

AI-01741 US Citizen Residing Abroad vs Investing

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A 70 years old US citizen but lives in Cebu Philippines was told by Fidelity Investments that he cannot invest in the US stock market, buy US ETF or mutual funds because he does not live in the US or no US address. Is it true?

Yes, what Fidelity Investments told the 70-year-old US citizen living in Cebu, Philippines, is largely true for new accounts and certain types of investments.

Here's a breakdown of why:

- **Residency vs. Citizenship:** Fidelity, like many other US-based financial institutions, primarily bases its account opening policies on **residency**, not citizenship. While the individual is a US citizen, because he resides outside the US (in the Philippines), Fidelity generally will not allow him to open *new* retail investment accounts.
- **Regulatory Compliance:** This restriction is due to complex international regulations and compliance requirements. Financial firms are subject to the laws of both the United States and the countries where their clients reside. It's often too burdensome for them to comply with the diverse regulations of every country.
- **Mutual Fund Restrictions:** Even for existing accounts, US citizens living abroad often face restrictions on purchasing new **mutual funds**. This is because mutual funds are typically registered with the SEC for sale in the US, but not necessarily in foreign jurisdictions. Foreign countries have their own regulations for selling financial products to their residents, and US mutual funds may not meet those requirements. Fidelity explicitly states this: "As of

August 1, 2014 customers residing outside the United States will not be allowed to purchase shares of mutual funds."

- **ETFs:** While mutual funds are generally restricted, the ability to buy ETFs (Exchange Traded Funds) can be more nuanced. ETFs trade like stocks, and in some countries, US citizens living abroad can still purchase US-domiciled ETFs. However, this is not universally true and depends on the specific country's regulations. Fidelity's policy might also limit new purchases of ETFs based on the foreign residency.
- **Existing Accounts:** If the individual *already had* a Fidelity account open *before* moving to the Philippines, they might be allowed to maintain it and potentially trade individual stocks and sell existing holdings. However, even then, they would likely face restrictions on new mutual fund purchases and possibly other limitations.
- **Alternative Options:** While Fidelity may not be an option for new accounts, US citizens living abroad can still invest in the US stock market through other means. Some brokerage firms specialize in serving US expats (e.g., Charles Schwab International, Interactive Brokers, Saxo Bank, E-Trade). They are set up to handle the complexities of cross-border regulations.

In summary: Fidelity's stance is primarily driven by their internal policies and the complexities of international financial regulations, which prioritize residency for opening new accounts and restrict certain types of investments (like mutual funds) for non-US residents.

Does Bank of America MerrillEdge have the same restrictions as Fidelity?

Yes, **Bank of America Merrill Edge generally has similar restrictions to Fidelity** when it comes to US citizens living abroad, particularly concerning opening new accounts and investing in certain products like US mutual funds.

Here's why and what you can expect:

- **Residency-Based Policies:** Like Fidelity, Merrill Edge's policies are primarily driven by the client's country of residence, not just their US citizenship. They face the same challenges of complying with diverse international financial regulations.

- **Difficulty Opening New Accounts:** It is highly unlikely that a US citizen residing in the Philippines would be able to open a *new* self-directed Merrill Edge account (Merrill Edge Self-Directed). Many US brokerage firms, including Merrill Edge, have tightened their policies on accepting new clients who are non-US residents.
- **Mutual Fund Restrictions:** This is a common and almost universal restriction for US citizens living abroad. US-based mutual funds are typically registered only for sale in the US. Selling them to residents of other countries (even US citizens) can trigger complex foreign regulatory requirements that most US firms are unwilling to meet. You will find that new purchases of US mutual funds are generally prohibited for non-US residents, including dividend reinvestments.
- **Existing Accounts:** If someone had an existing Merrill Edge account *before* moving abroad, they might be allowed to maintain it, sell existing holdings, and possibly purchase individual stocks and ETFs, but they would likely face restrictions on new mutual fund purchases. However, there are also reports of Merrill Lynch (the broader wealth management arm, which Merrill Edge is part of) having closed accounts for US expats in the past due to compliance burdens.
- **FATCA and Compliance:** The Foreign Account Tax Compliance Act (FATCA) has significantly increased the reporting burden on foreign financial institutions with US clients, and on US financial institutions with clients abroad. This has led many firms to simply reduce their exposure to expat clients due to the added cost and complexity of compliance.
- **Merrill Lynch Wealth Management vs. Merrill Edge:** It's important to distinguish between Merrill Edge (the self-directed platform) and Merrill Lynch Wealth Management. While Merrill Edge is generally restrictive for non-US residents, Merrill Lynch Wealth Management *might* have options for high-net-worth individuals living abroad, often with much higher minimum balance requirements and specialized advisors who deal with international clients. However, even then, the product offerings could still be limited compared to what's available to US residents.

