

IRS Further Extends Temporary Relief from Physical Presence Requirement for Certain Retirement Plan Consents

July 1, 2021

As we previously reported [here](#), in June 2020, the IRS issued Notice 2020-42 (available [here](#)) which provided temporary relief from the physical presence requirements for certain participant and beneficiary elections under qualified retirement plans. The IRS recently issued an advance version of Notice 2021-40 (available [here](#)) which extends the temporary relief for an additional year, through June 30, 2022. Under this extended relief, participant elections, including spousal consents, that require a signature to be witnessed in the physical presence of a notary public will meet the *physical presence* requirement if remote notarization is done through live audio-video technology that otherwise satisfies the requirements of Treasury Regulations 1.401(a)-21(d)(6) and is compliant with state law applicable to notaries. Participant elections, including spousal consents, that require a signature to be witnessed in the physical presence of a plan representative will meet the *physical presence* requirement if (i) the person signing the participant election (the **"Individual"**) presents a valid photo ID, (ii) the audio-video call allows for direct interaction between the Individual and the plan representative, (iii) the Individual faxes or electronically sends a signed copy of the document to the plan representative on the day it is signed, and (iv) the plan representative acknowledges the signature has been witnessed in accordance with the requirements of Notice 2020-42 and transmits the signed document and acknowledgement back to the Individual in compliance with the requirements of Treasury Regulations 1.401(a)-21(c).