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# 2022



## Trust Comprehensive Traditional IRA Amendment

### **TRUST — NONDEPOSIT INVESTMENTS NOT FDIC-INSURED**

Under your Trust IRA, you may use your IRA funds to purchase mutual funds and other nondeposit investment products. Nondeposit investment products, such as mutual funds, stocks, bonds, etc., are not FDIC-insured; are not deposits or other obligations of this institution and are not guaranteed by this institution; and involve investment risks, including possible loss of principal.

Dear IRA Grantor:

You have established an Individual Retirement Account (IRA) (under section 408(a) of the Internal Revenue Code) to provide for your retirement and for the support of your beneficiaries after your death. We, as your IRA custodian, are updating or amending the IRA documents (IRS Form 5305, as modified, and the Disclosure Statement) previously furnished you.

It is important that you understand the current laws and the IRA plan provisions applying to your IRA. In December of 2019 and March of 2020 there were important law changes applying to an IRA beneficiary and the laws requiring when an inherited IRA must be closed by a beneficiary. In general, many beneficiaries will be required to close their inherited IRA by using a 10-year rule rather than being able to take distributions over their life expectancy. Some beneficiaries will still qualify to take distributions over their life expectancy. The IRS on November 5, 2021, announced the various IRA contribution and compensation limits applying to IRAs for 2022. Due to the higher rate of inflation these limits in general increased more than in prior years. More individuals will be eligible to claim a tax deduction for their traditional IRA contributions.

We are furnishing you this Comprehensive traditional IRA Amendment so that you can be informed of these changes and take advantage of the law changes. The general rule is that the IRA plan agreement must authorize the transaction being made by an IRA accountholder or an inheriting IRA beneficiary and the IRA custodian. The IRA Disclosure Statement has been revised to set forth the IRA rules applying for the 2021-2022 tax years. Set forth is a summary of some of the law changes.

1. The eligibility requirement that a person could not be age 70½ or older in order to make a Traditional IRA contribution has been repealed for 2020 and subsequent years. As long as you have compensation you are eligible to make a traditional IRA contribution.
2. The rules applying to your designated beneficiary or beneficiaries have changed greatly for non-spouse beneficiaries when you die after December 31, 2019. These rules are complicated. You should discuss with your advisers, especially if you have designated a trust as your IRA beneficiary. The intent of the law change was to reduce the tax benefits to be realized by a beneficiary. In general, the rules applying to a spouse beneficiary have not changed. A spouse is an Eligible Designated Beneficiary (EDB). Unless your beneficiary is an EDB, your beneficiary if a living person will be required to close the inherited IRA by using the 10-year rule and no longer may use the life distribution rule. If your beneficiary is not a living person, then the inherited IRA must be closed by using the 5-year rule. If your beneficiary is an EDB, then he or she will be entitled to use the life distribution rule and in some cases the 5-year rule. The following individuals qualify as an EDB: a non-spouse beneficiary who is disabled, chronically ill, a child who has not reached the age of majority, a non-spouse beneficiary who is not more than 10 years younger than you and certain trusts. Additional discussion of these new rules is set forth in the Disclosure Statement on pages 36-39.
3. If you are an active participant in an employer sponsored plan, or if you are married and your spouse is an active participant, then you may or may not be eligible to claim a tax deduction for all or a portion of your annual IRA contribution. If your modified adjusted gross income (MAGI) exceeds a certain limit based on your tax filing status, then you are eligible to make a non-deductible contribution, but ineligible to make a deductible contribution. These limits are indexed for cost-of-living increases and these limits normally change each year. The limits for 2021 and 2022 are set forth on pages 18-21.
4. Since 1975 the age for required distributions for traditional IRAs, SEP IRAs and SIMPLE IRAs has been age 70½. Commencing for 2021 RMDs, it is age 72. A person's required beginning date is now April 1 of the year following attaining age 72.

5. Required minimum distributions (RMDs) were waived for 2020 by the CARES Act. RMDs are again required for 2021. IRA owners age 72 and older in 2021 must take an RMD for 2021. An updated RMD life expectancy table is to be used for the 2022 RMD calculations. If you attain age 72 in 2021, your required beginning date is April 1, 2022. This is your deadline to withdraw your RMD for 2021. The deadline to withdraw your 2022 RMD is December 31, 2022.
6. Effective for Qualified Charitable Distributions (QCDs) made in 2020 and subsequent years, the QCD exclusion amount for the current year must be reduced by an amount (but not below zero) equal to the excess of: the aggregate of all deductions allowed for all tax years on or after attaining age 70½ over the aggregate amount of the QCD reductions for all tax years preceding the current year. Some IRA owners used to excluding 100% of the distribution on their tax return as a QCD, will no longer be eligible to do so if they choose to make a deductible contribution.
7. There are special disaster related rules for use of IRA funds. Special tax relief was enacted within the SECURE Act, within the Further Consolidated Appropriations Act of 2020 regarding qualified disasters for the time period commencing on January 1, 2018, and ending on the date which is 60 days after the enactment of this Act. Special tax relief was also enacted within the CARES Act related to the qualified disaster related to Coronavirus (COVID-19) for the time period commencing on or after January 1, 2020 and before December 31, 2020. In general such tax relief permits a victim who is an IRA owner to include a distribution in income over a three year time period rather than having to include it all in income for the year of withdrawal and allows the individual three years to repay a distribution. An IRA owner who takes a disaster distribution prior to age 59½ does not owe the 10% additional tax.
8. A new exception to the 10% additional tax required by Code section 72(t) now exists. Such tax is not owed with respect to a distribution of up to \$5,000 which is on account of the birth of a child or an adoption of a child. Such a distribution may be rolled over or repaid.
9. A direct trustee to trustee transfer is authorized for certain lifetime income investments or a qualified plan distribution annuity. Such investments may be held by a defined contribution plan, a 403(b) plan or a governmental 457(b) plan. However, if such investments are no longer authorized to be held as an investment option under the plan such may be transferred to an IRA or another employer plan.
10. The second RMD relief provision in the CARES Act has to do with the 5-year rule for certain beneficiaries of an IRA account holder who died before January 1, 2020. The law change is, 2020 is not to be considered in applying the 5-year rule. In general, such a beneficiary is given one additional year to close the inherited IRA.

Unless indicated otherwise, the law changes apply to contributions and distributions made after December 31, 2019.

There will be times when you will want to conduct additional research, and you will want to contact a tax professional for advice. You will find helpful information at the IRS website, [www.irs.gov](http://www.irs.gov).

We suggest you keep this Comprehensive Traditional IRA Amendment in your personal files for safekeeping. The revised and updated Individual Retirement Account (IRA) and Disclosure Statement are both set forth in this Comprehensive Traditional IRA Amendment and they replace previously furnished forms.

Sincerely,  
Your IRA Trustee

# Individual Retirement Trust Account

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## FORM

This is Form 5305 as revised by the Department of Treasury, Internal Revenue Service in April of 2017. Do not file with the IRS. This IRA account is under section 408(a) of the Internal Revenue Code.

## NOTICE OF AGREEMENT

Since your name appears on the application, you understand that you are establishing an Individual Retirement Account (IRA) (under section 408(a) of the Internal Revenue Code) to provide for your retirement and for the support of your beneficiaries after your death. The Trustee named on the application has given you the disclosure statement under the Income Tax Regulations under section 408(i) of the Code. You have deposited with the Trustee the sum indicated on the application, in cash. In case of a transfer contribution, a rollover contribution or a recharacterized contribution, it may be in kind or in cash. You and the Trustee make the following agreement with the following terms:

### ARTICLE I

Except in the case of a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an employer contribution to a simplified employee pension plan as described in section 408(k), or a recharacterized contribution described in section 408A(d)(6), the trustee will accept only cash contributions up to \$5,500 per year for 2013 through 2017. For individuals who have reached the age of 50 by the end of the year, the contribution limit is increased to \$6,500 per year for 2013 through 2017. For tax years after 2017, these limits will be increased to reflect a cost-of-living adjustment, if any.

### ARTICLE II

The grantor's interest in the balance in the trust account is nonforfeitable.

### ARTICLE III

1. No part of the trust funds may be invested in life insurance contracts, nor may the assets of the trust account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).
2. No part of the trust funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3) which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

### ARTICLE IV

1. Notwithstanding any provision of this agreement to the contrary, the distribution of the Grantor's interest in the trust account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.
2. The Grantor's entire interest in the trust account must be, or begin to be, distributed not later than the Grantor's required beginning date, April 1 following the calendar year in which the Grantor reaches age 70½. By that date, the Grantor may elect, in a manner acceptable to the Trustee, to have the balance in the trust account distributed in:
  - (a) A single sum, or
  - (b) Payments over a period not longer than the life of the Grantor or the joint lives of the Grantor and his or her designated beneficiary.
3. If the Grantor dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
  - (a) if the Grantor dies on or after the required beginning date and:
    - (i) the designated beneficiary is the Grantor's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if distributions are being made over the period in paragraph (a) (iii) below, over such period.
    - (ii) the designated beneficiary is not the Grantor's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the Grantor and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
    - (iii) there is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the Grantor as determined in the year of the Grantor's death and reduced by 1 for each subsequent year.
  - (b) If the Grantor dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below, or, if elected or there is no designated beneficiary, in accordance with (ii) below:
    - (i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the

calendar year following the year of the Grantor's death. If, however, the designated beneficiary is the Grantor's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the Grantor would have reached age 70½. But, in such case, if the Grantor's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated beneficiary.

(ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Grantor's death.

4. If the Grantor dies before his or her entire interest has been distributed and if the beneficiary is not the Grantor's surviving spouse, no additional contributions may be accepted in the account.
5. The minimum amount that must be distributed each year, beginning with the year containing the Grantor's required beginning date, is known as the "required minimum distribution" and is determined as follows:
  - (a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the Grantor reaches age 70½, is the Grantor's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the Grantor's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Grantor's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the Grantor's (or, if applicable, the Grantor and spouse's) attained age (or ages) in the year.
  - (b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the Grantor's death (or the year the Grantor would have reached age 70½, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the individual specified in such paragraphs 3(a) and 3(b)(i).
  - (c) The required minimum distribution for the year the Grantor reaches age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
6. The owner of two or more traditional IRAs may satisfy the minimum distribution requirements described above by taking from one traditional IRA the amount required to satisfy the requirement for another in accordance with the regulations under section 408(a)(6).

#### ARTICLE V

1. The Grantor agrees to provide the Trustee with all information necessary to prepare any reports required by section 408(i) and Regulations sections 1.408-5 and 1.408-6.
2. The Trustee agrees to submit to the Internal Revenue Service (IRS) and Grantor the reports prescribed by the IRS.

#### ARTICLE VI

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles inconsistent with section 408(a) and the related regulations will be invalid.

#### ARTICLE VII

This agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the application page.

#### ARTICLE VIII

Article VIII may be used for any additional provisions. If other provisions are added, they must comply with applicable requirements of State law and the Internal Revenue Code.

#### Introduction

In this Article, the words "you" and "your" mean the person for whose benefit the IRA has been established. The words, "we," "us," and "our" mean the Trustee of your IRA. In addition to the provisions of Articles I-VII, you and we agree that your IRA will be governed by these terms.

#### 1. Duties and Rights

**1.1 Purpose and Savings Provision.** The express intent of you as the IRA grantor and we as the IRA trustee is to execute and create a traditional IRA which meets the requirements of Internal Revenue Code section 408(a)(6) and related regulations. No action may be made by you or us with respect to your traditional IRA which would adversely affect the qualification of your traditional IRA and any such action is null and void to the extent permitted by existing law.

**1.2 Tax Consequences and No Representations.** Because IRAs are so influenced by tax laws, you expressly acknowledge that you should consult with your tax advisor before making an IRA transaction. You are responsible for the tax consequences of any contribution or distribution, including rollovers, transfers, recharacterizations, excess contributions, and prohibited transactions. You acknowledge that you have not relied upon our employees or agents as to the tax or other effect of any IRA transaction.

**1.3A Investments and Selection of Investments.** You will have the right to self-direct the assets of this traditional IRA only if so indicated on the application page. If so, you, or your authorized investment manager, may direct us to invest your traditional IRA funds or some portion in any other assets as described in section 1.3B.

You agree to notify us in writing with sufficient direction so that we may properly execute the transaction. You also agree to comply with any other conditions or requests we may require for administrative reasons. You expressly agree that your IRA will be charged for all transaction costs and other fees related to any directed investments. Such costs and fees are in addition to any other fees we may charge under this agreement.

You may invest your IRA assets only in assets which are clearly permitted by the laws governing IRAs. Thus, you cannot direct that your IRA assets be invested in any investment so that a prohibited transaction occurs. And, although we may permit you to self-direct the investments, we reserve the right to refuse to follow any investment direction.

When you direct your investments, you assume full responsibility and we shall not be liable for any loss you suffer. We shall be able to rely fully on your directions without making any inquiry or investigation. We are granted the discretion to decline your investment direction for any reason. We shall have the right to request that you furnish us with a written attorney's opinion that the proposed transaction will not be a prohibited transaction. If we are a trust entity and we are not authorized to offer our own deposit accounts, then those provisions discussing depository accounts as offered by us are inapplicable.

You may also instruct us in writing to invest your traditional IRA into one or more of the savings or time deposit instruments which we are offering at that time if Applicable. You expressly authorize this even though we are acting as the IRA trustee of your IRA. Our name is set forth on the IRA application. Such deposit account must bear a reasonable rate of interest as determined by the terms of the deposit instruments and the short and long term economic conditions. The terms of any such accounts are incorporated by reference into this agreement.

If on the application you have indicated that we will fully invest your IRA funds on your behalf, then section 1.3B sets forth our powers, rights and duties.

FDIC insurance will only apply to the portion of your IRA funds invested in our time and savings accounts or those of another insured institution, and then only to the extent provided under governing rules. Such insurance does not apply to IRA funds which you self-direct into other types of investments. Securities are not bank deposits or FDIC insured, are not obligations of or guaranteed by the Trustee, and involve risk to principal.

**1.3B Investments.** We will invest the assets comprising this traditional IRA unless the application page indicates otherwise. We have the following powers, rights and duties regarding the investment of your traditional IRA assets.

a. You expressly authorize us to invest your IRA funds into one or more deposit accounts as being offered by our financial institution or any related affiliate.

See the application page for our name. Such deposit accounts must bear a reasonable rate of interest as determined by the terms of the deposit instruments and the short and long term economic conditions. The terms of any such accounts are incorporated by reference into the agreement.

b. To hold any property in our name or that of our nominee or in any other form we consider desirable.

c. To invest in bonds, notes, debentures, mortgages, trust interests, investment stock, mutual funds, general and limited partnership interest, deposits which bear a reasonable interest rate in the trustee, or in such other property, real or personal, within the United States, as the trustee may deem advisable, or as directed by you.

d. To invest in common trust funds and common investment funds (within the meaning of Code section 408(a)(5)).

e. To hold in cash such portion of the IRA assets as shall be reasonable under the circumstances.

f. To exercise any powers and rights of any individual owner with respect to any property of the IRA including, but not limited to, conducting business or litigation, participating in a voting trust, merger, borrowing funds and to do all other acts in its judgment necessary or desirable for the investment of your IRA assets even though the specific power to do such acts is not listed.

g. To allow you (the IRA grantor) pursuant to written policy to direct the investment of your IRA assets. For purposes of this section, the term "you" includes any Investment Manager which you have named. When we permit you to direct the investment, we shall not be liable for any loss you suffer.

**1.3C. Voting Proxies.** The IRA grantor and the IRA custodian/trustee agree the following provisions will apply to investment proxies related to the IRA investments. We as the IRA custodian/trustee have the responsibility to perform the proxy duties, including voting, whether we select the investments or you select the investments because you self-direct your IRA. We as the IRA custodian/trustee are the owner of the IRA investments. We will use our best efforts to determine what is best for your IRA. In general, the investments selected for your IRA (by us or you) must be in your economic interest considering only pecuniary factors.

You and we agree that we are not required to inform you when we are sent proxy materials with respect to an IRA investment. However, you may inform us in writing when you want us to inform you about a proxy matter.

If we determine the cost associated with responding to the proxy materials exceeds the economic benefit to be realized, then we will not respond or vote on the proxy matter.

You agree that we may charge a reasonable fee for our proxy services. If you request us to respond to a proxy

we may charge a fee of based on the rate of \$50 per hour. If we decide we will respond to a proxy we may charge a fee of based on the rate of \$50 per hour. We reserve the right to waive this fee.

We both acknowledge that in some situations there could be prohibited transaction concerns. You should advise us in writing when you hold an asset within your IRA and you (or a company controlled by you) also own such asset on a personal non-IRA basis. If we decide to adopt your suggested approach on a proxy matter, you agree to accept full responsibility for the matter, including any negative resulting from a determination by a banking regulator, the SEC, the IRS or the Department of Labor (DOL).

**1.4 Withdrawals/Termination.** You may withdraw any amount of money from your IRA at any time. You must, however, complete our distribution form and furnish us with the reason for your distribution. If you indicate the distribution is because of a disability or death or a substantially equal periodic payment, then you must provide us with necessary verification in the format we require. Unless you instruct us in writing otherwise, we must withhold income tax on any IRA distribution for federal and state income tax purposes, if applicable. The amount to be withheld would be the amount then required by the applicable tax laws. With any distribution, including transfers, you will be required to pay from your IRA funds, if applicable, the interest penalty for the early surrender of a time deposit(s) and/or any fees or investment penalties related to the distribution.

If any distribution causes or will cause your IRA to have a balance of less than \$100 (or other amount that the IRA trustee may establish), the IRA trustee shall have the right to terminate your IRA and distribute the balance to you or your inheriting beneficiary in a single sum payment.

**1.5 Special Distribution Rules to Ensure Compliance with RMD Rules.** You are required to establish a periodic distribution schedule so that you are paid a distribution amount which equals or exceeds your required minimum distribution amount for the year you attain age 72 and each subsequent year. We have forms available which can be used to establish this schedule. Alternatively, you may elect to use the alternative certification method. You must furnish us a written notice of your intent to use the alternative certification method. Upon your request we will furnish you a form which you can use to make this election.

**Note.** The CARES Act waives all RMDs for 2020. RMD rules will again apply for 2021 and subsequent years.

Unless you instruct us otherwise in writing, you hereby authorize us to issue you a check from your IRA funds on or before November 15 of each year for the amount of your annual required distribution as determined above or deposit such amount into any non-IRA checking or savings account which you maintain with us. If you do not maintain such a non-IRA savings account, then you hereby grant us the authority to establish a non-IRA savings account to receive your RMD. We shall have the right to select a date other than November 15, but we must furnish you 15 days' notice. We shall have the authority but not the duty to distribute this annual required distribution amount from your IRA. You are solely responsible to make sure that your required minimum distributions take place on a timely basis.

**1.6 Designating Beneficiaries and Method of Payment.** You may designate one or more beneficiaries to receive your IRA assets after your death. We require that you use our beneficiary form (or such other form which we have acknowledged in writing) to designate your beneficiary or beneficiaries and that you sign this form and file it with us during your lifetime. You are deemed to have furnished us with your beneficiary designation if you furnished such a form to an entity with respect to which we are considered to be a successor custodian and we have such designation in our files. You may change your beneficiaries at any time, and the consent of a beneficiary is not required unless you reside in a state with community or marital property laws. When you sign a new beneficiary form, you revoke all prior beneficiary designations. If you do not name a beneficiary, or if none of the named beneficiaries are alive on the date of your death, your IRA assets will be paid to your estate. As the beneficial owner of the IRA assets, you can instruct how and when these assets will be paid to the beneficiaries as long as there is compliance with the required distribution laws. Such instruction must be in writing. If you don't instruct, your beneficiaries will have the right to choose how and when the assets will be paid. Any method of payment must satisfy the provisions of Article IV and other governing law.

On the IRA application you are to define the percentage to be received by each beneficiary of each beneficiary classification. The total of such percentages is limited to be 100%. The following procedures are to be applied if the total of the percentages is not 100%. If the total of such percentages exceeds 100%, then on a pro-rata basis such percentages shall be reduced so the total is 100%. If the total of such percentages is less than 100% including no percentage being assigned any participant, then the remaining percentage (could be 100%) is to be divided equally between those beneficiaries not assigned a specific percentage. If you designate multiple beneficiaries and the total percentage exceeds 100% and you have failed to designate a percentage for one or more beneficiaries, then you are deemed to have assigned this beneficiary(ies) with the same percentage as the beneficiary with lowest percentage and then the percentages of all beneficiaries will be reduced pro-rata so that the total of the percentages is 100%.

Should any beneficiary pre-decease you, his or her share of the IRA is distributed pursuant to the selection you made on the account application in the Designation of Beneficiary section. The first choice, the pro rata method, terminates the interest of the deceased beneficiary and distributes those funds pro rata according to the remaining beneficiary's share percentage(s). The second choice (a per stirpes method) transfers the deceased beneficiary's share equally to the next generation of his or her living issue. Living issue is defined first as children, then grandchildren, then great-grandchildren (natural and/or adopted). If the predeceased primary beneficiary does not have any living issue, then his or her share shall be transferred to the other primary beneficiary(ies) on a pro rata basis based on their respective percentage shares unless you indicate on the IRA application that the share of the predeceased primary beneficiary is to go to his or her surviving spouse, if any.