In essence: The 70-year-old US citizen in Cebu would likely encounter the same "no" from Merrill Edge as they did from Fidelity for similar reasons. Both firms

prioritize simplifying their regulatory compliance by largely focusing on clients who reside within the United States.

So what will happen to my 401k retirement fund in Fidelity if I decide to relocate to Cebu?

This is a common and important question for US citizens planning to retire abroad. Here's what will likely happen to your 401(k) with Fidelity if you relocate to Cebu, Philippines:

General Principles for 401(k)s When Moving Abroad:

- **You can generally keep it:** You are typically allowed to keep your existing 401(k) with Fidelity even if you move out of the U.S. Your 401(k) is tied to your former employer's plan, and those plans generally don't require you to liquidate or transfer your funds just because you change your residency.
- **No new contributions:** You won't be able to make new contributions to that 401(k) since you will no longer be employed by the sponsoring US company and will not have US earned income for 401(k) purposes.
- **Investment limitations:** While you can keep your existing holdings, you will likely face restrictions on new investments, especially in US mutual funds. Fidelity's policy explicitly states that "customers residing outside the United States will not be allowed to purchase shares of mutual funds." This means you won't be able to buy new mutual funds or add to existing ones, though dividend reinvestment on existing mutual fund holdings might still be allowed. Trading individual stocks and ETFs is generally less restricted, but this can depend on the specific country and Fidelity's internal policies for that country.
- **Access to funds:** You'll still be able to access your funds according to the plan rules (e.g., when you reach retirement age or if you qualify for an early withdrawal). Distributions will still be subject to US tax laws, and potentially Philippine tax laws, depending on tax treaties and your specific situation.
- **Tax implications:** This is crucial.
 - **US Taxes:** Your 401(k) is a US-qualified retirement plan. Withdrawals, when you take them, will be subject to US income tax, just as if you were living in the US. If you take distributions before age 59 1/2, they will also be subject to a 10% early withdrawal penalty, unless an exception applies.

- **Philippine Taxes:** The Philippines has its own tax laws. Depending on the tax treaty between the US and the Philippines, and your residency status in the Philippines, your 401(k) distributions might also be subject to Philippine income tax. You'll need to consult with a tax professional specializing in US-Philippines taxation to understand your specific obligations and how to avoid double taxation.
- **Communication and Address:** You will need to update your address with Fidelity to your new address in Cebu. Fidelity will require you to provide foreign status certification (W-8BEN form) to determine your correct tax withholding status. All communications will be sent to your Philippine address.

Your Options for Your Fidelity 401(k):

1. **Leave it with Fidelity (as is):** This is often the simplest option. Your money remains invested, continues to grow tax-deferred, and you can access it when you meet the plan's distribution rules. However, you'll be subject to the investment restrictions mentioned above.
2. **Roll it over to a Fidelity IRA (potentially problematic):** This is generally a good option for people staying in the US. However, since you will be a non-US resident, **Fidelity's general policy states that they "do not open accounts for any new customers residing outside the United States."** This means you likely *cannot* roll your 401(k) into a *new* Fidelity IRA once you are a resident of the Philippines. If you already had an existing Fidelity IRA from before you moved, you might be able to roll your 401(k) into that, but you would still face the mutual fund purchase restrictions.
3. **Roll it over to an IRA with another brokerage specializing in expats:** This is often the recommended path. Some US brokerage firms are set up to cater to US citizens living abroad, and they may allow you to open an IRA with your Philippine address and roll over your 401(k) into it. Examples include Charles Schwab International, Interactive Brokers, or other firms that have dedicated expat services. This would give you more control over your investments and potentially wider investment choices.
4. **Cash out:** You could liquidate your 401(k) and take the cash. However, this is almost always the least advisable option, especially if you're not yet retired, due to immediate taxation (ordinary income tax on the entire amount) and a

10% early withdrawal penalty if you're under 59 1/2. You'd lose the significant benefits of tax-deferred growth.

5. **Roll it over to a new employer's plan (if applicable):** This is not relevant in your case as you are retiring.

