

# Remote Online Notarization and Alternative Forms for Evidence of Death

Governmental orders related to the COVID-19 pandemic are in effect over much of the United States, requiring citizens to stay at home and shutting down business and government activities. In these circumstances, participants in many retirement plans have told Prudential that it is unsafe or impossible to obtain traditional notarizations (requiring physical presence before a notary) for their signatures and the consents of their spouses in connection with plan distributions and loans. Participants and beneficiaries also have told Prudential of their difficulties in obtaining death certificates that are necessary for their eligibility to receive distributions that are contingent upon death.

## Streamlined Processing Options

We are writing to seek your consent for Prudential's offering two options during the COVID-19 crisis (until December 31, 2020) to your plan participants and beneficiaries to assist them in streamlining the processing of participant transactions. Described below are details regarding Remote Online Notarization and alternative forms for evidence of death. We believe these options will help Prudential to respond to the needs of your plan participants and beneficiaries.

## Your Consent Requested

As described further and under the terms below, Prudential seeks your consent by reply email to accept both "remote online" notarizations and alternative forms of evidence of death from your participants and beneficiaries. Note that with respect to alternative forms of evidence of death, Prudential will assume your consent if we don't hear from you within five business days.

## Remote Online Notarization (RON):

As you know, federal benefits law requires the written consent of participants and their spouses for certain transactions (e.g., forms of distribution, beneficiary designations, hardship distributions and loans). Consent must be witnessed by a plan sponsor representative or notary. The validity of a notarization depends on state law. The IRS, in a 2006 regulation, said that a consent must be witnessed in the "physical presence" of the notary. The IRS recently has received requests for relief from the "physical presence" requirement, including requests to permit "remote online notarization." The IRS has not yet issued new guidance on notarization. Although it appears likely that the IRS will issue guidance, the content and timing of any guidance is not known.

"Remote Online Notarization" or "RON" refers to online notarization by means of audio-video technology wherein a signer located anywhere can "appear" online before a duly commissioned notary public. The RON notary produces a document with a notary seal for the state where the notary is physically present (e.g., Virginia), which may or may not be the state where the notary's customer is physically present.

Prudential is aware that many states (currently 45) permit remote online notarization (RON), through a combination of state laws, regulations and emergency orders. The state laws vary as to procedural requirements for RON notarizations, including record retention. Some states explicitly recognize the validity of notarizations done for their residents by notaries in other states, and others do not. Regardless of whether a state explicitly recognizes notarizations done in other states, some observers believe that the Full Faith and Credit Clause of the U.S. Constitution requires states to do so. Prudential has identified two RON notaries, NotaryCam and Notarize, that currently appear to provide notarizations with an e-seal in Virginia (NotaryCam and Notarize) and Texas, Nevada and Florida (Notarize).

Prudential does not provide legal advice and recommends that you discuss with your own legal counsel the appropriateness of Prudential accepting RON notarizations from your participants. The permissibility of RON notarizations for federal benefits and state law purposes is not free from doubt, for the reasons noted above.

### **Your Consent to RON**

Prudential seeks your affirmative consent by reply email to accept RON notarizations from your participants for transactions up to \$100,000 (limit applicable to Defined Contribution Plans only). If we do not hear from you, Prudential will not assume your consent to remote online notarizations. If you consent, Prudential will accept RON notarizations on the following terms:

- If your participant contacts Prudential and informs us that he/she cannot get a traditional “physical presence” notarization due to the current pandemic, Prudential will inform him/her that that Prudential will accept a RON notarization (in good order) from a notary engaged by the participant who is physically located in the participant’s state of residence. (Prudential will mention, without endorsing, that NotaryCam and Notarize apparently notarize documents and generate seals for Virginia, Texas, Nevada and Florida.) If a participant tells us that he/she cannot locate such a RON notary, then Prudential will accept a notarization from NotaryCam or Notarize if Prudential reasonably can determine that the participant’s state of residence does not prohibit notarizations by RON notaries located in other states.
- If the validity of a RON notarization is later challenged (e.g., by the IRS or a participant’s spouse who seeks to revoke an earlier RON notarization), Prudential will assume that you will cooperate with Prudential in resolving any dispute in accordance with the IRS’ Employee Plans Compliance Resolution System (Rev. Proc. 2019-19 or its successor), including the financial cost thereof.
- If the IRS issues guidance on notarization that addresses RON notarizations, Prudential will change its procedures to reflect that guidance.

### **Alternative Forms for Evidence of Death and Your Consent**

Again, due to the current coronavirus pandemic, it may be difficult for a beneficiary to obtain a death certificate. While obtaining a death certificate is preferred, the circumstances created by COVID-19 have caused Prudential to consider possible alternatives to requiring a death certificate for death claims.

Prudential seeks your affirmative consent by reply email to accept alternative forms for evidence of death from your participants. If we do not hear from you within five business days, however, Prudential will assume your consent to the following:

- Under the new process, should a participant or beneficiary indicate that a death certificate is not available as a result of COVID-19, Prudential will attempt to validate the death via two sources of alternative proof.
- An outbound call or return fax to the funeral home confirming the participant’s death, OR
- Obtaining the participant’s obituary and the death is confirmed via an additional source (e.g. Lexis Nexis or Social Security Death Match).
- These alternative documents for evidence of death will be allowed for death benefits payable under \$1,000,000 (limit applicable to Defined Contribution Plans only). Death benefits payable above that threshold will require a death certificate.

Thank you for your consideration. If you have any questions, please contact your Prudential Representative.



# Plan Sponsor Authorization

Please complete the following elections for your plan.

## Accept Remote Online Notarization

Yes

No (default if no response)

## Accept alternative forms for evidence of death

Yes (default if no response)

No

Plan Name: (A) Lancaster County Employees Retirement Plan; and (B) Deferred Compensation Plan  
Plan Number: (A) 006371 and (B) 006372  
Plan Sponsor: Lancaster County, Nebraska  
Date: May 7, 2020  
Signed/Typed:  
Print name: (A) Sean Flowerday (B) Kerry P. Eagan  
Title: (A) Chair, Lancaster County Board of Commissioners; and (B) Chief Administrative Officer

Please return via email to: [CAREsactSelection@prudential.com](mailto:CAREsactSelection@prudential.com).

