



IRS Temporarily Eases Witness and Notarization Requirements for Certain Retirement Plan Participant Elections

On June 3, the Internal Revenue Service provided temporary relief from the requirement in IRS regulations that certain participant elections must be witnessed in the physical presence of a plan representative or notary. While primarily intended to facilitate CARES Act coronavirus-related distributions and loans, this relief, which is retroactive to the beginning of the year and will be in effect until December 31, 2020, also applies to any participant election that needs to be witnessed in the physical presence of a plan representative or a notary with spousal consent.

The relief granted by IRS Notice 2020-42 eliminates, at least temporarily, one practical problem caused by the social distancing and stay-at-home measures currently in effect as a result of the public health emergency caused by the COVID-19 pandemic. The IRS notice allows plan administrators and participants to rely on remote electronic technologies for participant elections to receive plan distributions and loans; for spousal waivers to distributions and loans; and for spousal consents to non-spouse beneficiary designations.

For elections or consents **witnessed by a notary public**, the physical presence requirement is deemed satisfied if the notary's state allows remote electronic notarization and the notary witnesses the election or consent through a live audio-video conference in accordance with state law requirements that apply to the notary.

For elections or consents **witnessed by a plan representative**, the physical presence requirement is deemed satisfied if the plan representative witnesses the election or consent through a live audio-video conference and the following additional requirements are satisfied:

1. The individual making the election or giving consent must show a valid photo ID to the plan representative during the audio-video conference;
2. The live audio-video conference must allow direct interaction between the conferees;
3. A legible copy of the signed document must be sent, by fax or electronically, to the plan representative on the day it was signed; and
4. The plan representative must acknowledge that the document has been witnessed and send the signed document, including the acknowledgment, back to the individual who signed it by means of a system satisfying IRS notice requirements.

Plan sponsors and administrators should consider modifying their distribution, loan and beneficiary designation procedures to incorporate this new relief for the rest of 2020. After 2020, the IRS could decide to extend this relief, or Congress could pass legislation that would permit electronic notarizations.

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Boynton Beach:

1880 N. Congress Avenue, Suite 200
Boynton Beach, FL 33426
Tel: (561) 293-3590

New York:

200 Park Avenue, Suite 1700
New York, NY 10166
Tel: (212) 338-5159

St. Louis:

1099 Milwaukee Street, Suite 140
St. Louis, MO 63122
Tel: (314) 236-0065

Boston:

99 Summer Street, 13th Floor
Boston, MA 02110
Tel: (617) 357-5200

Chicago:

190 South LaSalle Street, Suite 2100
Chicago, IL 60603
Tel: (847) 990-9034

San Diego:

8677 Villa La Jolla Drive, Suite 888
San Diego, CA 92037
Tel: (619) 232-8702

Tampa:

101 East Kennedy Boulevard, Suite 2140
Tampa, FL 33602
Tel: (813) 603-2959

 [@wagnerlawgroup](https://twitter.com/wagnerlawgroup)

 [@wagnerlawgroup](https://www.youtube.com/wagnerlawgroup)

Lincoln, MA:

55 Old Bedford Road, Suite 303
Lincoln, MA 01773
Tel: (617) 532-8080

San Francisco:

315 Montgomery Street, Suite 900
San Francisco, CA 94104
Tel: (415) 625-0002

Washington, D.C.:

800 Connecticut Avenue, N.W., Suite 810
Washington, D.C. 20006
Tel: (202) 969-2800

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