



IRS OKs witnessing retirement plan elections, spousal consent by video

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IRS [Notice 2021-03](#) extends through June 30, 2021, temporary relief allowing the use of audio-video conferencing for spousal consents and other elections by retirement plan participants that ordinarily must be made in the physical presence of a notary public or plan representative. The relief is meant to facilitate benefit elections that require a witness while social distancing measures for the COVID-19 pandemic remain in place. This relief is identical to what was provided in [Notice 2020-42](#) for the period Jan. 1 through Dec. 31, 2020.

Eligible actions. The relief is intended primarily to help participants take advantage of the special distributions and loans available until Dec. 30 under the Coronavirus Aid, Relief and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)). But the notice also makes remote witnessing available for any election requiring a witness, such as obtaining spousal consent for certain ordinary distributions or plan loans or naming a nonspouse beneficiary.

Remote witnessing by a notary public. A notary public can witness elections using live audio-video conferencing if the IRS rules for participant elections using electronic media and all state requirements for performing electronic notarization are satisfied. The relief isn't available in states that don't permit remote electronic notarization.

Remote witnessing by plan representatives. Plan representatives can witness participant elections over audio-video conference if the following requirements are satisfied:

- The individual signing the election must show a valid photo ID to the plan representative during the conference — sending a copy of the ID before or after the conference is not sufficient.
- The conference must allow for direct interaction between the individual and the plan representative — a prerecorded video of the person signing is not sufficient.

- On the same day the document is signed, the individual must send a legible copy by fax or other electronic means directly to the plan representative.
- The plan representative must return the document to the individual — using an electronic system the individual is effectively able to access — with an acknowledgment of having witnessed the signature.

Request for comments

Notice 2021-03 includes a request for comments relating to the temporary relief from the physical presence requirement. IRS is particularly interested in whether the relief should be made permanent, and, if so, what safeguards would be necessary to reduce the risk of fraud, spousal coercion or other abuse. The IRS did not set a specific deadline for commenting.

Related resources

Non-Mercer resources

- [Notice 2021-03](#) (IRS, Dec. 22, 2020)
- [Notice 2020-42](#), (IRS, June 3, 2020)
- [Pub. L. No. 116-136, the CARES Act](#) (Congress, March 27, 2020)

Mercer Law & Policy resources

- [IRS gives retirement plans more pandemic relief](#) (June 2, 2020)
- [IRS releases FAQs on CARES Act distributions and loans](#) (May 5, 2020)
- [Keeping track of COVID-19 laws affecting employee benefits, jobs](#) (May 4, 2020)
- [DOL gives retirement plans and participants pandemic relief](#) (April 30, 2020)
- [Delving into CARES Act relief for retirement plan participants](#) (April 10, 2020)
- [SECURE, CARES acts change rules on required minimum distributions](#) (April 7, 2020)
- [IRS extends preapproved DB, 403\(b\) plan adoption deadlines](#) (April 6, 2020)
- [Stimulus bill gives DB funding relief, access to DC savings](#) (March 26, 2020)

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