

**MEMO# 32801**

October 2, 2020

# ICI Requests Permanency of IRS Remote Notarization Guidance Due to Ongoing Pandemic

[32801]

October 2, 2020 TO: ICI Members  
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Requests Permanency of IRS Remote Notarization Guidance Due to Ongoing Pandemic

In the attached letter, ICI joined with several other organizations to request that the Internal Revenue Service (IRS) make permanent the temporary relief from the physical presence requirement for notarization of spousal consent in Notice 2020-42.[\[1\]](#) Notice 2020-42 provided 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. Necessitated by the COVID-19 pandemic, the temporary relief covers the period from January 1, 2020, through December 31, 2020.

In light of the ongoing pandemic, the joint letter makes the following points:

- Remote notarization (and the conditions built into Notice 2020-42) fully protects participants and their spouses.
- Public notaries are regulated by the states, and the IRS should not preempt state notarization practices.
- Social distancing will likely continue after December 31, 2020.

Finally, the letter notes that while there are sufficient reasons to make the relief in Notice 2020-42 permanent, at a minimum, the IRS should extend the relief an additional year. The IRS is urged to announce an extension as quickly as possible.

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## [Attachment](#)

### **endnotes**

[1] See ICI Memorandum No. 32507, dated June 3, 2020, *available at* [https://www.ici.org/my\\_ici/memorandum/memo32507](https://www.ici.org/my_ici/memorandum/memo32507).

[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.

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