

Via Electronic Delivery

March 10, 2023

CC:PA:LPD:PR (REG-114666-22)

Room 5203

Internal Revenue Service

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

RE: Use of an Electronic Medium to Make Participant Elections and Spousal Consents (RIN 1545-BQ50)

To Whom It May Concern:

The undersigned write in support of the Internal Revenue Service's (IRS) notice of proposed rulemaking on "Use of Electronic Medium to Make Participant Elections and Spousal Consent" (NPRM), which provides for remote witnessing of spousal consent by a plan representative or notary. We appreciate the IRS' efforts over the past three years that balance spousal protections with the practical realities of participants, spouses and plans.

Internal Revenue Code (IRC) section 417 requires spousal consent for certain elections. A spousal rights waiver is valid if the spouse consents in writing to the election, and, among other requirements, the spouse's consent is witnessed by a plan representative or a notary public. 26 U.S.C. § 417(a)(2)(A)(i). Before the COVID-19 pandemic, there was no specific IRS guidance that addressed remote witnessing.

Recognizing the need to address spousal consent witnessing during the COVID-19 pandemic, the IRS first provided for temporary relief from the physical presence requirement for spousal consent in Notice 2020-42 and extended the relief in Notices 2021-03, 2021-40 and 2022-07. These Notices also contain security requirements and participant and beneficiary protections that are stricter than the current in-person physical presence requirements.

Plans have been using this relief for almost three years, and systems are now in place to allow participants or spouses to use either in-person or remote witnessing, depending on their preference. During this three-year period, remote notarization has allowed participants and beneficiaries to save time and money in obtaining notarized consent, and it has been especially beneficial for a variety of individuals, such as those with mobility limitations, who work non-traditional schedules (such as first responders, in the health care profession and manufacturers) and who live in more remote areas. Furthermore, there has been no indication from either plan sponsors or services providers of fraud, spousal coercion or other abuse.

We appreciate the IRS' practical approach to this issue that protects plan participants and beneficiaries, but also allows flexibility to plan sponsors, participants and spouses. We look forward to working with the IRS on this issue.

Sincerely,

American Benefits Council  
American Council of Life Insurers  
American Retirement Association  
DocuSign  
Electronic Signature & Records Association  
Fidelity Investments  
Finseca  
Insured Retirement Institute  
Investment Company Institute  
National Association of Insurance and Financial Advisors  
Notarize, Inc.  
Paul Hastings LLP  
Paychex  
Retirement Industry Trust Association  
Securities Industry and Financial Markets Association  
SPARK Institute  
The ERISA Industry Committee  
TIAA  
U.S. Chamber of Commerce