In order that your funds be distributed according to your wishes, we strongly recommend you complete a new beneficiary designation as soon as possible when a beneficiary dies before you.

After your death, each primary beneficiary who acquires an interest in your IRA shall have the right to designate his or her own beneficiary(ies) with respect to his or her share. The procedures for designating a beneficiary(ies) which apply to you as the account holder shall also apply to your beneficiary. When a beneficiary signs a new or revised beneficiary designation form, your beneficiary revokes all of his or her prior beneficiary designations. If the beneficiary does not designate his or her other beneficiary(ies), or if a designated beneficiary is not alive when the beneficiary dies, then the remaining IRA assets will be paid to such beneficiary's estate. Any method of payment must satisfy the provisions of Article IV and other governing law.

**Simultaneous Death Provision.** If my beneficiary and I die together with no evidence showing who died first, then my beneficiary is deemed to have predeceased me.

**1.6.A Beneficiary Restricted Distributions and Restricted Investments.** You as the IRA grantor have the right to place restrictions on the distributions to be made to one or more of your IRA beneficiaries. This is true whether the beneficiary is your spouse, a child, a parent, a trust, your estate or any other designated beneficiary.

You as the IRA grantor have the right to place restrictions on your inheriting beneficiary's right to make the investment decisions. That is, you may retain the IRA trustee to perform the investment duties and not permit the beneficiary to perform these duties. This is true whether the beneficiary is your spouse, a child, a parent, a grandchild, another person, a trust, your estate or any other designated beneficiary.

Unless you restrict your beneficiary's distribution options, he, she or it is entitled to a total distribution upon his, her or its instruction.

Unless you restrict your beneficiary's right to make investment decisions, he or she or it is entitled to make the investment decisions.

Your restrictions must be set forth in your IRA Beneficiary Designation which is incorporated and is part of your IRA plan agreement and trust.

Although you may restrict the distributions, there must always be compliance with the required distribution rules. Required distributions are not subject to any restriction. The required distribution for a year is to be withdrawn pro rata from the account of each primary beneficiary.

**1.7 Special Distribution Rules to Ensure Compliance with Required Minimum Distribution Rules by Beneficiaries and Special Provisions for an Inherited IRA(s).** You agree to inform any person who is your beneficiary that he or she is your beneficiary and he or she must inform us of your death. We have the right to require that your beneficiary(ies) furnish us with a certified copy of your death certificate or other documentation as we feel appropriate to verify your death.

An inheriting beneficiary is subject to these terms of your IRA. Your beneficiary is required to complete such forms and furnish such information as we deem appropriate in order to handle a distribution request, including a transfer distribution.

After your death, there are rules which mandate that your IRA funds be distributed to your beneficiary(ies) on or before certain time deadlines.

If a time deadline is not met and the applicable required distribution is not withdrawn, an inheriting beneficiary will owe the 50% excise tax. The rules and time deadlines which apply depend upon whether you die on or before December 31, 2019 or whether you die after December 31, 2019 and whether or not a beneficiary is an eligible designated beneficiary as defined in the SECURE Act or is not an eligible designated beneficiary. These rules and deadlines are discussed in the IRA Disclosure Statement. You acknowledge that these rules are complex and that your beneficiaries should discuss with their own advisers.

Upon your death, your IRA will be converted into one or more inherited IRAs. The number of inherited IRAs to be created depends upon the number of your primary beneficiaries alive as of the date of your death. There will be an inherited IRA created for each such beneficiary. The following rules will govern such inherited IRAs. These rules are in addition to the other rules of this agreement and will govern if there is a conflict.

You agree that we have the right to establish an inherited IRA account for each beneficiary on our data processing system even before a beneficiary instructs us how he or she will take withdrawals. We will have the authority to move the funds from your IRA to one or more new inherited IRA accounts. We will have the right, but not the duty, to surrender and/or liquidate any or all of the investments comprising this trust IRA and then establish one or more inherited IRAs. We may invest the liquidated investments into conservative investments. We will seek new investment instructions from each beneficiary.

There will be earnings (or losses) from the time of your death until the time the separate inherited IRAs are set-up. Such earnings (or losses) will be allocated on a pro rata basis in a reasonable and consistent manner. An inheriting beneficiary is only entitled to receive a distribution with respect to his or her inherited IRA.

There may be times when your estate will be the beneficiary of your IRA upon your death. You hereby authorize us to establish separate inherited IRAs for the beneficiaries of your estate if the following requirement is met. If the estate's attorney will furnish a legal opinion that under federal and state law that it is permissible for the estate to pass-through to its beneficiaries the estate's right to withdraw the IRA funds over your life expectancy, then the IRA custodian shall establish such separate inherited IRAs. You agree that your estate and your beneficiary(ies) will hold us (i.e. the IRA custodian/trustee) harmless with respect to taxes, penalties, and all other tax and non-tax consequences should the IRS or any other party contest this procedure.



There may be times when your trust will be the beneficiary of your IRA upon your death. You hereby authorize us to establish separate inherited IRAs for the beneficiaries of your trust if the trustee or trustees of such trust decide to terminate this trust. You hereby authorize the amendment of your trust to accomplish this result. An attorney for the trust shall furnish a legal opinion that under federal and state law that it is permissible for the trust to pass-through to its beneficiaries the trust's right to withdraw the IRA funds using the measuring life of the oldest beneficiary of the trust. In such case the IRA custodian shall establish separate inherited IRAs. You agree that your trust and the beneficiary(ies) of such trust will hold us (i.e. the IRA custodian/trustee) harmless with respect to taxes, penalties and all other a tax and non-tax consequences should the IRS contest this procedure.

We will transfer an inherited IRA to another IRA custodian or trustee, but only if the requesting beneficiary and the receiving IRA custodian/trustee will furnish us with a special transfer of inherited IRA administrative form so it is clearly acknowledged that it is an "inherited IRA" which is being transferred. Inherited IRAs are not eligible to be rolled over unless the beneficiary is your surviving spouse.

Each beneficiary will be required to instruct us in writing as to how he or she will withdraw funds from his or her inherited IRA so that the required minimum distributions rules will be satisfied.

A beneficiary who wishes to disclaim his or her interest must do so within nine months of your death or by the attaining the age of 21, if later, and must comply with the requirements of Code section 2518 and applicable state law. Your beneficiary will be required to furnish us a written disclaimer as prepared by his or her attorney.

A spouse beneficiary will be deemed to have elected the life distribution rule unless he or she expressly elects the 10-year rule on or before December 31 of the year following the year of your death. Your spouse beneficiary is ineligible to elect the 10-year rule if you die on or after your required beginning date.

We have forms available which can be used by your beneficiary to instruct us which option he or she elects and to establish a distribution schedule. Alternatively, the beneficiary may elect to use the alter-native certification method. The beneficiary must furnish us a written notice of his or her intent to use the alternative certification method. We will furnish the beneficiary a form which can be used to make this election, upon his or her request.

If your beneficiary fails to furnish us with his or her instruction as to how he or she will comply with the required distribution rules which apply to the situation, if applicable, then you hereby authorize us to mail a check to the beneficiary or to set-up a non-IRA savings account for such beneficiary and to deposit such funds into such account. We shall have the authority to make such a distribution by November 15 of the applicable year, but not the duty. Any beneficiary shall be solely responsible to make sure that required distributions take place on a timely basis so the 50% excise tax of Code section 4974(a) will not apply. A nonspouse beneficiary must remember that he or she has no rollover rights with respect to a distribution from an inherited IRA unless the exception for the return of an IRS levy would apply.

**1.8 Assignment Rights.** You, your beneficiaries, or anyone else may not borrow from your IRA, or pledge any portion of it as security or otherwise assign or create a lien on any part of your IRA account.

**1.9 Indemnification.** You hereby agree to release us from any and all liability with respect to your IRA except if such liability arises from our intentional misconduct or gross negligence.

**1.10 Sale of Trustee-Successor Trustee.** If another institution should purchase this, the trustee institution, or any of our IRA deposits, or we elect to change our corporate structure via a merger, consolidation or name change, then you hereby consent that the purchasing entity or the resulting corporate entity will be the successor trustee of your IRA funds with all duties and rights as listed herein.

**1.11 General Rule—No FDIC Insurance Coverage.** Normally FDIC insurance does NOT apply to assets held within a trust IRA because FDIC insurance applies only to certain deposit accounts. Your IRA has primarily been invested or will be invested in investments other than such deposit accounts and therefore will NOT be insured by the FDIC.

Stated another way, under your trust IRA, your IRA funds may be used to purchase mutual funds and other non-deposit investment products. The nondeposit investment products are not FDIC insured; are not deposits or other obligations of this institution and are not guaranteed by this institution; and involve investment risks, including loss or principal.

In some instances a portion of your IRA funds will be invested in deposits at this institution or another institution which is an "insured" institution. In such case, such deposits would be insured pursuant to the rules as established by the FDIC. A summary follows. Such IRA deposits are insured on a per institution basis and are insured separately from other deposit accounts, pursuant to the Federal Deposit Insurance Act, up to \$250,000. Any IRA, Roth IRA, most eligible deferred compensation plans described in section 457 of the Internal Code, a Keogh plan as described in Code section 401(d) and any individual account plan as defined in section 3(34) of ERISA shall be aggregated and insured in an amount not to exceed \$250,000. This aggregation requirement applies to a Keogh plan or an individual account plan only when you have the right to direct the investment of your account. Amounts in excess of \$250,000 are not insured.

The FDIC has stated that funds within an Inherited IRA are insured separately from funds within your personal IRA. The reason – the funds are held in a different right and capacity.

**1.12 Special Terms Regarding SEP-IRA Contributions.** Your IRA may accept SEP-IRA contributions which are made either by your employer or, if you are self-employed, by yourself. You hereby acknowledge that we have no responsibility or duty to determine your eligibility for such contributions or the correctness of the contri-

tribution amount. This is true even if we furnished you a copy of the IRS model Form 5305-SEP or Form 5305A-SEP or SEP prototype. You also acknowledge that you could well have excess IRA contributions if your employer (or you as the employer) makes a mistake as to which employees of the sponsoring business are entitled to be allocated a share of the employer contribution and the amount of each allocation. Other administrative errors could also occur. Therefore, you agree to hold us harmless with respect to any and all adverse tax consequences (e.g. excess contributions) which arise or may arise as a result of your employer (or you as the employer) making such administrative error(s).

**1.13 Reports.** Each year we will provide you or your beneficiary with one or more reports showing the fair market value and the activity in your IRA for the preceding year as required by IRS regulations and pronouncements.

You agree that we may furnish these reports by either providing a print version or an electronic version of the reports.

**1.14 Reporting Errors.** You or your beneficiary must carefully review each report for any errors. You are to notify us immediately if there are any errors. If you do not tell us of any errors within 90 days after the date we mailed the report, we are relieved of any responsibility for the error.

**1.15 Corrections of Errors.** We shall have the right to correct any error we make with respect to your IRA unless IRS rules and procedures would not permit us to do so. Such errors include both reporting errors and non-reporting errors.

**1.16 Special Agreement Regarding Prohibited Transactions.** You acknowledge that the prohibited transaction rules set forth in Code section 4975 are complex and can result in harsh tax consequences. Generally, if you or your beneficiary engage in a prohibited transaction in connection with your traditional IRA account at any time during the year, the account stops being an IRA as of the first day of that year. Therefore, you expressly agree that you will consult with your attorney or tax advisor prior to any proposed transaction which might be a prohibited transaction. You shall furnish us with an attorney's written opinion that a prohibited transaction will not occur on account of the proposed transaction. You agree to hold us harmless for any prohibited transaction which occurs unless we would be principally at fault.

Generally, a prohibited transaction is any improper use of your traditional IRA account or annuity by you, your beneficiary, or any disqualified person.

Disqualified persons include your fiduciary and members of your family (spouse, ancestor, lineal descendant, and any spouse of a lineal descendant).

The following are examples of prohibited IRA transactions.

- Borrowing money from it.
- Selling property to it.
- Receiving unreasonable compensation for managing it.
- Using it as security for a loan.
- Buying property for personal use (present or future) with IRA funds.

**1.17 Fiduciary.** For these purposes, a fiduciary includes anyone who does any of the following.

- Exercises any discretionary authority or discretionary control in managing your IRA or exercises any authority or control in managing or disposing of its assets.
- Provides investment advice to your IRA for a fee, or has any authority or responsibility to do so.
- Has any discretionary authority or discretionary responsibility in administering your IRA.

Current law provides for a 5-part test to determine if a person is a fiduciary. Under this rule a person is a fiduciary only if he or she:

1) makes recommendation on investing in, purchasing or selling securities or other property; or gives advice as to their value; 2) on a regular basis; 3) pursuant to a mutual understanding that the advice; 4) will serve as a primary basis for investment decisions; and 5) will be individualized to the particular needs of the IRA or plan.

A person who does not meet all five conditions is not a fiduciary.

**1.18 Notices.** We may give a notice or report to you or your beneficiary by mailing it to you or your beneficiary at the address or email address last furnished to us. The notice or report is considered given when it is furnished by either an agent or us.

**1.19 Agents.** We may use agents to assist us in fulfilling our duties under this agreement. Such agents must abide by applicable federal privacy laws and our policies. Access to your personally identifiable financial information is limited to the employees of the agent who have been retained to enter data so that various IRS reporting forms and statements and other non-IRS reports and statements may be prepared.

**1.20 Contribution Limitations and Procedures.** For any tax year, we will only accept contributions to your IRA which do not exceed the maximum dollar amount which a person may be eligible to contribute for federal income tax purposes (see Disclosure Statement Section 3.2). However, if you provide us with a certification, we may accept a rollover contribution, a SEP contribution, a recharacterized contribution, a transfer contribution, or one of the special types of recontributions as authorized by the tax laws. Your contribution will be reported as a contribution for the year in which it is made, unless you clearly instruct us, in writing, that it is for the prior year. This procedural rule also applies to a direct deposit of your tax refund into your traditional IRA.

**1.21 Fees.** You agree to pay us the fees specified in our current schedule of fees, if any, for establishing, maintaining and administering your IRA. We may replace or change our fee schedule at any time, upon giving you 30-days written notice. You hereby authorize us to deduct these fees from your IRA assets and to surrender or sell such IRA assets at our discretion to pay any fee of which you have been notified, and which remains unpaid 30 days thereafter. However, in the case of an administrative fee, we will allow you to pay such fee with non-IRA funds, but we have no duty to inform you of this option other than herein.

If your IRA is escheated to a state we will have the discretion to charge a \$50 fee. In addition, we will have the discretion to charge a \$50 fee if we use the IRS missing person programs or similar programs to find you or your beneficiary or to try to find you or a beneficiary. If state law does not permit such fee or fees, then these fees shall not apply. You expressly authorize us to conduct a search if we have not had contact with you for a period of 12 months.

**1.22 Termination and Resignation as Trustee.** We may resign or terminate our position as trustee of your IRA at any time by giving you written notice. You may then instruct us in writing to transfer your IRA assets to another IRA trustee if done within 30 days of our written notice. If you fail to so instruct us in writing within 30 days of our written notice, the IRA assets will be paid to you by mailing a check to you or by depositing such funds into a non-IRA checking account or savings account which you maintain with us. In addition, if you do not maintain such a non-IRA checking or savings account, then you hereby grant us the authority to establish a non-IRA savings account to receive this transfer.

If the IRS would determine that we have failed to perform our duties as the IRA custodian, the IRS upon giving you notice may require that you substitute a new IRA custodian or trustee.

**1.22A Resignation and/or Change in the Trustee After Your Death.** Unless you restrict your beneficiary's right to make investment decisions and his, her, its right to select and appoint a new financial institution to serve as the successor IRA trustee he, she, or it is entitled to have a direct transfer of the inherited IRA. Both the existing IRA trustee and the successor IRA must mutually prepare and sign the direct transfer form and then make the transfer accordingly.

**1.23 Amendments.** We may amend this agreement at any time in order to meet the requirements of the tax laws or regulations. We will send you a copy of any such amendment. We may also furnish the amendment by electronic means. You also agree that we may amend any provision of Article VIII and it will become effective 30 days after it is mailed to you or your beneficiary.

**1.24 Good Faith Payments.** We are not liable for any payments we make in good faith. We can rely fully on any information or direction you give us or on any document which we believe sufficient to determine a person's identity. We can rely on the latest beneficiary form in our possession. We may presume that a beneficiary is fully competent until we are told otherwise. If a beneficiary is a minor or is incompetent, we may make payments to the beneficiary's legal representative, or to the person with whom the beneficiary resides or to the beneficiary directly, notwithstanding state law to the contrary.

**1.25 Withholding Payments and Resolution of Disputes.** We shall have the right to withhold payments from your IRA assets if there is any dispute or uncertainty with respect to these assets. For example, disputes could arise in a divorce situation, or different individuals could claim that they were entitled to be paid as your beneficiaries. This right of ours to withhold payment is expressly authorized until the dispute or uncertainty is settled to our satisfaction by all of the parties. We shall have the right (but not the duty) to request a judicial determination as to ownership of the assets at any time from a Court of law. The Court's determination shall be binding upon us, you and all persons claiming an interest in the assets. You expressly authorize and agree that we have the right to be paid (i.e. deduct) from your IRA assets any fees and expenses, including but not limited to, legal and accounting fees, whether internal or external, associated with resolving any dispute.

**1.26 Legal Claims Against Your IRA.** We will attempt to notify you if we are served with any type of legal process which affects or might affect your IRA. The provisions of section 1.25 will apply to this situation except rather than request a judicial determination as to the ownership of the assets there would be a request to determine the validity of the legal process against your IRA assets. Your IRA will be responsible for all fees and expenses associated with responding to the legal process claim.

**1.27 Transfers and Rollovers.** We reserve discretion whether or not we will transfer your IRA assets to another IRA custodian or trustee. We will generally require the other IRA custodian/trustee to sign our IRA transfer form or use a transfer form we find acceptable. With respect to rollovers from 401(k) plans, other employer sponsored plans or IRAs, you should receive a written form from the paying entity that you are eligible to directly rollover or rollover such distribution. You have the primary duty to determine your best interests are served by making your rollover contribution. You also have the duty to determine that you comply with the numerous rollover eligibility rules, including the 60 day rule and the rule that authorizes a person to rollover only one IRA distribution within a 365 day time period commencing with the distribution.

The rollover and direct rollover rules are complicated. You should consult with your tax adviser. The new rollover rules are discussed in the Disclosure Statement.

In the case of a transfer contribution or a rollover contribution it may be in kind or in cash.

In the case of a transfer distribution it may be in kind or in cash.

**1.28 Authority to Deduct Taxes.** In our sole discretion, you authorize us to deduct and pay from your IRA assets the amount necessary to pay any and all taxes which relate to this IRA for which it may be liable.

**1.29 Express Duty to Notify Us When You Become an Expatriate.** You acknowledge that you have the express duty to notify us (your IRA custodian) of your expatriation date when you become an expatriate or covered expatriate. In general, an expatriate is either a United States citizen who has relinquished his or her citizenship or is a long term resident who ceases residence in the United States.

You agree to complete such administrative forms as we believe necessary. In our sole discretion, we will have the right to deduct and pay from your IRA assets any amount which reasonably might be owed to the United States Treasury regarding your expatriation. Refer to section 4.5.K for a summary.

**1.30 Power of Attorney.** You may designate in writing one or more individuals to act as your power of attorney with respect to your IRA. He or she will have the full authority to make contributions, take distributions and take other actions with respect to your IRA on your behalf. There is one exception. He or she will not have the authority to name himself or herself as a beneficiary unless the power of attorney expressly grants this authority. You agree that this power of attorney continues in full force and effect even if you become incapacitated or unable to conduct your own affairs. You agree to assume all liability and responsibility for the acts of your power of attorney or for his or her failure to act. We shall have no liability for any loss of any kind incurred as a result of actions taken by your power of attorney. We shall have no duty or obligation to question any direction or instruction given by your power of attorney, including taking a distribution closing your IRA. This written power of attorney shall be furnished to us while you are alive. We must find it acceptable. We may rely on your power of attorney designation until we have been notified in writing that you have either revoked or changed such power of attorney. If we have a valid tax or business reason, we may decline to follow a direction or instruction as given by your power of attorney. The power of attorney designation is revoked by your death. The power of attorney no longer has any power to act with respect to your IRA once you die. You agree to inform your power of attorney that he or she has the duty to inform us in writing of your death, if he or she has knowledge of your death. We are not liable for the acts of your power of attorney after your death unless we have received written notification of your death.

**1.31 Required Information to Open this IRA.** When opening an IRA or any other banking account, you are required to provide your name, address of residence, date of birth, and your social security number or other tax identification number. We may ask for additional information to allow us to verify your identity. These requirements are designed to allow a financial institution to participate in the public policy goal of allowing the government to effectively fight the funding of terrorism and money laundering activities.

**1.32 Effective Date.** The effective date of this IRA plan agreement is the date that the IRA custodian signs or accepts the IRA application of the depositor.

**1.33 Counterparts.** The IRA application may be signed in any number of copies, each one shall be deemed to be an original even though the other copies are not available.

