December 2023
Published Since 1984

The Pension Digest

ALSO IN THIS ISSUE –

Collin W. Fritz and Associates, Inc.,
"The Pension Specialists "

2024 RMD Notices and FMV Statements (12-31-2023)

Fair Market Value (FMV) statements

An IRA custodian must furnish a FMV statement to each IRA accountholder and each inheriting beneficiary having a balance as of December 31, 2023, to each IRA accountholder who died during 2023, and to any IRA accountholder who made a reportable contribution for 2023 during 2023 or 2024. The deadline to furnish the FMV statement is January 31, 2024.

This FMV statement must be prepared on a per plan agreement basis. That is, if a person would have two traditional IRAs and one Roth IRA, then he or she would need to be furnished three FMV statements. These could be combined on one statement as long as there were three separate sections.

There must be a sentence on the FMV statement informing the recipient that the FMV information (Balance as of December 31) will be furnished to the IRS when the 2023 Form 5498 will be filed with the IRS in May of 2024.

The IRA Custodian/trustee may, but is not required, to furnish contribution and earnings (including interest) information on the FMV statement for traditional IRAs, SEP-IRAs and Roth IRAs. However, a special rule applies for SIMPLE-IRAs. In the case of a SIMPLE-IRA, the IRA custodian must furnish a detailed statement listing all contributions (dates, and amounts) made by the employer on behalf of the SIMPLE-IRA accountholder.

Why is it required to furnish the FMV statement by January 31, 2024? A taxpayer who has basis within a traditional IRA, SEP-IRA or SIMPLE-IRA needs the FMV for purposes of completing the Form 8606 to determine the taxable portion of a distribution and the nontaxable portion.

The IRS may assess a penalty of $50 for each failure to furnish the FMV statement for traditional IRAs, SEP-IRAs, and Roth IRAs. The penalty is $100 PER DAY for failing to furnish the FMV statement for a SIMPLE-IRA.

RMD Notice for 2024

An IRA custodian/trustee must furnish each traditional/SEP/SIMPLE-IRA accountholder who was born during 1951 or earlier.

There is no requirement and no need to furnish an RMD Notice to a Roth IRA accountholder since the RMD rules do not apply to a Roth IRA accountholder while he or she is alive.

Three items must be set forth in the required RMD Notice.

First, the deadline applying to the specific IRA accountholder must be set forth. This will be December 31, 2024, for an individual who is older than age 73 in 2024 or April 1, 2025, if the individual attains age 73 in 2024. Second, there must a sentence informing the individual that the IRS will be told on the 2023 Form 5498 that he or she is subject to the RMD rules for 2024. Third, the individual must be informed of his or her RMD amount for 2024 or that such amount has not been calculated, but will be if the indi-

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Qualified Charitable Distributions – Planning for QCDs in 2024

The basic planning rule is, a QCD must be made from an IRA. A QCD cannot be made from a profit sharing plan, 401(k) plan or other employer sponsored plan.

Many individuals age 70½ or older may be considering making a qualified charitable distribution (QCD) or may know they want to make a QCD. Many of the laws governing IRAs are set forth in Code section 408. Code section 408(d)(8) authorizes an IRA accountholder to make a QCD if certain rules are met. The basic rules are: the IRA custodian must make the check payable to the charity, the aggregated IRA distribution amount must be $100,000 or less, the individual IRA accountholder or beneficiary must be age 70½ or older and the individual donor must get a tax receipt from the charitable organization confirming the contribution before filing their income tax return. The IRS on November 16, 2023 issued newswire IR-2023-215 discussing QCDs.

What tax benefits does a person receive when she or he makes a QCD?

The person receives two tax benefits for one transaction. This is rare under the federal income tax laws. For discussion purposes Alexa Taxpayer, age 78, has an IRA with a balance of $600,000. She has made 3 QCDs totaling $50,000 in 2023. She instructed her IRA custodian to send a check for $20,000 to Michigan State University, a check for $20,000 to her church and a check for $10,000 to the Salvation Army. Alex's RMD for 2023 is $27,273.

