Temporary Relief for Witnessing Spousal Consent Extended for Another Year

Thursday, June 24, 2021

Just when we were about to draft our blog reminding plans of the expiration of the temporary relief... The IRS has now issued Notice 2021-40 extending for another year the temporary relief from the requirement that spousal consent for plan distributions or loans be witnessed in person.

As discussed in greater detail in our earlier post, in response to the COVID-19 National Emergency, the IRS previously issued guidance temporarily allowing a notary or plan representative to witness spousal consent electronically via live video, provided certain conditions are met. This relief was originally due to expire on December 31, 2020, but last December the IRS issued a notice extending it through June 30, 2021. Notice 2021-40 now further extends the same relief for another year, through June 30, 2022.

Notably, as it did in its prior extension notice, the IRS is requesting comments on whether it should issue permanent guidance modifying the physical presence requirement. Notice 2021-40 contains various questions it would like commenters to address in that regard. Comments are due by September 30, 2021.

Plan administrators must continue to ensure that electronic witnessing meets all of the conditions set forth in the initial temporary relief, outlined here.
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