

NEWS RELEASE



American Society of Pension Professionals & Actuaries

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ASPPA Requests Safe Harbor Plan Relief from Treasury/IRS

Arlington, Va.—The American Society of Pension Professionals & Actuaries (ASPPA) wrote to the U.S. Department of the Treasury and the Internal Revenue Service (IRS) requesting specific relief for sponsors of certain 401(k) plans who are unable to make required 3 percent nonelective safe harbor contributions for the entire year due to current economic conditions. In [a letter](#) to Treasury Benefits Tax Counsel W. Thomas Reeder, IRS Employee Plans Director Michael Julianelle, and IRS Division Counsel/Associate Chief Counsel Nancy Marks, ASPPA urged the IRS to issue guidance that would modify existing regulations to permit an employer to suspend the contribution under Internal Revenue Code Section 401(k)(12).

[Brian Graff](#), ASPPA executive director and chief executive officer, said that with the economic downturn placing unprecedented financial pressures on employee benefit plan sponsors, the need is great for such a modification and the relief would provide an important alternative to plan termination. “It’s important in this economy that employers and employees are given the opportunity to continue 401(k) plans and save for retirement,” Graff said.

Under existing regulations, employers who cannot afford to continue the 3 percent nonelective safe harbor contributions to their 401(k) plans for the entire year have no other recourse than to terminate their plans. ASPPA suggested that certain notice requirements and other protections be included in this guidance, including notification about when such a suspension would occur, a timely amendment made to the plan, notification provided to affected employees, and a provision that the 3 percent nonelective contribution be made for compensation earned prior to the effective date of the suspension.

ASPPA further recommended that the plan of an employer who suspends nonelective contributions during a plan year be required to satisfy the actual deferral percentage (ADP) test for the entire plan year. This would ensure that the suspension of nonelective contributions would not result in discriminatory deferrals for highly compensated employees. ASPPA also noted that such relief is no different from ceasing accruals in a money purchase pension plan during a plan year.

The ASPPA comment letter emphasized the destructive collateral implications of terminating 401(k) plans. Plan terminations result in unnecessary additional administrative costs, additional set-up expenses if the employer later decides to re-start a 401(k) plan, and many employers might never replace plans that were terminated due to financial distress. Depriving employees of the opportunity to save, they will spend existing retirement savings rather than rolling over their balances into an individual retirement account or another qualified plan, resulting in further leakage to the pension savings system.

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ASPPA is a national organization of more than 6,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. The broad-based membership gives it unusual insight into current practical problems with the Employee Retirement Income Security Act and qualified retirement plans with a particular focus on the issues faced by small- to medium-sized employers. ASPPA membership is diverse and united by a common dedication to the private retirement plan system.

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