



TaxNewsFlash

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Notice 2021-40: One-year extension allowing retirement plan elections and spousal consents to be signed remotely (COVID-19)

The IRS today released an advance version of Notice 2021-40 that extends for an additional year—through June 30, 2022—temporary relief from the rule that retirement plan elections requiring the signature of an individual participant (including spousal consents under section 417) must be witnessed in the physical presence of a plan representative or notary public.

The relief from the physical-presence witnessing requirement was offered in response to the coronavirus (COVID-19) pandemic in 2020.

[Notice 2021-40](#) [PDF 115 KB] extends the relief from the physical-presence witnessing requirement for the 12-month period from July 1, 2021, through June 30, 2022. Thus, for that 12-month period, a plan may qualify for relief from the physical-presence requirement for any participant election witnessed by a notary public or a plan representative using an electronic system that satisfies requirements as specified by Notice 2021-3.

Today's notice also includes a request for comments as to whether the IRS and Treasury Department should issue permanent guidance modifying the physical presence requirement. Notice 2021-40 lists five questions for which comments are specifically requested. Comments are due by September 30, 2021.

Background

Temporary relief from the "physical presence requirement" of Reg. section 1.401(a)-21(d)(6) for certain participants was previously provided by:

- Notice 2020-42 for 2020 (January 1, 2020, through December 31, 2020) and
- Notice 2021-3 (through June 30, 2021)

The relief is intended to facilitate the payment of coronavirus-related distributions and plan loans to qualified individuals, as permitted by a provision of the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) (Pub. L. No. 116-136). Under the CARES Act, certain individuals may receive up to \$100,000 as a coronavirus-related distribution or as a loan from an eligible retirement plan.

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