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# Torrillo & Associates

Benefit Plan Audit Specialists

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## Temporary Relief from the Physical Presence Requirement for Plans



In response to the unprecedented public health emergency caused by the [Coronavirus Disease 2019 \(COVID-19\) pandemic](#), and the related social distancing that has been implemented, this notice provides

temporary relief from the physical presence requirement in Treasury Regulations § 1.401(a)-21(d)(6) for participant elections required to be witnessed by a plan representative or a notary public, including a spousal consent required under § 417 of the Internal Revenue Code.

This temporary relief covers the period from January 1, 2020, through December 31, 2020, is intended to facilitate the payment of coronavirus-related distributions and plan loans to qualified individuals, as permitted by [section 2202 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 \(2020\) \(CARES Act\)](#). The temporary relief applies to any participant election that requires the signature of an individual to be witnessed in the physical presence of a plan representative or notary.

For the period from January 1, 2020, through December 31, 2020, if the related requirements in subsection A or B below are satisfied, the notice provides the following temporary relief from the physical presence requirement in § 1.401(a)-21(d)(6):

- (1) temporary relief from the physical presence requirement for any participant election witnessed by a notary public of a state that permits remote electronic notarization, and
- (2) temporary relief from the physical presence requirement for any participant election witnessed by a plan representative.

#### **A, Temporary Relief from the Physical Presence Requirement for any Participant Election Witnessed by a Notary Public**

In the case of a participant election witnessed by a notary public, for the period from January 1, 2020, through December 31, 2020, the physical presence requirement in § 1.401(a)-21(d)(6) is deemed satisfied for an electronic system that uses remote notarization if executed via live audio-video technology that otherwise satisfies the requirements of participant elections under § 1.401(a)-21(d)(6) and is consistent with state law requirements that apply to the notary public.

#### **B. Temporary Relief from the Physical Presence Requirement for any Participant Election Witnessed by a Plan Representative**

In the case of a participant election witnessed by a plan representative, for the period from January 1, 2020, through December 31, 2020, the physical presence requirement in § 1.401(a)-21(d)(6) is deemed satisfied for an electronic system if the electronic system using live audio-video technology satisfies the following requirements:

- The individual signing the participant election must present a valid photoID to the plan representative during the live audio-video conference, and may not merely transmit a copy of the photo ID prior to or after the witnessing;
- The live audio-video conference must allow for direct interaction between the individual and the plan representative (for example, a pre-recorded video of the person signing is not sufficient);
- 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 was signed; and
- After receiving the signed document, the plan representative must acknowledge that the signature has been witnessed by the plan representative in accordance with the requirements of this notice and transmit the

signed document, including the acknowledgement, back to the individual under a system that satisfies the applicable notice requirements under § 1.401(a)-21(c).



Plan sponsors should review the specific requirements in [Notice 2020-42](#) and consult ERISA counsel with any legal questions.



**Phone:**

**Email:**

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## Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional

states that have passed firm mobility.

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