Key Action Steps:

- **Contact Fidelity:** Before you move, call Fidelity's retirement or international services department. Explain your situation (US citizen, moving to Cebu, what will happen to your 401k). Get their specific guidance on how your account will be handled, any restrictions, and the process for updating your address and tax forms (W-8BEN).
- **Consult a Tax Professional:** This is critical. Find a US tax advisor who specializes in expat taxation and ideally has knowledge of the US-Philippines tax treaty. They can advise you on the tax implications of distributions, FBAR reporting requirements (for foreign bank accounts), and overall tax planning for your retirement abroad.
- **Research Expat Brokerage Firms:** If you want more control over your investments or broader investment options, research brokerage firms that cater to US citizens living abroad and allow account opening for residents of the Philippines.

While your 401(k) generally won't be "closed" when you move, your ability to manage and invest within it will likely be restricted by Fidelity due to their residency-based policies. Rolling it over to an IRA with a brokerage firm that specializes in expats is often the best solution for ongoing management and investment flexibility.

What if I use the US address of my sister or brother since I will be selling my own house and revisit TX frequently? Will that be fine? List 22 Protocols to follow when planning to reside outside the USA.

Using your sister's or brother's US address might seem like a convenient workaround, but it comes with **significant risks and potential legal and financial complications**. While some expats do this, it's generally **not advisable** and can lead to serious issues if discovered.

Here's why and what you should consider:

Risks of Using a Relative's US Address When Living Abroad:

1. **Fraud and Misrepresentation:** Financial institutions require your **actual residential address** due to "Know Your Customer" (KYC) and anti-money laundering (AML) regulations, primarily under the Patriot Act. Providing a false address is considered misrepresentation and could be seen as fraud.
2. **Account Closure/Freezing:** If Fidelity (or any other financial institution) discovers you're not actually residing at the US address provided, they have the right to freeze or close your accounts. This could leave you without access to your funds, especially retirement funds, at a critical time.
3. **Proof of Residency:** Banks often require proof of residence beyond just an address, such as utility bills, lease agreements, or driver's licenses. You wouldn't be able to provide these for your sister's/brother's address, which would raise red flags.
4. **Tax Implications (State Level):** While your federal tax liability as a US citizen generally remains regardless of residency, your *state* tax residency is determined by where you primarily reside. If you maintain a US address and ties to a particular state (like Texas), that state might consider you a resident and attempt to tax your worldwide income, even if you spend most of your time in the Philippines. Texas has no state income tax, which is a benefit, but other states do.
5. **Mail and Important Documents:** Sensitive financial documents (statements, tax forms like 1099-R for distributions, important notices) will be sent to that address. Your sister/brother would be responsible for handling them, which can be a burden and risk for them, and you might miss critical information.
6. **Insurance Issues:** Car insurance, health insurance (if you maintain any US-based policies), and other insurance products are often tied to your primary residence. Using a false address could invalidate your policies.
7. **Legal Standing:** In case of any legal disputes or notifications, the address on file is where official communications will be sent. If you're not there to receive them, it could have serious repercussions.

What Fidelity's Stance Implies:

Fidelity's restrictions stem from their need to comply with both US and foreign regulations. If they know you reside in the Philippines, they are obligated to follow Philippine financial regulations, which they are likely not set up to do for retail investment accounts. Using a US address would effectively circumvent their compliance procedures, putting them at risk, and by extension, you.

Your 401(k) with a False Address:

If you try to keep your 401(k) with Fidelity using a US address while living in Cebu:

- **Existing Investments:** You'll likely be able to keep your existing holdings and potentially make limited trades (like selling stocks/ETFs), but buying new mutual funds will still be an issue if their system identifies your foreign residency through other means (e.g., IP address, phone number).
- **Distributions:** When you start taking distributions, they will still be sent to that US address or directly deposited into a US bank account.
- **Risk of Discovery:** Fidelity has sophisticated systems to detect discrepancies. Using a foreign IP address frequently, making transactions from the Philippines, or even your phone number being a Philippine number could trigger a review. If they discover you're not a US resident, they could freeze or close the account.

