NEST EGGS AND LIFELINES: THE OVERLOOKED STRAIN OF ECONOMIC VOLATILITY ON 401(K) PARTICIPANTS

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ABSTRACT

Many Americans rely on defined contribution plans like 401(k) plans for retirement savings. These plans do not guarantee a fixed retirement benefit; rather, the benefit is based on accumulated contributions and investment performance. When the stock market drops, so do retirement account balances. When inflation hikes living expenses, money does not go as far. President Donald Trump's policies, including those associated with tariffs, are causing economic and resource volatility leading to financial hardship. Americans worry as they watch living costs increase and their retirement savings diminish.

It is well known that retirees rely on 401(k) plan balances to fund their living costs. Yet the effects of economic volatility on 401(k) values extend well beyond retirees. Because these accounts serve a dual purpose—funding both retirement and, at times, current spending—workers who are years away from retirement also feel the impact. This Article examines the often-overlooked consequences of economic volatility under Trump 2.0 tariffs and related policies on 401(k) plan participants, including the ways in which inflation and recessionary pressures may drive pre-retirement withdrawals.

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INTRODUCTION

"Economic conditions influence resource access, and the availability of financial resources changes with shifts in labor markets and recessionary or inflationary trends."[1] U.S. economic stability (or instability) directly impacts Americans in myriad ways. Inflation erodes purchasing power, job layoffs reduce income and savings capacity, and market volatility undermines an individual's ability to buy, save, and retire. Together, these shocks create resource volatility and financial vulnerability.[2]

Trump 2.0 policies have exacerbated this volatility, particularly when viewed together.[3] While their collective effects are felt broadly across the American public, each policy also carries the potential to impact and even harm Americans in individualized, personal ways.[4] "Protectionist" tariffs and trade wars create

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[1] Linda Court Salisbury, Gergana Y. Nenkov, Simon J. Blanchard, Ronald Paul Hill, Alexander L. Brown, & Kelly D. Martin, *Beyond Income: Dynamic Consumer Financial Vulnerability*, 87(5) J. MKTG. 657, 660 (2023).

[2] David Hasen, *Managing Low-Income Resource Volatility*, (2025) (manuscript at 8), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5104629 [https://perma.cc/QMT2-LYDW]. Hasen, in his article, explains that resource volatility has two distinct sources: volatility in income or volatility in expenses, and either way it creates a pressing problem for any household as it impairs their access to primary goods. *Id. See also* Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 658 (defining financial vulnerability as the risk of experiencing future harm).

[3] By example, business owners in Washington, D.C., where Trump deployed the National Guard, observed their revenues dropping due to the military presence. Korsha Wilson, *As Troops Walk the Streets, Washington Restaurants Report A Slump*, N.Y. TIMES (Aug. 27, 2025), https://www.nytimes.com/2025/08/23/dining/washington-restaurants-national-guard.html [https://perma.cc/7Y8R-QZ7G].

[4] Jake Goldstein-Street, *Washington Could Lose Billions in Revenue from Trump's Tariffs, New Reports Say*, WASH. STATE STANDARD (Sep. 4, 2025, at 14:53),

numerous issues, as discussed *infra*. Reduced Medicaid spending results in fewer people seeking necessary healthcare, job losses, and diminished state tax revenue.[5] Anti-DEI policies result in job losses[6] and stifle economic growth.[7] Gutting federal governmental agencies eliminates jobs and essential public services.[8] Anti-environmental policies raise energy costs, destroy jobs, generate waste,[9] and harm

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https://washingtonstatestandard.com/2025/09/04/wa-could-lose-billions-in-revenue-from-trumps-tariffs-new-report-says/ [https://perma.cc/67JA-BTJC].

5 Cameron Brown, *Five Fast Facts: The Impact of Medicaid Cuts on Pennsylvania*, HOSP. HEALTHSYSTEM ASS'N PA. (May 21, 2025), https://www.haponline.org/News/HAP-News-Articles/Latest-News/five-fast-facts-the-impact-of-medicaid-cuts-on-pennsylvania [https://perma.cc/BQ7C-NZS5]; *Medicaid Spending Reductions Would Lead to Losses in Jobs, Economic Activity and Tax Revenue for States*, AM. HOSP. ASS'N (June 5, 2025), https://www.aha.org/fact-sheets/2025-06-05-medicaid-spending-reductions-would-lead-losses-jobs-economic-activity-and-tax-revenue-states [https://perma.cc/GQ33-A5AY].

6 Candice Helfand-Rogers, *Experts Say Trump's Anti-DEI Crusade Has Hurt Black Women the Most*, STORY EXCH. (Aug. 25, 2025), https://thestoryexchange.org/experts-say-trumps-anti-dei-crusade-has-hurt-black-women-the-most/ [https://perma.cc/NB4Z-U2P8] (stating that the U.S. Bureau of Labor Statistics revealed that roughly 300,000 Black women left the nation's labor force in a three-month period as a result of new anti-DEI policies).

7 Jose Rosa, *The Critical Importance of Diversity, Equity, and Inclusion (DEI) and the Detrimental Impact of Anti-DEI Policies* (Feb. 2025), https://www.researchgate.net/publication/388819858_The_Critical_Importance_of_Diversity_Equity_and_Inclusion_DEI_and_the_Detrimental_Impact_of_Anti-DEI_Policies [https://perma.cc/XTZ9-7J8U]; Rodney Coates, *Beyond the Backlash: What Evidence Shows About the Economic Impact of DEI*, BERGENSIA (June 2, 2025), https://bergensia.com/beyond-the-backlash-what-evidence-shows-about-the-economic-impact-of-dei/ [https://perma.cc/N5QE-QHEU]; Janice Gassam Asare, *The High Cost of Ditching DEI: What Target Boycott Fallout Reveals*, FORBES (Aug. 23, 2025, at 21:43 EDT), https://www.forbes.com/sites/janicegassam/2025/08/23/the-high-cost-of-ditching-dei-what-targets-boycott-fallout-reveals/ [https://perma.cc/K8XF-6LKD].

8 Diccon Hyatt, *How Mass Layoffs of Federal Employees Could Affect the Economy*, YAHOO FIN. (Feb. 18, 2025), https://finance.yahoo.com/news/mass-layoffs-federal-employees-could-224923543.html [https://perma.cc/99ST-DEUD].

9 By example, a wind project off the coast of Rhode Island was 80% complete when the Trump administration, via the U.S. Bureau of Ocean Energy Management, announced a halting order under the guise of national security concerns. Robert Mackey, *States Vow to Fight Trump Official's Stop-Work Order on Offshore Wind Farm*, GUARDIAN (Aug. 23, 2025, at 18:46 EDT), https://www.theguardian.com/us-news/2025/aug/23/wind-farm-rhode-island-connecticut [https://perma.cc/VX96-8QYD].

green companies.[10] Immigration deportation policies threaten employment in construction, agriculture, and childcare industries.[11] Anti-science policies derail research careers, cut grants, and eliminate jobs.[12] Tax cuts for the wealthy will ultimately increase taxes on poorer Americans.[13] And new spending initiatives risk increasing the national debt.[14] The confluence of these policies is cataclysmic for many individuals, creating the need for additional money to cover consumer consumption and the inability to save. While this Article primarily focuses on the negative impacts of Trump's tariff policies and the chain reactions emanating therefrom, tariffs do not exist in a vacuum—all the above policies combine to add to the volatility. And all are working against retirement and 401(k) wealth accumulation *en masse*.

Retirement is the ultimate goal for most, if not all, American workers. And for a majority of Americans, saving and accumulating wealth through growth to achieve that goal is a lifetime endeavor.[15] Because working years are finite, inadequate savings during one's life can impact retirement timing decisions—

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[10] Lucero Marquez & Jasia Smith, *What Trump's Anti-Environment One Big Beautiful Bill Act Means for Your Wallet, Health, and Safety*, AM. PROGRESS (July 7, 2025), https://www.americanprogress.org/article/what-trumps-anti-environment-one-big-beautiful-bill-act-means-for-your-wallet-health-and-safety/ [https://perma.cc/LD5F-XA2Q].

[11] Ben Zipperer, *Trump's Deportation Agenda Will Destroy Millions of Jobs*, ECON. POL'Y INST. (July 10, 2025), https://www.epi.org/publication/trumps-deportation-agenda-will-destroy-millions-of-jobs-both-immigrants-and-u-s-born-workers-would-suffer-job-losses-particularly-in-construction-and-child-care/ [https://perma.cc/D3Y7-JAPT].

[12] Brief for Am. Soc'y for Biochemistry & Molecular Biology, The Am. Soc'y for Cell Biology, Am. Soc'y for Microbiology, & Fed'n of Am. Soc'ys for Experimental Biology as Amici Curiae Supporting Plaintiffs, Am. Pub. Health Ass'n v. Nat'l Inst. of Health, No. 25-10787-WGY, 2025 U.S. Dist. LEXIS 103400 (D. Mass. May 30, 2025), https://asm.org/getmedia/931ca424-a45e-4e82-9660-ffef1b9d0f68/amicus-brief-of-biological-and-biomedical-research-societies-5-1-25.pdf [https://perma.cc/6XP7-5N5P].

[13] Stephen Groves, *Trump's Tax Law Will Mostly Benefit the Rich, While Leaving Poorer Americans with Less*, *CBO Says*, ASSOCIATED PRESS (Aug. 11, 2025, at 20:52 ET), https://apnews.com/article/trump-tax-cuts-food-stamps-6542e448a2f6ed7b93ab8f7fe84ac53a [https://perma.cc/9GX5-9BB4].

[14] Max Zahn, *What $4 Trillion in Debt from Trump's Spending Measure Could Mean for Future Generations*, ABC NEWS (Aug. 5, 2025, at 12:56), https://abcnews.go.com/Business/4-trillion-debt-trumps-spending-measure-future-generations/story?id=124372328 [https://perma.cc/ZF4K-45CV].

[15] Unlike in some countries, in the United States, the responsibility to afford retirement is primarily on the individual.

often leading to individuals delaying or forgoing coveted retirement.[16] However, the ability to save is a challenge particularly when employees must choose between surviving today and saving for future retirement.[17] It follows that during economic volatility, savings and growth thereon are impairing retirement wealth accumulation.

Such economic volatility is directly impacting individuals well in advance of retirement, as well. An often overlooked use of retirement accounts is 401(k) plans' role as short-term lifelines.[18] Historically, many plans have allowed borrowing or hardship withdrawals.[19] The SECURE and SECURE 2.0 Acts expanded this safety net by permitting penalty-free access for additional circumstances such as childbirth, natural disasters, terminal illness, or domestic

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[16] American men and women work an average of 46 and 45 years, respectively. TERESA GHILARDUCCI, WORK, RETIRE, REPEAT 14 (Univ. Chi. Press 2024). See the April 5, 2025, X post by Leslieoo7 comparing the 2008 recession to the 2024 Trump tariff stock market crash: "In 2008, I had a co-worker in her 60s who had a 401k large enough for her to retire comfortably and move to be near her grandchildren. When the market crashed her 401k was shredded and she wound up working another 7 years. People planning to retire are unfairly screwed by this." Leslieoo7 (@Leslieoo7), X, (Apr. 5, 2025, at 07:33), https://x.com/Leslieoo7/status/1908528340262351186 [https://perma.cc/5YTG-KRAS].

[17] When faced with such a decision, "a worker might rationally give weight to the here and now." Quinn Curtis, Leo E. Strine, Jr., & David H. Webber, *Rebalancing Retirement: How 401(k) Plans Exacerbate Inequality and What We Can Do About It*, 30 STAN. J.L. ECON. & BUS. 401, 425 (2024). And there are racial implications, "[b]ecause of existing wealth inequality, Black Americans are more vulnerable to labor shocks and circumstances that might demand cash on hand." *Id*. at n.103.

[18] Early monetary withdrawals from retirement accounts for non-retirement purposes is termed "leakage." *See* Peter J. Brady & Steven Bass, *Decoding Retirement: A Detailed Look at Retirement Distributions Reported on Tax Returns*, INV. CO. INST. (Jan. 21, 2020), https://www.irs.gov/pub/irs-soi/20rpdecodingretirement.pdf [https://perma.cc/8WGT-QB38]; *Workplace Retirement Account Leakage: By the Numbers*, https://www.ebri.org/docs/default-source/by-the-numbers/ebri_leakage_facts-and-figures_111722.pdf?sfvrsn=22dd382f_6 [https://perma.cc/NZM2-4PEB].

[19] "[Defined Contribution] retirement accounts are intended mainly for old-age financial security, although they do offer pre-retirement liquidity to meet current consumption needs." Timothy (Jun) Lu, Olivia S. Mitchell, Stephen P. Utkus, & Jean A. Young, *Borrowing from the Future: 401(k) Plan Loans and Loan Defaults* 26 (Nat'l Bureau Econ. Rsch., Working Paper No. 21102, 2015), https://www.nber.org/system/files/working_papers/w21102/w21102.pdf [https://perma.cc/LQ2Z-RCAZ].

abuse.[20] However, inflation and layoffs erode buying power and investment performance, leaving participants with fewer resources precisely when they need them most.[21]

This Article recognizes both the looming retirement crisis and the growing reliance on retirement accounts to meet immediate needs. When 401(k) accounts lose value—via stock market volatility or people's inability to save—and expenses rise, individuals not only have less for their imminent and future retirement, but also less for their immediate consumption. The tariff turmoil and the resulting ripple effects are causing, and will continue to cause, unrecoverable financial harm for many.

Using Trump's tariff policies as a case study, this Article first establishes the nature of the tariffs and the widespread economic volatility they generate for individuals and businesses. It then demonstrates numerous detrimental effects of economic volatility on the 401(k) account balances of retirees and near-retirees. Next, it elaborates on pre-retirement impacts, emphasizing the vital importance of early 401(k) fund access during periods of financial distress and emergencies including natural disasters, terminal illness, and domestic abuse. The analysis subsequently pivots to a critical examination of employee benefit impacts, focusing specifically on the ways that financially challenged companies amend their 401(k) plans (e.g., through suspending matching contributions) to the short- and long-term detriment of their employees. Finally, the Article discusses the proliferating long-term effects that economic volatility imposes on retirement savings.

I. ECONOMIC VOLATILITY VIA TARIFFS

Within days of Trump's second term as president, his tariff threats swiftly translated into far more sweeping tariffs than anyone anticipated.[22] Predictions and

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[20] 26 U.S.C. § 72(t)(2)(H); 26 U.S.C. § 72(t)(2)(I); Reg. Section 1.401(k)-1(d)(3)(iii)(A). *See* Samantha J. Prince, *Financial Empowerment via 401(k) Plan Domestic Abuse Victim Distributions*, 9 GEO. WASH. BUS. & FIN. L. REV. ESSAYS 1 (Oct. 10, 2025), https://gwbflr.org/promoting-financial-empowerment-via-401k-plan-domestic-abuse-victim-distributions/ [https://perma.cc/65YH-47DD].

[21] *See* Leslie Muller & John Turner, *The Persistence of Employee 401(k) Contributions Over a Major Stock Market Cycle: Evidence on the Limited Power of Inertia on Savings Behavior*, UPJOHN INST. FOR EMP. RSCH.: BENEFITS Q. (Apr. 1, 2011). Survey data found that 401(k) participation is influenced by the performance of the stock market at a given time. *Id.*

[22] Christopher Rugaber, *Before Trump Ramped Up Tariff Threats, Inflation Was*

fears of trade wars quickly followed.[23] Investors reacted by dumping stocks as markets plummeted worldwide.[24] The bond markets did not go unscathed; they crashed, too.[25] Concerns of a recession loomed.[26] Inflation was predicted to increase as companies that face higher costs from tariffs were anticipated to pass these same costs along to consumers.[27] The uncertainty forced Federal Reserve

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Cooling, PBS NEWS (Apr. 10, 2025, 16:42 EST), https://www.pbs.org/newshour/economy/before-trump-ramped-up-tariff-threats-inflation-was-cooling [https://perma.cc/7B2Y-K9TD]; Senator Bernie Sanders, who is generally an advocate for strategically used tariffs to protect American jobs, referred to Trump's tariffs as "chaotic across-the-board tariffs." Press Release, Bernie Sanders, Senator, Senate, Sanders Statement on Trump Tariff Announcement (Apr. 9, 2025), https://www.sanders.senate.gov/press-releases/news-sanders-statement-on-trump-tariff-announcement/ [https://perma.cc/3QCU-KFSZ]; Howard Schneider & Ann Saphir, *Powell Says Fed Remains in Wait-and-see Mode; Markets Processing Policy Shifts*, REUTERS (Apr. 16, 2025, at 14:53 MST), https://www.reuters.com/markets/us/fed-chair-powell-deliver-fresh-economic-view-tariffs-inject-uncertainty-2025-04-16/ [https://perma.cc/3KGB-LDCK] ("[Powell's remarks] noted a potentially tough situation developing [for the Fed] in which prices are pushed higher by tariffs while growth and possibly the labor market weaken").