Her first tax benefit is, she is not required to pay taxes on the $50,000 because she excludes the $50,000 from her income.

Her second tax benefit is, she is not required to withdraw her RMD of $27,273 and include it in income and pay the applicable income tax because the IRS has ruled a person's QCD counts towards the person's RMD for that year.

Does the law authorize a 401(k) participant or a profit sharing plan participant to make a QCD?

The answer is no. A 401(k) or profit sharing participant is ineligible to make a QCD. Common sense says that the law should be changed so that a profit sharing plan participant or a 401(k) participant is eligible to make a QCD if he or she is age 70½ or older but that is not the current law. A profit sharing plan participant or 401(k) participant who wants to make a QCD must directly rollover their 401(k) funds into an IRA and then make the QCD. Remember, an RMD is ineligible to be rolled over. So, the direct rollover needs to completed by December 31, 2023 if the QCD will be made in 2024.

A 401(k) participant may make a charitable contribution under the laws set forth in Code section 170, but the tax benefits realized are more limited. If Alexa's balance in a 401(k) plan was $600,000 she would be required to withdraw her RMD of $27,273. She would include that amount in her income. If she made charitable contributions to her three charities she would be able to claim some deductions for her charitable contributions. The IRS has written Publication 526 (Charitable Contributions) The amount which a person is able to deduct is not 100%. There are various limits (15%, 30%, or 60%) which apply and which reduce the amount which can be deducted. IRS Publication 526 (Charitable Contributions) discusses charitable contributions in detail.

These two transactions - QCDs and Charitable Contributions sound a lot alike, but they are two separate and different transactions having different tax consequences. QCDs provide a much greater tax benefit than a charitable contribution which is deducted.

In summary, a person needs to move his or her funds in a profit sharing plan or 401(k) plan into an IRA by December 31, 2023 if the individual wishes to use those funds to make a QCD in 2024. The amount one pays in income taxes will be substantially reduced by making a QCD. To do so the funds need to be in IRA. A QCD cannot be made from funds in a 401(k) plan or other qualified plan.

RMD Notices,
Continued from page 1

vidual contacts the IRA custodian/trustee and requests that the calculation be made.

Although the RMD laws apply to an inheriting IRA beneficiary of all four types of IRAs, current IRS rules do not require the IRA custodian/trustee to furnish an RMD notice. CWF strongly suggests you do so. The model IRS IRA forms require that there be an RMD distribution made to an inheriting beneficiary. A beneficiary who fails to take an RMD will owe the RMD tax of 10% or 25% and may well argue that the custodian/trustee should pay some of this tax for its failure to notify or payout a RMD.

The IRS may assess a fine of $50.00 for each time an IRA custodian/trustee fails to furnish a complying RMD notice.

The Pension Digest

CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

1 Gross distribution $

2a Taxable amount $

OMB No. 1545-0119
2023
Form 1099-R

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

2b Taxable amount not determined ☐ Total distribution ☐

Copy B

Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return.

This information is being furnished to the IRS.

PAYER'S TIN | RECIPIENT'S TIN

3 Capital gain (included in box 2a) $

4 Federal income tax withheld $

RECIPIENT'S name

5 Employee contributions/ Designated Roth contributions or insurance premiums $

6 Net unrealized appreciation in employer's securities $

Street address (including apt. no.)

7 Distribution code(s) | IRA/ SEP/ SIMPLE ☐

8 Other $ %

City or town, state or province, country, and ZIP or foreign postal code

9a Your percentage of total distribution %

9b Total employee contributions $

10 Amount allocable to IRR within 5 years $

11 1st year of desig. Roth contrib.