**1.34 Withholding of State Income Tax.** If you are a resident of a state which has income tax laws, then we will withhold income tax for such state if we are required by law to do so or if we choose to. In general, we will withhold income tax for a state only if we have the minimal contacts with such state so we are required to do so.

**1.35 Notice and Address Change.** You and your beneficiaries must deliver or mail any required information to our office unless we ask that you send it elsewhere. Any notice or election is effective only upon actual receipt. You or your beneficiaries must notify us of any change in address.

## **2. General Provisions and Special Law Changes**

**2.1 Entire Agreement/Reproductions.** This agreement is made up of two documents: (1) the application form and (2) the IRS model Form 5305-A plan agreement along with Article VIII. You and we have received or retained a copy of these documents. You also acknowledge the fact that we have given you an IRA disclosure statement. A copy of these documents shall be admissible in evidence in any judicial or administrative proceeding as if they were originals. This agreement contains the entire agreement of the parties. It may not be changed orally; you and we must agree to any changes according to the procedure set forth in Section 1.23.

**2.2 Controlling Law.** The laws of the state in which our principal office is located will govern this agreement for purposes of the relationship between us (i.e. the traditional IRA custodian and the traditional IRA account holder or the inheriting beneficiary). However, if controlling law must be determined for another reason, then the laws of the state of the account holder's domicile shall govern this agreement.

**2.3 Waiver of a Breach and Severability.** Your waiver or our waiver of a breach of any provision of this agreement by the other party shall not operate or be construed as a waiver of any subsequent breach. If any provision of this agreement is held to be illegal or nonenforceable, the remaining provisions shall be construed as if that provision had not been included.

**2.4 Privacy Policies.** We will furnish you our privacy policies as required by applicable banking laws. We hereby incorporate into this Agreement the terms of our Privacy Policies.

**2.5 Special Plan Agreement Changes for the IRA Law Change Made by the Heroes Earned Retirement Opportunities Act.** To the extent necessary, the previous provisions are modified to authorize the special IRA tax benefits allowed under the Heroes Earned Retirement Opportunities Act. These changes are discussed under Section 4.4.A of the Disclosure Statement.

**2.6 Special Plan Agreement Changes for the IRA Law Changes Affecting Certain Reservists as Set Forth in the Pension Protection Act of 2006.** To the extent necessary, the previous provisions are modified

to authorize the special IRA tax benefits relating to certain reservists. These changes are discussed under Section 4.4.F(5) of the Disclosure Statement. In general, certain reservists are entitled to recontribute funds during a 2-year time period. The standard 60-day rollover period will not apply.

**2.7 Special Plan Agreement Changes Authorizing Tax-Free Charitable Distributions.** To the extent necessary, the previous provisions are modified to authorize the special IRA tax benefits relating to tax-free charitable distributions. These changes are discussed under Section 4.5.J(7) of the Disclosure Statement.

**2.8 Special Plan Agreement Changes Authorizing a New Type of Inherited IRA as Set Forth in the Pension Protection Act of 2006.** To the extent necessary, the previous provisions are modified to authorize the special IRA tax benefits relating to the new type of inherited IRA arising from direct rollovers of the accounts of nonspouse beneficiaries. These changes are discussed under Section 3.10 of the Disclosure Statement.

**2.9 Various Contribution Amounts, Income Limits and Limits Relating to the Saver's Tax Credit are to be Adjusted for Cost of Living Beginning, in General, in 2007, as Set Forth in the Pension Protection Act of 2006.** To the extent necessary, the previous provisions are modified to authorize these adjustments. These changes are discussed in the Disclosure Statement.

**2.10 Special Plan Agreement Changes Authorizing IRA Funds to be Transferred Tax-Free to Health Savings Accounts.** On or after January 1, 2007, a person who is eligible to make an HSA contribution, who has funds within a traditional IRA or a Roth IRA may make a special election once during their lifetime to transfer a certain amount from their IRA to their HSA. This type of special transfer is called a qualified HSA funding distribution. Such an election, once made, is irrevocable. The amount transferred in such a direct trustee-to-trustee transfer will be excluded from his or her income. (See section 4.5.J(6) for discussion of this special tax-free transfer.)

**2.11 Special Plan Agreement Changes for Special Rollover Contributions Arising from Exxon Valdez Litigation.** To the extent necessary, the previous provisions are modified to authorize the special rollover contributions arising from the Exxon Valdez litigation rules as set forth in the Emergency Economic Stabilization Act of 2008. These changes are discussed in Section 4.4.F(7) of the Disclosure Statement.

**2.12 Special Plan Agreement Changes Authorizing Rollovers of Airline Payments to Traditional IRAs and Re-characterizations of Previous Rollovers of Airline Payments to Roth IRAs.** To the extent necessary, the previous provisions are modified to authorize the special rollover contributions and transfer contributions as authorized by the FAA Modernization and Reform Act. This Act was signed into law on February 14, 2012. These changes are discussed under Section 4.4.F(7) of the Disclosure Statement.

**2.13 Special Plan Agreement Changes for Laws Enacted in 2017 Relating to Certain 2016/2017 Hurricanes and other Federally Declared Disasters.** To the extent necessary, the previous provisions are modified to authorize the special IRA tax benefits made by the Tax Cuts and Jobs Act of 2017 and the Disaster Tax Relief and Airport and Airway Extension Act of 2017. These changes are discussed under section 4.5.I of the Disclosure Statement. One of the primary changes is, a qualified individual is authorized to roll over a qualified hurricane disaster distribution within a 3-year time period rather than the standard 60 days as set forth in the Internal Revenue Code sections referenced in Article I.

**2.14 Special Plan Agreement Changes for IRA Laws Enacted By The Tax Cuts Act As Signed Into Law By President Trump on December 22, 2017.** To the extent necessary, the previous provisions are modified effective for tax years commencing after December 31, 2017 to impose the restriction that a person who makes a Roth IRA conversion in 2018 or subsequent years is unable to recharacterize it. And there is a new rollover rule for certain plan loan offset amounts. These changes are discussed in the IRA Disclosure Statement.

**2.15 Special Plan Agreement Changes for IRA Laws Enacted By The Bipartisan Budget Act of 2018 as signed into law by President Trump on February 9, 2018.** To the extent necessary, the previous provisions are modified effective for tax years commencing after December 31, 2017 to authorize the new rollover rule for an IRA owner who has had their IRA levied by the IRS and then the IRS has had to return some or all of the levied funds. Also victims of the California fires are to receive the special tax benefits as summarized in section 2.13. These changes are discussed in the IRA Disclosure Statement.

**2.16 Special IRA Plan Agreement Changes for IRA Law Changes Enacted by the SECURE Act as incorporated into the Further Consolidated Appropriations Act of 2020 as signed into law by President Trump on December 20, 2019.** To the extent necessary the preceding IRA plan agreement provisions are modified to adopt the IRA changes authorized by the Further Consolidated Appropriations Act of 2020. In general, these changes apply for tax year commencing after December 31, 2019. The following changes (and also others) are discussed in the IRA Disclosure Statement. An individual with compensation regardless of age is eligible to make a traditional IRA contribution. Being age 70½ or older no longer makes an individual ineligible to make a traditional IRA contribution. From 1975-2019 a person who attained age 70½ was required to take an RMD for the year he or she attained age 70½ and all subsequent years as long as living. The 70½ age is changed to age 72. The rules applying to inherited IRAs have changed radically. In general, with respect to an IRA account holder dying on or after January 1, 2020, a nonspouse beneficiary who is more than 10 years younger than the IRA owner will have 10 years in which to close the inherited IRA. The rules for spouse beneficiaries have not changed. These rules changes are complex and you will wish to discuss with your legal and tax advisers. There are two new exceptions to the 10% additional tax of Code section 72(t), certain adoption and birth expenses and certain disaster distributions. There are two new rules regarding compensation for IRA contribution purposes. Certain taxable stipend payments and non-tuition payments are to be treated as compensation. Certain difficulty of care payments are also to be treated as compensation. There are special IRA rules for contributions and distributions if you are eligible to use the disaster related rules.

**2.17 Special IRA Plan Agreement Changes for IRA Law Changes as Enacted within the “CARES Act”.** “Coronavirus Aid, Relief and Economic Security Act” on Friday, March 27, 2020. To the extent necessary the preceding IRA plan agreement provisions are modified to adopt the IRA changes authorized by the CARES Act. In general, these changes apply for the tax year commencing after December 31, 2019. The following changes are discussed in the IRA Disclosure Statement. RMDs for 2020 are waived for both living IRA accountholders and beneficiaries. 2020 is not to be considered in applying the 5-year rule for a beneficiary using the 5-year rule when the IRA accountholder had died before January 1, 2020. Special tax relief was also enacted within the CARES Act related to the qualified disaster related to Coronavirus (COVID-19) for the time period commencing on or after January 1, 2020, and before December 31, 2020.

The IRS has issued guidance changing the tax filing deadline for 2019 and the deadline for making IRA contributions for 2019 to July 15, 2020 from April 15, 2020.

**2.18 Additional Discussion For An IRA Beneficiary Because the IRS Has Not Yet Adopted A Final RMD Regulation.** The IRS issued a proposed regulation on February 24, 2022, discussing the new RMD rules on account of the changes made by the SECURE Act which was enacted in December of 2019. The IRS requested the public submit their comments. The IRS also held a public meeting on June 15, 2022 and parties testified. The IRS will be issuing its final regulation in late 2022 or in 2023. The IRS still needs to furnish additional guidance as to how a beneficiary complies with the RMD rules for 2021 and 2022.

You may well wish to consult with your tax adviser to learn whether or not the IRS has adopted its final RMD regulation. It had not done so as of June 30, 2022.

Some of the IRS' proposed rules are complicated and change current rules. There are a number of proposed major changes. Time will tell if these proposed changes are adopted. We discuss two. First, a surviving spouse eligible to treat their deceased spouse's IRA as their own would be required to make their election by a deadline. Currently there is no deadline. The eligible spouse may make the election at any time even though the eligible spouse initially elected to use the life distribution rule or the 10-year rule. The proposed deadline for the election would be: the later of (1) December 31 of the calendar year in which the surviving spouse reaches age 72 or (2) December 31 of the calendar year following the year the deceased IRA owner dies. Second, a beneficiary of an IRA owner who dies after December 31, 2019 and after their required beginning date must use a life distribution rule commencing the year after the IRA owner died. That is, a beneficiary is not permitted to use the 10-year rule when the IRA owner dies on or after their required beginning date. If the beneficiary is not an eligible designated beneficiary, the 10-year rule also applies unless a special rule imposes a sooner deadline. For example, Jane Doe age 77 dies in 2022. Her son Mark age 50 is her beneficiary. He will use the life distribution rule for years 2023-2031 and he must close the inherited by December 31, 2032. If the beneficiary is an eligible designated beneficiary there is no requirement to close the inherited IRA under the 10-year rule.

## Disclosure Statement

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### 1. Introduction and Purpose

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This IRA Disclosure Statement is an explanation of the rules which govern your regular or traditional IRA because that is the type of IRA which you have established. A SEP-IRA is a traditional IRA to which a SEP-IRA contribution is authorized.

You have not established a Roth IRA, or a SIMPLE-IRA. You would need to sign other special documents if you would like these special types of IRAs.

This summary or explanation of your traditional IRA is intended to be a nontechnical explanation. It explains the basic rules and tax considerations in establishing and maintaining a traditional IRA. However, as with any plan or program created by the Internal Revenue Code, these rules are complicated. Note that this is a summary and you may well wish to conduct additional research. See section 5.2 about obtaining assistance from the IRS. You may also visit the IRS website, [www.irs.gov](http://www.irs.gov).

### 2. Revocation Procedure

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You are entitled to revoke or cancel your IRA for any reason within seven (7) calendar days of the day you established it. You revoke your IRA by mailing or delivering a written notice to the Custodian's representative as shown on the application page. If you mail your notice, it is deemed mailed on the postmark date if you deposited it, properly addressed, in the United States mail with first class postage. Your timely revocation within the first seven days will mean your original contribution will be returned to you without any adjustment. Be advised that the current procedures of the Internal Revenue Service require us to report your contribution and distribution even if you exercise this right to revoke your IRA.

### 3. Statutory Requirements of an IRA

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**3.1 Cash Contributions.** Your traditional IRA contribution must be in cash (or cash equivalent, and cannot be property) unless it is a rollover contribution or a recharacterized contribution.

**3.2 Contribution Limits.** The contribution to your traditional IRA for any taxable year cannot exceed the lesser of the amount set forth in the Chart of IRA Contribution Limits as set forth below, or the amount of your qualified compensation, which is defined to include salaries, wages, self-employment income and other personal service income included in your gross income. Compensation does not include income from property. If you are self-employed, your net earnings must be reduced by any amount allowed as a deduction on your behalf under a qualified plan. Compensation includes any amount includable as alimony in your gross income

under section 71(a)(1) and non-taxable military combat pay. There is additional discussion of the compensation topic at section 4.4A.

#### Chart of IRA Contribution Limits

<b>Tax Year</b>	<b>Amount If Not Age 50 or Over</b>	<b>Amount If Age 50 or Over</b>
2008-2012	\$5,000	\$6,000
2013-2018	\$5,500	\$6,500
2019-2022	\$6,000*	\$7,000*

\*The amounts for subsequent years may be larger than \$6,000 and \$7,000 as they may be adjusted by a COLA.

**3.3 Custodian/Trustee Requirements.** The custodian or trustee of your traditional IRA must be a bank, trust company, savings and loan association, a federally insured credit union, or other entity approved by the Secretary of the Treasury.

**3.4 No Life Insurance.** Your contributions or any funds in your IRA cannot be invested in life insurance to any extent.

**3.5 Nonforfeitable.** Your contributions and IRA funds are nonforfeitable.

**3.6 Segregated Funds.** Your IRA funds must be kept separate from other property, although these assets may be combined with other property in a common IRA trust fund.

**3.7 Distributions which must be taken by Age 72, as applicable.** The following discussion is presented in question and answer format.

**Why are there federal tax rules mandating required minimum distributions from a traditional IRA, SEP-IRA and SIMPLE-IRA?** The primary purpose of a traditional IRA is to allow you and others to save for retirement and then use the funds for retirement and also to accumulate funds for a beneficiary. Therefore, the tax laws require an IRA accountholder to take a required minimum distribution (RMD). After the IRA accountholder dies, the beneficiary or beneficiaries will be required to take required distributions. There are specific formulas for determining how much must be withdrawn, and when. These amounts are called "required minimum distributions" (RMDs).

Congress in 1974 decided that the year a person attains age 70½ is a reasonable time to require a person to commence withdrawals from his or her traditional IRA, SEP-IRA or SIMPLE IRA.

Congress and President Trump decided in December of 2019 that the age 70½ requirement should be changed to age 72. One reason for this change is that IRA owners are generally living a little longer.

**When did the new age 72 rule become effective?** Due to the waiver, it became effective for 2021. Any person attaining age 72 in 2021 was required to take an RMD for 2021. The person's required beginning date was April 1, 2022.

**What happens if I fail to withdraw the required minimum distribution?** Current federal income tax law provides a penalty tax of 50% of the amount required to be distributed, but which was not. For example, if you failed to withdraw a required minimum distribution of \$1,000 for a given year, then you owe a tax of \$500.

**What are the tax consequences of receiving an RMD?** The general taxation rule for traditional IRAs will apply. A recipient (you or your beneficiary) will include the amount received in gross income for the year of receipt. You (or your beneficiary, if applicable) will pay taxes with respect to this amount at the marginal income tax rate which applies to you (or your beneficiary if applicable), unless a portion of the distribution is not taxable because it is comprised of basis.

**Must I withdraw all of my money because I am 72, or may I withdraw IRA funds over a number of years?** You are not required to withdraw all of your IRA funds in one year. You are permitted to set up a distribution schedule over a number of years, as long as you take each year your RMD amount or a larger amount.

As long as your money is in your IRA, it remains tax deferred, as do any earnings. By using periodic payments over a number of years, you spread your income out over the Payment schedule and typically will pay less tax.

#### 3.8 RMDs for Accountholders

**What is the basic RMD calculation?** There are actually two formulas which must be used to calculate the RMD amount. The RMD equals the IRA's balance as of the preceding December 31, divided by the distribution period set forth in the Uniform Lifetime Table or the Joint and Last Survivor Table.

##### Formula #1

$$\text{RMD} = \frac{\text{Account Balance}}{\text{Period from Uniform Lifetime Table}}$$

##### Formula #2

$$\text{RMD} = \frac{\text{Account Balance}}{\text{Period from Joint Lives Table}}$$

The account balance of the IRA as of December 31 of the previous year is adjusted for outstanding rollovers and transfers.

For example: the fair market value of your IRA as of 12/31/20 is \$15,000. Your age is 77 in 2021. The divisor from the Uniform Lifetime Table is 21.2. Your required minimum distribution for 2021 is \$15,000/21.2, or \$707.55.

**Do all distributions count towards satisfying the RMD amount?** Almost all distributions do count, even the distribution of nondeductible contributions are counted. However, "corrective distributions" pursuant to Code section 408(d)(4), 408(d)(5), 408(k)(6)(C) or similar items defined do not reduce the RMD amount.

**What "age" is used to determine the distribution period (i.e. life-expectancy factor) for the first year?** The age to be used is the age you attain as of December 31.

**Has the IRS issued a final regulation updating the life expectancy tables?** Yes. On November 8, 2020, the IRS issued new tables which update the life expectancy and distribution tables used for purposes of determining minimum required distributions. These updated tables apply for the 2022 RMD calendar year.

**What is the Uniform Lifetime Table?** It is the table which the IRS has instructed be used for determining the distribution period for lifetime distributions to an IRA accountholder when his or her spouse is either not the sole designated beneficiary, or is the sole beneficiary, but is not more than 10 years younger than the accountholder. This is a joint life-expectancy table created by the IRS using the age of the IRA accountholder and a hypothetical beneficiary who is 10 years younger than the accountholder.

#### Uniform Lifetime Table

Age of IRA Account-holder	Distribution Period (in years)	Age of IRA Account-holder	Distribution Period (in years)
72	27.4	97	7.8
73	26.5	98	7.3
74	25.5	99	6.8
75	24.6	100	6.4
76	23.7	101	6.0
77	22.9	102	5.6
78	22.0	103	5.2
79	21.1	104	4.9
80	20.2	105	4.6
81	19.4	106	4.3
82	18.5	107	4.1
83	17.7	108	3.9
84	16.8	109	3.7
85	16.0	110	3.5
86	15.2	111	3.4
87	14.4	112	3.3
88	13.7	113	3.1
89	12.9	114	3.0
90	12.2	115	2.9
91	11.5	116	2.8
92	10.8	117	2.7
93	10.1	118	2.5
94	9.5	119	2.3
95	8.9	120	2.0
96	8.4		

**What life-expectancy table is used if the Uniform Lifetime Table is NOT used?** It is the Joint and Last Survivor Table. You may find it in IRS Publication 590-B or in the final RMD regulation. The only time this table is used is if your spouse is your sole beneficiary at all times during the distribution calendar year and he or she is more than 10 years younger than you are.

**When is the determination made that my spouse is my sole beneficiary and is more than 10 years younger?** It is made on January 1 of each required distribution year.

**What happens if there is a change in my marital status after January 1?** If your spouse would die after January 1, or you become divorced after January 1, you will still be treated as married for such year. However, you would not qualify to use the Joint Table for subsequent years unless you would re-marry and qualify again under the special rule.

**What happens if I designate a beneficiary other than or in addition to my spouse who had been my sole beneficiary during the distribution calendar year?** The RMD amount will need to be redetermined and it will be a larger amount, using the Uniform Lifetime Table.

**What is my required beginning date?** Your required beginning date is April 1 of the year following the year in which you reach age 70½ or age 72 as applicable.

**If my first distribution has to be withdrawn by April 1 of the year after the year I reach age 72 as applicable, when do I have to take additional distributions?** The distribution for the second year and every subsequent year must be made by December 31 of such year. The deadline for subsequent distributions is December 31 of each subsequent years.

**May I withdraw more than my required minimum distribution?** Yes, you are always able to withdraw more, but only to the extent of your IRA account balance.



**Must the distribution schedule I establish also be the same as my required minimum distribution schedule?** No. The rule is that the amount distributed each year must always equal or exceed your RMD amount for such year.

**Am I required to take a minimum distribution from each IRA I have?** No. The minimum distribution amount must be calculated separately for each IRA you have. Under the final RMD rules, the IRA custodian must determine your RMD if you request it. However, you do not have to take a distribution from each IRA, as long as you satisfy the total minimum distribution amount from at least one IRA.

**Example:** Roberta is age 76 (distribution period of 22.0) in 2022, and she has four IRAs at four different IRA custodians:

<b>IRA Custodian</b>	<b>IRA Balance</b>	<b>RMD Amount</b>
First Bank	\$5,000.00	\$227.27
First Brokerage	\$15,000.00	\$681.82
Second Bank	\$30,000.00	\$1,363.64
Second Brokerage	\$20,000.00	<u>\$909.09</u>
Aggregate RMD TOTAL		\$3,181.82

Roberta can take the \$3,181.82 from the first IRA, the second IRA, the third IRA, the fourth IRA or in any combination, as long as she satisfies her required minimum distribution of \$3,181.82. If Roberta withdraws \$3,181.82 from the IRA at First Bank, then she should inform the other three custodians in writing that she has satisfied her RMD requirement by withdrawing funds from the IRA at First Bank.

