



SLEVIN & HART, P.C.

Benefits Update

Extension of Temporary Relief from the Physical Presence Requirement for Participant Elections

January 26, 2021

As discussed in our June 9, 2020 [Benefits Update](#), the Internal Revenue Service (“IRS”) previously issued Notice 2020-42, which provided 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. That notice provided the temporary relief through December 31, 2020. However, on December 23, 2020, the IRS issued Notice 2021-03 (“New Notice”), which extends the temporary relief through June 30, 2021 in response to the ongoing COVID-19 pandemic. Under the New Notice, the conditions for obtaining relief from the physical presence requirement are the same as under the prior notice, which we summarized in our June 9, 2020 Benefits Update. For reference, those conditions are summarized again below.

Please note that the Treasury Department and the IRS have invited comments from the public on whether the temporary relief as provided in the New Notice should be made permanent and, if so, what safeguards might be necessary to reduce the risk of fraud, spousal coercion, or other abuse in the absence of a physical presence requirement.

Conditions of Relief

Participant Elections Witnessed by a Notary Public. For any participant election witnessed by a notary public in a state that permits remote electronic notarization, the physical presence requirement may be satisfied by a notary public witnessing the individual’s signature via live audio-video technology and satisfying any other 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 conditions of the New 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.

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