



# SLEVIN & HART, P.C.

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## Benefits Update

### Temporary Relief from the Physical Presence Requirement for Participant Elections

June 9, 2020

In response to the ongoing challenges presented by the COVID-19 pandemic and the related social distancing measures that have been implemented, the Internal Revenue Service (“IRS”) issued Notice 2020-42 (“Notice”) on June 3, 2020. The Notice provides temporary relief from the physical presence requirement for participant elections that require a signature to be witnessed by a notary public or a plan representative. The IRS notes that while this relief is intended to simplify the payment of COVID-19 related distributions and plan loans permitted under the CARES Act, it is applicable to any participant election that requires a signature to be witnessed, including spousal waivers of the a qualified joint and survivor annuity form of payment. The relief is effective retroactive to January 1, 2020 and continuing until December 31, 2020.

Currently, applicable regulations provide that certain participant elections, such as spousal consents, must be witnessed in the physical presence of a plan representative or a notary public. The Notice provides temporary relief from the physical presence requirement provided that the conditions below are met.

*Participant Elections Witnessed by a Notary Public.* The Notice provides that the physical presence requirement may be satisfied for any participant election witnessed remotely by a notary public in a state that permits remote electronic notarization if the individual’s signature is witnessed via live audio-video technology and is consistent with any state law requirements that apply to the notary public. Many, but not all, states currently permit remote electronic notarization either on a permanent or temporary basis.

*Participant Elections Witnessed by a Plan Representative.* For any participant election witnessed by a plan representative, the physical presence requirement may be satisfied through a live audio-video conference that satisfies the following:

- The individual signing the participant election must present a valid photo ID to the plan representative during the live audio-video conference;
- The live audio-video conference allows for direct interaction between the individual and the plan representative;
- The individual must transmit by fax or electronic means a legible copy of the signed document directly to the plan representative on the same date it is signed; and

- After receiving the signed document, the plan representative must acknowledge that the signature was witnessed by the plan representative in accordance with the Notice and then transmit the signed document, including the acknowledgement, back to the individual through a system that the individual has an effective ability to access (in accordance with electronic notice requirements) and with a statement that a paper copy will be provided upon request, at no charge.

Please contact Slevin & Hart for more information about how this guidance may affect your plan.

## Attorneys



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