



TaxNewsFlash

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Notice 2020-42: Temporary relief allowing retirement plan elections, spousal consents to be signed remotely (COVID-19)

The IRS today released an advance version of Notice 2020-42 that provides temporary relief from the requirement that retirement plan elections that require the signature of an individual participant, including spousal consents, must be witnessed in the physical presence of a plan representative or notary public.

The relief provided by Notice 2020-42 is offered in response to the coronavirus (COVID-19) pandemic, and is available only for 2020 (that is, January 1, 2020, through December 31, 2020).

Notice 2020-42 [PDF 30 KB] provides temporary relief from the “physical presence requirement” of Reg. section 1.401(a)-21(d)(6) for participant elections required to be witnessed by a plan representative or a notary public, including a spousal consent required under section 417 of the Code.

The relief provided by Notice 2020-42 is intended to facilitate the payment of coronavirus-related distributions and plan loans to qualified individuals, as permitted by a provision of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) (Pub. L. No. 116-136), (CARES Act). Under the CARES Act, certain individuals may receive up to \$100,000 as a coronavirus-related distribution or as a loan from an eligible retirement plan.

The temporary relief by Notice 2020-42 applies to any participant election that requires the signature of an individual to be witnessed. As explained separately in a related IRS release—**IR-2020-110**—an individual may use an electronic system facilitating remote notarization if executed via live audio-video technology that otherwise satisfies the requirements of participant elections and that is consistent with state law requirements that apply to the notary public.

For the same period, in the case of a participant election witnessed by a plan representative, the individual may use an electronic system using live audio-video technology if the following requirements are satisfied:

- The individual must be effectively able to access the electronic medium used to make the participant election;
- The electronic system must be reasonably designed to preclude any person other than the appropriate individual from making the participant election;
- The electronic system must provide the individual making the election with a reasonable opportunity to review, confirm, modify, or rescind the terms of the election before it becomes effective; and
- The individual making the election, within a reasonable time, must receive confirmation of the election through either a written paper document or an electronic medium under a system that satisfies the applicable notice requirements.

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