Independent Wealth Network

2350 NW 128th Street
Urbandale, Iowa 50323
515-461-5123

www.indwealth.net

Best Interest Disclosure for Retirement Account Rollover/Transfers

Effective February 22, 2022

Independent Wealth Network

Instructions

On December 15, 2020, the Department of Labor ("DOL") issued their final interpretation of who is a fiduciary under ERISA and the Internal Revenue Code as well a new class exemption, Prohibited Transaction Exemption ("PTE") 2020-02. PTE 2020-02 requires fiduciaries to comply with the impartial conduct standards, which are:

1. ***The fiduciary must provide advice in the "Best Interest" of the Retirement Investor***
2. ***The fiduciary must charge "reasonable" compensation for the services provided***
3. ***The fiduciary must make only "not misleading" statements about investment transactions, compensation, and conflicts of interest.***

PTE 2020-02 has a disclosure requirement which this disclosure is intended to satisfy. The scope of the rule includes the sponsor, owner, participant, and/or beneficiary of ERISA plans, SIMPLE, SEP, and solo-participant plans, including IRAs. Also included are Health Savings Accounts, Medical Savings Accounts, and Coverdell Education Savings Accounts ("Retirement Investor"). The list of accounts not subject to the Rule is short and includes church plans, state pensions, deferred compensation plans, and 529 plans.

The Retirement Account Best Interest Form must be completed by the investment adviser representative ("IAR") and signed by the client prior to making a recommendation with a prospective Retirement Investor and within ten days of making a recommendation to an existing Retirement Investor where there would be additional direct or indirect compensation to the representative, firm, affiliate, or related entity. This disclosure is not required when making recommendations that do not concern retirement assets. If you have any questions as to the scope or applicability of this disclosure, you should inquire with the compliance department.

ERISA Fiduciary Acknowledgement

When we provide investment advice to you regarding your retirement plan account or individual retirement account, we are fiduciaries within the meaning of Title I of the Employee Retirement Income Security Act and/or the Internal Revenue Code, as applicable, which are laws governing retirement accounts. The way we make money creates some conflicts with your interests, so we operate under a special rule that requires us to act in your best interest and not put our interest ahead of yours

Rollover Account Education

As a Participants/account owner(s), you have four choices that you are entitled to as distribution and/or transfer of assets. Those are:

- Leave the money in the current retirement plan/account (unless the account has a small balance and the plan “forces” distributions of small balances).
- Transfer the account balance to the plan of a successor employer. (This assumes that the participant is not retiring and will go to work for another employer who sponsors a plan that permits those transfers.)
- Roll the account balance into a new or existing individual retirement account (IRA).
- Take a taxable distribution (which could reduce a participant’s retirement money by the income taxes and penalties charged on taxable distributions).

The first three options avoid the immediate taxation of the benefits; the fourth does not.
The decision should be based on your individual needs and circumstances as a participant or account owner. None of these alternatives is right for every person in every situation.
It’s not an easy decision because of the long-term financial consequences. However, when coupled with your Adviser’s educational explanations, these materials can help you make decisions about what’s correct for your financial future.
The following educational guide discusses many of the considerations that would be important to the typical participant or account owner. You need to decide which are the most important to you and whether other factors should be considered as well.

<u>Distribution Alternatives and Educational Considerations</u>

1. Keep your money in the plan.

As a general rule, you may leave your money in your plan and keep the pre-tax status (until it is ultimately distributed). However, some plans have mandatory distributions for accounts worth less than $1,000 or even less than $5,000. Check with your plan administrator.
Advantages:

- The federal law governing the plan— ERISA—requires that the plan fiduciaries prudently monitor the cost and quality of the investment options in the plan.
- Your plan may offer investment choices and other services that are less expensive than those available to you outside of the plan.
- Employer-sponsored plans may offer better creditor protection than rollover IRAs (but both are protected in bankruptcy).
- If you have a participant loan, you may be able to continue to make payments on the loan rather than having to take a taxable distribution of the loan amount. However, some plans require payment of the loan when you leave your job. Check with your plan administrator.

Disadvantages:

- You don’t have control over the plan investments or services available to you. Your former employer, as the plan fiduciary, will make those decisions.

- The plan may offer a limited number of investment choices (unless it permits you to use a brokerage account).
- The plan may assess fees to your account for administrative or other reasons.
- You may not have access through the plan to personalized investment advice or advice that takes into account your other assets or particular needs.
- You need to know whether the plan permits period (for example, monthly) payments if you intend to use the money for retirement income. You should also ask if the plan charges for those distributions.