[23] Nicole Narea, *The Real Losers from Trump's Stock Crash, Explained in 2 Charts*, VOX (Apr. 9, 2025, at 07:20 MST), https://www.vox.com/politics/407588/stock-market-retirement-401k-trump-tariffs [https://perma.cc/JLU5-3SL4].

[24] *Id.* "Not only may they see their net worth decline as the stock market reacts, but they may also expect higher prices and a tougher labor market." *Id.*

[25] Even the inflation-protected bonds saw a not-insignificant decrease. Vivien Lou Chen, *Falling Treasury Yields Signal That Trump Policies Are Starting to Spook Investors*, MARKETWATCH (Feb. 25, 2025, at 16:05 ET), https://www.marketwatch.com/story/falling-treasury-yields-signal-that-trump-policies-are-starting-to-spook-investors-7a1e4951 [https://perma.cc/X3AH-MEUS].

[26] On April 11, 2025, Larry Fink stated that he believes the United States is already in a recession. Filip Timotija, *US May Already Be in Recession: BlackRock CEO*, HILL (Apr. 11, 2025, at 15:25 ET), https://thehill.com/business/5245180-us-may-already-be-in-recession-blackrock-ceo/ [https://perma.cc/AF5X-LZNV]; Jesse Pound, *JPMorgan Raises Recession Odds for This Year to 60%*, CNBC (Apr. 4, 2025, at 08:26 EDT), https://www.cnbc.com/2025/04/04/jpmorgan-raises-recession-odds-for-this-year-to-60percent.html [https://perma.cc/UX6X-BF4F].

[27] Narea, *supra* note 23. Consumers expect prices to rise significantly. Daniel de Visé, *Consumer Inflation Fears Reach Highest Mark Since 1981*, USA TODAY (Apr. 14, 2025, at 09:03 ET), https://www.usatoday.com/story/money/2025/04/11/inflation-consumer-trump-tariffs-michigan-survey/83047558007/ [https://perma.cc/4ZYD-ZN3J]. "[T]he rise

Chair Jerome Powell and the Federal Open Market Committee into a holding pattern when it came to adjusting interest rates.[28]

Uncertainty and disruption have become hallmarks of Trump's tenure.[29] For example, tariff "deals" did not materialize as swiftly as promised, thereby prolonging the period of uncertainty. Trump's response to such delays effectively exacerbated uncertainty by granting tariff pauses,[30] or alternatively by levying or threatening stiffer tariffs,[31] while also stating that making trade deals with different

in near-term inflation expectations should not be ignored and is being driven by tariffs." *Id.*; Jack Ewing, *Stellantis Says Profit Plunged as Tariffs Began to Bite*, N.Y. TIMES (July 21, 2025), https://www.nytimes.com/2025/07/21/business/stellantis-profit-trump-tariffs.html [https://perma.cc/LPZ4-C6S9]. ("U.S. government policy is [] taking a toll. Tariffs cost Stellantis 300 million during the first half of the year . . . while factory shutdowns related to Trump trade policies contributed to a 25 percent decline in the number of cards delivered to U.S. buyers. Tariffs may soon force the company to begin raising car prices"). Many experts were anticipating "stagflation" which is "the miserable combination of a stagnant economy and high inflation." Brett Arends, *The World's Biggest Money Managers Just Issued a 'Stagflation' Warning—but Look at What They're Buying*, MARKETWATCH (July 16, 2025, at 10:05 ET), https://www.marketwatch.com/story/the-worlds-biggest-money-managers-just-issued-a-stagflation-warning-but-look-at-what-theyre-buying-97cd52c0 [https://perma.cc/V6W7-M4PZ]; tariffs are indeed increasing consumer prices. *See* Alina Selyukh, *Walmart Says Tariff Costs Are Rising 'Each Week' and Will Continue*, NPR (Aug. 21, 2025, at 11:55 ET), https://www.npr.org/2025/08/21/nx-s1-5509592/walmart-tariff-costs-rising-earnings [https://perma.cc/AMB8-ZEB8].

[28] Rugaber, *supra* note 22. Key economic data for the Federal Reserve to use in making rate decisions is deficient due to government employee layoffs via DOGE and the 2025 governmental shutdown. Still, as of this writing, the Federal Reserve thrice cut rates marginally by .25% during 2025. Jeff Cox, *Divided Fed Approves Third Rate Cut This Year, Sees Slower Pace Ahead*, CNBC (Dec. 10, 2025, at 15:53 EST), https://www.cnbc.com/2025/12/10/fed-interest-rate-decision-december-2025-.html [https://perma.cc/4KD7-XY3X].

[29] Sophie Baker, *Asset Managers, Investors Reassess U.S. Holdings as Tariff War Rumbles On*, PENSIONS & INVS. (July 9, 2025, at 07:24 ET), https://www.craincurrency.com/investing/asset-managers-investors-reassess-us-holdings-tariff-war-rumbles [https://perma.cc/XV8P-EY2C] ("The Trump administration has brought with it a dramatic increase in political, economic and market volatility. The dollar's reserve status and Treasuries' role in portfolios is also being questioned amid massive global exposure; investment imbalances may drive a shift toward non-U.S. assets and a weaker dollar.").

[30] *Id.*

[31] *Id.*

countries is "too time-consuming" and "complicated."[32] In this landscape of constantly shifting trade threats and uncertainty, businesses became, and as of this writing still are, unable to normalize operations. This volatility rapidly metastasized into genuine economic turmoil, which is most acutely felt in the form of higher operating costs and unpredictable profit margins for companies.

Tariff cost transfers create earnings uncertainty that hinders the ability of most businesses to "plan, invest, and hire workers" because "the prices of their inputs change[] by the week."[33] Tariff costs and their effect on inflation are often delayed for various reasons, including using pre-tariff inventory, and they are increasingly difficult to quantify or budget for.[34] The costs of business increase, "whether it's higher prices on intermediate components (like oil country tubular goods), increased uncertainty over deliveries times, or even just an increase in paperwork

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[32] Alexander Bolton, *GOP Lawmakers Dismayed by Lack of Progress on Trade Deals*, HILL (July 9, 2025, at 06:00 ET), https://thehill.com/homenews/senate/5390913-republican-senators-trump-tariffs/ [https://perma.cc/9EN9-8V3A].

[33] Michael R. Strain (@MichaelRStrain), X (Apr. 12, 2025, at 14:37 ET), https://x.com/MichaelRStrain/status/1911126538679918813 [https://perma.cc/7DEG-E4W6]; Jan Hatzius, Alec Phillips, David Mericle, Ronnie Walker, Manuel Abecasis, Elsie Peng, & Jessica Rindels, THE IMPACT OF UNCERTAINTY ON INVESTMENT, HIRING, AND CONSUMER SPENDING, GOLDMAN SACHS (Apr. 6, 2025, at 23:07 EDT), https://www.goldmansachs.com/pdfs/insights/goldman-sachs-research/the-impact-of-uncertainty-on-investment-hiring-and-consumer-spending/report.pdf [https://perma.cc/HY5T-TXLV]; *see also* R. Andrew Bauer, Renee Haltom, & Matthew Martin, *Why Businesses Say Tariffs Have a Delayed Effect on Inflation*, FED. RSRV. BANK RICH. (Aug. 8, 2025), https://www.richmondfed.org/region_communities/regional_data_analysis/regional_matters/2025/why_businesses_say_tariffs_delayed_effect_inflation [https://perma.cc/AK5K-86MP] (national retailer explaining companies are delaying operations "in hopes [they] get more clarity on trade deals").

[34] Bauer, Haltom, & Martin, *supra* note 33; Daniel Desrochers, *'Only So Long' Before Trump's Tariff Costs Hit Consumers, Businesses Warn*, POLITICO (Dec. 8, 2025, at 14:32 EST), https://www.politico.com/news/2025/12/08/trumps-tariff-costs-consumers-00679261 [https://perma.cc/Q4MR-MLPV] ("Major retailers like Kohl's, Abercrombie, Williams-Sonoma and Under Armour have all warned of price increases starting as early as late December [2025] or January [2026].") *Id*. (The CFO of Williams-Sonoma stated that "[T]ariffs have taken longer than expected to hit his company's bottom line, both because of the delayed implementation of some of Trump's duties and because the company stockpiled goods before the president raised many of the duties on foreign goods.") *Id*.

to remain in compliance with the law."[35] The elimination of the long-lasting de minimis exemption that allowed duty-free imports under $800 resulted in DHL and numerous countries—e.g., Austria, Denmark, France, Germany, India, Italy, Japan, Spain, Sweden, and the United Kingdom—to suspend deliveries to the U.S.[36] Eliminating this exemption hurts businesses and their supply chains, leaving them with no option but to raise prices or withdraw certain products from the market.[37] This, in turn, results in scarcity and higher prices for the American consumer "disproportionately hurt[ing] low-income and minority households" by directly reducing their disposable income.[38]

The totality of this financial compression on consumers, in conjunction with the uncertainty, fundamentally undermines the ability of U.S. companies to operate predictably and profitably, extending the economic turmoil across all sectors. For example, automakers are feeling the impact.[39] Other industries are negatively impacted as well: "energy, chemicals, mining, and metals companies are grappling with both weak global demand and volatile commodity prices, which is undermining [companies'] willingness to invest."[40] Numerous other businesses are

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[35] Joe Weisenthal & Tracy Alloway, *What We're Really Talking About is Stagflation*, BLOOMBERG (Aug. 25, 2025, at 16:08 UTC), https://www.bloomberg.com/news/newsletters/2025-08-25/what-we-re-really-talking-about-is-stagflation [https://perma.cc/T35Y-JHZG]; Scott Lincicome, *For US Businesses, Tariff Complexity Is "Death by a Thousand Papercuts"*, CATO INST. (Dec. 4, 2025, at 14:59), https://www.cato.org/blog/us-businesses-tariff-complexity-death-thousand-papercuts [https://perma.cc/QT6K-7PUA] (noting that the burden of tariffs as a tax is "undoubtedly significant" but that "the tariff's regulatory costs are arguably even worse.").

[36] Zach Kaplan, *'De Minimis' Exemptions Set to End Globally Friday: What Does it Mean?*, HILL (Aug. 26, 2025, at 07:12 ET), https://thehill.com/business/5469979-de-minimis-exemptions-set-to-end-what-to-know [https://perma.cc/SA2F-7K8K].

[37] *Id.*; *See* Pablo D. Fajgelbaum & Amit Khandelwal, *The Value of De Minimis Imports* (Nat'l Bureau of Econ. Rsch., Working Paper No. 32607, 2025), https://www.nber.org/papers/w32607 [https://perma.cc/W96Q-DUJ8]; Clark Packard, *The High Costs of Eliminating De Minimis Shipping*, CATO INST. (Feb. 21, 2025, at 15:50 ET), https://www.cato.org/blog/high-costs-eliminating-de-minimis-shipping [https://perma.cc/78VL-C3SL].

[38] Fajgelbaum & Khandelwal, *supra* note 37.

[39] Note that some deals or projects are proceeding regardless of the uncertainty. Brooke Sutherland, *Union Pacific-Norfolk Southern Merger Bolsters Deal Spree Defying Tariff Chill*, BL (Aug. 8, 2025, at 07:00 MST), https://www.bloomberglaw.com/product/blaw/bloombergterminalnews/bloomberg-terminal-news/T0OHKVGPL3WK [https://perma.cc/X4KP-EF6M].

[40] *Id.*

pausing projects, delaying "opening new stores and replacing older equipment" because they do not know what things will cost.[41] Business advocacy groups such as the U.S. Chamber of Commerce have warned the U.S. Department of Commerce of tariff concerns.[42] The Chamber estimated "if American small businesses maintain the same level of imports at these new tariff rates, they will face a $202 billion annual tariff tax."[43] Businesses that cannot financially handle the economic results of the tariffs are closing.[44]

The tariffs Trump has put forth are much higher than tariffs have been in the past, and they apply to more countries than ever before.[45] They are also broader in

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[41] *Id.* "'Having to pay a 20-30% on tariff on overseas production, we don't have the investment capital we want to buy more machines and hire more people. It's almost like we're being constrained by our own government to be able to invest in our facility here.'—Matt McGee, the executive vice president of the McGee Group, an independent eyewear manufacturer." *Id.*

[42] U.S. Chamber of Com. et. al., Coalition Letter on Com. Dep't Section 232 Tariffs (Sep. 16, 2025), https://www.uschamber.com/assets/documents/250916_USCC_CoalitionLetter_232Derivatives_FINAL.pdf [https://perma.cc/3GZK-GLWF]

[43] Neil Bradley, *Latest Tariffs Spell $200 Billion Annual Tax for Small Businesses*, U.S. CHAMBER COMMERCE (Aug. 1, 2025), https://www.uschamber.com/tariffs/latest-tariffs-spell-200-billion-annual-tax-for-small-businesses [https://perma.cc/Y3GW-HHZD]. The Chamber further noted that "in some instances this may understate the level of tariffs imposed on small businesses." *Id*.

[44] Matt Welch, *Mailbucket #16: Closing Time*, FIFTH COLUMN (July 31, 2025), https://www.wethefifth.com/p/mailbucket-16-closing-time [https://perma.cc/UT4R-BJ4U] (Forest-products export manufacturer announces how tariffs have "liberated [him] from the values of [his] retirement funds, and now [his] business . . . [a] venture that started in 1987 has ended. . . . Donald Trump's tariffs proved to be the final nail. . . . The American hardwood industry is being decimated." Also, stating that there were other factors that caused the business to close, but that closure was "hastened—by orders of magnitude—by tariffs.").

[45] Robert McClelland & John Wong, *Too Many Goods Are About to Face Historically High Tariffs*, TAX POL'Y CTR. (July 8, 2025), https://taxpolicycenter.org/taxvox/too-many-goods-are-about-face-historically-high-tariffs [https://perma.cc/8GPD-GPPY]. Trump levied a disproportionate 39% tariff on Switzerland which resulted in reduced imports from the country and a loss of trust. Bastian Benrath-Wright, *Swiss Exports to US Slipped in Last Full Month of 39% Tariff*, BLOOMBERG (Nov. 20, 2025, at 02:07 MST), https://www.bloomberg.com/news/articles/2025-11-20/swiss-exports-to-us-slipped-in-last-full-month-of-39-tariffs [https://perma.cc/55PJ-CCQZ]; Liz Alderman, *If the Swiss Army Knife Is Made in America, Is It Still Swiss?*, N.Y. TIMES (Sep. 22, 2025),

application, often applying to all goods instead of specific goods or certain industries.[46] Furthermore, they seem to change on Trump's emotional whims, thereby creating more uncertainty.[47] "As a likely result, consumer prices will rise, employment and incomes in downstream industries will fall, and profits will shrink."[48] Companies likely will be "forced to cut costs by shrinking their labor force."[49] They will also pause major business projects in the wake of uncertainty. Republican Senator Thom Tillis, member of the Senate Finance Committee stated, "I would never advise a former client of mine to make any major decision until [the trade war] settles down."[50]

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https://www.nytimes.com/2025/09/21/business/swiss-army-knife-trump-tariffs.html [https://perma.cc/5ATF-SVYL]. Carl Elsener Jr., Chief Executive of Victorinox, the maker of the famous Swiss Army Knife, shared that the United States has always been Victorinox's most important market and that Switzerland was blindsided when Trump imposed a drastic 39% import tariff. *Id.* Ultimately, Trump reduced the tariff to 15% with a commitment for Swiss companies to invest in the United States. Elisabeth Buchwald, *The Trump Administration is Lowering Its Mega Tariffs on Switzerland*, CNN (Nov. 14, 2025), https://www.cnn.com/2025/11/14/business/switzerland-us-tariffs [https://perma.cc/2C3M-C78R].

[46] *Id. See* Terry Lane, *Tariffs Were Supposed to Revive US Manufacturing. So Far, They're Having the Opposite Effect*, INVESTOPEDIA (Sep. 3, 2025, at 11:52 EDT), https://www.investopedia.com/tariffs-were-supposed-to-revive-u-s-manufacturing-so-far-they-re-having-the-opposite-effect-11802173 [https://perma.cc/D8NE-QNUZ] (noting that higher material costs caused by tariffs and uncertainty surrounding tariffs are negatively impacting the domestic manufacturing sector).

[47] Josh Boak, *Trump's New Tariffs Go Into Effect as US Economy Shows Signs of Strain*, ASSOCIATED PRESS (Aug. 7, 2025, at 22:53 MST), https://apnews.com/article/trump-tariffs-into-effect-economy-warning-signs-eafe20de9abad312573b320fd4b5fb33 [https://perma.cc/UTE2-44F6]. Paul Ryan, former Trump advisor, told CNBC: "There's no sort of rationale for this other than the president wanting to raise tariffs based upon his whims, his opinions. I think choppy waters are ahead because I think they're going to have some legal challenges." *Id.*

[48] McClelland & Wong, *supra* note 45. "The value of retirement plans that hold stocks in these industries will also likely drop." *Id.*

[49] Narea, *supra* note 23. Peyton Forte, *Churchill Downs Tumbles as Tariff Angst Delays Derby Projects*, BLOOMBERG (Apr. 24, 2025, at 13:17 MST), https://www.bloomberg.com/news/articles/2025-04-24/churchill-downs-tumbles-as-tariff-angst-delays-derby-projects [https://perma.cc/Z8VC-PF6S].