12 FATCA filing requirement ☐

14 State tax withheld $ $

15 State/Payer's state no.

16 State distribution $ $

Account number (see instructions)

13 Date of payment

17 Local tax withheld $ $

18 Name of locality

19 Local distribution $ $

Guidance to Prepare the 2023 Form 1099-R to Report a Traditional IRA, SIMPLE-IRA, SEP-IRA or Roth IRA Distribution

What's New

Redesign of Form 1099-R. Beginning with the 2024 forms that will be processed in 2025, we are anticipating the redesign of Form 1099-R to reduce the number of pages. Copy D and Instructions for Payer will be removed from the form. Copies B, C, and 2 will be on one page. All Instructions for Recipient will also be on one page.

The Taxpayer First Act of 2019 authorized the Department of the Treasury and the IRS to issue regulations that reduce the 250-return e-file threshold. T.D. 9972, published February 23, 2023, lowered the e-file threshold to 10 (calculated by aggregating all information returns), effective for information returns required to be filed on or after January 1, 2024. Go to IRS.gov/inforeturn for e-file options.

#1. An IRA includes all investments under one IRA plan agreement. File only one Form 1099-R no matter how many distributions have been made from the investments of the same IRA plan agreement during one year unless different reasons codes apply. Example, Jane Doe is paid a death distribution (reason code #4) from her former spouse's IRA (she did not treat this IRA as her own) and she is also paid a distribution from her only IRA. She is age 65 (reason code #7). One Form 1099-R must be filed for all distributions with a reason code 4 and a Form 1099-R must be filed for all distributions with a reason code 7.

#2. The Form 1099-R and the Form 5498 are per plan agreement forms. If a person, age 65, has two traditional IRA plan agreements and takes a distribution from each IRA, he or she must be furnished two 1099-R forms each having a reason code 7 in box 7. The IRA custodian could be fined $280.00 times 2 if it only created one Form 1099-R. The IRA custodian must file Form 1099-R using the same name and EIN/TIN used to deposit any tax withheld and to file Form 945, Annual Return of Withheld Federal Income Tax.

#3. The IRS wants an IRA custodian to prepare a Form 1099-R for every distribution, even those less than $10.00.

#4. If an IRA custodian is required to file a Form 1099-R, then it must furnish a statement (i.e. a copy of the 1099-R form) to the recipient.

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2023 Form 1099-R,
Continued from page 3

#5. An account number must be used on a Form 1099-R when a recipient has more than one IRA plan agreement and you are required to file multiple Form 1099-R's. However, the IRS encourages an IRA custodian to designate an account number for all Form 1099-Rs which it files.

#6.Never enter a negative amount in any box on Form 1099-R.

#7. Use the name and TIN of the individual or entity which receives-funds from the IRA. Normally, this will be the IRA accountholder. However, if you make a distribution to a beneficiary (whether an individual, trust or estate), then the 1099-R is prepared using the name and TIN of the beneficiary. You do not use the name of the decedent for payments made to beneficiaries after his or her death.

#8. An IRA custodian has a duty to correct a Form 1099-R that it knows was prepared incorrectly. The correction must be made as soon as possible. See the IRS instructions as the law now does allow the IRA custodian to not correct an incorrect Form 1099-R in some limited situations.

#9. For a distribution from a traditional IRA, SEP-IRA or SIMPLE-IRA boxes 1 and 2a are to be completed with the same amount unless the IRS instructions discuss a special situation.

#10. For a distribution from a Roth IRA, box 2a is to be left blank unless an exception applies.

#11. An IRA custodian will generally check box 2b, taxable amount not determined. There will be times when it is not checked - withdrawal of an excess or current year contribution before the due date, a recharacterization and rolling funds from an IRA into an accepting employer plan.