2. **Rollover your money into an existing or new IRA.**

Another option for preserving the tax-deferred status of your retirement money is to transfer your account to a rollover IRA. It is important to find out about the range of investments and services available through a particular IRA and the fees for that IRA before choosing your rollover IRA.
Advantages:

- This is your account, and you have discretion over your money, including deciding which financial institution, investments, and services to use—and whether to make changes in the future.
- A rollover IRA may also enable you to place all your investments with one advisor, who could coordinate your overall financial and investment planning.
- An advisor may be able to give you personalized advice about investing and retirement planning.
- A rollover IRA may allow you to consolidate your other tax-deferred retirement accounts in one place. This may be helpful for your financial and retirement planning. It may also prove helpful in managing the required minimum distributions (RMDs) you have to start taking when you reach age 70½.
- IRAs are often more flexible than plans on withdrawals and distributions, e.g., setting up regular periodic payments or an unscheduled withdrawal. Also, IRAs don't charge for periodic payments or special distributions (e.g., the medical needs or family events).

Disadvantages:

- There is not a plan fiduciary who prudently monitors the investments and their cost and quality in your rollover IRA. Also, there will usually be more choices in an IRA, and you have to select your own investments. However, if you have an advisor for your IRA, he or she can help you with the investment decisions and may also be a fiduciary to your account.
- You may pay more in a rollover IRA for investments, services, and advice than you pay through your retirement plan (or a successor plan). Compare those costs to plan's fees for services, investments, and administration.
- IRA investment fees can be complex and more difficult for you to evaluate. There may be conflicts of interest where you could be encouraged to select investments that pay the providers more money but which might not be right for you.
- Generally, rollover IRAs are protected in bankruptcy but may not otherwise offer the same level of creditor protection as employer-sponsored retirement plans.

- You can't borrow from an IRA—you can only access the money in an IRA by taking a taxable distribution (which may also subject you to tax penalties if you are younger than 59½).
- When you reach 70½, you will have to take periodic taxable distributions from your IRA, but you wouldn't have to from a plan (unless you are a 5% or more owner of the business).

3. Transfer your money to a new employer's plan.

The third way to preserve the tax-deferred benefit of your 401(k) account is to transfer the money in your account to a new employer's plan. While most employer plans allow new employees to roll their accounts in, not all do, so it is important that you ask. (This option is not available if you are retiring and will not be working for a new employer.)
Advantages:

- You will be able to make contributions to your 401(k) account at your new employer when you become eligible to participate in that plan and all your 401(k) money can be in one place.
- The new plan could potentially offer lower-cost investment options and services.
- You should ask about the administrative and other fees assessed to participants' accounts in the new employer's plan and compare them to your alternatives.
- If you have an existing loan, you may be able to roll it over to your new employer's plan through a "direct" rollover. Check with the plan administrators at both your former employer and your new employer.
- In some states, 401(k) plans offer better creditor protection than IRAs. (However, both rollover IRAs and 401(k) plans are protected under federal bankruptcy laws.)
- So long as you are working at the employer, you will not be required to take minimum distributions when you reach age 70½ (unless you are a 5% or more owner of the business).
- Many 401(k) plans have loan provisions.
- If you transfer your retirement funds to a new employer's plan that permits loans, you may be able to borrow from the money in the new plan.

Disadvantages:

- The new plan may not allow rollovers or, if it does, there may be a waiting period.
- You won't have control over the expenses, services, or investments in the new plan.
- The new plan might offer fewer or more expensive investment options than your former plan. Make sure that the option you choose has the right investments (at the right cost) for your needs.
- The new plan may not offer personalized advice on investments, retirement planning, or your other investments.
- The new plan may not offer the services that you need. Make sure that you understand what's available before you decide.
- Changes to the plan by your employer will impact you (i.e., plan investments, fees, services, plan providers, plan termination.).

4. Withdraw your money from your account.

It is your money, and you get to choose what's right for you. One decision you could make is to take a taxable distribution.
Advantages:

- You can use the money as you wish, for example, to pay off existing debt, bills, or other expenses.
- If you have made after-tax contributions (other than Roth contributions), you will be able to take these amounts tax-free (though you will be required to pay tax on the earnings on those amounts). (There are special rules for Roth contributions and, depending on the circumstances, a part of the payment may or may not be taxable if withdrawn from a plan.)
- If you have employer stock that is substantially appreciated, there may be tax advantages in taking a distribution of those shares. Check with your tax advisor.