Only the RMDs of "like-kind" IRAs may be aggregated for purposes of this special distribution rule.

Examples of "like-kind" IRAs:

1. Traditional IRAs of a person who holds them as an accountholder;
2. Traditional IRAs of a person who holds them as a beneficiary, as long as related to the same deceased IRA accountholder (i.e. an inherited IRA); and
3. Roth IRAs of a person who holds them as a beneficiary of the same deceased Roth IRA accountholder (i.e. an inherited Roth IRA).

A distribution from an IRA which is not of the same type may not be used to satisfy the RMD requirement of another type of IRA. For example, if John Doe inherits two traditional IRAs from his dad and one traditional IRA from his mom, then he may aggregate the two IRAs he inherited from his dad, but he may not aggregate these two with the inherited one from his mom.

Traditional IRAs, Roth IRAs, and section 403(b) plans are three different types, so the three may not be aggregated. This special aggregation rule does not apply to distributions from Qualified Plans. There must be a separate distribution from each qualified plan, and a distribution from an IRA can never be used to satisfy an RMD for a QP, or vice versa.

**What rules apply if I wish to roll over funds from an IRA to a different IRA? Are there any special RMD rules with which I must comply?** Yes. The rules applying to rollovers have not changed. A person is ineligible to roll over an RMD. If one does, then it will be an excess contribution.

The IRS rules provide that the first money out of your IRA for a given year is defined to be your required distribution for such year, until your requirement is met. Therefore, if you were to take a distribution early in the year, thinking you could roll it over and later take your RMD amount, the IRS would consider the distribution to be your RMD amount, and rolling over an RMD amount is not permissible.

**What rules apply if I wish to transfer funds from an IRA to a different IRA, and am I required to take a required distribution if I have not yet done so?** You may transfer your entire IRA balance (including any RMD for such year) from one IRA to another IRA. You must be aware that the two IRA custodians (i.e. sending and receiving) are not responsible to redetermine your RMD amount just because you transfer funds out of their IRA or transfer funds into their IRA. This means that you, the accountholder, will be responsible to make sure that you withdraw your RMD.

**What is an RMD Notice?** Every IRA custodian or trustee is required to send you an RMD notice by January 31 of each year informing you what your required distribution amount is for each IRA which you maintain with such IRA custodian or trustee. The annual RMD notice must also inform you of your deadline for taking your RMD. Alternatively, the IRA custodian must advise you that you must take an RMD with respect to a specific IRA plan agreement, inform you of your deadline, offer to calculate the RMD upon your request, and then, if requested, calculate the RMD and provide it to you. The IRA custodian may choose to inform you that you do not need to take a distribution from that specific IRA as long as you were using the alternative certification method and take the RMD amount for that IRA from another IRA plan agreement.

**Is my IRA custodian required to give the IRS any information about my RMD?** Yes. The IRA custodian must, on an annual basis, indicate on the Form 5498 if an RMD is required. At the present time, the IRS is not requiring that the actual RMD amount be reported to the IRS.

**What is an IRA qualified longevity annuity contract (IRA QLAC)?** It is a special type of annuity sold by an insurance company which you may wish to consider as an IRA investment when you are subject to the

required distribution rules. In July of 2014 the IRS adopted a final regulation authorizing qualified longevity annuity contracts (QLAC) for traditional IRAs, SEP-IRAs and SIMPLE-IRAs. In general, IRA funds invested in a QLAC not in payout status are exempt from the RMD calculation.

#### **4. Federal Income Tax Consequences**

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**4.1** Generally you may add up to the applicable contribution limit of earned income to your IRA account each year and have it be either fully or partially tax deductible (see Deductibility Chart). If your contribution is tax deductible, then you receive two tax benefits: (1) an immediate tax savings because you will pay fewer taxes because of the deduction and (2) the earnings generated by the IRA funds are not taxed until distributed. If your contribution is not tax deductible, you still receive the tax benefit of tax deferral on the IRA's earnings. You may also qualify for a tax credit as discussed later.

**4.2 Deferred Taxation.** Your IRA funds (whether contributions or related earnings) are not taxed until actual distribution unless (1) you engage in a prohibited transaction, (2) you invest in collectibles, (3) your contribution is nondeductible, (4) you pledge your IRA as security, or (5) you engage in a trade or business with these funds so that the unrelated business income tax imposed by Internal Revenue Code section 511 applies. If you engage in a prohibited transaction at any time during the year, your IRA funds will be treated as if they were distributed on January 1 of that year. IRC section 4975 names the prohibited transactions. Some examples: (1) borrowing from your IRA; (2) selling property to your IRA; (3) using your IRA as security for a loan; or (4) receiving unreasonable compensation for managing your IRA. If any of your IRA funds are invested in collectibles after 1981, the amount invested is considered distributed to you in that year. Collectibles include tangible personal property such as artwork, rugs, antiques, metals, gems, coins, alcoholic beverages, etc. Exception #1: IRA funds may be invested in certain gold, silver, and platinum coins issued by the United States. Exception #2: IRA funds may be invested in any coin issued under the laws of any state. Exception #3: After December 31, 1997, an IRA may purchase certain gold, silver, platinum or palladium bullion. Such bullion must be in the physical possession of the IRA trustee or custodian. Such bullion must be of a fineness that a contract market requires for metals which may be delivered in satisfaction of a regulated futures contract.

**4.3 Establishment and Contribution Deadline.** You are able to establish a traditional IRA on or before April 15 of the following tax year unless the 15th falls on a Saturday or Sunday or there is a holiday recognized for federal income tax purposes. In some years the Emancipation Day holiday as recognized in Washington D.C. will result in the filing deadline occurring on a day after April 15.

You must make your contribution of regular or spousal contributions by the time prescribed by law for filing your Federal income tax return for such year, but determined without regard to extensions.

The deadline for tax year 2021 is April 15, 2022.

There are special disaster related tax rules arising from federally declared disasters. These special rules may modify the IRA contribution deadline in certain situations. These rules are briefly discussed later in this IRA Disclosure Statement. You will want to consult with your tax adviser regarding these special rules.

**Electronic Contribution of Federal Tax Refund.** The IRS has authorized a procedure to allow you to have all or a portion of your federal tax refund electronically deposited to your Traditional IRA rather than to your checking or savings account. You will need to complete Form 8888 and attach it to your tax return. Such a contribution will be processed as a contribution for the current calendar year unless you designate it in writing as being for the prior tax year.

**4.4 Types of IRA Contributions, Contribution Limits and Deduction Rules.** Various types of contributions may be made to an IRA: (i) regular; (ii) spousal; (iii) rollover; (iv) direct rollover; (v) late rollover; (vi) transfer; (vii) SEP-IRA; (viii) recharacterization; (ix) a repayment; (x) a repayment of a disaster distribution and (xi) any other contribution as authorized by law. The amount which you can deduct depends upon your contribution type. Be aware that neither you nor your employer are eligible to make a SIMPLE contribution or a Roth IRA contribution using this IRA agreement. You must use a special SIMPLE-IRA plan agreement, or a Roth IRA plan agreement to make any of these types of contributions. A contribution will be treated as a regular annual contribution unless you instruct otherwise and such contribution type would be appropriate.

**4.4.A Regular.** For 2021, you are eligible for a regular contribution if you have compensation (income earned from performing material personal services). For 2020 and subsequent years you are eligible to make a regular IRA contribution as long as you have compensation. You may also qualify for a contribution if you meet the special eligibility requirements for a rollover, transfer, SEP, recharacterization contribution, or an authorized repayment.

In general, if for some reason your income is not taxable for federal income tax purposes, then you are generally unable to use it to make an IRA contribution.

The regular or spousal contribution to your IRA for any taxable year cannot exceed the lesser of the amount set forth in the Chart of IRA Contribution Limits as set forth below or the amount of your compensation, which is defined to include salaries, wages, self-employment income and other personal service income included in your gross income. Compensation does not include income from property. If you are self-employed, your net earnings must be reduced by any amount allowed as a deduction on your behalf under a qualified plan, SEP or SIMPLE. Compensation includes any amount includable as alimony in your gross income under section 71(a)(1). As of January 1, 2009, the term compensation also includes any differential wage payment. This is any payment made by an employer to an individual with respect to the time he or she is performing service in the uniformed services while on active duty for a period of more than 30 days and which represents all or a

portion of the wages the individual would have received from the employer if he or she was performing service for the employer. Commencing on or after January 1, 2020, compensation includes certain taxable stipend payments and non-tuition fellowship payments, and difficulty of care payments.

The definition of compensation for purposes of being eligible to make an annual IRA contribution is clarified to make clear that compensation includes certain "difficulty of care payments." The general rule, in order to make an IRA contribution regardless if deductible or non-deductible, a person must have "taxable" income to support such contribution.

There is a special rule for a person who excludes from gross income under code section 131 certain. The person will be eligible to make a traditional IRA contribution. Such a person is eligible to make a non-deductible contribution to the extent of the lesser of the amount excluded or the maximum IRA contribution amount as reduced by the amount of compensation which is includible in income.

For example, Jane Doe, age 39, receives compensation of \$11,000 from certain "difficulty of care payments." Jane is able to exclude \$9,000 under section 131 and she includes \$2,000 in her taxable income. She is eligible to make a non-deductible contribution of \$4,000 (the lesser of \$9000 or \$6,000 less \$2,000).

The Heroes Earned Retirement Opportunities Act (HEROA), provides a special rule that an individual who has nontaxable combat-zone pay on or after January 1, 2004, may use such pay to make his or her IRA contribution.

#### Chart of IRA Contribution Limits

<b>Tax Year</b>	<b>Amount If Not Age 50 or Over</b>	<b>Amount If Age 50 or Over</b>
2008-2012	\$5,000	\$6,000
2013-2018	\$5,500	\$6,500
2019-2022	\$6,000*	\$7,000*

\*The amounts for subsequent years may be larger than \$6,000 and \$7,000 as they may be adjusted by a COLA.

**4.4.B Spousal.** You will be eligible to make or receive a spousal contribution if the following rules are satisfied:

- You and your spouse must each have your own traditional IRA.
- You must be married as of the end of the tax year (i.e. December 31).
- You must file a joint income tax return.
- You must have qualified compensation includable in gross income which is less than that of your spouse.

A spousal IRA is an IRA to which a spousal IRA contribution has been made. Due to a law change in 2013, spousal IRAs were renamed as Kay Bailey Hutchison Spousal IRAs.

Your annual traditional IRA contribution for 2021 and 2022 is limited to the lesser of \$6,000 or \$7,000, as applicable, or the sum of your compensation which is includable in gross income for such year plus the compensation of your spouse as reduced by your spouse's contribution to his or her own traditional IRA and Roth IRA. In addition, when your Roth IRA contribution is aggregated with your traditional IRA contributions and with the contributions of your spouse, the maximum permissible amount for all IRAs will be the lesser of 12,000, \$13,000 or \$14,000 for 2021 and 2022, as applicable, or 100% of your qualified combined incomes.

You should be aware that there is a combined limit for contributions to your traditional IRA (i.e. this IRA) and your Roth IRA, if any. The aggregate limit is also the lesser of 100% of your qualified compensation or the amount from the Chart of IRA Contribution Limits.

#### The IRA Deduction Rules

Although you may be eligible to make a regular or a spousal contribution, you may not be entitled to deduct the entire contribution.

How much of your IRA contribution will be deductible? The answer depends upon your tax-filing status, whether or not you and/or your spouse are covered by an employer-sponsored retirement plan at work, (i.e. whether or not you are an active participant) and your modified adjusted gross income (AGI). The amount you can deduct, in general, is the contribution limit amount as reduced by the amount you cannot deduct.

You are an "active participant" for a year if you are covered by a retirement plan. You are "covered" by a retirement plan for a year if your employer or union has a retirement plan under which money is added to your account or you are eligible to earn retirement credits. You are not considered an active participant if you are covered in a governmental plan only because of service as 1) an Armed Forces Reservist, for 90 days or less of active service, or 2) a volunteer firefighter whose accrued benefit does not exceed a certain amount. Your Form W-2 for the year should indicate your participation status. Also, IRS Publication 590-A and Notice 87-16 contain more information on these rules.

If you are single and you are not covered under an employer-sponsored retirement plan, then you are entitled to a full deduction to the extent of your contributions, regardless of your income.

If you are married and neither you nor your spouse are covered under an employer-sponsored retirement plan, then you are entitled to a full deduction to the extent of your contributions, regardless of your income.

If you are single and you are covered under an employer-sponsored retirement plan (i.e. you are an active participant), the following formula is used to determine the portion of your contribution which qualifies to be deducted. Your IRA limit (the lesser of 100% of your compensation or the applicable contribution limit) must be reduced by an amount which bears the same ratio as the excess of your adjusted gross income over a base dollar amount bears to \$10,000. The base dollar amount is \$66,000 for 2021 and also \$68,000 for 2022. In future years this amount will be increased by a cost-of-living factor. You can use the IRS worksheets in the Form 1040 booklet instructions or Publication 590-A to determine your partial IRA deduction. You are unable to deduct any portion of your IRA contribution if your adjusted gross income equals or exceeds \$76,000 for 2021 and also \$78,000 for 2022.

If you are married and both you and your spouse are covered under an employer-sponsored retirement plan, the following formula is used to determine the portion of your contribution which qualifies to be deducted. The IRA limit for each of you (the lesser of 100% of your compensation or the applicable contribution limit) must be reduced by an amount which bears the same ratio as the excess of your adjusted gross income over a base dollar amount bears to \$20,000. See the table below. This formula is also used if you are an active participant, but your spouse is not.

#### Schedule of Income Limit Changes for Married Filing Jointly

Year	Base Amt	Upper Amt
2020	\$104,000 -	\$124,000
2021	\$105,000 -	\$125,000
2022	\$109,000 -	\$129,000

If you are married and you are not an active participant, but your spouse is an active participant, then the following formula is used to determine the portion of your contribution which qualifies to be deducted. The IRA limit for 2020 (the lesser of 100% of your compensation or the applicable contribution limit (see Disclosure Statement Section 4.4.A)) must be reduced by an amount which bears the same ratio as the excess of your adjusted gross income over a base dollar amount of \$198,000, bears to \$10,000. For 2022, the base dollar is \$204,000.

Any amount determined under the above formulas which is not a multiple of \$10 shall be rounded to the next lowest \$10. However, an IRA accountholder will be able to deduct a minimum of \$200 as long as his or her AGI is not above the phaseout amount.

To compute your reduced IRA deduction, you must determine your "modified adjusted gross income." If you file Form 1040, refigure the amount on the page 1 "adjusted gross income" line without taking into account any of the following amounts: IRA deduction; student loan interest deduction; tuition and fees deduction; domestic production activities deduction; foreign earned income exclusion; foreign housing exclusion or deduction; exclusion of qualified savings bond interest shown on Form 8815, Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989 (For Filers With Qualified Higher Education Expenses); and exclusion of employer-provided adoption benefits shown on Form 8839, Qualified Adoption Expenses. This is your modified AGI.

A special rule provides that a married individual is not considered married for IRA purposes for any year in which the individual and the individual's spouse file separate returns and did not live together at any time during the tax year.

Any taxpayer (not just active participants) may elect on the tax return to treat an otherwise deductible contribution as nondeductible.

The following chart summarizes these contribution and deduction rules.

#### IRA Contribution Deductibility Chart for 2021

(for participants and/or spouses in employer-sponsored retirement plans.)

##### Amount of Modified AGI - (Combined modified AGI if married)

###### Single or Head of Household

Below \$66,000 or less—Entitled to full deduction

\$66,001-\$75,999.99—Entitled to prorated deduction amount

\$76,000 or more—No deduction permissible

###### Married - joint return, both are covered or qualifying widower

Below \$105,000 or less—Entitled to full deduction

\$105,001-\$124,999.99—Entitled to prorated deduction amount

\$125,000 or more—No deduction permissible

###### Married - joint return, but only you are covered or qualifying widower

Below \$105,000 or less—Fully Deductible

\$105,001-\$124,999.99—Entitled to prorated deduction amount

\$125,000 or more—No deduction permissible

**Married - joint return, but only your spouse is covered**

Below \$198,000 or less—Fully Deductible

\$198,001-\$207,999.99—Entitled to prorated deduction amount

\$208,000 or more—No deduction permissible

**Married Filing Separately**

Below \$10,000—Entitled to prorated deduction amount

\$10,000 or more—No deduction permissible

**IRA Contribution Deductibility Chart for 2022**

(for participants and/or spouses in employer-sponsored retirement plans.)

**Amount of Modified AGI - (Combined modified AGI if married)**

**Single or Head of Household**

Below \$68,000 or less—Entitled to full deduction

\$68,001-\$77,999.99—Entitled to prorated deduction amount

\$78,000 or more—No deduction permissible

**Married - joint return, both are covered or qualifying widower**

Below \$109,000 or less—Entitled to full deduction

\$109,001-\$128,999.99—Entitled to prorated deduction amount

\$129,000 or more—No deduction permissible

**Married - joint return, but only you are covered or qualifying widower**

Below \$109,000 or less—Fully Deductible

\$109,001-\$128,999.99—Entitled to prorated deduction amount

\$129,000 or more—No deduction permissible

**Married - joint return, but only your spouse is covered**

Below \$204,000 or less—Fully Deductible

\$204,001-\$213,999.99—Entitled to prorated deduction amount

\$214,000 or more—No deduction permissible

**Married Filing Separately**

Below \$10,000—Entitled to prorated deduction amount

\$10,000 or more—No deduction permissible

**Considerations for Making Nondeductible IRA Contributions.** You may be a person who has been or is eligible to make a “nondeductible” IRA contribution, but who has chosen not to. Even though you are ineligible to make a “deductible” contribution to a traditional IRA or make a contribution to a Roth IRA, you are eligible to make a nondeductible contribution to a traditional IRA. You may feel that the fact that the earnings of nondeductible IRA contributions are tax deferred is not a sufficient tax benefit to subject yourself to the administratively burdensome rules which apply to IRA distributions when there have been nondeductible contributions.

However, with the law change repealing the eligibility requirements for Roth IRA conversions, you may wish to reconsider whether or not you would benefit by making nondeductible IRA contributions and then making a conversion contribution. Because the rules are complex, you will want to discuss this possibility with your tax advisor.

**Determining One’s Traditional IRA Deduction and The Taxable Portion of One’s Social Security**

**Benefits.** There are rules that govern when Social Security benefits and Tier 1 Railroad Retirement benefits must be included in a taxpayer’s gross income. If you receive such benefits, then you must include a portion of these benefits in your gross income if your provisional income exceeds either of two threshold amounts. Your provisional income includes modified adjusted gross income (adjusted gross income plus tax-exempt interest plus certain foreign-source income) plus 50% of your Social Security or Railroad Retirement benefit.

If your provisional income exceeds the following applicable threshold amount – \$32,000 for married taxpayers filing joint returns, \$25,000 for unmarried taxpayers and \$0 for married taxpayers filing separate returns – then you are required to include in gross income the lesser of (1) 50% of your Social Security or Railroad Retirement benefit or (2) 50% of the excess of your provisional income over the applicable threshold level.

If your provisional income exceeds the following applicable threshold amount – \$44,000 for married taxpayers filing joint returns, \$34,000 for unmarried taxpayers and \$0 for married taxpayers filing separate returns, then you are required to include in gross income the lesser of (1) 85% of your Social Security or Railroad Retirement benefit or (2) the sum of 85% of the excess of your provisional income over the applicable threshold level plus the lesser of: (a) the amount determined using the applicable threshold described in the immediately preceding paragraph or (b) \$4,500 if you are unmarried, \$6,000 if you are married and filing jointly and \$0 if you are married but are filing a separate return.

The IRS has designed a number of special worksheets (see IRS Publication 590-A) for those traditional IRA accountholders who are active participants in an employer sponsored plan and/or who receive social security benefits. In some cases the social security benefits will need to be included in the individual's modified adjusted gross income and this will impact the deductible and nondeductible calculation. In similar fashion, the IRS has developed worksheets for when an individual is taking a distribution from his or her traditional IRA will have to include this amount in income which in turn may make some the social security benefits taxable (i.e. includable in income) and possible impact the deductible and nondeductible calculation.

**4.4.C Simplified Employee Pension (SEP) and Salary-Reduction SEPs.** Your employer may make a SEP-IRA contribution to your traditional IRA and such IRA is defined to be a SEP-IRA. You may be eligible for a SEP-IRA contribution even if you are older than age 70½. In general, your SEP-IRA contribution must not exceed the lesser of 25% of your compensation or \$58,000 for 2021 and \$61,000 for 2022. For subsequent years the \$61,000 may change since it is adjusted by a cost-of-living formula.

If you are self-employed, then you are both the employer and the employee and you may make a SEP-IRA contribution for yourself as you must for other eligible employees, if any. A special definition of compensation applies if you are self-employed.

