



IRS Provides Temporary Relief to In-Person Consent Requirements for Retirement Plans

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In IRS Notice 2020-42, and in light of current social distancing rules, the IRS recently granted temporary relief from the physical presence requirement under regulations governing participant elections. Generally, those rules require certain elections made by a participant in a retirement plan, including spousal consents, to be witnessed by a notary public or retirement plan representative. However, under the new guidance, so long as certain requirements are met, such in-person witnessing is not required.

Notary Public Witness

In the case of participant elections (and spousal consents) witnessed by a notary public, the in-person requirement is deemed satisfied if an electronic system using remote notarization is used and the document is executed using live audio-video technology that otherwise satisfies the in-person regulatory requirements, and is consistent with state law requirements that apply to the notary public. Most states currently permit remote online notarization. Illinois is among such states, but requires, among other things, that the notary is physically in Illinois while performing the notarial act.

Plan Representative Witness

In the case of participant elections (and spousal consents) witnessed by a plan representative, the in-person witness requirement is deemed satisfied so long as an electronic system using live audio-video technology is used and the following requirements are met:

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- the individual signing presents a valid photo ID to the plan representative during the live conference and does not merely transmit a copy of the ID prior to or after the witnessing;
- the live conference allows for direct interaction between the individual and the plan representative (e.g., a prerecording is not sufficient);
- the individual transmits by fax, email, or other electronic means a legible copy of the signed document directly to the plan representative on the date that it was signed; and
- after receiving the signed document, the plan representative acknowledges that the signature has been witnessed in accordance with the requirements of the IRS' Notice and transmits the signed document, including the acknowledgement, back to the individual in a manner that satisfies notice requirements of the in-person witnessing regulations.

This temporary relief covers the period from January 1, 2020, through December 31, 2020.

If you have any questions related to implementing a remote witnessing program, please contact an employee benefits attorney at Laner Muchin.