

# IRS Issues Temporary Relief from Physical Presence Requirement for Spousal Consents Under Retirement Plans

Richard S. Chargar, Pamela D. Kaplan, Victoria E. Anderson

June 12, 2020

On June 3, the Internal Revenue Service (“IRS”) issued Notice 2020-24 providing temporary relief from the physical presence requirement for participant elections that are required to be witnessed by a plan representative or a notary public, including spousal consents. The relief covers the period from January 1, 2020 through December 31, 2020 (the “Relief Period”). While specifically intended to facilitate the payment of coronavirus-related distributions and plan loans under the CARES Act, as described in our [Advisory](#) of April 3, 2020, Notice 2020-24 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.

Existing IRS regulations allow the use of electronic media for participant elections under a retirement plan. For these purposes, a participant election is defined as any consent, election, request, agreement or similar communication made by or from a participant, beneficiary, alternate payee, or an individual entitled to benefits under a retirement plan, employee benefit arrangement, or individual retirement plan. Where a participant election is required to be witnessed by a plan representative or notary public, such as a spousal consent to the waiver of a qualified joint and survivor annuity, these regulations require the individual to make the election in the physical presence of the plan representative or notary public.

In response to concerns that the physical presence requirement is making it difficult, if not impossible, for participants to receive coronavirus-related distributions or plan loans while social distancing measures are in place, the IRS has announced that the physical presence requirement will be deemed satisfied during the Relief Period under either of the following circumstances:

1. A notary public witnesses a remote notarization using live audio-video technology in accordance with state law requirements applicable to the notary.
2. A plan representative witnesses a participant election using live audio-video technology satisfying the following requirements:
  - The individual signing the participant election presents a valid photo ID to the plan representative during the live audio-video conference;
  - The live audio-video conference permits direct interaction between the individual and

the plan representative;

- The individual transmits 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
- The plan representative acknowledges witnessing the signature and transmits the signed document and acknowledgement back to the individual in a format that satisfies accessibility requirements and includes a statement regarding the individual's right to request and receive a paper version of the documents at no charge.

If you have any questions about the IRS's temporary relief from the physical presence requirement, please contact a member of our Employee Benefits Group.