# IRS Relief Allows Individuals to Make Participant Elections Electronically

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Treasury Regulations ?Âº 1.401(a)-21(d)(6) requires participant elections, including spousal consents, to be witnessed in the physical presence of a plan representative or notary public.?Ã¡ In light of the COVID-19 pandemic, the IRS recently issued Notice 2020-42 (the ?ÃÂ£***Notice***?ÃÂ¥) to allow individuals making participant elections to do so through electronic means for the period from January 1, 2020 through December 31, 2020.?Ã¡ For participant elections, including spousal consents, that require a signature to be witnessed in the physical presence of a notary public, the ?ÃÂ£physical presence?ÃÂ¥ requirement is satisfied if remote notarization is done through live audio-video technology that otherwise satisfies the requirements of Treasury Regulations ?Âº 1.401(a)-21(d)(6) and is compliant with state law applicable to notaries.?Ã¡ For participant elections, including spousal consents, that require a signature to be witnessed in the physical presence of a plan representative, the ?ÃÂ£physical presence?ÃÂ¥ requirement is satisfied if (i) the person signing the participant election (the ?ÃÂ£***Individual***?ÃÂ¥) 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 the Notice and transmits the signed document and acknowledgement back to the Individual in compliance with the requirements of Treasury Regulations ?Âº 1.401(a)-21(c). The Notice can be found here.

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