In order to have a SEP, the employer must maintain either a Form 5305-SEP, Form 5305A-SEP, a SEP prototype, or an individually designed plan, and each eligible employee must establish his or her own IRA. The employer may establish the plan and may make the contribution at any time during the year; but to deduct contributions, the employer must make them not later than the due date (including extensions) of the employer's tax return for the year. For an additional discussion of SEPs, you should refer to the copy of the Form 5305-SEP or IRS Form 5305A-SEP and IRS Publication 560.

**4.4.D Tax Credit for IRA contributions and salary reduction contributions.** If you are an eligible individual, you may be able to claim a credit for a percentage of your qualified retirement savings contributions, such as contributions to your traditional or Roth IRA or salary reduction contributions to your SEP or SIMPLE.

You must meet the following five requirements in order to claim this credit for any given year.

- Be at least 18 years of age as of December 31 of such year
- Not be a dependent on someone else's tax return
- Not be a student as defined in Internal Revenue Code section 25B(c)
- Have adjusted gross income under certain limits which are based on your filing status.
- Must not have received certain distributions which disqualify you from claiming the credit, or certain distributions which were made to your spouse.

The maximum contribution amount allowed to be used in calculating this credit is \$2,000, even though you may have contributed more than that amount to your IRA.

A formula is used to calculate the amount of your credit. This formula is complex, since it requires you to reduce your qualifying contributions by the amount of certain distributions — even by the amount of certain distributions to your spouse, if you are married.

The formula to be used is:

$$\text{Contributions} - \text{Certain Distributions} \times \text{Applicable Percentage} = \text{Credit}$$

**How to figure and report the credit.** The amount of the credit you can get is based on the contributions you make and your credit rate. Your credit rate can be as low as 10% or as high as 50% or it may be 20%. Your credit rate depends on your income and your filing status and the percentage credit for which you qualify.

**Saver's Credit Limits for 2021**

The applicable percentage for 2021 is based on modified adjusted gross income (AGI) and your tax-filing status, and is determined by the following table:

**Joint Return**

<b>AGI Over</b>	<b>AGI Not Over</b>	<b>Percentage</b>
\$0	\$39,500	50%
\$39,500	\$43,000	20%
\$43,000	\$66,000	10%
\$66,000	N/A	0%

**Head of Household**

<b>AGI Over</b>	<b>AGI Not Over</b>	<b>Percentage</b>
\$0	\$29,625	50%
\$29,625	\$32,250	20%
\$32,250	\$49,500	10%
\$49,500	N/A	0%

#### **Other Filers Including Married Filing Separately**

<b>AGI Over</b>	<b>AGI Not Over</b>	<b>Percentage</b>
\$0	\$19,750	50%
\$19,750	\$21,500	20%
\$21,500	\$33,000	10%
\$33,000	N/A	0%

#### **Saver's Credit Limits for 2022**

The applicable percentage for 2022 is based on modified adjusted gross income (AGI) and your tax-filing status, and is determined by the following table:

#### **Joint Return**

<b>AGI Over</b>	<b>AGI Not Over</b>	<b>Percentage</b>
\$0	\$41,000	50%
\$41,000	\$44,000	20%
\$44,000	\$68,000	10%
\$68,000	N/A	0%

#### **Head of Household**

<b>AGI Over</b>	<b>AGI Not Over</b>	<b>Percentage</b>
\$0	\$30,750	50%
\$30,750	\$33,000	20%
\$33,000	\$51,000	10%
\$51,000	N/A	0%

#### **Other Filers Including Married Filing Separately**

<b>AGI Over</b>	<b>AGI Not Over</b>	<b>Percentage</b>
\$0	\$20,500	50%
\$20,500	\$22,000	20%
\$22,000	\$34,000	10%
\$34,000	N/A	0%

Contributions equal the sum of contributions to a traditional IRA, contributions to a Roth IRA, elective deferrals to a 401(k) plan, elective deferrals under a section 457 plan, and certain voluntary employee contributions. This total contribution amount must be reduced by certain distributions which occur during a testing period. The testing period for a tax year is comprised of the current tax year, the two preceding tax years, and the carry-back period for such tax year (i.e. January 1 to April 15), plus extensions.

Therefore, the total contribution amount must be reduced by any distribution amounts paid to you or your spouse during the above-described period from a section 401(a) plan, 401(k) plan, section 402(a) plan, section 457 plan, a traditional IRA, or a Roth IRA, which are not rolled over. However, a technical correction was enacted to make clear that a reduction in the allowable credit will not be required for that portion of any distribution which is not includable in gross income by reason of a trustee-to-trustee transfer of a rollover distribution. The maximum contribution taken into account is \$2,000 per person. On a joint return, up to \$2,000 is taken into account for each spouse.

**Maximum credit.** This is a nonrefundable credit. The amount of the credit in any year can't be more than the amount of tax that you would otherwise pay (not counting any refundable credits) in any year. If your tax liability is reduced to zero because of other nonrefundable credits, such as the credit for child and dependant care expenses, then you won't be entitled to this credit.

**4.4.E Transfers.** You may transfer other traditional IRA funds or assets into this IRA, if the other IRA plan agreement authorizes such a transfer. You are not, of course, entitled to any deduction for such a transfer contribution. You may not transfer funds to this traditional IRA from a SIMPLE-IRA, unless you have satisfied the "2 years of participation" rule applicable to SIMPLE-IRAs. Also, you should review Section 4.10 for a discussion of the rules for recharacterizing a contribution.

**4.4.F Rollovers.** If you meet certain requirements, you are entitled to roll over funds into this IRA which were distributed to you from an IRA, a 403(b) plan, a qualified plan, a SIMPLE-IRA, or a governmental section 457 plan. You are not entitled to any deduction for these rollover contributions.

The information presented below is intended to provide you with general information. You are strongly advised to see your tax advisor. A rollover is valid only if you make an irrevocable election in writing at the time of the contribution.

**Why would I want to roll over funds into an IRA paid from an IRA or employer plan?** You will avoid paying current taxes, which is the normal result when a distribution is received. That is, you avoid paying current taxes on the distribution amount plus the 10% additional tax which would apply if you were not yet age 59½, unless a special exception applied. These recontributed funds plus related future earnings will continue to compound or grow tax-deferred until distribution.

**What rules must be satisfied to gain the beneficial tax treatment bestowed on rollover contributions?**

**4.4.F(1) Rollover to an IRA from another IRA.** If a person receives a distribution (i.e. the check is made payable to the IRA account holder) of all or a part of his or her IRA, he or she can re-deposit the funds into an IRA without being taxed on the receipt of the funds, if:

- The funds are rolled over (i.e. re-deposited) within 60 days after the day the funds were received,
- The funds were not a required minimum distribution, and
- The person has not rolled over a previous distribution from the same IRA or another IRA within the last year. The one-year period commences on the date the person received the previous distribution and not on the date of the redeposit.

In 2015 and subsequent years a person is authorized to rollover only one distribution in a one year period. It does not matter how many IRAs this person has. A person who withdraws \$3,000 from her Roth IRA on January 15, 2021, and then withdraws \$6,000 from her traditional IRA on January 28, 2021, will have to decide which one of the two distributions will be partially or totally rolled over since only one distribution is eligible to be rolled over.

The statutory law is clear that person is limited to rolling over only one distribution per 365-day period. IRS guidance is not clear if a person is able to make multiple rollover contributions within the 60-day period or if she or he is limited to one rollover contribution. You must follow the advice of your tax adviser. The conservative approach is – you make only one rollover contribution during a 365-day period.

The tax consequences will be harsh if a person attempts to rollover two distributions within a 12-month period. The second distribution is ineligible to be rolled over which means it is generally taxable if it was from a traditional IRA. Or, if the second distribution was from a Roth and was ineligible to be rolled over, then individual will have lost the right to have such funds earn tax-free income. Any ineligible rollover contribution will be an excess contribution subject to the 6% excise tax unless timely corrected.

In summary, a person who takes distribution in 2021 (e.g. April 20, 2021) from his or her traditional IRA and rolls it over within the 60-day limit is eligible to rollover a subsequent distribution from any of his or her other IRAs only if such distribution occurs on April 20, 2021 or later. In addition, he or she is eligible to take a distribution on April 20, 2021 and roll it over, only if he or she has taken no previous distribution from an IRA during the preceding 12 months (i.e. April 21, 2020 to April 20, 2021).

You must roll over into the new IRA the same property which you received from your old IRA. There is no authority, as there is with qualified plan distributions, for you to roll over the proceeds of the sale of the property.

There are three exceptions to the 60-day rule. First, if your distribution deposit was put into an institution which has had its deposits “frozen,” then you may have longer than 60 days to complete the rollover. Refer to IRS Publication 590 for a discussion of the special “frozen deposit” rules. The second exception is, if you withdrew your funds for purposes of using such funds under the First-Time Home Buyer exception as discussed later, but your acquisition or construction was delayed, then the 60-day limit is changed to 120 days.

The third exception is that the IRS may waive the 60-day requirement where it would be against equity or good conscience not to do so.

The IRS has three procedures available so that an individual may benefit by the IRS waiving the 60-day requirement. The individual is to follow IRS instructions as set forth in Revenue Procedure 2003-16 as modified by 2016-47. If you have missed your 60-day deadline, you will want to discuss with your tax advisor whether or not you will qualify for an IRS waiver of the 60-day rule. The first waiver method set forth in Revenue Procedure 2003-16 requires the taxpayer to file an application requesting a waiver of the 60-day rule and the IRS must grant the waiver. The second waiver method authorizes an automatic waiver of the 60-day rule if four requirements are met. Because the current filing fee is \$10,000 many taxpayers are no longer able to have the IRS process their application and receive a concrete ruling that they were not entitled to a waiver of the 60-day rule. The application process provided a taxpayer with tax certainty. In Revenue Procedure 2016-47 the IRS authorizes a self-certification procedure that a taxpayer may use to request the waiver of the 60-day requirement rather than using the application procedure. The IRS tentatively grants the waiver upon the making of the self certification and the tax payer is permitted to prepare his or her tax return to reflect that he or she made a complying rollover so the distribution amount is not required to be included in his or her taxable income. However, the IRS retains the right to examine the individual's tax return for such year (ie audit) and determine if the requirements for a waiver of the 60-day rule were or were not met. If the IRS determines the individual was not entitled to a waiver of the 60-day rule, the individual will have to include such distribution in his or her income and have an excess IRA contribution situation needing to be corrected. How does this self-certification procedure work? You will furnish the IRA custodian/trustee with a written certification meeting the following requirements. You may use the IRS' model letter set forth in the appendix of Revenue Procedure 2016-47 on a word-for-word basis or by using a form or letter that is substantially similar in all material respects.

An automatic waiver of the 60-day requirement is granted by the IRS if the following conditions have been met: (i) the financial institution received the funds from the individual before the end of the 60-day period; (ii) the individual followed all of the financial institution's procedures for making a rollover contribution into another eligible retirement plan; (iii) solely due to an error by the financial institution, the funds were not timely deposited into the other eligible retirement plan; (iv) the deposit must have constituted a valid rollover but for the delay and (v) the funds must be deposited within one year from the beginning of the 60-day rollover period (i.e. the day after the day of receipt). The source of authority for this automatic waiver is Revenue Procedure 2003-16.



**Special Rule for SAR-SEPs.** If you are a highly compensated employee and you make a transfer or take a distribution from your SEP-IRA before the nondiscrimination test has been satisfied (ADP test), the distribution will be subject to regular income tax and the 10% additional tax for pre-age 59½ distributions, if applicable.

#### **4.4.F(2) Rollover and Direct Rollover to an IRA from a Qualified Plan or Other Eligible Employer Plan.**

When you separate from service or you reach retirement age, your employer is required by law, within a reasonable period of time before making a distribution, to furnish you with a special explanation form (i.e. a section 402(f) notice). This form will inform you if your entire account balance is entitled to be rolled over (or directly rolled over) or if only a portion is eligible. This form will then give you three options, and you will be asked to furnish your instruction. The first option—you can roll over or directly roll over 100% of your vested account balance which is eligible to be rolled over. The withholding rules do not apply to whatever amount you elect to directly roll over. The second option—you can have your vested account balance paid to you in cash. If so, the plan administrator is required by law to withhold 20% of the amount to be distributed, to the extent it is eligible to be rolled over. The third option—you can elect to have some of your vested account balance paid to you in cash (and the 20% withholding would apply, if applicable) and you could directly roll over the remainder.

By rolling over or directly rolling over your distribution to a traditional IRA, you then are not required to include the distribution in your taxable income and you will not owe the 10% additional tax which generally applies to a person who has not attained age 59½.

An “automatic” rollover rule applies for 2005 and subsequent years. If your vested account balance never exceeded \$5,000, but it did exceed \$1,000, and you failed to elect to have such distribution paid to an eligible retirement plan in a direct rollover or to receive the distribution directly, the plan administrator may execute the necessary documents to establish an individual retirement plan on your behalf, with a financial institution selected by the plan administrator.

Under the rules, a “direct rollover” is a distribution from an eligible retirement plan that would be eligible to be rolled over, but is instead paid directly to another retirement plan. The transaction must be executed for the benefit of the person entitled to receive the distribution from the employer’s plan.

Commencing January 1, 2008, the law authorizes certain individuals with funds in an employer-sponsored plan to directly rollover some or all of his or her account balance into a Roth IRA. The standard eligibility rules for a conversion apply. See the discussion regarding the conversion rules set forth later in this booklet. The amount moved to the Roth IRA will be a conversion contribution. The individual will be required to include the distribution in his or her income for federal income tax purposes. An individual will want to discuss such a transaction with his or her tax advisor BEFORE making such a conversion contribution.

A direct rollover may be accomplished by any reasonable means of direct payment to an eligible retirement plan. If payment is made by check, the check must be negotiable only by the trustee of the eligible retirement plan. For example, “ABC Bank as trustee of the IRA of Maria Evert” or the “Trustee of XYZ Corporation Profit Sharing Plan FBO Jim Davis.” If payment is made by wire transfer, it must be directed only to the trustee. It is permissible to have the plan furnish you with a check, if you are instructed to deliver the check to the trustee, and the check is made payable, as indicated above, solely to the trustee.

If your distributions during the year are reasonably expected to total less than \$200, then the plan administrator need not offer you the right to directly roll over these funds.

Again, the plan administrator will inform you to what degree your vested account balance in a qualified plan or other employer plan is eligible to be rolled over.

In Notice 2014-54 (September 18, 2014) the IRS issued guidance for when an individual has basis within a qualified plan or similar plan and takes a distribution and wishes to roll over or directly rollover such basis into a Roth IRA or another tax preferred plan.

Once you are subject to the Required Distribution Rules, you must start taking distributions from your account each year. These RMD distributions are ineligible to be rolled over to an IRA. You are also ineligible to roll over any distribution which is paid over your life or your life expectancy (single or joint) or any distribution which is one of a series of substantially equal periodic payments (i.e. installments) for a period spanning ten years or more. Also, corrective distributions of excess deferrals and contributions, defaulted loans and hardship distributions are ineligible to be rolled over.

#### **Additional rules applying to rollovers and direct rollovers from an eligible employer plan.**

- You must roll over the property you received, unless you sell it. If you sell the property, you may roll over the proceeds of the sale.  
You CANNOT roll over any life insurance to an IRA.
- You must complete the rollover within 60 days after the day the distribution was received.
- If you die, your surviving spouse may roll over all or part of a distribution, but the rules discussed above must be satisfied.
- Often in divorce, one spouse (i.e. the alternate payee) is given, by court order, the right to be paid the other spouse’s pension benefits. Any amount paid to a spouse or former spouse pursuant to a qualified domestic relations order is eligible to be rolled over if the distribution would qualify under the above-described rules if the spouse or nonspouse was substituted for the employee.
- The amount you choose to keep and not roll over must be included in your gross income as ordinary

income in the year in which you receive it. In addition, unless a special exception applies, you will be subject to the 10% additional tax if you have not attained age 59½.

**4.4.F(3) Rollover and Direct Rollover to an IRA from a Section 403(b) plan/annuity.** If you receive an eligible rollover distribution from a tax-sheltered annuity, you may roll over these funds to an IRA within 60 days of receipt. However, you should be aware that an annuity contract qualifies as a section 403(b) plan/annuity only if the contract is written so that distributions attributable to contributions made pursuant to a salary-reduction agreement can be paid only if the annuitant has attained age 59½, separated from service, died or became disabled, or, in the case of a hardship, the distribution was received on or before December 31, 1998.

If you die, your surviving spouse may roll over any tax-sheltered annuity funds to an IRA as long as the applicable rollover rules are satisfied.

**4.4.F(4) Rollover and Direct Rollover to an IRA from a Governmental Section 457 Plan.** If you receive an eligible rollover distribution from a governmental section 457 plan, then you may roll over these funds into an IRA within 60 days of receipt. As discussed in the section dealing with rollovers from qualified plans, not all distributions are eligible to be rolled over. The plan administrator is to inform you in writing what portion of your distribution is eligible to be rolled over or directly rolled over.

**4.4.F(5) Special Recontribution Rules for Certain Military Reservists.** A military reservist called to active duty for 180 days or more on or after September 11, 2001, has special recontribution rights. The standard 60-day rollover rule is overridden by this special rule. The military reservist has the right to recontribute a distribution over a 2-year period ending two years after his or her active duty ended. The recontribution may be made in one or more contributions, and such recontributions are independent of the normal contribution limits. The recontribution amount cannot exceed the distribution amount.

You cannot claim a deduction for a qualified reservist repayment. This means that your recontribution is comprised of nondeductible contributions. You should include such amount on line 1 of Form 8606 (Nondeductible IRA Contributions). The amount you may repay is in addition to the amount you are eligible to contribute under the standard contribution rules.

**4.4.F(6) Special Rule for SIMPLE-IRAs Rolling into a Traditional IRA and Expansion of Rollovers Into SIMPLE-IRAs.** The general rules which apply for IRA-to-IRA rollovers also apply in this situation. In addition, a rollover from a SIMPLE-IRA to a traditional IRA is only permissible if the distribution from the SIMPLE which you are rolling over occurred after the 2-year period which commences on the date you first participated in the related SIMPLE plan.

SIMPLE-IRAs may accept rollover contributions arising from distributions from 401(k) plans, 403(b) plans, 457(b) plans and certain other qualified plans. Such contributions can only be made after the 2-year period described in section 72(t)(6) has been met. For example, funds now in a 401(k) plan may be rolled over into a SIMPLE-IRA if the 2-year requirement has been met or funds in a traditional IRA may be rolled over into a SIMPLE-IRA if the 2-year requirement has been met.

**4.4.F(7) Special Rollover Contribution(s) Arising From Exxon Valdez Litigation or Certain Airline Payments.** Settlement funds from the Exxon Valdez litigation may be rolled over into a traditional IRA if certain rules are met and certain airline payments may be rolled over if certain rules are met. Rolling over such funds has the tax effect that an individual need not include these payments immediately in his or her income, but taxation is deferred until withdrawal from the traditional IRA. See IRS Publication 590A for the IRS discussion of these special rollovers. These rules are complex and you should also consult with your tax attorney or accountant.

**4.4.F(8) Special Self-Certification Rule Also Applies To Distributions From An Employer Sponsored Plan.** The new self-certification procedures as discussed in Section 4.4.F.(1) also apply if the distribution intended to be rolled over originated from an employer plan rather than an IRA.

**4.4.F(9) Rollover Rule For Certain Plan Loan Offset Amounts.** As of January 1 2018, there is a new rollover rule for certain plan loan offset amounts which are treated as distribution in tax years beginning after December 31, 2017. In certain situations a plan loan offset amount is deemed distribution. A plan offset amount is the amount by which a participant's vested account balance is reduced in order to repay a loan from the plan. A participant is entitled to rollover his or her plan loan offset amount, but the rollover must be completed by the tax filing deadline for the year during which the distribution occurred rather than under the standard 60-day rule.

**4.4.F(10) Rollover Rule for Certain IRS Levies Returned to an IRA Owner or IRA Beneficiary.** With respect to IRS payments made after December 31, 2017, an IRA owner or an IRA beneficiary is eligible to make a rollover contribution of the following IRS payment. At times, in order to collect tax funds owed the IRS will levy an individual's IRA funds or pension funds. Sometimes the IRS must return all or some of the levied amount. An individual is now eligible to rollover the returned amount into a traditional IRA. This special rollover must be made no later than the due date of the individual's tax return for the year the individual receives the IRS' repayment. This situation is the only time a non-spouse beneficiary may roll over a distribution from either an IRA or a pension plan. This special rollover is not to be counted for purposes of the once per 12 month rollover rule.

## 4.5 Distributions.

**4.5.A In General.** For IRA purposes, a distribution is defined to be a removal of funds or property from an IRA which is actually paid to you or your beneficiary or which is transferred to another qualifying IRA or inherited IRA.

A distribution will either be fully taxable, partially taxable or will not be taxable because all, some or none of the amount distributed will be required to be included in income for federal income tax purposes.

However, see the discussion at Section 4.5.J(6) and section 4.5.J(7), as certain charitable IRA distributions and certain qualified HSA funding distributions are tax free (i.e. they are not required to be included in income and be taxed).