[50] Bolton, *supra* note 32. Even where Trump has alleged a trade deal has been reached with the U.K., uncertainty remains due to erroneous disclosure. "To my knowledge, we don't have a single ratified or inked trade agreement, up to and including the U.K. We have

Businesses have struggled to create their next-year business plans due to economic volatility and the uncertainty it brings.[51] A survey of CEOs found that 89% said "they expect tariffs to significantly impact their business' performance and operations of the next three years, with 86% saying they expect to respond by increasing prices for their goods and services as needed."[52] While many businesses indeed pass the tariffs through to their customers, thereby creating inflationary conditions and strain on Americans' pocketbooks,[53] the harm of these policies on businesses could also result in businesses shrinking their employee benefits, e.g., retirement plan contributions, as a cost-saving measure.[54]

The Trump policies have caused the U.S. dollar to lose value.[55] "Despite a new

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memoranda of understanding, but we don't have dispute resolution, or all the other kinds of things you would wrap around the fundamental trade agreement. . . . Until you have that, you have uncertainty." *Id.*

[51] Zach Edwards & James Melton, *Tariff Cost Pass-Through Among Fifth District Firms*, FED. RSRV. BANK RICH. (Aug. 26, 2025), https://www.richmondfed.org/region_communities/regional_data_analysis/regional_matters/2025/tariff_cost_pass-through_fifth_district [https://perma.cc/7WKL-V38E].

[52] Doug Palmer, *Trump's Tariffs are Costing Companies. Keeping up with Them May Cost Even more*, POLITICO (Nov. 16, 2025, at 12:00 EST), https://www.politico.com/news/2025/11/16/trump-tariffs-ceo-company-resources-00651968 [https://perma.cc/A3AU-M2BP]. Further elucidating that Trump's tariff system is complicated and is creating a "massive burden" on business who rely on imports. *Id.*

[53] Edwards & Melton, *supra* note 51.

[54] *See infra* Part IV; Vanessa Vaag & Marcella Giorgou, *Benefit Plans Staring Down Tariff Turmoil*, MILLIMAN (May 12, 2025), https://www.milliman.com/en/insight/benefit-plans-staring-down-tariff-turmoil [https://perma.cc/YR5B-FL7R].

[55] Baker, *supra* note 29; Jesse Pound, *U.S. Dollar Index Suffers Biggest Drop Since 2022, Hits New Low for the Year*, CNBC (Apr. 10, 2025, at 16:10 EDT), https://www.cnbc.com/2025/04/10/us-dollar-index-suffers-biggest-drop-since-2022-hits-new-low-for-the-year.html [https://perma.cc/6X5L-CXET]; Jenni Reid, *Scale of U.S. Dollar Declines and Euro Gains Amid Trump Tariffs Catches Investors Off Guard*, CNBC (Apr. 14, 2025, at 15:43 EDT), https://www.cnbc.com/2025/04/14/us-dollar-has-plunged-and-euro-soared-on-trump-tariffs.html [https://perma.cc/VRH3-MDCG]; *CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm [https://perma.cc/KG94-T8V5] (last visited July 15, 2025, at 19:52 ET). The dollar has lost 25% in value since 2020. *Id.* Furthermore, this year alone, the buying power of $100,000 in January 2025 became the same as $101,194 by May 2025—a 1.194% decrease in the value of the dollar. *Id.*; *US Tariffs Are Expected to Weaken the Dollar as GDP Growth Slows*, GOLDMAN SACHS: MARKETS (Apr. 15, 2025), https://www.goldmansachs.com/insights/articles/us-tariffs-are-expected-to-weaken-the-dollar-as-gdp-growth-slows [https://perma.cc/P4JZ-DR5H].

extension to the implementation of U.S. tariffs on countries across the globe, asset managers expect to see continued caution from investors and ongoing allocations away from the U.S. and the dollar that have dominated portfolios."[56] And the U.S. is destabilizing global economies.[57]

This economic volatility and tariff turbulence initially resulted in investors fleeing, reducing wealth levels and the 401(k) plan values for approximately 70 million Americans.[58] The markets swing based on news, which is not unique, but it also moves due to retail investors—speculative trading—which can artificially inflate stocks and raise red flags.[59] Regardless of the reasons for the swings, news of large market swings,[60] like those occurring shortly after the Trump tariff announcements, and the potential for a bubble to burst,[61] often result in people

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[56] Baker, *supra* note 29.

[57] Timotija, *supra* note 26. (Fink stated, "This is not a pandemic. This is not a financial crisis. This is something that we've created. As I said, also on Monday, United States, post-World War II was a global stabilizer. We are the global destabilizer.").

[58] *401(k) Resource Center*, INV. CO. INST., https://www.ici.org/401k#:~:text=401(k)%20plans%20held%20$8.9,of%20former%20employees%20and%20retirees [https://perma.cc/CY5D-KZUG]. Notably, 401(k) plans are not immune to market volatility as trillions of dollars in the investment markets are invested through 401(k) plans. But as mentioned above, more is going on with the Trump administration than the precipitation of a "market correction" or a market drop due to an extenuating circumstance that is out of our control, such as the COVID-19 pandemic or the 2008 recession.

[59] *See* Hannah Erin Lang, *Five Signs of a Market Bubble Investors are Tracking*, WALL ST. J. (July 27, 2025, at 20:00 EST), https://www.wsj.com/finance/stocks/five-signs-of-a-market-bubble-investors-are-tracking-ddbea944 [https://perma.cc/M9W8-8T6X]; Joe Rennison, River Akira Davis, & Eshe Nelson, *Uneasiness Over A.I. Spending Looms Over Markets*, N.Y. TIMES (Nov. 20, 2025), https://www.nytimes.com/2025/11/20/business/stocks-ai-global.html [https://perma.cc/BCA3-FLCY].

[60] Mostly these are market dives but on the day that Trump announced a 90-day stay to the tariffs, the market rebounded. Still, as of this writing, many believe the tech-AI bubble is about to burst—these stocks have run high in part due to Trump's AI-friendly policies. *See, e.g.*, Stuart P. Meyer, Tyler G. Newby, Adine Mitrani, Zach Harned, & Joanne Dynak, *Trump Administration Releases Sweeping AI Action Plan*, FENWICK (Aug. 1, 2025), https://www.fenwick.com/insights/publications/trump-administration-releases-sweeping-ai-action-plan [https://perma.cc/P4NT-KT6L].

[61] Lang, *supra* note 59 (defining a bubble as "a period of frenzied market activity and speculation that artificially inflates asset values, driving prices to an eventual breaking point."); *See*, *e.g.*, Rennison, Davis, & Nelson, *supra* note 59 (discussing that A.I. spending is raising concerns of an A.I. bubble causing market swings).

checking their 401(k) and other investment accounts more frequently.[62] And it really *should* result in people checking more frequently, because more people need to monitor their financial position and assess how to afford not just retirement costs but current living expenses as well.[63]

When the stock market crashed in April 2025, Americans took to social media to voice concerns. During the week of April 4 through April 10, 2025, #401k was trending on TikTok.[64] The TikTokers posting under this topic were people of various ages: 43% of the #401k posters were aged 35+, 28% were aged 25-34, and 29% were aged 18-24.[65] People were checking their accounts and reacting, showing grave concern over their financial future. Most of them may not have even realized the full extent of the situation, as it extends beyond the more facially obvious retirement savings aspect.[66]

Certainly, the markets fluctuate, and nothing is a sure bet.[67] Even so, there are some traditionally safe—or *safer*—places to invest one's money, such as the bond

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[62] Senator Schiff is closer to being right. Denying that individuals check on their 401(k) plans and investments comes from the personal perspective of a privileged individual, and likely one who employs a financial advisor rather than doing the investing themselves. "ich denke, er lebt etwas in einer privilegierten Blase." Translation: "I think [Bessent] lives in a bit of a privileged bubble." Von Roland Lindner, *Trump schürt Rentenpanik*, FRANKFURTER ALLGEMEINE (Apr. 11, 2025, 12:03), https://www.faz.net/aktuell/wirtschaft/unternehmen/usa-wieso-trumps-zollpolitik-rentner-besonders-hart-trifft-110412411.html [https://perma.cc/6R6R-GFVJ].

[63] Financial awareness and literacy are requirements to achieve retirement readiness. Paul J. Yakoboski, FINANCIAL LITERACY, LONGEVITY LITERACY, AND RETIREMENT READINESS, TIAA INST. (2023), https://www.tiaa.org/content/dam/tiaa/institute/pdf/insights-report/2023-01/longevity_literacy_financial_literacy_and_retirement_readiness.pdf; Curtis, Strine, Jr., & Weber, *supra* note 15 (stating that employees rely on investment results for retirement accumulation).

[64] There were 2,000 posts in those seven days alone. In the thirty days prior to this point, 4,000 total posts were made. So, 2,000 is just one week is quite the uptick. TikTok Creative Center screenshots on file with the author.

[65] TikTok Creative Center screenshots on file with the author.

[66] Although one poster recommended taking a loan from your 401(k).

[67] This is why many financial advisors and journalists believe Americans are investing too much of their retirement funds in the stock market. *See* Brett Arends, *Americans are Betting Too Much of Their Retirement on the U.S. Stock Market*, MARKETWATCH (Apr. 30, 2025, at 12:55 ET), https://www.marketwatch.com/story/americans-are-betting-too-much-of-their-retirement-on-the-u-s-stock-market-74a937e5 [https://perma.cc/5C6P-L32W].

market. However, as the value of the U.S. Dollar slumps and foreign investors offload their U.S. Treasury bonds, even the bond market can become a risky investment arena.[68] Additional uncertainty for the U.S. bond market arises due to Trump's continued attempts to control the independent Federal Reserve by calling for the firing of Fed Chair Jerome Powell and Fed policymaker Lisa Cook.[69]

During this volatility, some are leaning into the traditional mindset that a 401(k) plan is a "long-term investment," arguing that people should not worry about market fluctuations. Although this is generally true, 401(k) plan money is part of an American worker's compensation that they should have, and may *need*, pre-retirement access to. Some may still argue that all administration changes bring forth some policy change turbulence, but Trump 2.0 is yielding more uncertainty and volatility than predicted, harming more Americans in the short and long term.[70]

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[68] Baker, *supra* note 29 (In early July 2025, the Government Pension Investment Fund, Tokyo (one of the world's largest pension funds), reported a quarterly loss "as a depreciating dollar dragged down the value of its overseas securities"); *US Tariffs Are Expected to Weaken the Dollar as GDP Growth Slows*, (Apr. 15, 2025), https://www.goldmansachs.com/insights/articles/us-tariffs-are-expected-to-weaken-the-dollar-as-gdp-growth-slows [https://perma.cc/XY5H-BEJL]; Brett Arends, *Bonds Are a Disaster. Why You May Want to Buy More*, MARKETWATCH (Sep. 4, 2025, at 11:03 ET), https://www.marketwatch.com/story/bonds-are-a-disaster-why-you-may-want-to-buy-more-a0c9b255 [https://perma.cc/F4R4-K3J8].

[69] Politicizing the Federal Reserve was "disastrous" in the "inflationary 1970s." Brett Arends, *Trump's Attacks on Powell Pose Another Risk for Bondholders—Especially Older Investors*, MARKETWATCH (Apr. 20, 2025, at 20:07 ET), https://www.marketwatch.com/story/trumps-attacks-on-powell-pose-another-risk-for-bondholders-especially-older-investors-a7562d6f [https://perma.cc/GPY3-XBM5]; *See* Brett Arends, *Watch Out, Retirees: President Trump Doesn't Understand Interest Rates*, MARKETWATCH (Sep. 5, 2025, at 14:29 ET), https://www.marketwatch.com/story/watch-out-retirees-president-trump-doesnt-understand-interest-rates-e1d9a571 [https://perma.cc/J2HF-ZC87] (stating U.S. bonds "entail plenty of risks"); stripping the independence of the Federal Reserve could have significant world consequences. Michael D. Bordo & Robert N. McCauley, *A Wrong Fed Could Do the Dollar in, an Open Letter to the U.S. Senate*, FIN. TIMES (Sep. 4, 2025), https://www.ft.com/content/6485ce33-7a44-415d-adc4-d8c029cea9e2 [https://perma.cc/R3BG-ES4U]; *see also* Allison Morrow, *What Trump's Fed Pressure Campaign is Really About*, CNN (Sep. 5, 2025, at 11:48 ET), https://www.cnn.com/2025/09/05/business/fed-lisa-cook-trump-miran-nightcap [https://perma.cc/3TCB-TJEP].

[70] *See* Schneider & Saphir, *supra* note 22, at 2 (stating "the impact of tariffs … have proved larger, at least as announced, than even the most severe scenarios penciled into initial Fed planning estimates").

II. RETIREMENT-RELATED IMPACTS

Many Americans are not well-positioned for retirement in the face of the United States' impending retirement crisis.[71] For example, a 2023 Pew Charitable Trusts survey showed that "vulnerable households are projected to fall short of their income replacement target by an annual average of $7,050 by 2040."[72] To accumulate necessary retirement wealth, plan participants rely not only on their own contributions, but also on those made by their employers. Furthermore, they rely on the investment growth of these contributions.

When these essential components fail to achieve retirement security, the resulting financial shortfall becomes a burden to society. Shortfalls in the retirement system not only present problems for the affected individuals and their families, but also to taxpayers. Insufficient retirement savings result in "increased public assistance costs, reduced tax revenue, decreased household spending and standards of living."[73]

These public and societal costs are demonstrably intensified by economic turmoil. Specifically, the existing retirement crisis is exacerbated by extreme tariffs, persistent inflation, the threat of recession, rising unemployment, and severe market volatility.[74] Such conditions leave American workers with fewer resources when they need them most to cover emergencies or rising living costs. The existence of such resource volatility also makes it far more difficult to save,

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[71] *See* Christine Healy, *Where Seniors Are Most (and Least) Likely to Outlive Their Savings*, SENIORLY RES. CTR. (Aug. 11, 2025), https://www.seniorly.com/resource-center/seniorly-news/where-seniors-are-most-and-least-likely-to-outlive-their-savings [https://perma.cc/9WVM-LKW3]; John Scott, *Millions of Americans Are Falling Behind on Their Retirement Goals*, PEW CHARITABLE TRS. (Oct. 24, 2024), https://www.pewtrusts.org/en/about/news-room/opinion/2024/10/24/millions-of-americans-are-falling-behind-on-their-retirement-goals [https://perma.cc/U8Q5-BRKN].

[72] Scott, *supra* note 71, at 2.

[73] John Scott & Andrew Blevins, *State Automated Retirement Programs Would Reduce Taxpayer Burden from Insufficient Savings*, PEW CHARITABLE TRS. (June 2, 2023), https://www.pewtrusts.org/en/research-and-analysis/articles/2023/05/11/state-automated-retirement-programs-would-reduce-taxpayer-burden-from-insufficient-savings [https://perma.cc/C59H-H5NZ].

[74] Accumulating retirement wealth can be difficult for those with cognitive decline, as such a decline presents specific challenges to self-managing retirement funds and making spending decisions. Shankar Parameshwaran, *The Future of Healthy Aging and Retirement*, KNOWLEDGE WHARTON (June 17, 2025) https://knowledge.wharton.upenn.edu/article/the-future-of-healthy-aging-and-retirement/ [https://perma.cc/N39A-TUN8].

and this creates financial vulnerability.[75] Financial vulnerability stemming from deficient retirement savings often leads to retirees having to re-enter the workforce.[76]

A. Lower Account Balances for Retirees

People often find it difficult to mentally switch from savers to spenders.[77] Financial advisors recommend that individuals devise a plan to combat this challenge: "A great way to feel more confident about spending money in retirement is having a plan in place."[78] Regardless of whether a person has a plan based on the percentage withdrawal rule[79] or some other method, it can be

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[75] Hasen, *supra* note 2, at 8. "Resource volatility . . . may arise from volatility in income or from volatility in expenses, but volatility of either type creates a particularly pressing problem for any household to the extent that it impairs acquisition of primary goods." Primary goods are the basic resources and rights essential for a person to live; *see also* Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1.

[76] Pete Grieve, *Inflation Is Pushing Many Older Americans Into 'Un-Retirement'*, MONEY (May 29, 2024, at 08:00 EDT), https://money.com/inflation-pushing-retirees-part-time-jobs/ [https://perma.cc/A6PA-JS7J]; Alicia H. Munnell, *Will the Average Retirement Age Keep Rising?*, CTR. FOR RET. RSCH. BOS. COLL. (Apr. 15, 2025), https://crr.bc.edu/will-the-average-retirement-age-keep-rising/ [https://perma.cc/8MXL-YK94]. Retirement is also challenging because social security does not go as far when there is inflation. David A. Pratt, *Too Big to Fail? The U.S. Retirement System in 2019*, 27 ELDER L. J. 327, 373 (2020).

