

MEMO# 32507

June 3, 2020

IRS Permits Remote Notarization and Witnessing of Benefit Plan Elections During COVID-19 Pandemic

[32507]

June 3, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Permits Remote Notarization and Witnessing of Benefit Plan Elections During COVID-19 Pandemic

In Notice 2020-42,[\[1\]](#) the IRS provides temporary relief from the physical presence requirement in Treasury Regulations § 1.401(a)-21(d)(6)[\[2\]](#) for participant elections required to be witnessed by a plan representative or a notary public, including a spousal consent. The temporary relief covers the period from January 1, 2020, through December 31, 2020. Several organizations, including the ICI,[\[3\]](#) requested relaxation of the physical presence requirement during the COVID-19 pandemic in light of social distancing measures.

The Notice explains that the relief is intended to facilitate the payment of coronavirus-related distributions and plan loans permitted by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),[\[4\]](#) but it applies to any participant election that requires the signature of an individual to be witnessed in the physical presence of a plan representative or notary, subject to the following conditions:

- For notarization of a participant election, during the time-period described above, the physical presence requirement is deemed satisfied for an electronic system that uses remote notarization if executed via live audio-video technology that otherwise satisfies the requirements of participant elections under § 1.401(a)-21(d)(6) and is consistent with state law requirements that apply to the notary public.[\[5\]](#)
- For a participant election witnessed by a plan representative, during the time-period described above, the physical presence requirement is deemed satisfied for an electronic system if the electronic system using live audio-video technology satisfies the following requirements:
 - a. The individual signing the participant election must present a valid photo ID to the plan representative during the live audio-video conference, and may not merely transmit a copy of the photo ID prior to or after the witnessing;

- b. The live audio-video conference must allow for direct interaction between the individual and the plan representative (for example, a pre-recorded video of the person signing is not sufficient);
- c. The individual must transmit by fax or electronic means a legible copy of the signed document directly to the plan representative on the same date it was signed; and
- d. After receiving the signed document, the plan representative must acknowledge that the signature has been witnessed by the plan representative in accordance with the requirements of Notice 2020-42 and transmit the signed document, including the acknowledgement, back to the individual under a system that satisfies the applicable notice requirements under § 1.401(a)-21(c) (regarding the effective ability to access the electronic medium and right to a free paper copy upon request).

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endnotes

[1] Notice 2020-42 is available at <https://www.irs.gov/pub/irs-drop/n-20-42.pdf>.

[2] Section 1.401(a)-21(d)(6)(i) provides that, in the case of a participant election that is required to be witnessed by a plan representative or a notary public (such as a spousal consent required under § 417), the signature of the individual making the participant election must be witnessed in the physical presence of a plan representative or a notary public. Section 1.401(a)-21(d)(6)(iii) provides that the Commissioner may provide in guidance that the use of procedures under an electronic system is deemed to satisfy the physical presence requirement, but only if those procedures with respect to the electronic system provide the same safeguards for participant elections as are provided through the physical presence requirement.

[3] See ICI Memorandum No. 32430, dated May 1, 2020, available at https://www.ici.org/my_ici/memorandum/memo32430.

[4] See ICI Memorandum No. 32328, dated March 27, 2020, available at https://www.ici.org/my_ici/memorandum/memo32328.

[5] The state must permit remote electronic notarization for the relief to apply.