**4.5.B Transfers.** A transfer occurs when ownership of the IRA funds or property is changed from one IRA custodian/trustee on behalf of an IRA depositor or beneficiary to a subsequent IRA custodian/trustee on behalf of the same depositor or beneficiary. A transfer is not a reportable event to either the individual or the IRS, because an actual distribution has not been received by the IRA account holder. Funds within a traditional IRA or SEP IRA may be transferred to or from a SIMPLE IRA as long as you have satisfied the two-year rule applying to SIMPLE IRAs.

The following types of transfers may take place with respect to your IRA: (1) you may transfer funds to another of your IRAs; (2) your spouse who is your spouse beneficiary may elect to treat your IRA as his or her own IRA; (3) there may be a transfer of your IRA funds to your spouse or ex-spouse, if pursuant to a court decree or property settlement or (4) there will be a transfer by operation of law from your IRA to your beneficiary's inherited IRA.

**4.5.C Tax Treatment of Distributions.** Any money or property that you receive from your IRA is a distribution. The general rule is that any distribution is included in the gross income of the recipient in the year received. The favorable ten-year averaging or capital gain provisions of IRC section 402 do not apply. If you have made nondeductible contributions, then a portion of the distribution will not be taxable, as determined by applying the rules of IRC section 72 as modified by some special IRA rules. See IRS Publication 590B.

If you have one or more traditional IRAs, one or more SEP-IRAs or one or more SIMPLE-IRAs, then you are required to aggregate all of these IRAs for purposes of applying the pro rata IRA distribution taxation rule. See IRS Form 8606.

**General Rule.** Distributions from your traditional IRA may be fully or partly taxable, depending on whether your IRA includes any nondeductible contributions or other basis.

**Fully taxable.** If only deductible contributions were made to your traditional IRA (or IRAs, if you have more than one), you have no basis in your IRA. Because you have no basis in you IRA, any distributions are fully taxable when received.

**Partly taxable.** If you made nondeductible contributions to any of your traditional IRAs, you have a cost basis (investment in the contract) equal to the current balance of those nondeductible contributions. These nondeductible contributions are not taxed when they are distributed to you. They are a return of your investment in your IRA. Until all of your basis has been distributed, each distribution is partly nontaxable and partly taxable.

**Form 8606.** You must complete Form 8606, and attach it to your return, if you receive a distribution from a traditional IRA and have ever made nondeductible contributions to any of your traditional IRAs. Using the form, you will figure the nontaxable distributions and your total IRA basis.

**Note.** If you are required to file Form 8606, but you are not required to file an income tax return, you still must file Form 8606. Complete Form 8606, sign it, and send it to the IRS at the time and place you would otherwise file an income tax return.

In addition, see Disclosure Statement Section 4.9, for a discussion of the special rules which apply if you convert your funds from this traditional IRA to a Roth IRA.

**4.5.D A Tax to Consider Before Withdrawing IRA Funds.** Effective as of January 1, 2013, a 3.8% tax went into effect. The IRS has chosen to call this tax, the Net Investment Income Tax.

This 3.8% tax applies to certain individuals having net investment income and certain estates and trusts having net investment income. To determine the tax owing, a person will multiply 3.8% time the lesser of: (1) his or her net investment income (NII) or a person's modified adjusted gross income as reduced by a threshold amount as set forth in the following table:

Filing Status	Threshold Amount
Married filing jointly	\$250,000
Married filing separately	\$125,000
Single	\$200,000
Head of household (with qualifying person)	\$200,000
Qualifying widow(er) with dependent child	\$250,000

This tax will be owed only if an individual has net investment income and his or her modified adjusted gross income exceeds the applicable threshold amount.

The tax means an individual before taking an IRA distribution will want to determine if he or she will have to pay the 3.8% tax on account of such distribution. For most people and situations, a person will not owe the 3.8% tax on account of his or her IRA or pension distribution, but in some situations the tax would be owed.

There will be times, however, when a person's IRA distribution will mean the individual will have to pay the 3.8% tax on account of the IRA distribution.

There will also be times when a person will take an IRA distribution and he or she will be required to pay the 3.8% tax, but the amount owed does not increase because of such IRA distribution.

What types of income are defined to be non-investment income?

Distributions from IRAs, pension plans, 401(k) plans, tax sheltered annuities, etc. are not investment income. Social security benefits are not investment income. Wages and income or profits from a nonpassive business including self-employment income are not investment income. Unemployment compensation and workers compensation are not net investment income.

What types of income are net investment income and so they might be subject to the 3.8% tax?

Investment income includes interest, dividends, gains from the sale of stocks, bonds, mutual funds, capital gain distributions from mutual funds, certain sales related to real estate, rental and royalty income, non-qualified annuities, income from businesses involved in trading of financial instruments or commodities, business income arising from certain passive activities, and the sale of an interest in a partnership and S corporations by an individual who had a passive interest. Such investment income is reduced by certain expenses properly allocable to the income. And any income or gain excluded from gross income for regular income tax purposes is also excluded from a person net investment income (e.g. \$250,000 exclusion for sale of primary residence).

This 3.8% tax is different from the new 9/10ths of 1 percent Additional Medicare tax which also went into effect on January 1, 2013.

If you have net investment income for a tax year, then you should review the IRS instructions for Form 8960, Net Investment Income Tax – Individuals, Estates and Trusts to determine if you are required to complete and file this form.

**4.5.E Federal Income Tax Withholding.** If you receive an IRA distribution which is payable upon demand, the payer-custodian will withhold federal income tax at the rate of 10%, unless you elect not to have any withholding or instruct to have a greater amount withheld. You use Form W-4P or a substitute Form W-4P to instruct your custodian that you do not want withholding.

The standard withholding rules, as summarized above, apply fully to any distribution you take from your traditional IRA or SEP-IRA, even though you make a Roth IRA conversion contribution by rolling it over to a Roth IRA. Special withholding rules apply if you are a covered expatriate.

**4.5.E(1) State Income Tax Withholding.** Different states have different state income tax withholding rules for IRA distributions. In some states if federal income tax is withheld, then the withholding of state income tax is mandatory unless an exemption applies. In other states, even if federal income tax is withheld, the IRA account holder has the right to not have any state income tax withholding. Other states have no procedures for processing the withholding of state income tax for an IRA distribution.

State income tax withholding on an IRA distribution only applies to a state resident, it does not apply to a non-resident.

**4.5.F. Tax Credit for the Elderly.** If you are age 65 or older, amounts you receive from your IRA may qualify for the retirement income credit. See IRS Publication 524.

**4.5.G Effect on Taxation of Social Security and Railroad Retirement Benefits.** There are rules that govern when Social Security benefits and Tier 1 Railroad Retirement benefits must be included in a taxpayer's gross income. If you receive such benefits, then you must include a portion of these benefits in your gross income if your provisional income exceeds either of two threshold amounts. Your provisional income includes modified adjusted gross income (adjusted gross income plus tax-exempt interest plus certain foreign-source income) plus 50% of your Social Security or Railroad Retirement benefit. These rules are discussed at the end of section 4.5B.

The consequence of these rules may be: (1) if you are an active participant, any taxable Social Security amounts will increase your AGI for purposes of the deductible/nondeductible calculation and (2) a distribution from your IRA could result in some of your Social Security benefits being taxable.

**4.5.H Ten Percent Additional Tax.** The general IRA taxation rule is that an IRA distribution will be included in the income of the recipient, and it will also be subject to an additional tax equal to 10% of the amount required to be included in income, unless one of the following exceptions applies.

The first exception is if you are age 59½ or older at the time of the distribution.

The second exception is if you are disabled. You are considered disabled if you can furnish proof that you cannot do any substantial gainful activity because of your physical or mental condition. A physician must determine that your condition can be expected to result in death or be of long continued and indefinite duration.

The third exception is if you die. Payments to a beneficiary are not subject to the 10% additional tax. If your spouse elects to treat your IRA as his or her own, then any subsequent payments to your spouse will not be as a beneficiary, and would be subject to the 10% additional if he or she was younger than age 59½.

The fourth exception is for substantially equal periodic payments. The 10% additional tax will not apply if the distribution is part of a series of substantially equal periodic payments (not less frequently than annually) made for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your beneficiary.

However, if this schedule is changed prior to the later of attaining age 59½ or the schedule being in effect for 5 years, then a new penalty tax will be imposed. This tax will be equal to the tax that would have been imposed had the "substantially equal" exception not applied (i.e. all previous distributions will be assessed the 10% tax plus an amount equal to the accrued interest).

The fifth and sixth exceptions are for certain distributions used to pay certain medical expenses or to pay certain health insurance premiums. The additional 10% tax will not apply if the distribution is used to pay medical expenses that exceed 10% of your adjusted gross income for 2013 and subsequent years. This means that the medical expenses must qualify as an itemized deduction on your federal income tax return. The 10% additional tax will also not apply to a distribution which is used to pay health insurance premiums in certain situations after you become unemployed. In order to qualify for this special rule, you must have been receiving unemployment benefits for at least 12 consecutive weeks. You will qualify to use this unemployment exception even if you are self-employed, if you would have been eligible for unemployment benefits but for your self-employment.

The seventh exception is if the distribution is used to pay certain first-time home buyer expenses. Qualified first-time home buyer distributions are distributions from an IRA which are used to pay the qualified acquisition costs of the principal residence of the first-time home buyer.

The first-time home buyer can be you, your spouse or your child or grandchild, and any ancestor of you or your spouse. To qualify as a first-time home buyer, you, and if married, your spouse, must not have had any ownership interest in a principal residence for the two-year period ending on the date of acquisition of the principal residence being purchased under this exception. The date of acquisition is defined as the date a binding contract to purchase the residence is entered into, or the date on which construction or reconstruction of the residence begins.

Qualified acquisition costs include the cost of acquiring, constructing, or reconstructing a residence. The term also includes any usual and reasonable settlement, financing and closing costs. The funds that are distributed for the first-time home purchase must be used, within 120 days after the day the funds were received, to pay the qualified acquisition costs.

If the distributed amount is recontributed, i.e. rolled over, within the 120-day period, there will be no income tax or penalty tax consequences. Written documentation will be necessary to insure compliance with these rules. If the funds are not recontributed within this time period, the amount will be taxable and subject to the 10% premature distribution penalty, if applicable.

Under this exception, you are limited to an aggregate amount of \$10,000 for your lifetime. While you may be able to use this exception more than once in your lifetime, the total lifetime distribution that can fall under this exception is \$10,000.

The eighth exception is if the distribution is used to pay certain higher education expenses. Distributions made from an IRA will not be subject to the 10% premature distribution penalty tax if the funds are used to pay the qualified higher education expenses of yourself, your spouse, your children or grandchildren for the year for education furnished at an eligible educational institution. Be aware, the definition of qualifying education expenses for IRA purposes is different than the definition applying for Coverdell ESA purposes. Qualified higher education expenses include tuition, fees, books, supplies, and equipment required for enrollment or attendance at an eligible educational institution. This amount may also include, for students who are carrying at least one-half of the normal full-time course load, reasonable expense amounts incurred for room and board. The amount of educational expenses for which a distribution from an IRA can be used and not be subject to the penalty under this exception must be reduced by the amount of any qualified scholarship, educational assistance allowance, or payment that is excludable from gross income.

The ninth exception is if the distribution has occurred because of an IRS levy. A state levy is not an exception.

The tenth exception is if the distribution is converted to a Roth IRA. Such conversion contribution may be accomplished either by making a special rollover contribution or a special transfer contribution to a Roth IRA.

The eleventh exception is that the 10% additional tax will not apply to certain military reservists. A military reservist called to active duty for 180 days or more on or after September 11, 2001, is not subject to the 10% premature penalty tax of Code section 72(t), as long as the distribution was or is made during his or her time on active duty.

The twelfth exception is that the 10% tax will not apply if you are a covered expatriate and you are deemed to have received a distribution of your entire IRA account under the special tax rules applying to expatriates.

The thirteenth exception is that the 10% tax will not apply if your distribution is on account of you being a victim of a qualifying hurricane or other federally declared disaster, including COVID-19.

The fourteenth exception is that the 10% tax will not apply if your distribution is used to make a qualified HSA funding contribution.

The fifteenth exception is that the 10% tax will not apply if your distribution is on account of the birth of a child or an adoption of a child.

There is a \$5,000 aggregate limit. The actual language is, "The aggregate amount which may be treated as qualified birth or adoption distributions by any individual with respect to any birth or adoption shall not exceed \$5,000." An individual may receive a qualified birth or adoption distribution of up to \$5,000 with respect to the same child or eligible adoptee. If a person is related to multiple births or adoptions, the person may have a qualified birth or adoption distribution with respect to each child or eligible adoptee. If a person is married each

parent may receive a qualified birth or adoption distribution of up to \$5,000 with respect to the same child or eligible adoptee.

A qualified birth or adoption distribution means any distribution from an IRA or other applicable retirement plan to an individual as long as the distribution is made during the 1-year period beginning on the date a child of the individual is born or on the date the legal adoption of an eligible adoptee child is finalized. An eligible adoptee is any person who has not attained age 18 or any person who is physically or mentally incapable of self-support. A child of a taxpayer's spouse is ineligible to be an eligible adoptee.

The individual will need to complete their tax return to show there was a qualified birth or adoption distribution. The individual will do this by completing the applicable section of Form 5329 and claim exception to the 10% additional tax and attach it to his or her tax return. The individual must include the name, age, and the taxpayer identification number of the child or the eligible adoptee on their tax return for the tax year in which the distribution is made.

A taxpayer who has taken a qualified birth or adoption distribution may repay such distribution. This part of the law needs to be clarified as the law does not define the repayment period. A qualified repayment of a qualified birth or adoption distribution means the distribution is not taxable.

Note, the 10% additional tax only applies to distributions made to an individual younger than age 59½ which must be included in the individual's taxable income.

**4.5.I Special Rules Grant Tax Relief to Certain IRA Owners on Account of Certain Federally Declared Disasters.** This tax relief can be very beneficial to an IRA owner in a disaster area or who has a certain relationship to the disaster area. In order to determine if you will qualify for this tax relief you should contact your tax adviser, review IRS guidance as published on the IRS website including Publication 976, the Form 8915 series of forms and other IRS guidance.

Specific tax legislation has been enacted for IRA owners who were victims of the hurricanes Harvey, Irma and Maria in 2017 or who were victims with respect to a 2016/2017 disaster area as declared by the President.

Specific tax legislation has been enacted for IRA owners who were victims of federally declared disasters in 2018 and 2019 as declared by the President including additional California wildfires.

Specific tax legislation has been enacted for IRA owners who were victims of federally declared disasters that occurred in 2018 and before December 21, 2019, and continued no later than January 19, 2020. The disaster declaration must be made before February 19, 2020. The special relief for these qualified disasters does not apply to taxpayers impacted by the California wildfires in January of 2019 (who received special relief in 2018).

Specific tax legislation has been enacted for IRA owners who are victims of COVID-19.

You must determine that you qualify for a disaster distribution. You qualify for a disaster distribution as long as you sustain an economic loss on account of the disaster. You may qualify regardless of your need or the actual amount of your loss.

This legislation provides for tax favored withdrawals and repayments of such withdrawals. If you receive a qualified disaster distribution, it is taxable, but it is not subject to the 10% additional tax. You may include this distribution in your income ratably over a three year time period. Otherwise, you include the entire distribution in your income in the year you received the distribution. You are permitted to repay this distribution. If you do so, you need not include the distribution in your income. You have 3 years from the day after the date you received the distribution to make a repayment. Amounts that are repaid are treated as a trustee-to-trustee transfer and are not included in income. Such repayment is not considered a rollover for purposes of the once per year rollover rule. You should review Form 8915 and Publication 976 for further IRA guidance.

IRS grants general tax relief for certain IRA owners who live in certain disaster areas. The federal tax laws give the IRS broad authority to grant relief when the President declares a disaster and FEMA designates an area or areas for assistance. This authority is set forth in Code section 7508A and regulation 301.7508. The primary relief given by the IRS is to extend the time a taxpayer has to file various tax returns and pay the tax owing. However, there are many deadlines by which a taxpayer, such as an IRA account holder, must complete a tax transaction. However, it is possible, if there has been a disaster, that the IRS could extend a tax deadline. Regulation section 301.7508-1(c)(iii) provides for the postponement by the IRS of rules for making certain IRA contributions, taking certain distributions, recharacterizing IRA contributions or making rollovers. A person needs to determine if there is a public event which qualifies for the special rules and if he or she qualifies for the special tax rules. You should visit the IRS web site at [www.irs.gov](http://www.irs.gov) and review the guidance for tax relief in disaster situations. You should consult your tax advisor.

**Automatic 60-day Extension of IRA Contribution Deadline And Other Tax Acts For Certain Federally Declared Disasters.** The SECURE Act authorizes an automatic 60-day extension to file a tax return and certain other tax acts. With respect to IRAs and pension plans the 60-day extension shall apply to: annual IRA contributions which have a deadline of April 15 (with no extension), a withdrawal of an excess contribution made before the tax return due date (plus extensions), a recharacterizing of a contribution and making a rollover contribution.

This automatic extension shall be in addition to or concurrent with other IRS guidance issued pursuant to other subsections of Code section 7508A.

The 60-day period ends on the date which is 60 days after the latest disaster incident date.

The 60-day extension is granted to a qualified taxpayer who was in or in some cases was impacted by the disaster area.

**4.5.J Exceptions to General Taxation Rule.** There are exceptions to the general rule concerning when a distribution is not subject to tax: (i) nondeductible contributions (ii) rollovers; (iii) the return of a current-year contribution before the due date of the current year's tax return; (iv) the return of certain excess contributions after the due date of the tax return for the year the excess was made; (v) transfers incident to a divorce; (vi) certain transfers to a Health Savings Account; and (vii) Qualified Charitable Distributions.

**4.5.J (1) The first exception is a distribution which includes nondeductible contributions.** Code section 72 sets forth the rules for determining the tax consequences of receiving an IRA distribution when both deductible and nondeductible contributions have been made. In general, the concept is to treat an IRA distribution as partially being the return of nondeductible contributions (i.e. not taxable) and the remaining portion as being the return of deductible (i.e. taxable) contributions.

In general, to determine the nontaxable amount of the distribution, multiply the total IRA distributions during the year by a fraction, the numerator of which is the aggregate nondeductible contributions not yet recovered tax-free and the denominator of which is the sum of the December 31 values in all IRAs (including any traditional IRAs, Rollover IRAs, SEP IRAs and SIMPLE-IRAs, but excluding any Roth IRAs); any outstanding rollovers; and all distributions received during the year. IRS Form 8606 must be completed and attached to the income tax return filed for that year.

**4.5.J (2) The second exception is a distribution from an IRA which is rolled over into an eligible retirement plan.** An eligible retirement plan is: (1) an IRA; (2) a qualified plan under section 401(a) or 403(a); (3) a section 403(b) plan; or (4) a section 457 plan as sponsored by a state or local government.

The rules for rolling over funds from an IRA to an IRA were discussed previously under the discussion of rollover contributions.

**Rollovers from traditional IRAs into qualified plans.** For distributions after December 31, 2001, you can roll over, tax free, a distribution from your IRA into a qualified plan. The part of the distribution that you can roll over is the part that would otherwise be taxable (includable in your income). That is, you are not authorized to roll over any basis or nondeductible contributions. Qualified plans may, but are not required to, accept such rollovers. Rules applicable to other rollovers, such as the 60-day time limit apply. For more information see Publication 590A.

**Rollovers of traditional IRAs into tax-sheltered annuities (section 403(b) plans).** Beginning with distributions after December 31, 2001, if you participate in an eligible deferred compensation plan of a state or local government, you may be able to roll over a distribution from your traditional IRA into a deferred compensation plan of a state or local government. Section 457 plans may, but are not required to, be written to accept such rollovers. For more information see Publication 590-A.

**Rollovers of traditional IRAs into deferred compensation plans of state and local governments (section 457 plans).** If you participate in an eligible deferred compensation plan of a state or local government, you may be able to roll over a distribution from your traditional IRA into a deferred compensation plan of a state or local government. Section 457 plans may, but are not required to, be written to accept such rollovers. For more information see Publication 590A.

**4.5.J (3) Withdrawal of Current-Year Contribution(s) Before the Due Date of the Current Year's Tax Return.** If you satisfy the following three (3) requirements, you will not be taxed on the withdrawal of a current-year contribution from your IRA. A current-year contribution may be an excess contribution, but it does not need to be. You do not need to have a specific reason to withdraw a current-year contribution. First, you must withdraw the contribution by the date, including extensions, your income tax return is due. Second, no deduction must have been allowed for the contribution for that tax year. Third, any interest or other income earned by the contribution must also be withdrawn. The interest or other income earned on the excess contribution must be included in your gross income for the year in which the contribution was made, and the 10% additional tax must be paid, if applicable.