[77] Christine Benz, *How to Retire: Transition From Saving to Spending*, MORNINGSTAR (Oct. 17, 2024), https://www.morningstar.com/retirement/how-retire-transition-saving-spending [https://perma.cc/2KNV-E7FM]. One survey indicates that only 18–20% of retirement plan participants are very confident in transitioning to retirement, in converting savings into income so they do not outlive their savings, understanding how much money they will need to retire and devising personalized strategies for drawing down from savings. VOYA INV. MGMT., SURVEY OF THE RETIREMENT LANDSCAPE, PLAN SPONSOR SENTIMENTS 10 (4th ed. 2025). https://advisors.voya.com/system/files?file=system/files/article/file/survey-retirement-landscape-plan-sponsor-sentiments_0.pdf [https://perma.cc/4X9H-QBPU].

[78] Angie Thomas, *Making the Transition from Saving to Spending in Retirement*, CREATIVE PLAN. (Nov. 8, 2023), https://creativeplanning.com/insights/financial-planning/saving-to-spending/ [https://perma.cc/S6R8-DLYW].

[79] These percentage rules rely on financial suggestions that retirees should plan on withdrawing 4% or 7% from their investments in the first year of retirement and then adjust each year for inflation. *See* Julia Kagan, *What Is the 4% Rule for Withdrawals in*

challenging to ride out a market crash, lower investment returns,[80] or predict future spending when expense volatility is high due to policy-created uncertainty and inflation.[81] Not everyone can ride out market crashes or take out "less when the portfolio is down."[82] And the risk of financial vulnerability and future harm increases when one cannot adequately estimate how far their resources will go in the future.[83]

Even when faced with the results of the Trump tariffs, some leaders are seemingly a bit tone deaf, stating, among other things, that Americans are weak and stupid if they are worried,[84] that they should trust Trump,[85] and that people being worried about their 401(k) accounts is a "false narrative."[86] Treasury

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Retirement?, INVESTOPEDIA (July 25, 2025) https://www.investopedia.com/terms/f/four-percent-rule.asp [https://perma.cc/JGP8-U6UQ]; Brett Arends, *Retiring with $1.3 Million? Here's What That Really Means*, MARKETWATCH (July 18, 2025, at 11:36 ET), https://www.marketwatch.com/story/retiring-with-1-3-million-heres-what-that-really-means-068aa9b3 [https://perma.cc/83EF-UL73].

[80] Brett Arends, *Opinion: Sorry, Retirees—the 4% Rule Won't Work for You if Vanguard is Right about Where the Stock Market Is Headed*, MARKETWATCH (Dec. 6, 2025, at 10:07 ET), https://www.marketwatch.com/story/sorry-retirees-the-4-rule-wont-work-for-you-if-vanguard-is-right-about-where-the-stock-market-is-headed-027ffdcf?mod=panda_marketwatch_author_alert [https://perma.cc/6C3H-CKBJ].

[81] *See* Hasen, *supra* note 2, at 21; Sherman D. Hanna & Kyoung Tae Kim, *Treatment of Inflation in Retirement Planning Calculations: An Improved Method*, 30 J. FIN. PLAN. 44, 47 (2017) (discussing that textbooks for retirement planners do not adequately cover inflation considerations in retirement planning).

[82] Christine Benz, *3 Tricky Decisions for Every Retirement Plan*, MORNINGSTAR (June 9, 2025), https://www.morningstar.com/personal-finance/3-tricky-decisions-every-retirement-plan [https://perma.cc/8UPB-X9HP]. *See*, Arends *supra* note 80.

[83] *See generally* Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 658.

[84] Rachel Raposas, *Trump Tells Americans to Stop Being 'Weak' and 'Stupid' amid Stock Market Crash That Unfolded During His 4-Day Golf Trip*, PEOPLE (Apr. 7, 2025, at 14:51 EDT), https://people.com/donald-trump-dont-be-panican-about-stock-market-crash-11710382 [https://perma.cc/Y7PT-F6GF].

[85] Alison Durkee, *White House Promises 'No Pain' from Tariffs—Tells Wall Street 'Trust in President Trump' As Stocks Tumble*, FORBES (Apr. 3, 2025, at 12:51 EDT), https://www.forbes.com/sites/alisondurkee/2025/04/03/white-house-promises-no-pain-from-tariffs-tells-wall-street-trust-in-president-trump-as-stocks-tumble/ [https://perma.cc/L776-7Y5K].

[86] Alexandra Marquez & Megan Lebowitz, *Treasury Secretary Scott Bessent Says Americans Ready to Retire Aren't Worried About 'Day-to-day' Market Fluctuations*, NBC

Secretary Scott Bessent believes that "Americans who want to retire right now . . . don't look at the day-to-day fluctuations [in the stock market]."[87] Senator Adam Schiff says otherwise: "The treasury secretary saying that people aren't looking at where the retirement savings are — maybe he doesn't have to. He's got the wealth; he doesn't have to. Maybe the president, with his wealth, doesn't have to. But what I'm hearing from Californians is those who have just retired, those who are on the eve of retiring, they're terrified of this[.]"[88] Despite advisors recommending only checking their 401(k) plans a few times per year,[89] many people *do* check their investments regularly to stay informed.[90] "When you're checking that balance, it gives you the opportunity to get a quick, point-in-time sense of how you're progressing toward that goal and how your investments are faring."[91]

While it is true that many individuals invest more conservatively when approaching retirement, e.g., gravitating toward inflation-protected bonds, the tariff turmoil incited a significant sell-off in the U.S. Treasury market.[92] This

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NEWS (Apr. 6, 2025, at 07:53 MST), https://www.nbcnews.com/politics/trump-administration/bessent-americans-retire-arent-worried-stock-market-recession-rcna199892 [https://perma.cc/9RYR-N2BD].

[87] *Id.*

[88] *Id.*

[89] Julia Glum, *Dollar Scholars Asks: How Often Is Too Often to Check My 401(k)?*, MONEY (Aug. 4, 2022), https://money.com/dollar-scholar-check-401k-how-often/ [https://perma.cc/KV9H-FYGY0] ("[I]f you're looking with a lot of frequency, you may then take action that's unnecessary."); Ryan O'Toole, *Updated: 401(k) Investing During Volatile Markets*, SEQUOIA (Apr. 9, 2025), https://www.sequoia.com/2025/04/401k-investing-in-volatile-markets/ [https://perma.cc/5SXA-8AHP].

[90] The Finder and Tastytrade Investor Sentiment Report from August 2024 indicates that "almost three-quarters of investors say they check their portfolio at least once a week, with 31% checking weekly, 26% checking daily, and 17% checking multiple times a day." Richard Laycock, *The Retail Investor Sentiment Report*, FINDER.COM, https://www.finder.com/investments/investing-statistics [https://perma.cc/DH4D-JLS3]. While this statement does not include checking 401(k) plan balances specifically, one may consider that active investors would be equally interested in their 401(k) plan investments, too.

[91] Glum, *supra* note 89.

[92] Brett Arends, *Fund-manager Survey Raises Questions About Beijing's Possible Role in Bond-market Turmoil*, MARKETWATCH (Apr. 16, 2025, at 15:27 ET), https://www.marketwatch.com/story/fund-manager-survey-raises-new-questions-about-beijings-possible-role-in-bond-turmoil-9f39547e [https://perma.cc/WNG9-D3TP]; Davide Barbuscia & Gertrude Chavez-Dreyfuss, *Sharp US Bond Selloff Revives*

movement seemingly signals that the only way to protect one's money is to hold it in cash, and while that practice can preserve funds at a certain level, it does not help increase value.

Once retirees start depleting their 401(k) savings, the remaining funds need to hold steady or ideally grow in value.[93] After all, these investments provide the income upon which retirees rely to survive. As such, 401(k) savings including investment income need to be able to cover costs until the retirees die. Without enough income, individuals can become financially vulnerable. But insufficient income is only one factor that plays a role in causing financial vulnerability.[94] Other factors include aged-related conditions such as cognitive decline, life events such as divorce, economic cycles that include inflation and recession, and other unforeseen crises such as natural disasters and healthcare emergencies.[95] Dramatic decreases in the value of investments and the increasing cost of living can be devastating and can leave people with tough choices about how to manage their lives.[96] One such decision could be to re-enter the workforce or continue to work longer if a person has not yet retired.

B. Retirement Date Waffling

Common retirement policy wisdom in our society holds that people "who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire."[97] Implicit in this statement is the

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Flashbacks of COVID-Era 'Dash-for-Cash', REUTERS (Apr. 9, 2025, 10:41 MST), https://www.reuters.com/markets/rates-bonds/global-markets-tariffs-treasuries-analysis-2025-04-09/ [https://perma.cc/4MRE-26DM].

[93] They need to outpace spending. If investment returns are low once one considers the market and inflation. "The effect of low returns on the newly retired can be brutal." Arends, *supra* note 80.

[94] Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 657.

[95] *Id.* at 657–58. "Consumers can [also] become financially vulnerable due to age, life events, economic cycles, and other unforeseen crises that hinder their access to financial resources in the short or long term." *Id.* (citations omitted).

[96] *See* Pratt, *supra* note 76.

[97] This is the overarching policy surrounding the tax-preferred status of 401(k) and other tax-qualified plans. Samantha J. Prince, *Megacompany Employee Churn Meets 401(k) Vesting Schedules: A Sabotage on Workers' Retirement Wealth*, 41 YALE L. & POL. REV. 1, 7 (2022) (*quoting* H.R. REP. No. 93-779, at 8 (1974)); *cf.* Jennifer Clendening & Jun Ho Phue, *More U.S. Residents Are Working Past Retirement Age*, PEW CHARITABLE TRS. (Aug. 4, 2025), https://www.pew.org/en/research-and-

notion that, for many people, the ultimate goal is retirement. Barring unplanned, emergency retirement due to disability or some other similar situation, most Americans probably have an idea of when they would like to retire. And they plan for it as best they can, although some plan less and consider working longer their retirement strategy.[98] For the millions that have 401(k) plans, however, planning means ensuring they have enough in their account balances when combined with social security and other savings to support themselves.[99] But the ability to save is fiscally out of reach for many Americans, particularly low- and middle-income employees.[100] Overcoming wage stagnation is important for retirement saving, but not always possible.[101] For those with 401(k) plan accounts, financial awareness is instrumental to accumulating retirement wealth.[102] Monitoring one's 401(k) plan balance does not make a person a "panican" (a "loser" term used by Trump and Rep. Marjorie Taylor Greene).[103] Rather, it makes them a fiscally responsible

analysis/articles/2025/08/04/more-us-residents-are-working-past-retirement-age [https://perma.cc/BQL4-5K2T].

[98] Charlotte Morabito, *Working Longer to Afford Retirement Is a Risky Plan, Economists Say—But Some Employees Are Counting on It*, CNBC (Sep. 19, 2025, at 11:39 EDT), https://www.cnbc.com/2025/08/18/working-longer-retirement-plan.html [https://perma.cc/ZS7M-N8P4].

[99] *See* Suzanna Fritzberg & Ksenia Shadrina, *Spotlighting Women's Retirement Security*, U.S. DEPT. TREASURY (Sep. 20, 2024), https://home.treasury.gov/news/featured-stories/spotlighting-womens-retirement-security [https://perma.cc/X268-YND6] ("In general, retirees in America rely on Social Security benefits, tax-preferred retirement accounts, including 401(k) plans, Individual Retirement Arrangements (IRAs), and defined benefit pension plans to meet consumption needs.").

[100] Curtis, Strine, Jr., & Webber, *supra* note 15, at 233 ("As income inequality has grown and wages for lower- and middle-income workers has stagnated, their ability to save for retirement has been compromised."); even songs contain lyrics that address the inability of many Americans to not retire, "My family works 'til they die." HOT MULLIGAN, *Stickers of Brian*, *on* Stickers of Brian, at 01:37–01:39 [Single] (Spotify, Wax Bodega, Mar. 21, 2024).

[101] Curtis, Strine, Jr., & Webber, *supra* note 15, at 439.

[102] David Learner Associates, *Financial Awareness: The Foundation of a Secure Retirement* (Aug. 6, 2025), https://www.davidlerner.com/newsroom/article/financial-awareness-retirement [https://perma.cc/D9Z7-FYFE].

[103] Marjorie Taylor Greene (@RepMTG), X, *PANICANS are losers and failures! Don't be a PANICAN!.* (Apr. 7, 2025, at 06:31) (*quoting* Donald Trump (@realDonaldTrump), *The United States has a chance to do something that should have been done DECADES AGO. Don't be Weak! Don't be Stupid! Don't be a PANICAN (A*

person who must make a judgment call on when to retire. While this decision is malleable and revocable, it is still one of the biggest decisions in a person's life.

Timing one's retirement can be a challenge. Favorable economic conditions and financial markets typically result in increased retirement plan balances.[104] Conversely, volatile market conditions can result in lower account balances which, combined with a recessionary economy, can make it more difficult for those who are near retirement to afford it.[105] Under such conditions, people will tend to work longer. "401(k) participants bear investment risk, [therefore] they need to work longer to accumulate a buffer against prematurely exhausting their resources."[106] During investment market crashes like the one in April 2025, people "[become] less confident in reaching their retirement goals and worry that they may never be able to retire."[107] One concerned TikToker posted on April 7, 2025, "[d]o we just take out our money??? I just lost $25K in 3 days and I don't see a bottom? Do you guys?. . . . I plan on retiring in 5 years and I don't have money . . . Where does this leave us??? Working until we die. That is where that leaves us. I am tired."[108] Similar concerns span across political party lines. A compilation of several prominent conservatives expressing fear and regret also appeared in a TikTok

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new party based on Weak and Stupid people!). Be Strong, Courageous, and Patient, and GREATNESS will be the result!), https://x.com/RepMTG/status/1909237501576851842 [https://perma.cc/E2GR-Y2U7].

[104] Helen Esomo, *Working Longer: The New Retirement Reality*, MILLS WEALTH ADVISORS (Apr. 16, 2025), https://www.millswealthadvisors.com/working-longer-the-new-retirement-reality/#:~:text=When%20determining%20an%20ideal%20retirement,on%20individual%20circumstances%20and%20priorities [https://perma.cc/8UZ7-3VXX].

[105] *See id.*; *see also* Courtney C. Coile & Phillip B. Levine, *Bulls, Bears, and Retirement Behavior*, 59 INDUS. & LAB. RELS. REV. 408, 408–29 (2006) (examining the impact of stock market crashes and economic downturns on older workers' retirement decisions); Arends, *supra* note 80 ("If their portfolio earns an average return of, say, 5% a year and inflation is 2%, they could last nearly 50 years before they run out of money—so long as those returns are constant throughout their retirement. But if they start out with a lost decade, when their investment returns barely keep up with inflation, that can cut an astonishing 15 years off the life of the portfolio, even if returns then rebound.").

[106] Munnell, *supra* note 76.

[107] U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-715, 401(K) PLANS: POLICY CHANGES COULD REDUCE THE LONG-TERM EFFECTS OF LEAKAGE ON WORKERS' RETIREMENT SAVINGS 1 (2009).

[108] Video posted by Stinkster Reborn (@stinkster_reborn), TIKTOK (Apr. 7, 2025), https://www.tiktok.com/t/ZTjduE2dj/ [https://perma.cc/6Y59-VJ4M].

video on April 9, 2025.[109]

Timing retirement successfully requires an assessment of financial readiness, specifically considering issues of mounting consumption costs, increasing expenses, and long-term economic security. Laws that reduce and/or restructure public programs can also pose a significant barrier to retirement, particularly as many people now live longer as compared to their forebears.[110] For instance, policies that decrease coverage or benefits from programs like Medicare and Medicaid can undermine the ability of older Americans to afford essential health-related costs.[111] Furthermore, inflation and tariffs exacerbate the difficulty of affording retirement, e.g., health insurance and medical-related costs have increased significantly.[112] Consequently, individuals timing their exit from the workforce must factor in these escalating costs of living into their long-term financial projections.

People may choose to work longer when their 401(k) balance is viewed as insufficient to cover retirement.[113] However, while working longer can help people

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[109] Video posted by MSNBC (@MSNBC), TIKTOK (Apr. 9, 2025), https://www.tiktok.com/t/ZTjduhnWf/ [https://perma.cc/GL6X-U3QM].

[110] *See, e.g.*, One Big Beautiful Bill Act, Pub. L. No. 119-21, ch.2, § 71201, 139 Stat. 78 (2025).

[111] Alicia H. Munnell, *The Importance of Medicaid for Older Americans,* CTR. FOR RET. RSCH. BOS. COL. (Oct. 22, 2024), https://crr.bc.edu/the-importance-of-medicaid-for-older-americans/#:~:text=While%20Medicare%20covers%20all%20persons%2065%20and,outlays%20for%20health%20care%20(see%20Figure%201) [https://perma.cc/ZHN6-6C8T]; Pratt, *supra* note 76, at 373.