#12. The total distribution box is also found in 2b. An "X" is to be entered in this box when the amount shown in box 1 is a total distribution. The instructions for the total distribution section of box 2b are not as clear as they should be. It is doubtful if this box applies to IRA distributions; but the instructions are unclear, and an IRA custodian should complete the box pursuant to the instructions. In order for a person to use the favorable 10-year averaging or capital gain treatment he or she must receive a total distribution. Such treatment does not ever apply to any type of IRA distribution. If this box is not checked, the IRS will question an individual's attempt to use 10-year averaging. A total distribution is one or more distributions within one tax year in which the entire balance is distributed. This means if two or more nonperiodic distributions occur in more than one year, then there is no total distribution and the box does not need to be checked. For example, a person with an IRA balance of $30,000 withdraws $10,000 in 2022 and the remainder in 2023 has not had a total distribution. Exception. If periodic or installment payments are made in more than one year, this box is to be marked for the year in which the final payment is made.

#13 For a distribution of contributions plus earnings from an IRA under **section 408(d)(4)**, report the gross distribution in box 1, only the earnings in box 2a, and enter Code 8 or P, whichever is applicable, in box 7. Enter Code 1, 2, 4 or 7, if applicable.

#14. For a distribution of contributions without earnings <u>after</u> the due date of the individual return, under section **408(d)(5)**, leave box 2a blank, and check the "Taxable amount not determined" check box in 2b. Use Code 1 or 7 in box 7 depending on the age of the accountholder.

#15. For a distribution from an IRA that is payable to the trustee of, or is transferred to, an employer plan, or for an IRA recharacterization, enter 0 (zero) in box 2a.

#16. In box 7 indicate the distribution code and enter an "X" in the **IRA/SEP/SIMPLE check box** if the distribution is from a traditional IRA, SEP-IRA, or SIMPLE-IRA. Do <u>NOT</u> check the box for a distributing from a Roth IRA or for an IRA recharacterization.

#17. **Roth IRAs.** For a distribution from a Roth IRA, report the total distribution in box 1 and leave box 2a blank except in the case of an IRA revocation or account closure and a recharacterization. Use Code J, Q, or T as appropriate in box 7. Use Code 8 or P, if applicable, in box 7 with Code J. Do not combine Code Q or T with any other codes.

However, for the distribution of excess Roth IRA contributions, report the gross distribution in box 1 and only the earnings in box 2a. Enter Code J and Code 8 or P in box 7.

The Rules Applying to Your Designated Beneficiary of Your IRA After Your Death

Your designated IRA beneficiary is required for federal income tax purposes to close the inherited account within a certain time period. There is no requirement to take a lump sum distribution immediately, but that may be done unless you have disallowed your beneficiary from taking a lump sum distribution. If your beneficiary fails to comply with the RMD beneficiary rules, he or she will owe an RMD tax, either 10% or 25% unless the IRS would agree to waive the tax.

Your beneficiary will generally be required to include in income any amount withdrawn. Until then your beneficiary will continue to benefit from tax deferral. The general federal rule is that 10% of the distribution will be withheld unless your beneficiary instructs otherwise.

A non-spouse designated beneficiary has no right to withdraw their inherited IRA plan funds and then roll the funds over into an IRA. The SECURE 2.0 has changed the law so that if an IRA custodian/trustee mistakenly furnishes a distribution to your beneficiary or the plan trustee furnishes information indicating the beneficiary can make a rollover of a distribution, the new law allows a beneficiary to use the late rollover procedural rules to make a late rollover. A beneficiary in this situation should discuss their situation with their tax adviser.

The law relating to IRA and pension beneficiaries was changed in 2019 and 2022. The SECURE Act was enacted in December of 2019. The SECURE Act 2.0 was enacted in December of 2022. The rules applying to certain beneficiaries have changed greatly. Many beneficiaries are now required to withdraw their inherited funds much quicker than under the pre-2020 rules. There are two sets of rules now - one set applies if a beneficiary died on or after January 1, 2020 and one set applies if the beneficiary died before January 1, 2020.

The discussion of beneficiaries which follows has two categories - married individuals and non-married individuals who are called non-spouse beneficiaries.

Non-Spouse Beneficiaries.