**Special Rule.** The IRS has adopted a rule for correcting current-year and excess contributions very similar to the one which it has adopted with respect to recharacterizations. This special rule is set forth in the instructions for Form 8606. You will have 6 months from the due date of your tax return to withdraw an excess contribution plus the related income (or less any loss). For most taxpayers this is October 15 of the following year. The effect of this special rule is that the deadline for correcting an excess contribution (or a current year contribution) becomes October 15 of the following year rather than April 15 of the following year plus extension. The effect of your withdrawal on or before October 15 of the following year is that the contribution is treated as if it had never been contributed. You are still required to withdraw the related income and you will need to include it in your income for the year in which the contribution is made. You should discuss this special rule with your tax advisor or consult the IRS' instructions, as the rules are complicated. If you have already filed your tax return for such year, then you will need to file an amended return with "Filed pursuant to section 301.9100-2" written at the top.

**4.5.J (4) Withdrawal of Prior Year's Excess Contribution After the Due Date of that Year's Tax Return.** Even though the time for filing your income tax return has passed, you may still withdraw an excess contribution without being required to include the excess contribution in gross income if (1) the total contribution did not exceed the applicable contribution limit (see Disclosure Statement Section 4.4.A) and (2) no deduction was allowed for the excess contribution. In general, an excess contribution is an impermissible contribution. The income earned by the contribution is not required to be withdrawn.

If the contribution exceeds the applicable contribution limit (see Disclosure Statement Section 4.4.A), you must include in your gross income an excess contribution withdrawn even if you originally did not deduct it (i.e. improper rollover attempt). However, in the case of an excess contribution arising from a SEP contribution, the applicable contribution limit (see Disclosure Statement Section 4.4.A) is increased to the lesser of the maximum SEP contribution for the current-year or the amount of the SEP contribution. In the case of an excess contribution arising from an impermissible rollover contribution due to erroneous information supplied by a plan administrator, the applicable contribution limit (see Disclosure Statement Section 4.4.A) is increased by that portion of the excess contribution attributable to the erroneous information.

**4.5.J (5) Transfer Incident to Divorce and/or Election to Treat as Own.** When an IRA is transferred from one spouse to another by a divorce decree or written document relating thereto, or after the death of one spouse, the transfer is not a distribution and is deemed tax free. The IRA becomes the IRA of the transferee as of the date of transfer, subject to all rules governing IRAs.

**4.5.J (6) Discussion of the Special Rules Applying to Tax-Free Transfers to Health Savings Accounts.**

On or after January 1, 2007, a person who is eligible to make an HSA contribution and who has funds within a traditional IRA or Roth IRA may make a special election once during his or her lifetime to transfer a certain amount from such IRA to their HSA. This type of special transfer is called a qualified HSA funding distribution. Such an election, once made, is irrevocable. The amount transferred in such a direct trustee-to-trustee transfer will be excluded from the person's income.

This one-time transfer rule allows a person to change funds which would be taxable (money distributed from an IRA) to funds which will escape taxation if they are withdrawn from the HSA and used to pay qualified medical expenses.

The right allowing a person to transfer funds from an IRA to an HSA tax-free applies even when the person has inherited an IRA. When a beneficiary transfers funds from his or her inherited IRA to an HSA, such a transfer will count to satisfy his or her IRA required distribution from the inherited IRA.

The amount contributed to an HSA, when transferred from an IRA, does count against the HSA contribution limit for the current year.

The maximum amount which can be transferred tax-free is determined at the time of the transfer and not later in the year. A person who is covered under a HDHP in March of 2020 may transfer from an IRA to an HSA in March the "family" amount even though later in 2020 he switches to a "single" HDHP.

The amount to be excluded is limited. It shall not exceed the annual contribution limit for single or family coverage, as applicable, as based on the HDHP coverage as of the time of the special transfer, or, in some cases, the amount of an earlier qualified HSA funding distribution. Thus, the maximum amount eligible for this special transfer for 2021 will be \$3,600 for single coverage and \$7,200 for family coverage plus any applicable catch-up amount.

Any traditional IRA and/or Roth IRA funds may be transferred to an HSA, including non-taxable basis. However, if a person chooses to transfer his or her basis from either a traditional IRA and/or Roth IRA, the individual will not be able to carry over this basis to his or her HSA. The IRS has adopted the position that the general HSA distribution rule will be applied even if a person has transferred IRA basis into his or her HSA.

The general rule is that a person is allowed only one tax-free transfer during his or her lifetime. One means one. Therefore, if a person has two or more IRAs and wants to use amounts in multiple IRAs to make the tax-free transfer, if eligible, the individual must first make an IRA to IRA or Roth IRA to Roth IRA transfer of the amounts to be distributed into a single IRA, and then make the one tax-free transfer. A person who has both a traditional IRA and a Roth IRA will only be able to do the transfer from one or the other IRA.

A person will be able to transfer SEP-IRA or SIMPLE-IRA funds to his or her HSA only if the SEP or SIMPLE is not an "on-going" plan. That is, the transfer is permissible as long as the employer has not made an employer contribution for the plan year ending with or within the SEP-IRA or SIMPLE-IRA owner's tax year.

There are special testing period taxes if you make this special type of transfer and then end your coverage under an HDHP before a one-year time period has expired.

The testing period starts with the month in which the qualified HSA funding contribution is contributed to the HSA and ends on the last day of the 12th month following such month.

If, at any time during the testing period, you are no longer an eligible individual, then you will be penalized as follows. You will have to add to your income all contributions which had been excluded from income. This is required for the first month you become ineligible. The tax you owe will depend on what marginal tax rate applies. You will also owe an additional 10% tax.

**Caution** — Once the IRA funds are contributed to the HSA, there is no authority or provision in the law to recontribute the funds to the IRA. However, if the recontribution took place within the standard 60-day rollover period, it would be permissible.

**IRS Reporting Tasks for Qualified HSA Funding Distributions.** There is no special reporting for Qualified HSA Funding Distributions (HFD). Many times IRA accountholders and their tax advisors think the IRA custodian should be preparing the Form 1099-R to show the movement of the IRA funds to their HSA as being tax-free. This is not the IRS procedure. An HFD is to be reported as any other IRA distribution (code 7 if you are 59½ or older and code 1 if less than age 59½). You will be required to complete lines 4a and 4b of your federal income tax return to show what portion is taxable, if any. If the total distribution is an HFD, then enter 0 on line 4b and write HFD next to line 4b.



**4.5.J (7) Discussion of the Special Rules Applying to Tax-Free Charitable IRA Distributions/Contributions.** The federal income tax laws governing Qualified Charitable Distributions are now permanent as a result of a new budget and tax bill as signed into law by President Obama on December 18, 2015.

The IRS has issued guidance that a qualified charitable distribution will count towards your required minimum distribution.

A qualified charitable distribution (QCD) is a non-taxable distribution made directly by the trustee of your IRA (other than a SEP or SIMPLE-IRA) to an organization eligible to receive tax-deductible contributions. You must have been at least age 70½ when the distribution was made. Also, you must have the same type of acknowledgement of your contribution that you would need to claim a deduction for a charitable contribution. See Records To Keep in IRS Publication 526. Charitable Contributions. Your total QCDs of the year cannot be more than \$100,000. If you file a joint return, your spouse can also have a QCD of up to \$100,000. However, the amount of the QCD is limited to the amount of the distribution that would otherwise be included in income. If your IRA includes non-deductible contributions, the distribution is first considered to be paid out of otherwise taxable income.

**What requirements must I meet in order to take advantage of this charitable contribution law?** (a) You must be age 70½ or older; (b) You must have a traditional or Roth IRA; (c) You must be allowed to itemize deductions on your Form 1040 income tax return; (d) Your contribution to a qualifying charity must also have been able to qualify as an itemized deduction, but for this special charitable contribution rule under Code section 170 (disregard the percentage limits). **Caution:** You receive the tax-free charitable contribution treatment only if the entire amount would have qualified as a charitable deduction. Thus, if the contribution amount is reduced because of a benefit received by you in exchange, or because the custodian does not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution; (e) The distribution, but for this rule, must otherwise have been required to be included in your gross income. The withdrawal of basis (i.e. non-deductible contributions or nontaxable distributions) from a traditional IRA and/or Roth IRA is not includable in income, and consequently, such withdrawal does not qualify as a tax-free charitable contribution; and (f) Payment, no matter in what form (electronic transfer, check, etc.), must be made directly from the IRA to the qualifying charitable organization. The instrument used for payment must not be negotiable by the IRA accountholder. The IRS has stated, however, that the accountholder may hand deliver the payment to the charity.

**What new QCD rule applies for 2020?** Effective for QCDs made in 2020 and subsequent years, the QCD exclusion amount for the current year must be reduced by an amount (but not below zero) equal to the excess of: the aggregate of all deductions allowed for all tax years on or after attaining age 70½ over the aggregate amount of the QCD reductions for all tax years preceding the current year.

**IRS Reporting Tasks for QCDs.** There is no special reporting for QCDs by the IRA custodian. Many times IRA accountholders and their tax advisors think the IRA custodian should be preparing the Form 1099-R to show the distribution as being tax-free. This is not the IRS procedure. A QCD is to be reported as a "normal" distribution since you are older than age 59½. You will be required to complete lines 4a and 4b of your federal income tax return. The general rule is that most IRA distributions are fully taxable so line 4a is left blank and the taxable amount is inserted on line 4b. An exception applies to QCDs. If the total distribution is a QCD, enter 0 on line 4b and write QCD next to line 4b. If only part of the distribution is a QCD, enter the part that is not the QCD on line 4b. Enter QCD next to line 4b.

**4.5.J (8) Special Rules for Certain Lifetime Income Investments.** A direct trustee-to-trustee transfer is authorized for certain lifetime income investments or a qualified plan distribution annuity. Such investments may be held by a defined contribution plan, a 403(b) plan or a governmental 457(b) plan. However, if such investments are no longer authorized to be held as an investment option under the plan, such investments may be transferred to another employer plan or an IRA.

**4.5.K Discussion of the Special Rules Applying to Distributions to Expatriates.** An expatriate is any United States citizen who relinquishes his or her citizenship and any long term resident of the United States who ceases to be a lawful permanent resident. An individual's expatriation date is the date he or she relinquishes citizenship or ceases being a permanent resident. A covered expatriate, in general, is an expatriate who meets the requirements of subparagraphs (A), (B), or (C) of Internal Revenue Code section 877(a)(2). However, there are exceptions where such a person is not treated as a covered expatriate. If you become an expatriate or are considering becoming an expatriate, you will want to consult with your tax attorney or accountant.

If you become an expatriate, your IRA is deemed totally distributed on the day before your expatriation date. This means you must include the taxable portion of your IRA in your income and pay tax at your applicable marginal income tax rate. The 10% additional tax is not imposed on this deemed distribution. There are to be appropriate adjustments made with respect to subsequent distributions from the account to reflect the deemed distribution. Special withholding rules apply.

**4.6 An IRA Distribution May Disqualify a Person For the Premium Tax Credit.** The premium tax credit (PTC) is a refundable tax credit authorized under the Affordable Care Act. It assists individuals and families with low or moderate income to afford health insurance purchased through a health insurance marketplace. A person is ineligible for this credit if the health insurance coverage is purchased outside the marketplace. A person who is eligible to enroll in certain employer-sponsored coverage or government programs such as Medicare, Medicaid or TRICARE is ineligible. To be eligible and to obtain this credit a person must meet certain requirements and must file a federal income tax return. One of the requirements is that a person's household

income must fall within a certain range. If you are receiving this credit, before taking any IRA distribution you will want to determine that such an IRA distribution will not make you ineligible to receive this credit.

**4.7 New Special Procedures Relating To an Incorrect Form 1099-R.** Until 2016, an IRA custodian had the duty to correct an IRS reporting form if it had knowledge that it had been prepared incorrectly. The IRS may assess an IRA custodian/trustee with a \$250 penalty for furnishing an incorrect form to the individual and a \$250 penalty for filing as incorrect form with the IRS. This \$250 amount is subject to adjustment by a COLA formula. It is \$280 for 2021. There is a new general rule for 2016. In two limited situations, an IRA custodian is no longer required to correct an incorrect Form 1099-R. First, no correction is necessary and the \$280 penalty is not owed if the error relates to an incorrect dollar amount and the error differs from the correct amount by no more than \$100. Second the \$280 penalty is not owed if the error relates to an incorrect tax withheld amount and the error differs from the correct amount by no more than \$25. There is an exception to this new general rule. An IRA distributee has the right to say (i.e. elect) that the IRA custodian/ trustee must still furnish a corrected Form 1099-R and it will owe the \$270 penalty amounts unless the IRA custodian/trustee within 30 days of the election prepares and files a corrected Form-R. You should contact us if you wish to make such an election. You as an IRA distributee who has been furnished an incorrect Form 1099-R must furnish the following information-(1) that you are making the election; (2) your name, address and TIN; (3) that a certain Form 1099-R was prepared with an error; and (4) the year or years you want your election to apply to. The IRS has stated it will be writing a regulation to provide additional guidance on this topic. Some IRA custodians/ trustees may choose to continue pre-2016 procedures of correcting all incorrectly prepared forms even though in some situations the law no longer requires this.

**4.8 Form 5329-Reporting Requirements when an Excise Tax Applies.** The IRS has created Form 5329 because sometimes an IRA accountholder makes an excess contribution, fails to take a required distribution, or takes a withdrawal before he or she is age 59½. If you make an excess contribution, you have the duty to file form 5329 and complete the applicable section. You must inform the IRS if you corrected the excess situation and so the 6% excise tax is not owed. Or, you must indicate the excess contribution situation has not been corrected and the annual 6% excise tax is owed. If you as the IRS accountholder or your inheriting beneficiary fails to timely withdraw his or her required distribution for a tax year, then you must complete the applicable section to show you owe the 50% tax or you may complete the form to request the IRS waive the 50% tax. If you have taken a distribution prior to age 59½, then you will in certain situations complete the applicable section of Form 5329 to claim an exception from the 10% additional tax or you will complete the form to indicate you owe the 10% additional tax. If you or your beneficiary(ies) owe the 6% excise tax on an excess contribution, the 10% additional tax on premature distributions or the 50% excise tax for failing to satisfy the minimum distribution requirements, you or your beneficiary(ies) must file IRS Form 5329. If you only owe the 10% additional tax for premature distributions, and the payer properly shows the correct code on the Form 1099-R, you may not have to file Form 5329. See the instructions for Form 5329 for more information. You may be required to file Form 5329 even though your income level would not otherwise require the filing of an income tax return (i.e. Form 1040, 1040-SR or 1040-NR).

**4.9 Reporting Requirements of Non-deductible Contributions, Conversions and Recharacterizations.** You must designate a contribution as nondeductible on your tax return by completing IRS Form 8606. On this form you will show: (1) the amount of designated nondeductible contributions for the tax year; (2) the amount of distributions from IRAs during the tax year; (3) the excess of the aggregate amount of designated nondeductible contributions for all preceding tax years over the aggregate amount of distributions from IRAs which was excludable from gross income for such tax years; and (4) the aggregate balance of all of your IRAs as of the close of the calendar year. You are required to file Form 8606 even though your income level would otherwise not require the filing of an income tax return. If you fail to file Form 8606, you will be required to pay a penalty of \$50 for each failure to file, unless such failure is due to reasonable cause.

The Form 8606 is required to be filed if any of the following apply:

- You made nondeductible contributions to a traditional IRA for a current tax year.
- You received distributions from a traditional, SEP or SIMPLE-IRA in the current tax year (other than a rollover, conversion, recharacterization, or return of certain contributions) and you have ever made nondeductible contributions to a traditional IRA.
- You converted an amount from a traditional, SEP, or SIMPLE-IRA to a Roth IRA in a current tax year (unless you recharacterized the entire conversion).

If you overstate the amount of nondeductible contributions, you may be assessed a penalty of \$100 per overstatement, unless the overstatement is due to reasonable cause.

In addition, you must generally file a Form 8606 for each year you convert funds from a traditional IRA, SEP-IRA or SIMPLE-IRA to a Roth IRA.

#### **4.10 Special Taxes that Apply Even Though No Distribution or Deemed Distribution.**

**4.10.A. Six Percent Excise Tax on Excess Contributions.** You must pay a 6% excise tax each year on excess amounts that remain in your IRA. An excess contribution will exist if you make a contribution which you are ineligible or not authorized to make. The tax cannot be more than 6% of the value of your IRA as of the end of the tax year. In general, an excess contribution is the amount paid to your IRA which exceeds your contribution limit (lesser of 100% of compensation or the applicable limit) or which is an improper rollover amount.

If the excess contribution is made for the current tax year, you will not have to pay the 6% excise tax if you withdraw or eliminate the excess amount by the date, including extensions, your tax return is due for the current year. (See the "Special Rule" under Section 4.5.I(3) above.)

If the excess contribution is attributable to a prior year, you will not have to pay the 6% excise tax if you withdraw or eliminate the excess by December 31 of the current year. The carryback concept does not apply in this situation.

**4.10.B. Fifty Percent Excise Tax on Excess Accumulations.** There is a 50% excise tax on any excess accumulations in your IRA or IRAs in the year you attain age 72 and any subsequent year. The 50% excise tax also applies to excess accumulations within an inherited IRA. An excess accumulation is the difference between the amount actually distributed to you or your beneficiary, and the amount required to be distributed, as explained in Disclosure Statement Section 3.7.

**4.11 Converting Your Traditional IRA to a Roth IRA.** Effective for tax years commencing after December 31, 2017, a person who makes a Roth IRA conversion is unable to recharacterize it. That is, a Roth IRA conversion is irrevocable.

You might benefit more (from a tax and/or nontax standpoint) if you would move or convert some or all of the assets in this traditional IRA to a Roth IRA. You may find it advantageous to incur the tax consequences of a present distribution in order to qualify to earn the right to have no taxation when the earnings are ultimately distributed from the Roth IRA. You will need to make this decision after considering all relevant rules, tax consequences and other factors. You should discuss this with your tax advisor.

Current law provides that anyone having a traditional IRA, SEP IRA or SIMPLE-IRA may convert funds to a Roth IRA.

You can convert amounts to a Roth IRA by using any of the following three methods. The first method is the standard rollover. You can receive a distribution from a traditional IRA and roll it over (contribute it) to a Roth IRA within 60 days of the distribution. The second method is a trustee-to-trustee transfer. If permissible, you may direct the custodian/ trustee of your traditional IRA to transfer an amount from the traditional IRA to the custodian/trustee of your Roth IRA. The third method is an internal movement. You direct the custodian/trustee of your traditional IRA to transfer an amount from your traditional IRA to your Roth IRA.

All three methods are reportable transactions and will be reported to the IRS and to you. This situation presents a new and unique meaning of "rollover" and "transfer." Normally, there is no taxation when a rollover or transfer occurs. This is not the case with this type of rollover or transfer. You may find it advantageous to incur the tax consequences of a present distribution in order to qualify to earn the right to have no taxation when the earnings are ultimately distributed from the Roth IRA.

A nonspouse beneficiary is ineligible to convert funds within an inherited IRA to a Roth IRA.

If you do elect to roll over or convert funds from your traditional IRA to a Roth IRA, then the amount distributed to you from your traditional IRA will be included in your income for the year of receipt and will be subject to income taxes for such year. However, even if you are younger than age 59½ at the time you receive the distribution, you will not owe the 10% excise tax.

Congress had concerns that an individual might roll over or convert funds from his or her traditional IRA to a Roth IRA and then withdraw funds before certain time periods are completed.

If you roll over or convert funds from your traditional IRA to a Roth IRA, and the 10% excise tax of Code section 72(t) would otherwise have applied, and you later withdraw funds from the Roth IRA before you meet the 5-year requirement, then you will owe the 10% excise tax as imposed by Code section 72(t). You will owe the 10% excise tax to the extent that the distribution is attributable to amounts that were includable in income due to the conversion/rollover and to which the 10% excise tax would have been applied except for the Roth conversion/rollover exception. Note that for the purpose of this additional 10% tax, there is a separate 5-year requirement for each conversion contribution. This 5-year period begins on the first day of your tax year (normally January 1) in which the conversion contribution is made. This 5-year period ends on the last day of the fifth consecutive taxable year beginning with the taxable year described in the preceding sentence (normally this is December 31).

**4.12 Recharacterizing a Contribution.** The law permits you to elect to treat an annual contribution made to a Roth IRA or traditional IRA (i.e. the First IRA) as made to the other type of IRA (i.e. the Second IRA). This can be accomplished by means of a trustee-to-trustee transaction or it can be done by an internal transaction with the same trustee.

The concept is – the contribution as made to the First IRA which is being recharacterized is treated on your federal income tax return as having been originally contributed to the Second IRA on the same date and for the same taxable year that the contribution was made to the First IRA. The income is considered earned by the Second IRA. A recharacterized contribution is not treated as a rollover for purposes of the one-rollover-per-year limitation.

This election can be made only if accomplished on or before the due date (including extensions) for filing your Federal income tax return for the taxable year for which the contribution was made to the First IRA or by such deadline as otherwise set by the IRS. If you as a taxpayer have filed your tax return timely and paid any tax owing, your deadline to complete your recharacterization is extended until October 15.

An election to recharacterize a contribution cannot be revoked once it has been completed.

You cannot recharacterize employer contributions to a SIMPLE-IRA or a SEP-IRA as contributions to another type of IRA. You cannot recharacterize a contribution to the First IRA if it was a tax-free contribution (i.e. a rollover or a transfer). The fact that a rollover or transfer (i.e. a tax-free transfer) has occurred from the First IRA to a subsequent IRA does not mean that the IRA contributor cannot recharacterize the initial contribution as long as the other rules are met. The subsequent IRA is deemed to be the first IRA for these purposes. The rollover or transfer is ignored and the recharacterization is permissible.

