

## **Prevent Termination of 401(k) Retirement Plans**

### **Proposal to Provide Relief for Small Business Retirement Plans**

Over 600,000 401(k) plans exist in America. A recent analysis by the American Retirement Association (ARA) determined that over 200,000 401(k) plans, operated by small businesses, are at risk for termination due to the COVID-19 pandemic. Small businesses are facing a cash flow issue and may see plan termination as a way to decrease payroll costs. ARA, whose broad membership consists of service providers and plan sponsors, strongly supports immediate 401(k) plan funding relief that will allow plan sponsors to continue to provide a retirement plan for their rank and file workers.

ARA proposes that plan sponsors of a 401(k) plan that have suffered a business hardship, as defined under Internal Revenue Code Section 412(c), be allowed the following relief:

#### **2020 Plan Year Funding Relief**

Permit the suspension of future employer contributions for 2020. Safe harbor plans maintain their safe harbor status for the remainder of the plan year. Plans that are not deemed "safe harbor" plans remain subject to top heavy testing, but ADP/ACP testing is waived for 2020.

#### **Relief Guardrails**

To prevent abuse of this important relief in 2020, key employees, as defined under Internal Revenue Code section 416, for the time period employer contributions cease are: (1) unable to defer contributions to the 401(k) plan; and (2) unable to receive employer contributions to non-qualified retirement plans. For a plan sponsor to utilize this relief in 2020, key employees must have been deferring contributions to the 401(k) plan on a ratable basis (i.e., front-loading contributions disqualifies eligibility for this relief).

If the 401(k) plan has 500 or fewer participants, the plan sponsor may delay for one year any employer contributions that have not yet been made to satisfy their 2020 obligations. Safe harbor plans retain their status for the 2020 plan year.

#### **Partial Plan Termination Relief**

The layoff of a significant number of employees could cause the plan to incur a partial plan termination, even in cases where it is expected that many employees may be rehired once the economy recovers. We propose that the current partial plan termination rules be altered to ensure such termination does not occur if the active participant count as of March 13, 2021 is 80% of the active participant count at the time the national emergency was declared.

These proposals will give plan sponsors the flexibility needed to maintain their retirement plan in the face of this period of severe economic distress. Plan sponsors use this option only as a last resort. The alternative might well be the termination of the entire plan. Moderate income workers save when they have access to a plan at work. These emergency measures will ensure that access will continue.

If you have any questions regarding this proposal, please contact Will Hansen, Chief Government Affairs Officer, at [whansen@usaretirement.org](mailto:whansen@usaretirement.org) or (202) 615-4880.