Most non-spouse beneficiaries are no longer eligible to use the life distribution rule which was sometimes called the stretch-out rule to close an inherited IRA. Most non-spouse beneficiaries must now close an inherited IRA within 10 years. You will wish to discuss with your legal and financial advisors. You will owe the RMD tax if you fail to comply with the RMD beneficiary rules.

Most non-spouse beneficiaries will not be an eligible designated beneficiary. A beneficiary who is not an eligible designated beneficiary is generally a person who is more than 10 years younger the deceased participant such as a child or grandchild, is not disabled, is not chronically ill or is not a minor child of the participant. Most states have age 18 as the age of majority.

Being a non-EDB means if the IRA owner had died prior to his or her required beginning date then the inherited IRA must be closed under the 10-year rule. For example, if the IRA owner had died in 2023, then the non-EDB beneficiary must close the inherited IRA by December 31, 2033. There is no RMD for years 1-9 only for year 10. However, for income tax reasons a beneficiary more than the likely wants to withdraw the inherited funds by setting up a periodic distribution schedule where she or he would withdraw an amount larger than that year's RMD. The beneficiary will wish to designate his or her own beneficiary to cover the situation should he or she die within this 1 0 year period. The next beneficiary does not get a new 1 0 year period, he or she is required to finish out the first beneficiary's 10-year period. Being a non-EDB means if the IRA owner had died on or after his or her required beginning date that the inherited IRA must be closed under the 10-year rule and the beneficiary must take annual RMDs based on their life expectancy commencing with the year after the participant died. For example, if the IRA owner had died in 2023, then the non-EDB beneficiary must close the inherited I RA by December 31 , 2033 and the beneficiary must take an annual RMD starting with the following year of 2024. This RMD is determined by using the divisor based on the age of the beneficiary in the following year. The divisor for subsequent years is determined by subtracting 1.0 for each elapsed year, The divisor is 1.0 for the 10th year. For income tax purposes a beneficiary more than the likely wants to take fairly equal periodic distributions for years 1-9. The beneficiary will wish to designate his or her

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Your Designated Beneficiary,
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own beneficiary to cover the situation should he or she die within this 1 0 year period. The next beneficiary does not get a new 1 0 year period, he or she is required to finish out the first beneficiary's 10-year period.

Some non-spouse beneficiaries will be an eligible designated beneficiary (EDB). An EDB is a person who is not more than 1 0 years younger than the deceased participant, is disabled, is chronically or is a minor child of the participant. Again, a beneficiary is an EDB if he or she is not more than 10 years younger than the deceased IRA accountholder. A beneficiary who is older than the IRA accountholder is by definition not more than 10 years younger.

Being an EDB means if the IRA owner had died before his or her required beginning date that the EDB must select for RMD purposes to use either the 10-year rule or the life distribution rule. In general this election is irrevocable and must be made by the December 31 of the year following the year the participant died. If the EDB elects the 10-year rule the inherited IRA must be closed by December 31, 2033. There is no RMD for years 1-9 only for year 10. The beneficiary will wish to designate his or her own beneficiary who is required to finish out your 10-year period. If the EDB elects the life distribution rule, annual RMDs for the beneficiary must commence the following year. The divisor for the RMD formula is based on the age of the beneficiary in the year following year and for subsequent years the divisor is reduced by 1.0 for each elapsed year.

Being an EDB means if the IRA owner had died on or after his or her required beginning date then the EDB must use the life distribution rule and annual RMDs for the beneficiary must commence the following year. The divisor for the RMD formula is based on the age of the beneficiary in the year following year and for subsequent years the divisor is reduced by 1.0 for each elapsed year.

A Spouse Beneficiary.

The rule for a spouse beneficiary were not changed much by the two new laws. However, the IRS has issued a proposed regulation which would make some important changes. We will revise this discussion if the IRS adopts the proposed changes.

A spouse is defined to be an eligible designated beneficiary.

A spouse who is the sole beneficiary is allowed to treat their deceased spouse's IRA as their own I RA. The surviving spouse is treated as if he or she was the original contributor. There no longer is an inherited IRA.