[112] Natasha Murphy, *5 Ways the Trump Administration Is Driving Up Health Care Costs for Families*, AM. PROGRESS (Sep. 18. 2025), https://www.americanprogress.org/article/5-ways-the-trump-administration-is-driving-up-health-care-costs-for-families/ [https://perma.cc/5U7B-2VG8]; Alberto Cavallo, Paola Llamas, & Franco M. Vazquez, *Tracking the Short-Run Price Impact of U.S. Tariffs*, (Nat'l Bureau Econ. Rsch., Working Paper No. 34496, 2025), https://www.nber.org/papers/w34496#:~:text=We%20use%20high%2Dfrequency%20retail,additional%20spillovers%20to%20domestic%20goods [https://perma.cc/RCA5-2BES].

[113] *See generally* Gary Burtless & Joseph F. Quinn, *Is Working Longer the Answer for an Ageing Workforce?*, CTR. FOR RET. RSCH. BOS. COLL. (Dec. 2002). *See* Alicia H. Munnell, *Falling Short: The Coming Retirement Crisis and What To Do About It*, CTR. FOR RET. RSCH. BOS. COLL. (Apr. 2015) (noting that working longer can increase the size of a social security check by 7–8%, allows participants more time to contribute more to their 401(k)s, and shrinks the years an individual has to stretch their retirement money).

pay off debt or provide more time to save,[114] it does not necessarily produce the desired result—additional funds for *retirement*.[115] Labor economist and retirement security expert Teresa Ghilarducci reports that working longer tends to mainly help people afford retirement because it reduces the time one has in retirement.[116] Put differently, the closer one works to death, the fewer years of retirement need to be financed.[117]

A working-longer strategy is particularly risky for those who become unable to continue working due to health or medical reasons. Relying on extended employment as a retirement plan leaves such individuals with little to no safety net.[118]

Even for those who do continue working, the financial benefits are often

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[114] Esomo, *supra* note 104.

[115] Karen Eilers Lahey, Doseong Kim, & Melinda L. Newman, *Full Retirement? An Examination of Factors That Influence the Decision to Return to Work*, 15 FIN. SERVS. REV. 1, 2 (2006). Working longer may also be detrimental to one's health, for instance many older Americans end up in physically demanding jobs. *See* Monique Morrissey, *Many Older Workers Have Difficult Jobs That Put Them at Risk*, ECON. POL'Y INST. (May 17, 2023), https://www.epi.org/publication/older-workers-difficult-jobs/#:~:text=Findings%3A%20Significant%20shares%20of%20older,adverse%20social%20interactions%20(14.1%25) [https://perma.cc/RTE5-ZW8K]; Jessica Forden, Siavash Radpour, Eva Conway, Christopher Cook, & Teresa Ghilarducci, *Physically Demanding Jobs and Involuntary Retirement Worsen Retirement Insecurity*, SCHWARTZ CTR. FOR ECON. POL'Y ANALYSIS (Nov. 1, 2022), https://www.economicpolicyresearch.org/jobs-report/physically-demanding-jobs-and-involuntary-retirement-worsen-retirement-insecurity [https://perma.cc/MV3Q-5MZ4]. On the other hand, working in mentally stimulating jobs may reduce cognitive decline. Robby Berman, *Mentally Stimulating Jobs May Reduce the Risk of Cognitive Decline, Dementia*, MEDICALNEWSTODAY (Apr. 18, 2024), https://www.medicalnewstoday.com/articles/mentally-stimulating-work-may-reduce-dementia-risk [https://perma.cc/B23U-QVJW]; ALICIA H. MUNNELL & STEVEN A. SASS, WORKING LONGER: THE SOLUTION TO THE RETIREMENT INCOME CHALLENGE (2008).

[116] GHILARDUCCI, *supra* note 16, at 107.

[117] *Id*. *See* Samantha J. Prince, *Vesting Villainy: The Call to Eliminate 401(k) Vesting Schedules*, 28 U. OF PENN. J. BUS. L. (forthcoming 2025). While some Americans choose to never retire for reasons such as staying mentally sharp, many Americans are forced to work longer because they do not have enough funds to survive retirement. *See also* Munnell, *supra* note 76 ("[W]orking longer substantially shrinks the number of years over which an individual needs to stretch his retirement nest egg.").

[118] Morabito, *supra* note 98.

limited.[119] Older workers frequently struggle to secure stable, well-paying jobs, meaning any additional savings may be minimal.[120] Moreover, many post-retirement-age jobs do not offer 401(k) plans, and this cuts workers off from valuable employer matches.[121] Despite these realities, many people still may have no choice (or think they have no choice) and delay their retirement dates to a time farther than they originally planned.

C. Withdrawing during turmoil

Retirees must withdraw money from their 401(k) plans for two main reasons. First, a retiree's 401(k) plan savings are often their primary source of funds on which to live.[122] As such, they must withdraw to pay their living expenses. It is likely that, due to inflation, retirees will need to draw down money at an

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[119] *See* Prince, s*upra* note 117. Even though these individuals can squirrel away money on their own in an IRA or some other vehicle, they tend to not do so.

[120] Teresa Ghilarducci & Barbara Schuster, *Working Longer Not a Panacea Considering the Number of Low-Wage Work Options*, GENERATIONS NOW (Nov. 16, 2021), https://generations.asaging.org/working-longer-not-panacea-older-adults/ [https://perma.cc/MW3L-4AZ2]; Veronica Dagher & Anne Tergesen, *Late-Career Job Losses Are Blurring What Retirement Looks Like in America*, WALL ST. J. (July 5, 2025, at 21:00 ET), https://www.wsj.com/personal-finance/retirement/early-retirement-layoff-america-77c94667\ [https://perma.cc/X6PS-DXPY]. It takes nearly 26 weeks, on average, for older workers ages 55 to 64 to find a job after a layoff, compared with 19 weeks for people ages 25 to 34. *Id.* Older career workers who find new jobs take an 11% pay cut, on average, because less higher compensating jobs are less available to older workers. *Id.*

[121] Some people end up working for small businesses who do not even have 401(k) plans. Two-thirds of small businesses do not offer retirement benefits. *Fidelity Study: Despite Concerns About the Future, Two-Thirds of Small Businesses Do Not Currently Offer Retirement Savings Benefits*, FIDELITY NEWSROOM (May 11, 2023), https://newsroom.fidelity.com/pressreleases/fidelity-study--despite-concerns-about-the-future--two-thirds-of-small-businesses-do-not-currently-o/s/72432825-233e-4a33-a470-3bed305b2f04 [https://perma.cc/GK45-GDLM]. "Nearly half of the private sector workforce—some 56 million workers nationwide—don't get retirement benefits through their jobs." *Workers Without Access to Retirement Benefits Struggle to Build Wealth*, PEW CHARITABLE TRS. (June 25, 2025), https://www.pew.org/en/research-and-analysis/issue-briefs/2025/06/workers-without-access-to-retirement-benefits-struggle-to-build-wealth [https://perma.cc/U8TK-A7QQ] citing John Scott, *Millions of Americans Are Falling Behind on Their Retirement Goals*, PEW CHARITABLE TRS. (Oct. 24, 2024), https://www.pewtrusts.org/en/about/news-room/opinion/2024/10/24/millions-of-americans-are-falling-behind-on-their-retirement-goals [https://perma.cc/LM8D-CFH9].

[122] Clendening & Phue, *supra* note 97.

accelerated rate, eroding both the immediate buying power of the funds and their capacity to accumulate additional retirement wealth. Unfortunately, "most Americans aren't properly managing or capable of properly managing their savings after they retire"[123] as it is challenging to "determine the optimal allocation between saving and consumption."[124] Premature or ill-timed withdrawals are key contributors to the retirement crisis,[125] a problem exacerbated by economic volatility, including inflation-driven cost of living increases.

Second, there exists an Internal Revenue Code (IRC) requirement that once a person reaches a certain age, they must take "minimum distributions" from their 401(k) plan.[126] In other words, upon reaching a statutory retirement age, an individual must withdraw a certain amount of money from their 401(k) plan balance annually.[127] Treasury Regulations provide calculations that determine the

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[123] Deepa Das Acevedo, *Addressing the Retirement Crisis with Shadow 401(k)s*, 92 NOTRE DAME L. REV. ONLINE 38, 39 (2017).

[124] Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 672. This is true no matter how knowledgeable a person is.

[125] *Id.* at 675–77.

[126] Michael Doran, *Retirement Distributions During the Public Health Crisis*, TAXNOTES (June 8, 2020), https://www.taxnotes.com/content-viewer?rid=2clbv&type=saa&str=cmFoNjE0N0Bwc3UuZWR1&token=0873b977-6db2-4081-80ac-1b11b2T2b30f4&utm_campaign=SAA%20Link&utm_medium=email&_hsenc=p2ANqtz-_4tE3hGegLEZ6zProAun249NPf6emywVSXr-iXGIQ0GLz4Mbx0mvcPw1ml8eEwDffDuSiDtoPLk7NjijHfBj37vINr5A&_hsmi=305999097&utm_content=305999097&utm_source=hs_automation [https://perma.cc/AL8B-ZLE6]. ("The point—the *only* point—of the required minimum distributions is to ensure that the tax subsidy for retirement savings begins to wind down during the taxpayer's retirement years. The rules force distributions from qualified plans and IRAs, in which investments are sheltered from tax, into the hands of taxpayers who are playing the back nine of life. There is absolutely no requirement that the amounts distributed be spent. Taxpayers can continue to invest the distributed amounts, but they cannot do that at the expense of the federal treasury."). Explained another way, the minimum distribution rules exist to "ensure that these plans are used to provide funds for retirement." *Present Law and Background Relating to Retirement Plans, Joint Comm. on Tax'n: Hearing before the S. Comm. on Fin.*, 117th Cong. (2021). These distributions were put in place to "not be an indefinite tax shelter." Pratt, *supra* note 76, at 372.

[127] In the past, the triggering age was 72, but SECURE 2.0 has changed the age to 73 for those turning 73 before January 1, 2032, and 75 for those turning 74 after December 31, 2032. I.R.C. § 401(a)(9)(C)(v).

amount that retirees must withdraw each year.[128] If one fails to withdraw these amounts, the IRS levies an excise tax equal to 25% of the required amount that was untaken for the year.[129] Furthermore, this requirement may pass on after death. Depending on the type of beneficiary, when a retiree dies, the beneficiary must take the remaining required minimum distributions.[130]

During an economic downturn, being forced to draw down from 401(k) plans and being penalized for not doing so could put some retirees in a precarious position.[131] These minimum distribution requirements prevent retirees from waiting to liquidate their investments until the market rebounds.[132] Instead, these minimum distribution requirements force retirees to begin liquidating during the year, regardless of market conditions. Overall, when retirees draw down during this volatile time, they are forced to sell assets during a time when they may be lower in value, and this effect is magnified because retirees will need more money due to the diminished purchasing power brought on by inflation.[133] As a result, these assets could be drawn down when their value is at its lowest, leaving fewer

[128] Treas. Reg. § 1.401(a)(9)-5 (2025). *See also* Treas. Reg. § 1.401(a)(9)-9 (2025) for the Uniform Lifetime Table used to compute minimum distributions.

[129] I.R.C. § 4974(a). The tax is reduced to 10% if timely corrective action is taken. I.R.C. § 4974(e). The tax could be waived if there was a reasonable error and the error was remedied. I.R.C. § 4974(d). This tax was much higher and was once described as "a confiscatory 50% excise tax." Pratt, *supra* note 76, at 372.

[130] Details on how to determine the interaction of these rules with beneficiaries are beyond the scope of this Article but can be found in I.R.C. § 401(a)(9); Treas. Reg. §§ 1.401(a)(9)-3–5 (2025).

[131] Note, however, that during the COVID-19 pandemic in 2020, minimum distributions were waived. Such a move was described by Professor Michael Doran as "nothing more than federal pork for affluent taxpayers and the financial-services industry." Doran, *supra* note 126. It has also been pointed out by Prof. Doran that many people do not have to take forced withdrawals because they need their savings for covering living expenses. *Id*. While this may be true, generally, considering that Trump 2.0 policies impact different people differently, the situation presented above may apply to more than the wealthy.

[132] *Id*.

[133] The minimum distribution rules may be too paternalistic and unfair in many regards. Professor Pratt calls for the repeal of the minimum distribution rules: "Why should individuals be required to take money out at age seventy-and-a-half when they may live for another twenty years and need to preserve funds for increasing health and other expenses in their later years?" Pratt, *supra* note 76, at 373. *But see* Doran, *supra* note 126.

assets from which retirees may accumulate wealth.[134]

III. PRE-RETIREMENT IMPACTS

During inflationary environments and economic volatility, living expenses increase. Because 401(k) plans house savings for millions of Americans, it is important to assess how economic volatility impacts the use of these funds for those who are not yet retired.

While 401(k) plan holders use savings primarily for retirement, they can withdraw funds for other purposes.[135] Even so, the IRC contains deterrents to discourage plan participants from using their 401(k) money for reasons other than retirement.[136] These deterrents—although there are some exceptions—present as a 10% early withdrawal penalty and immediate income taxation.[137] Despite the early

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[134] For example, if one has to sell ZCo stock while the stock is low, they are having to sell more shares than they would have during 2024. This means that the balance of their assets, e.g., the number of shares they own, are decreasing faster due to selling off and low market prices.

[135] This author is not suggesting 401(k) savings should be used outside of retirement other than when warranted, but economically challenging times can certainly warrant their use. Professor Doran appears to agree in his 2020 COVID-19 discussion: "In normal times, those restrictions and penalties serve legitimate policy goals. But of course, these are not normal times. Millions of taxpayers have been abruptly thrown out of full-time employment, and many households are facing painful financial constraints that will continue long after the public health crisis has abated. Families who no longer have regular paychecks will need to cover mortgage and rent payments, utility bills, and expenses for food and medical care. Inevitably, many will turn to their qualified plans and IRAs as a source of emergency capital. From a policy perspective, this premature drawdown of retirement savings is an unfortunate but understandable necessity." Doran, *supra* note 126. Many scholars, researchers, and advisors advocate against use of 401(k) funds for pre-retirement use (*i.e.* leakage). *See* Quay Scott ME (@quayscottme), TIKTOK (Feb. 26, 2025), https://www.tiktok.com/t/ZTjdv5hpT/ [https://perma.cc/QR2A-SGDA] ("Take that loan from your 401K only if you have been fighting for your life to get a little breathing room with your finances . . . you've been trying to do everything right, but nothing is working out for you . . . but DO NOT use this for no vacation or clothes. ONLY use if you will be responsible, not to increase your consumerism.").

[136] I.R.C. § 72(t)(1) (West, Westlaw through P.L. 119-36).

[137] *Id*. The 10% penalty and immediate income taxation can only serve as a deterrent if the participant withdrawing the funds understands or is aware of these implications. *See* Goldburn Maynard Jr. & Clint Wallace, *Penalizing Precarity*, 123 MICH. L. REV. 427, 455 (2024). The 10% penalty is "borne most heavily by poorer Americans who use their retirement savings to survive in times of desperate need." *Id*. at 427. It has been postulated

withdrawal penalty and immediate tax implications, however, there is quantitative and qualitative data that shows that people voluntarily withdraw, or at least consider withdrawing from, their retirement savings during times of economic insecurity.[138] Depending on the reason for the withdrawal, it may fall within one of the several permissible, penalty-free exceptions that allow participants to use their 401(k) funds for reasons other than retirement, so long as the employer's plan allows them.

Most plans permit pre-retirement withdrawals for certain purposes. In fact, it has been shown that more people participate in 401(k) plans when they know they will have some access to these savings when needed.[139]

Plan loans and hardship withdrawals are the most common pre-retirement withdrawal exceptions in 401(k) plans.[140] Newer types of pre-retirement

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that wealthier households are not deterred, given that the 10% penalty is "seldom imposed" on them. *Id*.

[138] Robert Argento, Victoria L Bryant, & John Sabelhaus, *Early Withdrawals from Retirement Accounts During the Great Recession*, CONTEMP. ECON. POL'Y, Apr. 2014, at 1. In the years following the 2008 financial crisis, data revealed that 2.9% of account balances for the younger than 55 age group were withdrawn early, a number that represented approximately half of new contributions for the same demographic in that year. A recent post by a Reddit user recalled this time and used the precedent as reasoning to consider withdrawing from their 401(k) after the 2024 election to preserve the retirement value they had accumulated in the time since the great recession. Robert Argento, Victoria L. Bryant, & John Sabelhaus, *Early Withdrawals from Retirement Accounts During the Great Recession* (Bd. of Governors of the Fed. Reserve Sys., Fin. & Econ. Discussion Series 2013-222013), https://www.federalreserve.gov/pubs/feds/2013/201322/index.htm [https://perma.cc/87VC-JXTT] (last visited Nov. 8, 2025).

