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IRS Extends Remote Notarization Relief

by R. Sterling Perkinson

On June 24, 2021, the Internal Revenue Service ("IRS") released Notice 2021-40, which extended relief from the "physical presence" requirement for witnessing by plan representatives or notaries of spousal consents through June 30, 2022. This further extends relief to allow for spousal consents for retirement plan loans or distributions to be witnessed remotely through audio visual equipment by a notary public in accordance with a state remote notarization law or by a plan official in connection with the COVID-19 pandemic. We discuss the relief in detail in our prior blog posts: here and here.

The IRS and Treasury Department also clarified the issues they are contemplating as they consider making permanent changes to the physical presence requirements. Notice 2021-40 includes a request for comments (following up on a request for comments through Notice 2021-03), which asks for comments specifically addressing (i) the costs and burdens of the physical presence requirement; (ii) any evidence of fraud, coercion or abuse resulting from temporary relief from the physical presence requirement; (iii) how spousal consents are currently being witnessed, or are expected to be witnessed following the end of the COVID-19 pandemic; (iv) any additional safeguards that should be put in place for remote witnesses; and (v) whether the guidance should differ for witnessing by plan representatives and remote notaries.

The comment period is open through September 30, 2021.