Any spouse is allowed to withdraw funds from their deceased spouses's IRA. and then make a rollover contribution into their own IRA.

If the deceased spouse IRA accountholder has died before his or her required beginning date the surviving spouse has 3 options.

First, you may elect to treat your deceased spouse's IRA as your own IRA.

Second, you can elect to use a special life distribution rule.

Third, you may elect the 10-year rule ..

If the deceased spouse IRA accountholder has died on or after before his or her required beginning date you have 2 options.

First, you may elect to treat your deceased spouse's IRA as your own IRA.

Second, you-can elect to use a special life distribution rule.

The 10-year rule is no longer an option. .

There may be special tax rules if you have designated a trust as a beneficiary. You must consul the your adviser(s) to determine if it is your best interest to designate a trust as your beneficiary.

In general if a plan participant died prior to January 1, 2020, a beneficiary is allowed to use the pre-2020 beneficiary RMD rules. Many such beneficiaries elected to use the life distribution rule and may continue to do so because they have been defined to be an EDB.

Comments Furnished to DOL/EBSA to NOT Adopt the Proposed Changes

December 29, 2023
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S.Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Attention: Definition of an Investment Advice Fiduciary - RIN 1210-AC02
Subject: Comments on the DOL's Proposed Investment Advice Fiduciary Rule Regulatory Changes
From: Anonymous

The DOL's proposed regulatory changes with respect to Individual Retirement Accounts, including rollovers and transfers are ill-advised and illegal for many reasons. The DOL believes and argues it has been given authority to rewrite the law to apply the provisions of Title I of ERISA to Individual Retirement Accounts. Title I of ERISA is Protection of Employee Benefit Rights. One of the obvious goals of the DOL 's proposed regulation is that the DOL will have new powers to regulate IRAs.

The DOL has not been given this authority and should not be given this authority. It is the IRS which has and should have the responsibility to regulate and administer IRAs. The DOL apparently believes individuals are unable to make informed decisions including investment decisions and are generally incapable of acting in their own best interest. There must be a third party who makes the determination that what he or she wishes to do is in their best interest.

Congress enacts the laws and not the Department of Labor. The DOL is in essence taking on the role of Congress and rewriting the law with monumental changes. If the law needs to be changed, Congress needs to make the changes and not the un-elected employees in the Department of Labor. The fact that Congress is functionally unable to enact new legislation does not mean that the DOL has the authority or the right to re-write the laws.

The tax laws applying to Individual Retirement Accounts are set forth in Internal Revenue Code sections 408 and 219. The law is clear that there was one set of prohibited transaction rules under Title I for pension plans sponsored by employers and another set of prohibited transaction rules under Title II and these applied and apply to IRAs.

The DOL is proposing that IRA custodians and trustees and IRA accountholders will be subject to dual regulation from the IRS and the DOL. A party may be fined or taxed by both the IRS and the DOL. This dual regulation will be very burdensome and confusing.

Until recently, the DOL has never taken the position it has the right to regulate any IRA which does not have some relationship to an employer.

The DOL argues that because of the Reorganization Plan No. 4 of 1978, which Congress ratified in 1984 that the DOL has been given the general authority to define who is a fiduciary for purposes of applying the prohibited transaction rules for purposes of Title I and Title II of ERISA and for other broad purposes. The DOL is proposing to increase its authority greatly by applying the rules of Title I to Individual Retirement Accounts. Congress did not write ERISA to apply the rules of Title I which apply to employer sponsored retirement plans to IRAs. And yet the DOL thinks it has the power to do so. I don't believe Congress has ever said to the DOL that we want the DOL to establish new rules for IRAs. This topic has been discussed since around 2015.

The DOL's new powers will cause massive confusion as to how IRA and pension plans are to be administered. The fundamental law for both IRAs and pension plans is that the terms of the plan document must be followed. Will the Department be taking over from the IRS the responsibility of determining if an IRA plan document complies with the law?