[139] "Early access to retirement savings has been shown to benefit participants by encouraging plan participation, increasing participant contributions, and providing participants with a means of addressing their financial needs." U.S. GOV'T ACCOUNTABILITY OFF., RETIREMENT SAVINGS: ADDITIONAL DATA AND ANALYSIS COULD PROVIDE INSIGHT INTO EARLY WITHDRAWALS, GAO-19-179 1 (Mar. 2019). Empirical data also suggests that permitted withdrawals like loans minimally impact plan participants' attempts to continue contributing to their retirement plans in subsequent years. John Beshears, James J. Choi, Joel Dickson, Aaron Goodman, Fiona Greig, & David Liabson, DOES 401(K) LOAN REPAYMENT CROWD OUT RETIREMENT SAVING? IMPLICATIONS FOR PLAN DESIGN, Wharton Pension Rsch. Council (2024) (revealing that contribution rates fell just 0.8% in the two years following loan issuance).

[140] According to the Plan Sponsor Council of America (PSCA), a large majority of 401(k) plans surveyed in 2024—82.3%—permit plan loans, while 15.9% report that they are considering whether to offer a loan feature. PLAN SPONSOR COUNCIL AM., PSCA'S

withdrawal exceptions have recently been codified to address personal emergencies such as those emanating from natural disasters and domestic abuse situations.[141] Executed correctly, individuals can withdraw 401(k) funds for hardship, emergencies (including natural disasters), or to escape an abuser without incurring a 10% early-withdrawal penalty.[142]

However, how much someone can borrow or withdraw is directly dependent on their vested account balance. In times of recession, high levels of inflation, or job layoffs, people may need to borrow or withdraw funds to make ends meet or to cover an emergency. Unfortunately, due to volatility precipitated by Trump tariffs and other executive policies, account balances, which are typically heavily invested in the U.S. stock market, can be significantly lower at a given time.

In addition, entrepreneurs can strategically use 401(k) balances to fund their startup ventures.[143] Tariffs wreak havoc for entrepreneurs, not just from a purchasing power and business model standpoint: The reduction in their 401(k) balance also gives them a lower amount of funds to use to start their businesses.

Lastly, for those who are using their 401(k) balance as an asset to show net worth, e.g., for purposes of acquiring a home mortgage, stock market volatility negatively impacts their buying power.[144]

A. Pre-Retirement Fund Access

1. Plan Loans

When times are tough, individuals who are experiencing financial challenges

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ANNUAL SURVEY OF PROFIT SHARING AND 401(K) PLANS 70 (2025) (hereinafter PSCA 2024 Survey) PSCA further indicates that in 2024, 90.6% of the 401(k) plans it surveyed allow hardship withdrawals. *Id*. at 74.

[141] *Id*. at § 72(t)(2)(K).

[142] *See id*. at § 72(t)(2). *See generally*, Prince, *supra* note 20.

[143] Entrepreneurs may be unable to access capital through more traditional means due to high qualification standards, competition, and bias. Jay Lindsay, *Overcoming History: Entrepreneurs of Color Forced to Confront Constraints from the Past*, FED. RES. BANK BOS. (June 7, 2021), https://www.minneapolisfed.org/article/2021/overcoming-history-entrepreneurs-of-color-forced-to-confront-constraints-from-the-past [https://perma.cc/M4S6-6HTG] (citing that a lack of banking relationships and credit score requirements can be a barrier to diverse entrepreneurs raising capital).

[144] Matthew Dewonskin, *Which Assets Can I Include on My Home Loan Application?*, RATE (Aug. 14, 2023), https://www.rate.com/mortgage/resource/assets-to-include-mortgage-application [https://perma.cc/B3EJ-QE6V].

often find themselves borrowing money to cover expenses.[145] Unfortunately, some individuals—particularly those in marginalized groups—are less likely to qualify for loans either due to lower income, discrimination, or poor credit scores.[146] Because none of these factors are taken into account when a plan loan is requested and granted, borrowing from a 401(k) balance can offer crucial liquidity for individuals experiencing resource volatility or financial vulnerability.

Hurdles for borrowing during economic turmoil transcend those situations mentioned above. Borrowing from traditional channels during inflationary times can be challenging since "the odds of borrowers defaulting on their loans because of financial hardships go up when the economy struggles."[147] The option of borrowing from credit cards and other predatory sources is suboptimal because high interest rates and fees[148] can put borrowers into a quicksand-type situation

[145] Lu, Mitchell, Utkus, & Young *supra* note 19, at 8. The propensity to borrow has been shown to be higher among participants ages 35–44. *Id*. at 14. In addition, it has been found that "liquidity-constrained participants," those with lower income and lower non-retirement wealth, are more likely to borrow from their 401(k) accounts. *Id*. at 12. Yet it is the better-off, those with higher incomes and higher non-retirement savings, who borrow the highest fraction of current 401(k) wealth. *Id*. at 16. *See* Craig Copeland, Michael Conrath, & Sharon Carson, *How Financial Factors Outside of a 401(k) Plan Can Impact Retirement Readiness*, EBRI Issue Brief No. 591, 6 (Sep. 14, 2023), https://www.ebri.org/docs/default-source/pbriefs/ebri_ib_591_spendingspikes-14sep23.pdf?sfvrsn=c06f062f_2 [https://perma.cc/P88B-BAA4] (showing that spending spikes lead to more borrowing from 401(k) plans).

[146] Benet J. Wilson & Ashley Parks, *How Race Impacts Credit: The History and Effect on Lending Practices*, BANKRATE (Nov. 17, 2025), https://www.bankrate.com/personal-finance/credit/does-race-affect-credit-score/ [https://perma.cc/QU7U-RBRQ].

[147] David Lerner Associates, *Should You Borrow Money in a Recession?* (Feb. 14, 2023), https://www.davidlerner.com/newsroom/article/should-you-borrow-money-in-a-recession [https://perma.cc/B4CN-SMRA].

[148] Chris Horymski, *Average American Debt by Age, US State, Credit Score and Type*, EXPERIAN (Feb. 14, 2024), https://www.experian.com/blogs/ask-experian/research/consumer-debt-study/ [https://perma.cc/F9D7-L3B4]. Fees and interest rates are in uncertain waters. In March 2024, The Consumer Financial Protection Bureau banned excessive credit card late fees and capped them at $8. This rule is currently being litigated. Senators Bernie Sanders and Josh Hawley have introduced a bill to cap credit card interest rates at 10%. Credit card interest rates are now the highest since 1994 when the Federal Reserve began collecting data. Rob Copeland, *Trump Promised a Cap on Credit Card Interest Rates. Here's His Chance.*, N.Y. TIMES (Feb. 4, 2025), https://www.nytimes.com/2025/02/04/business/credit-card-interest-cap.html [https://perma.cc/6E2W-TL7C].

that will be difficult to overcome.[149] Even using trendy "buy now, pay later" loans for necessities like groceries and other consumer goods—which may appear to be a safer path for avoiding high interest—is perilous as such debt can quickly snowball and bury people in debt.[150] When buyers do not pay on time, they often face late fees and interest rates of 36% leading to struggles to repay insurmountable debt.[151]

Buy now, pay later (BNPL) services are projected to finance more than $20 billion in online purchases in 2025 alone, yet despite becoming mainstream since the pandemic, regulatory protections remain patchy after the Consumer Financial Protection Bureau tempered enforcement.[152] "Adobe Analytics reports BNPL has driven $10.1 billion in spending so far this holiday season [in 2025]."[153] A particularly dangerous trend is that many users "stack" multiple BNPL loans simultaneously, often carrying 5, 10, or even 15 at once, creating overlapping payment obligations that trigger debt snowballs for those already living paycheck

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[149] *See*, Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 665.

[150] Gabrielle Fonrouge, *More Americans Are Financing Groceries with Buy Now, Pay Later Loans—and More Are Paying Those Bills Late, Survey Says*, CNBC (Apr. 26, 2025, at 07:00 EDT), https://www.cnbc.com/2025/04/26/americans-groceries-buy-now-pay-later-loans.html [https://perma.cc/DA6W-RTXP]. *See also* Julie Creswell, *Consumers Are Financing Their Groceries. What Does It Say About the Economy?*, N.Y. TIMES (June 2, 2025), https://www.nytimes.com/2025/06/02/business/buy-now-pay-later-groceries.html?campaign_id=9&emc=edit_nn_20250603&instance_id=155786&nl=the-morning&regi_id=96902683&segment_id=199182&user_id=f03e3e8c4ba4931f55658d5d433729a0 [https://perma.cc/E2L5-GK3P] ("If you're living paycheck to paycheck and you're on a tight budget and you have several of these loans out at one time, it can be very easy to get over your skis here.").

[151] Amy X. Wang, *They Got to Live a Life of Luxury. Then Came the Fine Print*, N.Y. TIMES (Oct. 7, 2025), https://www.nytimes.com/2025/10/07/magazine/buy-now-pay-later-klarna-affirm-shopping.html?campaign_id=9&emc=edit_nn_20251008&instance_id=164020&nl=the-morning&regi_id=96902683&segment_id=207365&user_id=f03e3e8c4ba4931f55658d5d433729a0 [https://perma.cc/BG44-E3AV].

[152] Allie Jasinski, *What to Know before Using Buy Now, Pay Later for Holiday Spending*, WGAL (Nov. 18, 2025, at 14:11 EST), https://www.wgal.com/article/buy-now-pay-later-what-to-know-holiday-shopping-online-spending/69460890 [https://perma.cc/UD2C-CTAJ]; Truman Lewis, *Holiday Shoppers Embraced Planning over Impulse Spending as BNPL Use Surged*, CONSUMER AFFS. (Dec. 2, 2025), https://www.consumeraffairs.com/news/holiday-shoppers-embraced-planning-over-impulse-spending-as-bnpl-use-surged-120225.html [https://perma.cc/RR7J-9DUR].

[153] Lewis, *supra* note 152.

to paycheck.[154] "BNPL's appeal is particularly strong among consumers facing tight budgets or limited credit access. These shoppers may rely on the services not for convenience, but necessity—increasing the likelihood of missed payments and compounding financial strain."[155] Coupled with the patchy regulatory oversight, the reliance on BNPL by consumers already facing tight budgets transforms its necessity into a profound and largely unmitigated financial risk for vulnerable households. As such, BNPL debt pressures may compel workers to utilize 401(k) loans as the next necessary financial rescue measure.

Although the general consensus is that it is imprudent to borrow during economic downturns or market volatility, many people may have little or no choice. Because a participant's credit score is not impacted by borrowing against their 401(k) plan balance, some people may be enticed into borrowing from it. One reason plan loans are enticing is because account holders will not have to undergo a credit check.[156] This may lead participants to borrow from their 401(k) plan simply because *they can*. Such borrowing also does not impact one's debt-to-income ratio, a significant benefit during times of economic turmoil.[157] In so doing, low scoring participants also avoid negatively impacting their credit score, which can result from being declined by traditional lenders.

As shown, borrowing from one's 401(k) balance can provide crucial, accessible liquidity without requiring a credit check or accruing third-party debt. This proactive measure is often the preferable financial route, given that "[r]ecovering from harm requires more resources than preventing harm" in the first place.[158] Thus, if a plan loan can prevent harm or avert a severe financial crisis using 401(k) plan funds is well justified.

How much one can borrow depends in part on a person's vested account

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[154] *Id*.; Jeff Larrimore, Alicia Lloro, Zofsha Merchant, & Anna Tranfaglia, *"The Only Way I Could Afford It": Who Uses BNPL and Why*, FED. RES. (Dec. 20, 2024), https://www.federalreserve.gov/econres/notes/feds-notes/the-only-way-i-could-afford-it-who-uses-bnpl-and-why-20241220.html [https://perma.cc/MCY2-DKJC]; Lewis, *supra* note 152.

[155] Lewis, *supra* note 152.

[156] Tessa Campbell & Jake Safane, *Can You Borrow from Your 401(k)? Rules, Interest Rates, and Loan Details*, BUS. INSIDER (Apr. 3, 2025, at 14:04 MT), https://www.businessinsider.com/personal-finance/investing/401k-loan#:~:text=Your%20plan%20administrator%20usually%20sets,loan%20is%20often%20around%208.50%25 [https://perma.cc/6R8Q-QZQY].

[157] *Id*.

[158] Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 657.

balance and the IRC limits.[159] To calculate how much a participant is permitted to borrow, that participant must first determine what is greater: $10,000 or 50% of their vested account balance. A participant must then take that calculated number and compare it to $50,000. The lesser of that number or $50,000 would be the amount that a participant is permitted to borrow under the IRC. This means that if a participant has an account balance of $30,000, the maximum amount that they can borrow is $15,000 because half of $30,000 is greater than $10,000 but less than $50,000. If the participant has an account balance of $120,000, the maximum amount they can borrow is $50,000 because half of $120,000 is greater than $10,000 *and* more than $50,000.

When investments are down and people are contributing less to their 401(k), their account balance can stagnate or even significantly drop, either of which directly limits the amount one can borrow. Using the first example described above, say a participant has the same account balance of $30,000, but due to economic turmoil or a large sell-off in AI-tech stocks, the total value of their vested account balance drops 20%. As a result, their account balance experiences a steep and almost immediate decline from $30,000 to $24,000. If the participant were to borrow against their account under the IRC's limits, the maximum they would be able to borrow would be $12,000: Half of $24,000 is $12,000, which is greater than $10,000 but less than $50,000. As a result, the participant not only loses the growth potential from the $12,000 had it been left in their 401(k), but market volatility caused them to lose an additional $3,000 that they could have borrowed prior to the market fluctuation.

Plans that permit loans often require minimum loan amounts. For instance, almost 80% of plans that PSCA surveyed require participants to take a minimum of $1,000 as a loan amount.[160] Forcing participants to liquidate and take more than they perhaps need is detrimental to their ability to accumulate retirement wealth for the same reasons as set forth above.

Additionally, many plans use a formula to calculate the interest rate that is tied to the prime interest rate—the interest rate that banks charge those with the highest credit scores for loans. Often the plan may provide for "prime +1" or "prime +2" for the interest rate.[161] For instance, the prime rate in November 2025 was 7.0%, so a 401(k) plan loan that uses "prime + 1" formula would have an interest rate of

[159] I.R.C § 72(p)(2)(A) (West, Westlaw through P.L. 119-36).

[160] PSCA 2024 Survey, at 72 (noting that 77.1% of plans surveyed in 2024 require participants take a minimum of $1,000 as a loan amount).

[161] Campbell & Safane, *supra* note 156.

8.0%.[162] Often, during inflationary environments, interest rates go up, but not always.[163] If rates increase, borrowing even from a 401(k) plan is negatively impacted as the interest rates applied to loans drawn from retirement plans are based on the prime rate: the higher the interest rates, the higher the monthly repayment is. Given participants are likely withdrawing because they need the money immediately, high monthly payments are infeasible and further detrimental to an individual's current situation.[164] If the interest rates decrease, participants will have lower payments but could find themselves borrowing beyond their means, and this is frequently a concern when inflation is high. Consider also that while repaying the loan, employees may not be able to afford to contribute more to the plan, thereby forgoing employer matching contributions and stagnating accumulation.

Tariffs, trade wars, and other policies causing economic volatility also harm businesses and may lead to businesses shutting down or laying off employees.[165] In many plans, participants who have loans must repay them within a certain amount of time after cessation of their employment, which may be difficult for

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[162] *Id*. *See also Current Prime Rate: Prime Rate Update*, https://www.commercebank.com/about-us/prime-rate-update [https://perma.cc/PH66-FU6E] (last visited Dec. 15, 2025).

[163] *Why Does the Fed Care About Inflation?*, CTR. FOR INFLATION RSCH. https://www.clevelandfed.org/center-for-inflation-research/inflation-101/why-does-the-fed-care-start [https://perma.cc/8KBL-5RBU] (last visited Sep. 13, 2025); *Foreign Investors May Be Paring Back Role in U.S. Markets*, MARKETPLACE (Apr. 14, 2025), https://www.marketplace.org/story/2025/04/14/foreign-investors-us-corporate-bonds-treasuries-stocks-investment-equities [https://perma.cc/Q46Z-VM4H].

[164] Because traditional lenders use risk-based pricing, for individuals who are at higher risk of default based on traditional metrics (*i.e.* lower income and lower credit scores), interest rates are very high. Karen Axelton, *How Does Your Credit Score Affect Your Interest Rate*, EXPERIAN (Sep. 26, 2023), https://www.experian.com/blogs/ask-experian/why-do-people-with-higher-credit-scores-get-lower-interest-rates/ [https://perma.cc/8D7L-YPJT]. A plan loan based on prime +1 or +2 could be significantly lower than what the plan participant's other options provide.

[165] Ian Lee, *Kansas Furniture Store Owner on Being Forced to Shutter Due to Tariffs: "We Decided to Liquidate Everything*,*"* CBS (June 27, 2025, at 19:55 EDT), https://www.cbsnews.com/news/kansas-furniture-store-owner-forced-to-shutter-tariffs/ [https://perma.cc/KP9E-LPVB]. A Kansas man opened his furniture shop four years ago with the belief that his business would create a retirement fund for his children. *Id*. Instead, in August, he is closing his doors because tariffs have become too burdensome to sustain his business. *Id.* The man imports 99% of the furniture in the store, and this has caused the man to pay around $162,000 in tariffs since Trump regained office. *Id*.

someone to do, particularly if they encounter an unexpected layoff.[166] If the loan is not repaid, the balance owed will be taxed as income and subject to the 10% early-withdrawal penalty.[167] Again, neither of these results are optimal for financially vulnerable individuals who are borrowing the money out of necessity.[168] Indeed, if they spent the money, they may not even have money to pay taxes incurred upon default.

