoring of HUD and LIHTC Programs.

HUD Grant Programs

“During the COVID-19 crisis, HUD’s Office of Community Planning and Development has authorized E-Signatures not only for documents issued by HUD, but also for its grantees.”

LIHTC Program

On March 26, 2020 the IRS issued an internal memorandum allowing for the temporary use of e-signatures as part of its response to the COVID-19 Pandemic. The memorandum stated that “effective immediately, it will begin temporarily accepting scanned or photographed images of signatures and digital signatures on certain documents “related to the determination or collection of tax liability.” Documents covered by the temporary policy include:

1. Extensions of statute of limitations on assessment or collection
2. Waivers of statutory notices of deficiency and consents to assessment
3. Agreements to specific tax matters
4. Tax liabilities (closing agreements)
5. Any other statement or form needing the signature of a taxpayer or representative traditionally collected by IRS personnel outside of standard filing procedures (for example, a case specific Power of Attorney).[1]

Based on the above, DHCD may accept electronic signatures on any IRS-generated forms for program monitoring purposes in the LIHTC context. It is reasonable to conclude that these forms, including tenant certification forms, are documents related to the “determination or collection of tax liability” since they can establish compliance or non-compliance with a federal tax program.

Per the memorandum, these forms fall under the designation of “any forms requiring the signature of a taxpayer collected by IRS personnel outside of standard filing procedures” because the persons certifying their income are considered taxpayers by the IRS.

E-signatures may be used on LIHTC program monitoring documents even where these documents are not generated by the IRS or “collected by the IRS outside of standard filing procedures” (See below).

E-Signature Permissibility in General

Federal and district law is clear-cut and well-established in permitting DHCD to accept electronic signatures for all tenant certification forms required for program monitoring purposes. The federal UETA and E-Sign

Acts, along with D.C. Code §28-4906 establish that wet-ink signatures should be given the same force and effect as digital signatures.

The relevant district statute (D.C. Code §28-4906) states the following:

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) If a law requires a record to be in writing, an electronic signature satisfies the law.
- (c) If a law requires a signature, an electronic signature satisfies the law.

Valid e-signatures require these elements:

1. Intent to sign – This can be accomplished by clicking an “accept” button on an application; typing a name or using the mouse to create a signature or symbol.
2. Consent to do business electronically – Most e-commerce applications include some type of simple consent action, such as a “click to accept” clause.
3. Association of signature with the record – The electronic signature must be attached to or associated with the electronic record being signed, and each signature should be provided according to established standards and be independently verifiable. In practice technologies allowing for e-signatures, such as Adobe PDF, the signature itself ensures both association and integrity.
4. Record retention- Electronic signature transaction records typically need to be kept for the same length of time as documents signed in ink.

Most contemporary document production software, such as Adobe PDF, contain built-in processes that automatically implement these required elements.

E-signatures and Monitoring: DHCD Advisory

During the Covid-19 pandemic, DHCD will grant our affordable housing partners to accept electronic signatures for program monitoring purposes, consistent with the guidance above.

If you have any questions, please feel free to send your questions to our compliance mailbox at pamd.compliance@dc.gov.

We thank you in advance for your participation in our housing programs. DHCD’s vision is creating and preserving affordable housing in the District of Columbia.

Sincerely,



Genee Hayes
Manager, Portfolio and Asset Management Division