

TEMPORARY RELIEF FROM PHYSICAL PRESENCE REQUIREMENT FOR SPOUSAL CONSENT GRANTED FOR 2020

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In response to the COVID-19 pandemic, the Internal Revenue Service has granted relief from the physical presence requirement for a spouse consenting to certain distribution requirements under the Internal Revenue Code for plans subject to the qualified joint and survivor annuity requirements. The relief is effective for the period January 1, 2020 through December 31, 2020. Under the temporary relief, a consent that is witnessed by a Notary Public in a manner which is consistent with state law requirements allowing for remote notarization is permissible. In addition, temporary relief is granted from the physical presence requirement for certain elections which are witnessed by a plan representative. Under this provision, relief is granted if the individual signing the election presents a valid photo ID during the live audio-video conference. This photo ID may not be transmitted prior to or after the witnessing. Second, the audio-video conference must allow for direct interaction between the individual and the plan representative; pre-recorded videos are not sufficient. Third, the individual must transmit by fax or other electronic means a legible copy of the signed document to the plan representative on the same day that it was signed. Finally, after receiving the signed document, the plan representative must acknowledge that the signature has been witnessed by the plan representative and transmit the signed document, including the acknowledgement, back to the individual. To comply with this last requirement the individual that signed the document must have effective ability to access the electronic medium being used to transmit the acknowledged witnessed copy, and the individual must be permitted to request a paper copy at no charge and the paper copy must be provided on request. IRS Notice 2020-24.

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