For those squeamish about market volatility, borrowing from one's 401(k) balance guarantees interest being paid to their account rather than risking the money by investing in a volatile stock market. Despite what sounds like an economic net positive, there is a bit of a trap. This money that goes back into the account as interest is ultimately subject to double taxation: First, the loan principal and interest is being paid for with after-tax money; and second, once it comes back out during retirement, it will be taxed again.[169] So there are many considerations

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[166] Some plans require that participants repay loans after they cease employment, otherwise the funds the participants have previously withdrawn will be subject to early withdrawal penalties and income tax. Some plans require such repayment within 60 days of the last date of employment, while others require it by the end of the quarter in which the employee ceased working. Hattie Greenan, *Repaying Loans After Separation*, PSCA (Aug. 11, 2025), https://www.psca.org/news/psca-news/2025/8/repaying-loans-after-separation/ [https://perma.cc/2949-BCUG]. However, some plans do not require the loan be satisfied after the employee has ceased working. *Id*. "More than half of plans that allow loans do allow participants to continue to repay their loans after separation from service (55 percent). For the 45 percent who do not, the most common response for not allowing it is the additional administrative burden, and the challenges with implementing it and tracking down participants after they leave, though some didn't know that this is an option." *Id*.

[167] *Id*.

[168] However, the costs inherent in fees, interest to one's own 401(k) plan, and taxes is likely less than the interest the participant would have had to pay a bank, i.e., "the opportunity cost and double taxation of interest in a 401(k) loan will be less than the cost of paying all interest to a financial institution." Lu, Mitchell, Utkus, & Young, *supra* note 19, at 7.

[169] *Id*. at 6. This statement assumes that the individual's socioeconomic position subjects them to income tax. Every year, millions of Americans do not pay federal income tax due to a combination of the standard deduction and refundable tax credits, like the child or earned-income tax credit. *See* Drew Desilver, *Who Pays, and Doesn't Pay, Federal Income Taxes in the U.S.?*, PEW RSCH. CTR. (Apr. 18, 2025), https://www.pewresearch.org/short-reads/2023/04/18/who-pays-and-doesnt-pay-federal-income-taxes-in-the-us/ [https://perma.cc/6WXX-4FH4].

participants need to weigh before deciding on whether to take a plan loan.[170]

2. *Hardship, Emergency, and Domestic Abuse Victim Distributions*

Similar to loans, amounts available for hardship withdrawals, domestic abuse victim distributions, and other emergency distributions are also contingent on the value of one's vested account balance.[171] During a recession and/or inflationary conditions, expense volatility may trigger the need to withdraw from 401(k) plan accounts. Hardship withdrawals "must be made on account of an immediate and heavy financial need of the employee and the amount must be necessary to satisfy the financial need."[172] The Internal Revenue Service website explains that the determination of "immediate and heavy" depends on the facts and circumstances, but the page does provide helpful examples of qualifying hardships like medical expenses, family emergency expenses, funeral expenses, etc.[173] Some plans require a participant to exhaust other financial resources, such as plan loans, before seeking a hardship withdrawal.

The SECURE Act, enacted January 1, 2020, introduced penalty-free withdrawals for new parents, aiming to ease the financial burdens associated with childbirth and adoption.[174] Expanding on the foundation the SECURE Act laid, the SECURE 2.0 Act significantly broadened the range of qualifying events for early distributions, including those for natural disasters and terminal illnesses.[175] This

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[170] *See generally* Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 675 (discussing how employers should offer, and how AI can likely assist with, financial education to employees who are considering a loan from their retirement account, and that this education should touch on all relevant factors that impact an employee's decision-making process).

[171] I.R.C § 72(t)(2)(K) (West, Westlaw through P.L. 119-36); I.R.S. Notice 2024-55, 2024-28 I.R.B. 31, 47 (July 8, 2024) https://www.irs.gov/pub/irs-drop/n-24-55.pdf [https://perma.cc/8APX-FV7J].

[172] Treas. Reg. § 1.401(k)-1(d)(3)(ii)(B). Sometimes caps apply depending on the reason for the withdrawal.

[173] *Retirement Plans FAQs Regarding Hardship Distributions*, https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-hardship-distributions [https://perma.cc/9SLY-HYHY] (Aug. 26, 2025).

[174] I.R.C. § 72(t)(2)(H) (West, Westlaw through P.L. 119-36). PSCA's table 163 shows 50.8% of all plans surveyed in 2024 offer this feature. PSCA 2024 Survey table 163, at 78.

[175] *Id*. at § 72(t)(2)(L); *Id*. at § 72(t)(2)(M) PSCA table 163 shows 70.6% of all plans allow for natural disaster withdrawals and 47.7% for terminal illness. PSCA 2024 Survey.

expansion is increasingly critical because the financial burden of such events is heavy. For example, climate change is intensifying the frequency and severity of natural disasters, which in turn causes increased disaster recovery costs.[176] Access to funds from the Federal Emergency Management Agency (FEMA)—a critical resource impacted by Trump policies[177]—and insurance coverage is becoming increasingly limited.[178] Therefore, allowing natural-disaster-affected people

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Brian J. Kearney, Matthew Calloway, & Margaret Berger, *IRS Gives Guidance on SECURE 2.0's Terminal Illness Distributions*, MERCER (Mar. 20, 2024), https://www.mercer.com/insights/law-and-policy/irs-gives-guidance-on-secure-2-0-s-terminal-illness-distribution/ [https://perma.cc/LG9S-A3NR]. A terminal illness withdrawal from a 401(k) (called a "terminally ill individual distribution" or "TIID") allows a participant with a physician-certified illness expected to result in death within seven years to access funds without the 10% early withdrawal penalty. To qualify, the participant must provide the plan administrator with a certification from an independent physician that includes details such as the diagnosis, supporting evidence, and physician attestation. The participant must already be eligible for a distribution under normal 401(k) rules (e.g., separation from service or hardship), since TIIDs are not yet considered their own distributable event. Once approved, the withdrawal is reported on Form 1099-R as penalty-exempt, and participants may recontribute all or part of the distribution within three years if the plan accepts rollovers.

[176] *Trump Administration Actions Weakening Disaster Preparation and Response*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 19, 2025, at 09:09), https://www.cbpp.org/blog/trump-administration-actions-weakening-disaster-preparation-and-response [https://perma.cc/E82B-AVPU].

[177] Kenny Stancil, *Map: Trump Has Often Delayed or Denied Disaster Aid*, REVOLVING DOOR PROJECT (July 2, 2025), https://therevolvingdoorproject.org/trump-disaster-policy-tracker-map/ [https://perma.cc/9QJU-YGG2]; Sara McTarnaghan, Lucy Dadayan, & Andrew Rumbach, *The Trump Administration Wants to Shrink the Federal Government's Role in Disaster Management. Do States Have the Fiscal Capacity to Weather the Storm?*, URB. INST. (July 15, 2025), https://www.urban.org/urban-wire/trump-administration-wants-shrink-federal-governments-role-disaster-management-do-states [https://perma.cc/KEU4-EVNY].

[178] Mary Mazzoni, *Beyond California, the U.S. is on the Brink of an Insurance Crisis Tied to Climate Change*, TRIPLE PUNDIT (Jan. 29, 2025), https://www.triplepundit.com/story/2025/insurance-crisis-climate-change/816806 [https://perma.cc/98SE-YKHS]; Matt Keeley, *When Fragile Insurers Meet Climate Change, Taxpayers End Up on the Hook*, COLUM. BUS. SCH. (Feb. 18, 2025), https://business.columbia.edu/research-brief/florida-homeowners-insurance-crisis-climate-change-taxpayer-burden [https://perma.cc/2XPV-Q5XY].

financial help without complete reliance on FEMA and insurance is critical.[179] Natural disaster distributions—"Qualified Disaster Recovery Distributions"—are permitted up to $22,000 of one's vested balance and are in addition to allowable natural disaster loans—up to $100,000 of one's vested balance.[180] An important eligibility requirement is the President has to declare a major disaster for such distributions and loans to be permissible.[181] And Trump has been denying and/or delaying such declarations for disasters that are worthy of assistance.[182] But if a presidential declaration is made, then penalty-free distributions and loans can bridge the gap emanating from FEMA funding shortfalls or delays. As noted, like other types of withdrawals, the vested balance amount triggers the amount one can use for natural disaster recovery.[183]

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[179] Hattie Greenan, *Use of Natural Disaster Withdrawals*, PSCA (July 25, 2025), https://www.psca.org/news/psca-news/2025/7/use-of-natural-disaster-withdrawals/ [https://perma.cc/L3GC-LDPF]. ("While waiving the 10% penalty is great, the $22,000 limit is not sufficient as costs to recover average $50,000+, to include home repairs, temporary housing, vehicle replacement, medical bills, income loss, and high insurance deductibles. Some are forced to take out high-interest loans, drain retirement savings, or file for bankruptcy."). *Id*.

[180] *Disaster Relief Frequently Asked Questions: Retirement Plans and IRAs Under The SECURE 2.0 Act of 2022*, (May 2024), https://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022#loans [https://perma.cc/DPC8-3SA5].

[181] *Id*.

[182] Stancil, *supra* note 177. *See, e.g.*, Thomas Frank, *Trump Refused to Send Disaster Aid to Chicago after 2 Devastating Storms*, POLITICO (Nov. 23, 2025, at 16:07 EST), https://www.politico.com/news/2025/11/22/trump-refused-to-send-disaster-aid-to-chicago-despite-devastating-damage-00655716 [https://perma.cc/7FMT-25GA]; Jordyn Hermani, *Feds Deny Michigan Request for Homeowner Aid Following Ice Storm*, BRIDGE MICH. (Oct. 24, 2025), https://bridgemi.com/michigan-government/feds-deny-michigan-request-for-homeowner-aid-following-ice-storm/ [https://perma.cc/DR4Q-FSPU]; Ana Ceballos & Melody Gutierrez, *Newsom, Seeking Federal Funds for LA Wildfire Recovery, Is Denied Meeting with Key Trump Officials*, L. A. TIMES (Dec. 5, 2025, at 14:23 MST), https://www.yahoo.com/news/articles/fema-denies-meeting-newsom-during-212351597.html [https://perma.cc/GC4U-E8V5].

[183] Americans facing increasingly severe natural disasters now confront a Catch-22: while worsening storms and reduced FEMA funding heighten the need for emergency access to 401(k) disaster withdrawals, Trump 2.0 policies—such as tariffs and related economic pressures—have left many households with diminished retirement savings upon which to draw. This combination of reduced federal aid and weaker personal financial security forces individuals to rely more heavily on their retirement accounts at a time when

SECURE 2.0 also authorized plans to permit penalty-free Domestic Abuse Victim Distributions.[184] This provision reflects a growing recognition of the intersection between financial need and personal safety. During economic downturns and times of employment insecurity and uncertainty, the risk of domestic abusive behavior increases.[185] "Although domestic violence is not caused by poverty, unemployment, and economic recession, these factors may increase the risk of domestic violence."[186]

Research indicates that couples who are financially strained *do* have a higher prevalence of domestic abusive behavior compared to those who feel low levels of financial strain.[187] Given this correlation, recessionary and inflationary

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those balances are already under strain. Maxine Joselow, *FEMA Employees Warn That Trump is Gutting Disaster Response*, N.Y. TIMES (Aug. 25, 2025), https://www.nytimes.com/2025/08/25/climate/fema-employees-letter-trump-katrina.html [https://perma.cc/H4KE-WU67].

[184] I.R.S. Notice 2024-55, *supra* note 171, at 47. ("The term 'domestic abuse' means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household."). PSCA shows 54.2% of all plans surveyed permit such distributions. PSCA 2024 Survey table 163, at 78. This represents an increase from the prior year in which only 37.6% of plans offered these important distributions. PLAN SPONSOR COUNCIL OF AM., PSCA'S ANNUAL SURVEY OF PROFIT SHARING AND 401(K) PLANS table 159, p. 78 (2024) (hereinafter PSCA 2023 Survey).

[185] *See* Daniel Schneider, Kristen Harknett, & Sara McLanahan, *Intimate Partner Violence in the Great Recession*, 53(2) DEMOGRAPHY 471 (2016); Karen Nikos-Rose, *Domestic Violence Increased in the Great Recession, UC Davis Study Suggests Preparing for Similar Issues in the COVID-19 Financial Crisis* (July 13, 2020), https://www.ucdavis.edu/curiosity/news/domestic-violence-increased-great-recession [https://perma.cc/L9BC-VFVX]; Deborah M. Weissman, *The Personal Is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 417, 431 (2007); *See generally* Patricia Voydanoff, *Economic Distress and Family Relations: A Review of the Eighties*, 52 J. MARRIAGE & FAMILY 1099 (1990).

[186] *Domestic Violence and the Economy–Talking Points Form*, DOMESTIC VIOLENCE AWARENESS PROJECT (June 2019), https://www.dvawareness.org/sites/default/files/2019-06/DVandtheEconomy-TalkingPointsForm.pdf [https://perma.cc/8779-4UL6] ("According to 56% of shelters, domestic violence is more violent now than before the economic downturn.").

[187] Claire M. Renzetti, *Economic Stress and Domestic Violence*, CRVAW FAC. RSCH. REPS. PAPERS (2009), https://uknowledge.uky.edu/crvaw_reports/1/ [https://perma.cc/8V3C-LHBG]; Rachel Jewkes, *Intimate Partner Violence: Causes and*

conditions—such as those linked to Trump tariffs and other policies—may contribute to increasing levels of intimate partner violence. Consequently, it is critical that a domestic abuse victim has the financial means to escape an abusive situation and achieve safety. But how much someone can withdraw while avoiding an early withdrawal penalty is based on one's account balance, i.e., the lesser of $10,000 or 50% of their vested account balance.[188] When the stock market drops and account balances plummet, a person's vested account balance is lower. This means that if a victim's account balance falls under $20,000, they will only be permitted to take 50% of their account balance from their plan account to help them escape their abuser. But domestic abuse victims do not have the luxury of waiting for the market to have a good day.

Access to such money can help victims become financially free of their abusers and can make them less likely to return to their abusive relationships.[189] As such, being able to access enough money, even if it is from one's retirement savings, can be lifesaving and life changing for a victim and their children.

SECURE 2.0 Act contains additional provisions that allow plans to offer participants the limited ability to withdraw money for emergencies without being subject to penalties.[190] The maximum amount that can be taken is $1,000 and that is only if the vested account balance remains above $1,000 after the distribution is

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Prevention, 359 LANCET 1423, 1424 (2002) ("Since poverty is inherently stressful, it has been argued that intimate partner violence may result from stress, and that poorer men have fewer resources to reduce stress.").

[188] *See* I.R.S. Notice 2024-55, *supra* note 171, at 47.

[189] "WE WOULD HAVE HAD TO STAY": SURVIVORS' ECONOMIC SECURITY AND ACCESS TO PUBLIC BENEFIT PROGRAMS, NAT'L RES. CTR. ON DOMESTIC VIOLENCE (Nov. 2018), https://vawnet.org/sites/default/files/assets/files/2018-11/NRCDV_PublicBenefits-WeWouldHaveHadToStay-Nov2018.pdf [https://perma.cc/YAB7-CRBK] (finding that 67% of survivors returned to an abusive relationship or stayed longer due to financial concerns); Michelle Travis, *3 Ways Companies Can Support Employees Facing Domestic Violence*, FORBES (Sep. 16, 2025, at 09:49 EDT), https://www.forbes.com/sites/michelletravis/2025/09/16/3-ways-companies-can-support-employees-facing-domestic-violence/ [https://perma.cc/7C34-7N93] ("Economic independence is an essential condition for being able to separate from an abusive relationship.").

[190] I.R.C. § 72(t)(2)(I) (West, Westlaw through P.L. 119-36).; I.R.C. § 72(t)(2)(I)(v–vii) (West, Westlaw through P.L. 119-36) (limiting distributions by frequency, dollar limitation, and repayment terms); PSCA shows 36.1% of all plans provide emergency distribution features. PSCA 2024 Survey table 163, at 78.

taken.[191] Again, like other avenues for withdrawing, the balance is the benchmark, and the lower the account balance is due to volatility, vesting, and suspended contributions, the less someone can withdraw.