In order to make an election to recharacterize a contribution, you must do the following. You must notify both the custodian/trustee of the First IRA and the Second IRA that you have elected to treat the contribution as having been made to the Second IRA, instead of the First IRA for Federal income tax purposes. This notification must be furnished on the date of the transfer (i.e. simultaneously) or before the date of the transfer. The notification must also include the following information: (1) Type and amount of the contribution to the First IRA that is to be recharacterized; (2) The date on which the initial contribution was made; (3) A direction to the custodian or trustee of the First IRA to transfer in a custodian/trustee-to-custodian/trustee transfer, the amount of the contribution plus the allocable net income to the custodian/trustee of the Second IRA; (4) The name of the first trustee and the second trustee; and (5) Any additional information needed to make the transfer.

In order to have a qualifying recharacterization, the net income attributable to the contribution being recharacterized must be transferred to the Second IRA. The method used to calculate the net income is a method very similar to the method used to calculate the earnings associated with an excess contribution to a traditional IRA.

You and your tax advisor will wish to review the IRS instructions for Form 8606 and other applicable forms as to how you are to report a recharacterization on your federal income tax return(s).

**4.13 Reconversion.** With the repeal of the rules allowing a person to recharacterize a Roth IRA conversion contribution, the Roth IRA reconversion rules and the failed reconversion rules no longer apply.

**4.14 Federal Estate and Gift Taxes.** You should consult with your attorney to determine to what degree the federal estate and gift tax laws apply to your IRA. In general, these laws do apply to IRAs. IRC sections 2039(c) and 2517, however, provide limited exceptions so that certain IRA transactions will not be subject to federal estate or gift taxes. For example, no federal gift tax has to be paid when you name a beneficiary or when the funds are paid to the beneficiary after your death. In general, IRA funds are includable in the computation of federal estate taxes.

The Tax Cuts and Jobs Act of 2017 has greatly expanded the federal estate tax exemption. For 2018-2025 the law provides an estate tax exemption for an individual of \$10,000,000. This is twice the \$5,000,000 limit (as COLA adjusted) which will apply in 2026. This amount is adjusted annually pursuant to a COLA adjustment. The exclusion amount for 2021 is 11.70 million. The exclusion amount for 2022 is 12.06 million. In general, a married couple is able to exclude 23.40 million from federal estate tax for 2021 and 24.12 million for 2022.

The IRS has furnished guidance by issuing a final regulation that there will be no claw back of large gifts, including IRA gifts, made before 2026.

The final regulation provides that the credit to be claimed on the estate's return is the larger of the exclusion amount as in effect on the decedent's date of death or the exclusion amount to be used to determine the gift tax payable. This means the decedent's estate is not inappropriately taxed with respect to gifts made when exclusion amount was greater.

**4.15 State Taxes.** You should consult with your attorney to determine to what degree state income, estate, and gift tax, and other laws apply to your IRA.

**4.16 IRS Reporting Duties of the IRA Custodian/Trustee.** An IRA custodian has certain IRS reporting duties and certain duties to report to state revenue departments.

Annually, the IRA custodian must prepare the Form 5498 to report your contributions (annual, rollovers, and recharacterizations) and the fair market value of your IRAs as of December 31. Form 5498 may also be used to inform the IRS that you, if applicable, must take a required distribution for the following year. A Form 5498 is not required to be prepared if you made no reportable contribution or if your IRA had no balance as of December 31.

The IRA custodian must also prepare a Form 1099-R to report any reportable distribution. Technically, the IRA custodian is only required to report distributions of more than \$10, but many IRA custodians report all distributions.

**4.17 IRS Reporting Duties of the IRA Accountholder and the Inheriting Beneficiary.** An IRA accountholder and/or an inheriting IRA beneficiary has federal tax reporting duties. You must properly report your IRA contributions and your IRA distributions. You are to complete the following IRS tax forms as applicable: Form 1040, 1040-SR or 1040-NR, 8606 (Nondeductible contributions) and 5329 (Additional taxes on IRAs and Other Tax-Favored Accounts). Form 1040 is the standard U.S. Individual Income Tax Return. The Form 1040 may be used by an IRA accountholder to claim an IRA deduction, to report an IRA distribution and/or to claim the Retirement Savings Contribution Credit. With respect to reporting an IRA distribution, the IRS has adopted the basic administrative rule that the recipient must include 100% of the distribution in his or her income and the applicable tax paid unless the recipient explains on his or Form 1040, 1040-SR or 1040-NR why the distribution need not be included in income. Some examples of when the distribution is not 100% taxable: return of basis, rollover, qualified HSA funding distribution, a qualified charitable distribution, the return of certain excess contributions or the return of certain current year contributions. If you are required to file one or more of these IRS tax return forms and fail to do so, the IRA may assess a tax penalty. The same is true for an inheriting

IRA beneficiary.

## **5. Rules and Procedures After You the IRA Accountholder or Your Beneficiary Has Died – RMD Rules for a Beneficiary**

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**Are my IRA beneficiaries required to take RMDs after I die?** Yes. Once an IRA accountholder dies, the law generally requires that a beneficiary take required distributions over his or her life expectancy or by using the 5-year rule or the 10-year rule. Unless you have restricted how much your beneficiary may withdraw, he or she is able to withdraw more than the required distribution amount, including closing the IRA. If your beneficiary fails to take his or her required distribution by the applicable deadline, then he or she will owe the 50% tax.

**Have the RMD rules for certain beneficiaries changed?** Yes. With the enactment of the SECURE Act within the Further Consolidations Act of 2020 there are now different rules depending upon whether the IRA owner died on or before December 31, 2019 or after December 31, 2019.

**Are there situations where a person designated to be a beneficiary no longer qualifies as a beneficiary?** Yes. If my beneficiary and I die together with no evidence showing who died first, then my beneficiary is deemed to have predeceased me. If my beneficiary dies within 120 hours of my death, such beneficiary is deemed to have predeceased me.

**Surviving Spouse's Right to Treat Deceased Spouse's IRA as Own.** A spouse who is the sole primary beneficiary, and who has an unlimited right to withdraw amounts from the deceased spouse's IRA, has the right to treat this IRA as his or her own IRA at any time after the spouse's date of death. When a surviving spouse elects to treat the deceased spouse's IRA as his or her own, the IRA is no longer an "inherited" IRA. The effect of treating the deceased spouse's IRA as his or her own IRA is that the surviving spouse is now treated as if he or she had originally made the IRA contributions. The surviving spouse is now considered to be the IRA owner, for whose benefit the IRA is maintained, for all purposes under the tax laws (e.g. the application of the 10% excise tax for pre-age 59½ distributions, the right to designate a beneficiary(ies), the right to convert the funds to a Roth IRA, the RMD Rules, etc).

**Note.** The IRS has made clear that even though your spouse beneficiary does not have the right to elect to treat your IRA as his or her own because he or she is not the sole beneficiary or for some other reason, your spouse may still roll over a distribution as long as the standard rollover rules are satisfied.

**When must my beneficiary(ies) be paid a required distribution?** If an RMD had been calculated for you for the year you die, then your beneficiary(ies) will need to be paid an RMD by December 31 of such year to the extent it had not been paid to your prior to your death. An RMD is calculated for the year you attain age 72 or would have attained age 72 since for RMD purposes it is assumed you lived the entire year.

The RMD due for the years after the year of your death depend upon the RMD rules as discussed.

**What is the tax consequence for my beneficiary if he or she fails to take an RMD by December 31?** He or she will owe the 50% tax. For example, if the RMD is \$600, then the penalty tax amount owed is \$300. The IRS does have the authority to waive this tax if special circumstances explain why a beneficiary missed taking his or her RMD.

**What is the general RMD formula for an IRA beneficiary?** It is the same formula which applies to a living IRA accountholder, except the life-expectancy table to be used is different. An IRA beneficiary uses the Single Life Table. An IRA beneficiary never uses either the Uniform Lifetime Table or the Joint and Last Survivor Table.

The Formula for Current Year:

12-31-XX of Preceding Year divided by the Period from Single Life Table (As Adjusted) equals RMD.

**What life-expectancy table is used to determine the life expectancy which applies to an inheriting IRA beneficiary using the life expectancy rule?**

**Single Life Table**

Age of IRA Beneficiary	Distribution Period (in yrs)	Age of IRA Beneficiary	Distribution Period (in yrs)	Age of IRA Beneficiary	Distribution Period (in yrs)	Age of IRA Beneficiary	Distribution Period (in yrs)
0	84.6	31	54.4	61	26.2	91	5.3
1	83.7	32	53.4	62	25.4	92	4.9
2	82.8	33	52.5	63	24.5	93	4.6
3	81.8	34	51.5	64	23.6	94	4.3
4	80.8	35	50.5	65	22.9	95	4.0
5	79.8	36	49.6	66	22.0	96	3.7
6	78.8	37	48.6	67	21.2	97	3.4
7	77.9	38	47.7	68	20.4	98	3.2
8	76.9	39	46.7	69	19.6	99	3.0
9	75.9	40	45.7	70	18.8	100	2.8
10	74.9	41	44.8	71	18.0	101	2.6
11	73.9	42	43.8	72	17.2	102	2.5
12	72.9	43	42.9	73	16.4	103	2.3
13	71.9	44	41.9	74	15.6	104	2.2
14	70.9	45	41.0	75	14.8	105	2.1
15	69.9	46	40.0	76	14.1	106	2.1
16	69.0	47	39.0	77	13.3	107	2.1
17	68.0	48	38.1	78	12.6	108	2.0
18	67.0	49	37.1	79	11.9	109	2.0
19	66.0	50	36.2	80	11.2	110	2.0
20	65.0	51	35.3	81	10.5	111	2.0
21	64.1	52	34.3	82	9.9	112	2.0
22	63.1	53	33.4	83	9.3	113	1.9
23	62.1	54	32.5	84	8.7	114	1.9
24	61.1	55	31.6	85	8.1	115	1.8
25	60.2	56	30.6	86	7.6	116	1.8
26	59.2	57	29.8	87	7.1	117	1.6
27	58.2	58	28.9	88	6.6	118	1.4
28	57.3	59	28.0	89	6.1	119	1.1
29	56.3	60	27.1	90	5.7	120	1.0
30	55.3						

**Who is primarily responsible to comply with the RMD rules after I die?** Each beneficiary has this responsibility. Each beneficiary should seek guidance from their own adviser because these laws are complicated. Current IRS procedures do not require the IRA custodian/trustee to furnish an IRA beneficiary with an annual RMD notice as is provided to you annually. Many IRA custodians/trustees will communicate with a beneficiary to assist a beneficiary with the withdrawal of the inherited IRA funds.

**What is the consequence if a beneficiary fails to comply with the RMD laws?** He or she will owe the 50% tax.

**After I die what required minimum distribution laws will apply to my beneficiary(ies)?** These laws are complicated and which laws apply to a certain beneficiary depend upon whether your beneficiary is a spouse or not, whether you die after December 31, 2019, (or before) and in some cases whether you die or died before or after your required beginning date. Your required beginning date is April 1 of the year following the year you attain age 72 if you die after December 31, 2019 or April 1 of the year following the year you attained age 70 1/2 if you died before January 1, 2020.

**What are the required distribution laws applying to my beneficiary(ies) if I die after December 31, 2019?** There are certain laws for an Eligible Designated Beneficiary (EDB) and then there are other laws for a beneficiary who or which is not an EDB. Your beneficiary is responsible to determine if he, she or it qualifies as an EDB. Your beneficiary is to furnish the IRA custodian/trustee with a certification as to their EDS or non-EDB status. We may rely on such certification.

There are five individuals or trusts who qualify as an eligible designated beneficiary.

1. A beneficiary who is disabled as defined for IRA and pension plan purposes.
2. A non-spouse beneficiary who is not more than 10 years younger than the deceased IRA. For example, Jane age 65 and designated her brother John age 58 as her primary beneficiary.
3. A beneficiary who is a child of the IRA owner who has not reached the age of majority. This exception is limited. Once the child attains the age of majority, she or will have 10 years in which to close the inherited IRA. In most states, the age of majority is age 18.
4. A beneficiary who is chronically ill. A certification must be provided showing a period of inability that is an indefinite one and which reasonably is expected to be lengthy.
5. A beneficiary which is a trust which meets certain special rules. These rules are not the rules that must be met under pre-2020 rules to have a qualified trust. First, the trust must have multiple beneficiaries. Second, the trust must have at least one beneficiary who is either disabled or chronically ill. Third, all of the beneficiaries are treated as designated beneficiaries for purposes of determining the distribution period. The trust is to be structured in one of two ways.

First, upon the death of the IRA owner, the trust is divided immediately into separate trusts for each beneficiary. There is to be a separate life distribution rule calculation for each beneficiary who is disabled or chronically. It is not clear what calculation is to be made for other beneficiaries.

Second, upon the death of the IRA owner, the trust must provide that only a beneficiary who is disabled or a beneficiary who is chronically is entitled to be distributed such trust funds. Other beneficiaries may be distributed such funds only after all such eligible designated beneficiaries have died. However, in that situation any remaining beneficiary (not an eligible designated beneficiary) shall be treated as a beneficiary of the eligible designated beneficiary.

If your EDB beneficiary dies during their life distribution RMD period and funds remain in the inherited IRA, then the 10-year rule applies to any subsequent beneficiary.

If your beneficiary is your spouse who is your sole primary beneficiary, then he or she will have three options. First, he or she may elect to treat your IRA as their own IRA. If this election is made, the funds may be transferred from your IRA into your surviving spouse's IRA. Secondly, your spouse may maintain the IRA as an inherited IRA and elect to use a special life distribution rule. Under this rule your spouse is not required to commence withdrawing funds until December 31 of the year you would have attained age 72. Thirdly you spouse may maintain the IRA as an inherited IRA and then elect to use the 10-year rule which requires the inherited IRA be closed (\$0.00 balance) by December 31 of the year containing the 10th anniversary of your death. Your spouse beneficiary is ineligible to elect the 10-year rule if you die on or after your required beginning date. Your spouse is an Eligible Designated Beneficiary. Your spouse beneficiary who is your sole beneficiary does have the right at any time to treat your IRA as his or her own IRA even though they initially elected the special life distribution rule or the 10-year rule.

If your beneficiary is your spouse who is NOT your sole primary beneficiary, then he or she will have two options. First, your spouse may maintain the IRA as an inherited IRA and elect to use the standard distribution rule. Under this rule your spouse is required to commence annual distributions commencing by December 31 of the year following the year of your death. Secondly, your spouse may maintain the IRA as an inherited IRA and then elect to use the 10-year rule which requires the inherited IRA be closed (\$0.00 balance) by December 31 of the year containing the 10th anniversary of your death. Your spouse is an Eligible Designated Beneficiary. He or she does have right to take a distribution (but not an RMD) from the inherited IRA and then make a rollover contribution over into their own IRA.

If your beneficiary is a living person, but not your spouse, who qualifies as an Eligible Designated Beneficiary (EDB) then he or she will have two options. First, your spouse may maintain the IRA as an inherited IRA, then your non-spouse beneficiary may maintain the IRA as an inherited IRA and elect to use the standard distribution rule. Under this rule your beneficiary spouse is required to commence annual distributions commencing by December 31 of the year following the year of your death. Secondly, your beneficiary may maintain the IRA as an inherited IRA and then elect to use the 10-year rule which requires the inherited IRA be closed (\$0.00 balance) by December 31 of the year containing the 10th anniversary of your death. He or she does NOT have right to take a distribution from the inherited IRA and then make a rollover contribution over into their own IRA.

If your beneficiary is a living person, but not your spouse, who does not qualify as an Eligible Designated Beneficiary (EDB) then he or she only has one option. He or she is required to use the 10-year law which requires the inherited IRA be closed (\$0.00 balance) by December 31 of the year containing the 10th anniversary of your death. He or she does NOT have right to take a distribution from the inherited IRA and then make a rollover contribution over into their own IRA. If your beneficiary is a not a living person such as your estate or a non-qualified trust, then it is required to use the five (5) year law which requires the inherited IRA be closed (\$0.00 balance) by December 31 of the year containing the 5th anniversary of your death. It does NOT have right to take a distribution from the inherited IRA and then make a rollover contribution into another inherited IRA. The IRS may create some special laws if your estate would be your beneficiary. Your beneficiary must seek the advice and guidance of their adviser and furnish us with a legal opinion if it is believed that there may be a distribution period other than the 5-year rule such as a special life distribution rule using your life expectancy.

Also it appears a qualified trust is entitled to use the 10-year rule rather than the 5-year rule. A legal opinion should be furnished that a certain trust is a qualified trust and therefore is entitled to use the 10-year rule.

**What are the required distribution laws if the IRA account holder died on or before December 31, 2019?** A beneficiary is grand-fathered and the rules which applied to the beneficiary as of December 31, 2019, continue to apply after December 31, 2019. That is, if the beneficiary was using the life distribution rule the beneficiary will continue to use the life distribution rule and if he or she was using the 5-year rule, the beneficiary will continue to use the 5-year rule as modified by the CARES Act. The year 2020 is not to be counted as one of the five years due to the waiver of all RMDs for 2020.

When the beneficiary dies after on or after January 1, 2020, their successor beneficiary as long as he or she is a person will be required to use the 10-year rule to close the inherited IRA. If the person is not a person the 5-year rule will apply and a person will be required to use the 5-year rule to close the inherited IRA.

A spouse beneficiary who was the sole primary beneficiary may still elect to treat the inherited IRA as their own even though their original election was to use the special life distribution rule or the 5-year rule. A spouse beneficiary who was not the sole primary beneficiary may still elect to take a distribution and rollover the non-RMD portion into his or her own IRA even though their original election was to use the standard life distribution rule or the 5-year rule.

## **6. Miscellaneous**

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6.1 Approved as to Form. Your IRA has been approved as to form for use as an IRA by the IRS. This approval as to form does not represent a determination of the merits of such IRA or its investments.

6.2 Further IRA Information. The IRS has published guidance on IRAs and this guidance may be found online at [www.irs.gov](http://www.irs.gov). The IRS now publishes two IRA Publications; Publication 590A, Contributions to Individual Retirement Arrangements (IRAs); and Publication 590B, Distributions from Individual Retirement Arrangements (IRAs). Combined these provide a comprehensive discussion of IRAs.

6.3 Financial Disclosure Information. It is NOT reasonable to project the growth of your IRA because your IRA investments include assets other than bank time deposits or savings accounts. Therefore, your final account balance will depend upon many factors—the amount of your contributions, the amount of time the funds are invested, the earnings and/or losses from the investments, expenses incurred such as brokerage commissions and trustee's fees and the overall performance of your investments. We expressly state that the growth in the value of your IRA cannot be guaranteed or projected. An attachment, if any, will explain if there are any transaction fees (brokerage fees, etc.) and/or surrender (termination) fees and explain how they are calculated. The earnings and losses of your investments are directly identified to your investments. There is no need to compute and allocate earnings unless you have invested in a common trust fund. In that case, an attachment will explain the method used to compute and allocate the earnings and losses.

6.4 General Rule—No FDIC Insurance Coverage. Normally FDIC insurance does NOT apply to assets held within a trust IRA because FDIC insurance applies only to certain deposit accounts. Your IRA has primarily been invested or will be invested in investments other than such deposit accounts and therefore will NOT be insured by the FDIC.

In some instances a portion of your IRA funds will be invested in deposits at this institution or another institution which is an "insured" institution. In such case, such deposits would be insured pursuant to the rules as established by the FDIC. A summary follows. Such IRA deposits are insured on a per institution basis and are insured separately from other deposit accounts, pursuant to the Federal Deposit Insurance Act, up to \$250,000. Any IRA, Roth IRA, most eligible deferred compensation plans described in section 457 of the Internal Code, a Keogh plan as described in Code section 401(d) and any individual account plan as defined in section 3(34) of ERISA shall be aggregated and insured in an amount not to exceed \$250,000. This aggregation requirement applies to a Keogh plan or an individual account plan only when you have the right to direct the investment of your account. Amounts in excess of \$250,000 are not insured.

## **7. Summary of Contractual Terms**

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7.1 You must refer to your savings or time deposit agreement(s) or other investment agreements, as applicable, for the terms which govern the investment of your IRA deposits, including an early withdrawal penalty or fee for taking a distribution prior to maturity, if applicable.

7.2 You have the right to designate a beneficiary or beneficiaries to inherit your IRA account. Refer to Section 1.6 of Article VIII so that you understand the rules and procedures.

7.3 You do not have any right or ability to assign your rights in this IRA.

7.4 We may charge fees as set forth in Section 1.21 of Article VIII.

7.5 We may amend the terms of this IRA from time to time to comply with law changes. If we amend it for any other reason, such amendment becomes effective 30 days after we have sent our notice of amendment to you.

7.6 You are to refer to Article VIII for the following topics: withdrawals, withholding rules, reporting errors, changes in the IRA custodian or trustee, good faith payments, termination and resignation of the IRA custodian or trustee, withholding payments and resolution of disputes, transfers and rollovers, and payment of taxes.