Recommendation:

It is generally safer and more compliant to **be transparent** about your residency. If you want to maintain US investment accounts while living abroad, explore options specifically designed for US expats:

- **Brokerages with International Divisions:** As mentioned before, firms like Charles Schwab International and Interactive Brokers are set up to handle US citizens living overseas and allow you to declare your foreign residency properly. They have different investment options and regulatory frameworks for expat clients.
 - **Seek Professional Advice:** This is paramount. Consult with an expat financial advisor and a US expat tax specialist *before* you move to discuss the best way to manage your 401(k) and other assets compliantly and efficiently.
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22 Protocols to Follow When Planning to Reside Outside the USA:

Planning an international move, especially for retirement, involves numerous complex steps.⁶ Here's a comprehensive list of protocols to follow:

I. Financial & Tax Planning:

1. **Consult an Expat Tax Specialist:** This is non-negotiable. Understand your US tax obligations (worldwide income taxation, FBAR, FATCA, Foreign Earned Income Exclusion, Foreign Tax Credit) and your tax obligations in the Philippines.
2. **Review Retirement Accounts (401k, IRA, Pensions):**
 - Understand distribution rules from abroad.
 - Assess tax implications of withdrawals in both the US and Philippines.
 - Consider rolling over 401k to an IRA with an expat-friendly brokerage.
 - Confirm how Social Security and any pensions will be paid (direct deposit, international direct deposit).
3. **Establish Expat-Friendly Banking:**
 - Maintain at least one US bank account (consider one that accepts foreign addresses like State Department Federal Credit Union or an international division of a major bank like HSBC Expat).
 - Open a local bank account in the Philippines for daily expenses.
 - Research cost-effective international money transfer services (e.g., Wise/formerly TransferWise, Revolut, Xoom).
4. **Review Investments:**
 - Understand restrictions on US mutual funds and other collective investments for non-residents.
 - Consider investments that are tax-efficient for expats.
 - Consult with a financial advisor specializing in international wealth management.

5. **Update Estate Plan:**

- Review your will, trusts, and power of attorney. US documents may not be recognized or effective in the Philippines.
- Consider creating a local will for assets in the Philippines or a multi-jurisdictional will.
- Update beneficiary designations on all accounts.

6. **Credit Cards & Credit Score:** Keep at least one US credit card to maintain your US credit history. Be aware of foreign transaction fees.

II. **Healthcare & Insurance:**

1. **Understand Medicare Limitations:** Medicare generally does *not* cover healthcare outside the US (with very limited exceptions).
2. **Secure International Health Insurance:** This is essential. Research and purchase a comprehensive international health insurance plan that covers you in the Philippines and potentially for travel back to the US.
3. **Evaluate Other Insurance:** Review life insurance, long-term care insurance, property insurance (for any US property), and travel insurance. Ensure coverage is adequate for your new residency.

III. **Legal & Administrative:**

1. **Notify Financial Institutions:** Officially inform your US banks, brokerages, and other financial institutions of your move and new foreign residential address (unless you are advised by a legal expert specializing in expat finance to do otherwise, which is rare for primary residences).
2. **Change of Address:**
 - Update your mailing address with the USPS (consider a reliable mail forwarding service that provides a legitimate street address, not just a P.O. Box).
 - Update your address with the IRS.
 - Update with Social Security Administration, pension providers, etc.
3. **Passport & Visa:** Ensure your US passport is valid for several years beyond your planned move date. Understand and obtain the correct long-term visa for

residing in the Philippines (e.g., retirement visa, special investor's visa).

4. **Driver's License:** Check if your US driver's license is valid in the Philippines and if/how to obtain a local license.
5. **Voting Abroad:** Register to vote as an absentee voter through the Federal Voting Assistance Program (FVAP).
6. **Power of Attorney:** Consider granting a trusted person in the US a durable power of attorney for financial and/or medical matters, in case you need someone to act on your behalf.
7. **Digital Access & Security:** Ensure you have reliable internet access, a US phone number (e.g., Google Voice, a cheap prepaid plan) for 2FA, and robust cybersecurity practices for managing your accounts remotely.

IV. Practical Logistics:

1. **Downsizing & Shipping:** Decide what to sell, store, or ship. Get multiple quotes for international shipping.
2. **Housing in the Philippines:** Research housing options (renting vs. buying, legal restrictions for foreigners buying land). Secure initial accommodation.
3. **Cost of Living Analysis:** Thoroughly research the cost of living in Cebu to ensure your retirement funds will support your desired lifestyle.
4. **Healthcare Access in the Philippines:** Understand the local healthcare system, hospitals, and access to doctors and medications.
5. **Local Integration:** Learn about Filipino culture, basic Tagalog phrases, and expat communities in Cebu.
6. **Emergency Preparedness:** Have a plan for emergencies, including contact information for the US Embassy/Consulate in the Philippines and a list of important documents and contacts.

This list highlights the complexity of moving abroad as a US citizen. Engaging with professionals (expat tax specialists, international financial advisors, and potentially an attorney in the Philippines) is the best way to ensure a smooth and compliant transition.¹⁰