Disadvantages:

- You will owe federal (and possibly state) income taxes on the money you withdraw. The government requires 20% withholding for federal income taxes, so the amount you receive will automatically be reduced. Also, the withdrawn money could put you in a higher tax bracket, and you may owe more taxes.
- If you are under the age of 59½, you would also owe a 10% early distribution tax penalty, in addition to the income taxes.
- Once you spend the withdrawal, you will need to begin saving for retirement again, but with fewer years left to save—and without the spent savings, it may delay your retirement date or result in a lower standard of living in retirement.
- That money is no longer protected from creditors or bankruptcy.

Important Definitions

Disqualified Person: (This term is unique to the Internal Revenue Code. For the equivalent under ERISA, see "party-in-interest" below.) A "disqualified person" is a person who is:

- A fiduciary
- A person providing services to the Retirement Investor
- An employee organization of whose employees are covered by the retirement plan
- An owner, direct or indirect, of 50 percent or more of
  1. The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation
  2. The capital interest or the profit interest of a partnership
  3. The beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described above
- A member of the family of any individual described above
- A corporation, partnership, trust, or estate of which 50 percent or more of
  1. The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation
  2. The capital interest or profits interest of such partnership

3. The beneficial interest of such trust or estate is owned directly or indirectly or held by persons described above

- An officer, director, a 10 percent or more shareholder, or a highly compensated employee of a person described above
- A 10 percent or more partner or joint venture of a person described above

Employee Pension Benefit Plan**:** Governed by Title I, an employee pension benefit plan is any plan, fund, or program maintained by an employer, an employee organization, or both that provides eligible employees with additional retirement accumulations through pre-tax and tax-deferred retirement income.

Employee Welfare Benefit Plan**:** Governed by Title I, an employee welfare benefit plan is any plan, fund, or program maintained by an employer, an employee organization, or both which is established to provide participants or their beneficiaries with medical, surgical, or hospital care benefits, benefits in the event of sickness, accident, disability, death or unemployment, vacation benefits, apprenticeships or other training programs or daycare centers, scholarship funds, pre-paid legal services, or any other benefit as described in Section 302(c) of the Labor Management Relations Act of 1947.

Fiduciary**:** On December 15, 2020, the DOL issued its “final interpretation” of the five-part test under its 1975 regulation defining who is a fiduciary under ERISA, and they withdrew the Deseret Advisory Opinion (2005-23A). The final interpretation broadens the scope of who is an ERISA fiduciary such that recommendations to rollover qualified plans trigger the functional definition of an ERISA fiduciary. By virtue of Presidential Order Reorganization Plan No. 4 in 1978, the change to ERISA is mirrored in the IRC and thus also impacts IRAs. The final interpretation became effective on February 24, 2021, with an enforcement date of December 10, 2021.

Individual Retirement Account (“IRA”)**:** An IRA is an individual retirement plan that provides tax advantages under IRC Section 408. There are various types of IRAs, including traditional, Roth, rollover, inherited, SEP and SIMPLE.

Party-in-Interest**:** (This term is unique to ERISA. For the equivalent under the Internal Revenue Code, see “disqualified person” above.) A person affiliated with the plan that is:

- Any fiduciary to a plan;
- Any person providing services to the plan;
- The employer whose Associated Persons are covered by the plan;
- An employee organization whose members are covered by the plan;
- A 50%, or more, owner of such employer;
- A spouse, ancestor, lineal descendent, or spouse of a lineal descendent of any of the persons above except an employee organization;
- A corporation, partnership, trust, or estate of which 50% is owned directly or indirectly by persons above other than relations;
- An employee, officer, director or 10% or more, shareholder of any persons mentioned above, except a fiduciary or relative; and/or
- A 10% or more partner or joint venture of any person above except a fiduciary or relative.

Retirement Investor: The definition of a “retirement investor” includes participants and beneficiaries of an ERISA plan, owners of solo-participant plans such as IRAs, and fiduciaries to a solo-participant or ERISA plan such as plan fiduciaries. The definition also includes Health Savings Accounts (“HSAs”), Medical Savings Accounts (“MSAs”), and Coverdell Education Savings Accounts (“Educational IRAs”).