The proposed regulation defines as a fiduciary advice recommendation any transaction of rolling over, transferring or distributing assets from an employee benefit plan or IRA. So, the DOL believes every distribution from an IRA or pension plan is a fiduciary transaction regardless if the person receiving funds from a plan or an IRA has an intent to make a rollover. This is ludicrous. Not every distribution involves the need to seek or use investment advice. The mandatory involvement of an investment

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Proposed Changes,
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adviser in many cases will be an invasion of privacy. If a person wishes to withdraw funds from his or her pension plan or IRA, he or she may not want to tell the pension plan administrator or the IRA custodian why the funds are being withdrawn and how they will be used. The individual has this right to not inform the IRA custodian or the plan administrator if he or she so decides. The person is entitled to use the funds for non-retirement purposes. The DOL may not like that fact ,but the person has that right.

There are real world differences between a direct rollover (plan to IRA), rollover (distribution to a person from an IRA who then makes a rollover contribution to an IRA) and a transfer from one IRA custodian to another IRA custodian. The DOL seems to assume these situations are similar and that there must be a formal review in each situation. The DOL needs to get in the real world. I am an accountholder and I have my IRA account with ABC. I don't need to explain or justify to ABC or DEF why I am moving my IRA to DEF. Nor does DEF need to determine that it is in my best interest that I have made the decision to move my funds to DEF.

The DOL has not discussed very well the job of a financial investment adviser in the following situations.

An IRA accountholder may take a distribution with the initial mind-set that he or she will roll it over and he or she does roll it over.

An IRA accountholder may take a distribution with the initial mind-set that he or she will roll it over but he or she does not roll it over.

An IRA accountholder may take a distribution with the initial mind-set that he or she will not roll it over and he or she does not roll it over.

An IRA accountholder may take a distribution with the initial mind-set that her she will not roll it over but he or she does roll it over.

The DOL makes the obvious statement that any fees charged to the person will lower the retirement funds which will be available for retirement. The same can be said about federal income taxes and state income taxes. The income taxes to be paid will reduce the amount an individual is able to use for retirement.

The IRS currently requires an employer plan to furnish a person taking a distribution with a section 402(f) notice and the IRS has provided safe harbor forms. In general this form does an adequate job of explaining to a person the rollover rules. There is no doubt that the rollover rules are complicated, but most section 402(f) notices do an adequate job of explaining the tax consequences. There are changes which could be made to improve the form but the IRS as the DOL many times is not real receptive to making changes. It is to noted that the IRS has never chosen to have any discussion in the section 402(f) notice regarding how the funds might be invested after the rollover has been made. The point being, there has not been close coordination between the IRS and the Department of Labor on the subject of rollovers. '

I agree with the DOL that in some defined situations an IRA accountholder or beneficiary should have an express right to sue an IRA custodian and that the law would define the damages. But Congress needs to make this change.

I agree with the DOL that there are situations where an IRA custodian should be able to receive compensation from a third party. The type of situations and the permitted amounts should be defined. It is time Congress revisits the prohibited transaction rules.

Rather than avoiding the subject and allowing the IRA custodian to charge any fee as long as it is reasonable, Congress should define with respect to IRAs the maximum amounts which may be charged for rendering certain services such as a distribution, a transfer, preparing IRS reporting forms, terminating the IRA, etc.

The DOL has not made clear - is it a duty of the fiduciary to consider all of the various tax aspects related to a person taking or not taking a distribution? Does investment advice include tax analysis advice?

In summary, the DOL's proposed regulation on fiduciary advice, rollovers and the changes to PTE 2020-02 and others PTEs should not be adopted. The DOL and the IRS should go to Congress and inform Congress how and why the IRA and pension laws should be changed. The public should be involved in the process. The DOL appears to have the attitude, we want to make these changes as fast we as we can. Most likely, there will be continued litigation as the current law does not support the DOL's position that it has the authority to redefine the term fiduciary as broadly as it has.

Thank you for considering my comments, Anonymous