Frequency of being able to take emergency distributions is tied to whether the participant repays the distribution, i.e., participants may take such a distribution once per year but only if they repaid the previously taken distribution.[192] If one does not repay it, they must wait an additional three years before taking another emergency distribution.[193] While a $1,000 maximum is not much to some people, it may provide some people relief to cover living expenses or a financial emergency. And such emergencies may surface more frequently during inflationary and recessionary times. The limitation on the money tied to being repaid is more burdensome during such times, and the longer the economic downturn lasts, the more difficult it will be for people to repay the distribution so they can take advantage of more than one distribution within a three-year period.[194]

B. Stifling Business Startups and Small Businesses

Entrepreneurship often serves as a critical pathway for older, experienced workers.[195] When individuals are compelled to extend their working years due to inadequate retirement savings, they frequently encounter difficulty securing new employment in the traditional job market, making starting a business a practical solution for them.[196] Similarly, the abrupt and unexpected shock of a layoff, particularly during periods of low hiring, provides an immediate motivation for skilled individuals of any age to transition into self-employment.[197] Whether such

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[191] *Id*. Secure 2.0 also permits plans to offer participants pension-linked emergency savings accounts where participants can establish emergency savings up to $2,500 within a retirement plan. 29 U.S.C. § 1193 (West, Westlaw through P.L. 119-36).

[192] I.R.C. § 72(t)(2)(I)(vi) (West, Westlaw through P.L. 119-36).

[193] *Id*. at § (2)(I)(vii).

[194] A three-year repayment timing makes such distributions somewhat like plan loans. Plan loans must be repaid within five years of borrowing. *Retirement Topics- Plan Loans*, I.R.S. (Aug. 26, 2025), https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-loans#:~:text=Generally%2C%20the%20employee%20must%20repay,to%20purchase%20a%20primary%20residence [https://perma.cc/KA8P-KVQY].

[195] Teemu Kautonen, Ewald Kibler, & Maria Minniti, *Late-Career Entrepreneurship, Income and Quality of Life*, 32 J. BUS. VENTURING 318, 322 (2017).

[196] *Id*.

[197] Frank-Olivier Garané, *Aiming Low: The Selection into Alternative Forms of*

individuals are entrepreneurs by necessity or led by their entrepreneurial spirit, they need seed capital to launch their endeavor and improve their financial circumstances.

Seed capital is often sourced through personal savings and bank loans. However, as mentioned *supra*, borrowing during economically volatile times can be challenging. Furthermore, if a bank loan *is* feasible, collateral in the form of the entrepreneur's personal assets will certainly play a role in whether someone is approved for a loan and the amount of that loan. One's 401(k) plan account balance can serve as a personal asset to assist them in securing a business loan. But when their account balance is lower, their borrowing power is also lower.

Given that 401(k) plans are often a significant portion of someone's personal savings, pursuing seed capital directly from a 401(k) plan can be a viable strategy. A Rollover as Business Start-up (ROBS) could be an option for entrepreneurs who leave their former employer to start a company. Procedurally, a ROBS allows someone to roll over their 401(k) balance to a new plan set up by the start-up company. So, the new company starts a 401(k) plan, and the entrepreneur rolls over the money from their prior employer's 401(k) plan. This cash is used to "buy" stock in the new company, and in exchange, the new company now has the money from the owner's previous 401(k) plan and can use it for start-up expenses. When a ROBS rollover is executed correctly, it avoids immediate taxation or any penalties for early withdrawal.[198]

Supply chain issues, many of which are a result of Trump's tariff waffling and complex regulations, create havoc for entrepreneurs and existing small businesses.[199] "Months of extraordinary volatility—with tariffs announced, then

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Entrepreneurship by Laid-Off Employees 1 (Mar. 19, 2024) (unpublished manuscript) (on file with the Northern Finance Association), https://portal.northernfinanceassociation.org/viewp.php?n=2240163100 [https://perma.cc/4NRG-TD4F].

[198] ROBS maneuvers appear to be highly scrutinized by the IRS. *See* Jenny Kiffmeyer, *Case of the Week: Rollovers as Business Startups (ROBS)*, NAT'L ASS'N. PLAN ADVISORS (Mar. 20, 2024), https://www.napa-net.org/news-info/daily-news/case-week-rollovers-business-startups-robs-0 [https://perma.cc/H6AK-G8Z2].

[199] *See generally* Susan Spence, *Manufacturing PMI® at 48.5%; May 2025 Manufacturing ISM® Report on Business®*, INST. FOR SUPPLY MGMT, (June 2, 2025, at 10:00 ET), https://www.prnewswire.com/news-releases/manufacturing-pmi-at-48-5-may-2025-manufacturing-ism-report-on-business-302470183.html [https://perma.cc/QKM9-EJTZ]. A representative from the electrical equipment supply chain group, responding to the Institute for Supply Management's May Manufacturing Report, remarked that "[t]he

delayed, then changed—have left [one North Carolina entrepreneur] confused about the basic economics of his business."[200] Millions of small business owners rely upon imports.[201] Many also relied on the recently eliminated de minimis exemption, the elimination of which has caused significant supply chain issues.[202] For those who can get their products, they are passing tariff increases along to their customers.[203] Some are contemplating giving up due to the uncertainty and increased costs, as it is difficult for small businesses to run a sustainable business in light of the teetering tariffs.[204] Others are taking out large credit lines to cover tariff costs, using lending startups and taking debt just to finance imported merchandise and avoid potential asset seizures due to the inability to keep up with

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administration's tariffs alone have created supply chain disruptions rivaling th[ose experienced during the] COVID-19 [pandemic]." *Id.* Similarly, a representative from the primary metals sector observed, "[w]e have entered the waiting portion of the wait and see [approach]. Business activity is slower and smaller this month." *Id.*

200 Peter S. Goodman, *His Start-Up May Not Survive Chaotic Rollout of Trump's Tariffs*, N. Y. TIMES (July 10, 2025), https://www.nytimes.com/2025/07/10/business/trump-tariffs-china.html?campaign_id=9&emc=edit_nn_20250710&instance_id=158207&nl=the-morning&regi_id=96902683&segment_id=201583&user_id=f03e3e8c4ba4931f55658d5d433729a0 [https://perma.cc/7X28-ZYNY]; Tad DeHaven & Nathan Miller, *No, Mr. President, Tariff Challengers Don't Hate Our Country*, CATO INST. (Sep. 23, 2025, at 12:17), https://www.cato.org/blog/no-mr-president-tariff-challengers-dont-hate-our-country [https://perma.cc/7HNJ-R6QB] (explaining that many of the companies challenging the tariffs in court are small businesses who are only doing so because Trump's tariffs have single handedly put their livelihoods at risk).

201 *Id.*

202 *See supra* Part I, at 8.

203 *See* Goodman, *supra* note 200. ("Faced with higher costs via tariffs, [an entrepreneur] recently lifted the prices of his products by 30 percent across the board. He worries that he is testing the limits of his customers. If Mr. Trump again raises tariffs on Chinese imports, that could force him to scrap [his product] altogether.").

204 Gabrielle Fonrouge, *Small Businesses are Being Crushed by Trump's Tariffs, and Economists Say It's a Warning for the Economy*, CNBC (Oct. 17, 2025, 12:28 EDT), https://www.cnbc.com/2025/10/17/how-much-trump-tariffs-are-costing-small-businesses.html [https://perma.cc/N6XT-Q34V]. Some are seeking bailouts from the federal government. *See, e.g.*, Cassandra Stephenson, *Dozens of TN Hardwood Companies Join Industry Plea for Federal Relief from Tariff Hardships*, TENN. LOOKOUT (Nov. 17, 2025, at 05:00), https://tennesseelookout.com/2025/11/17/dozens-of-tn-hardwood-companies-join-industry-plea-for-federal-relief-from-tariff-hardships/ [https://perma.cc/6EZM-W3NG] (hardwood companies asking to be characterized as "agricultural producers" to entitle them to a federal agriculture bailout).

such high tariff costs.[205] One does not know when the uncertainty will subside, making the prospect of repaying the incurred debts ominous. While using 401(k) money during these volatile times could offer the solution to the need for seed capital or survival during turbulent times, a lower account balance resulting from stock market instability and inflation diminishes the availability of that funding. All of this ultimately hinders both the creation and sustainability of existing small businesses.[206]

IV. EMPLOYEE BENEFIT IMPACTS

To make it even harder for workers to accumulate retirement wealth, companies might amend their 401(k) plans to save money during an economic downturn.[207] One strategy that companies may implement, or at least may consider, is lowering, eliminating, or suspending their matching or other employer

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[205] Spencer Soper, *Small Businesses Turn to Lending Startups as Tariff Costs Mount*, BLOOMBERG (Sep. 15, 2025, at 03:00 MST), https://www.bloomberg.com/news/articles/2025-09-15/tariffs-drive-small-importers-to-costly-loans-as-lending-startups-surge [https://perma.cc/JN6W-TAT8]. Joseph Asia, owner of Pardes Farms Inc., took out a $200,000 credit line to help cover the costs of the tariffs on his Chinese-grown frozen vegetables. *Id.* Slope Inc., a lending startup, said it saw applications for credit lines surge up to 730%, stating that the impact of tariffs was felt immediately. *Id.*

[206] Admittedly, many start-ups fail, and if someone uses their retirement savings to fund a failed start-up, they not only lose their business, but also their retirement money. However, a ROBS is still a funding option, and because market fluctuations and vesting schedules minimize someone's account balance value, they directly restrict one's ability to start a business.

[207] The Trump 2.0 economic climate is different from the pandemic, during which companies had to offer more employee-friendly policies to entice employees to work for them. Now, companies may be laying off employees rather than hiring them. This uncertainty makes decision-making regarding hiring difficult. *See* Hatzius, Phillips, Mericle, Walker, Abecasis, Peng, & Rindels, *supra* note 33; Andy Markowitz, *What to Do If Your Employer Suspends 401(k) Matches During Pandemic*, AARP (Apr. 23, 2020), https://www.aarp.org/money/retirement/employers-cut-match-contributions/#:~:text=As%20the%20coronavirus%20shutdown%20grinds,(CRR)%20at%20Boston%20College [https://perma.cc/M6PE-YQZY].

contributions.[208] In fact, many companies did so during the 2007 financial crisis.[209] As history tends to repeat itself, there are companies implementing such strategies during the Trump 2.0 economic crisis. In 2025, Sherwin-Williams suspended its 401(k) plan matching contributions "citing weak sales amid economic and tariff headwinds."[210] As discussed *supra*, inflation, tariffs, and job losses all put strain on American workers such that they may need to tap their 401(k) plans to cover expenses. Reduced or eliminated matches can stifle 401(k) balances. If the company ceases making contributions, the direct loss of company infused capital results in a lower account balance. Beyond this direct and more obvious harm, matching contributions are designed to induce employees to contribute. If this incentive is reduced or eliminated, employees who would otherwise make personal sacrifices to contribute may also cease or reduce their contributions.[211] This means less in their 401(k) plans which translates into less they can use for emergencies,

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[208] Isaac J. Morris, *Taming the Tariffs: Employee Benefit Issues for Employers During Times of Economic Uncertainty—Reducing or Suspending Qualified Retirement Plan Contributions*, FOLEY & LARDNER LLP (Apr 21, 2025), https://www.foley.com/insights/publications/2025/04/taming-the-tariffs-employee-benefit-issues-for-employers-during-times-of-economic-uncertainty-reducing-or-suspending-qualified-retirement-plan-contributions/ [https://perma.cc/4LSQ-HUCP]. Reducing or suspending 401(k) plan matching contributions has been an historical method of addressing plunges in revenue; Markowitz, *supra* note 207.

[209] See the enormous list that the Center for Retirement Research put together of companies that suspended their 401(k) matching in 2007. SUMMARY TABLE OF COMPANIES THAT SUSPENDED THEIR 401(K) MATCH, CTR. FOR RET. RSCH., https://crr.bc.edu/wp-content/uploads/joomla/Briefs/appendix.pdf [https://perma.cc/WU5R-8YWD] (last visited Dec. 15, 2025); MICHAEL J. BRIEN & CONSTANTIJN W.A. PANIS, DEFINED CONTRIBUTION PLAN EMPLOYER MATCH SUSPENSIONS DURING THE FINANCIAL CRISIS, DELOITTE & ADVANCED ANALYTICAL CONSULTING GRP. (Sep. 25, 2013), https://www.dol.gov/sites/dolgov/files/ebsa/researchers/analysis/retirement/defined-contribution-plan-employer-match-suspensions-during-the-financial-crisis.pdf [https://perma.cc/72FE-7E9H].

[210] *See* Megan Sims, *Sherwin-Williams Suspends 401(k)-Matching amid Weak Sales*, CLEVELAND.COM (Sep. 4, 2025, at 16:24), https://www.cleveland.com/news/2025/09/sherwin-williams-suspends-401k-matching-amid-weak-sales.html [https://perma.cc/TU2X-PXFD] (noting that Sherwin-Williams has implemented temporary suspensions during other economically challenging times such as during the COVID-19 pandemic). The company's 401(k) plan switched from immediate vesting to three-year cliff in January 2017.

[211] If employees during a financial crisis have the means to do so, they may increase their contributions to cover the lost employer contributions. Brien & Panis, *supra* note 209, at 9.

or to afford living costs. It also means there is less in the account to grow. While it is understandable that during a financial crisis, companies need to cut costs, actions to reduce, suspend, or eliminate matching contributions are a direct pay cut to employees. Employer contributions are compensation that employees need and should be able to rely upon.

Companies may also amend their plans to lengthen vesting schedules, which would make it harder for participants to vest.[212] These actions are detrimental to employees who need to accumulate retirement savings. When vesting schedules are present and employees cease employment—voluntarily or involuntarily—they forfeit unvested employer contributions, and the company significantly benefits from the resultant forfeitures.[213] While companies are not generally permitted to withdraw the previously contributed funds, their plans are permitted by law (depending on plan language) to use these funds to offset employer contribution obligations or reduce plan administration expenses.[214] In short, forfeitures are good for companies but bad for employees trying to save for retirement.[215]

Many companies have already been forced to lay off employees due to Trump policies.[216] As job losses continue, more people will be harmed[217] and will

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[212] Plans are permitted to amend vesting provisions, so long as they are forward in application and not retroactively applied. Vesting schedules must still be within permissible levels as provided in the IRC. For instance, vesting schedules must be at least as generous as a three-year cliff or six-year graded schedule. *See* Prince, *supra* note 117, at 13.

[213] *See* Samantha J. Prince, Timothy G. Azizkhan, Cassidy R. Prince, & Luke Gorman, *The Effects of 401(k) Vesting Schedules—in Numbers*, 134 Yale L.J. F. 1 (2024).

[214] *Id.*

[215] *Id.*

[216] *E.g.*, Hugh Cameron, *John Deere Announces Hundreds of Layoffs*, NEWSWEEK (Aug. 19, 2025, at 07:06 EDT), https://www.newsweek.com/john-deere-announces-hundreds-layoffs-tariffs-2115511 [https://perma.cc/88PG-RBFS].

[217] Job losses were consistently predicted to significantly increase as a result of Trump policies. Rachel Wells, *What Jobs Will Be Impacted by Trump's Tariffs in 2025?*, FORBES (Apr. 9, 2025, at 12:00 EDT), https://www.forbes.com/sites/rachelwells/2025/04/09/what-jobs-will-be-impacted-by-trumps-tariffs-in-2025/ [https://perma.cc/85XG-WFDK]; Gili Malinsky, *Trump Tariffs 'Will Increase the Unemployment Rate to Recessionary Levels,' Says Economist*, CNBC (Apr 9, 2025, at 09:57 EDT), https://www.cnbc.com/2025/04/08/trump-tariffs-job-market-impact-will-mostly-be-negative-economists-say.html [https://perma.cc/NW9Y-SDQL]; Samantha Dorisca, *Report Reveals Black Women Lost the Most Jobs in April and Changes in DEI Could Partially Be to Blame*, AFROTECH (May 12, 2025), https://afrotech.com/report-reveals-

ultimately forfeit retirement funds.[218] While layoffs often result in increased forfeitures, that is not always the case.[219] In situations where companies fire so many employees that they trigger a "partial plan termination"[220] all employees are entitled to full vesting of their employer contributions. Companies that survive tariff mayhem but are still suffering may terminate their 401(k) plans, resulting in the loss of a valuable employee benefit and an employee's vital path to increase retirement savings. Plans that are terminated for whatever reason, or partially terminated due to laying off too many employees, must vest all participant accounts.[221] A partial termination would foreclose an existing plan's ability to claw back forfeitures for its use, which would result in additional economic pain for already hurting companies. While forfeitures and their use by companies are dismaying to this author, the impact of their use for those plans that use them cannot be ignored.

Lastly, an overwhelming majority of plans require that vested balances under $1,000 be cashed out when an employee terminates, making the funds immediately available but subject to taxation and a 10% penalty.[222] Furthermore, plans can force

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black-women-lost-more-jobs-april [https://perma.cc/32NF-2F9P]. Economists report that Black women lost the most jobs in April; one noting "the layoffs at the federal level where Black people are more represented, the impacts of the tariffs, particularly on small businesses that hire Black women, and just the overall use of DEI as a slur, which may be contributing to a lack of hiring of Black women, all of these factors are probably at play." *Id.* Black women losing the most jobs, in turn, negatively affects their retirement wealth accumulation. *Id.*; Eric Rosenbaum, *'This is the Trump Recession,' CEOs Say, with Tariff Price Increases, Job Losses Coming: CNBC survey*, CNBC (Apr 7, 2025, at 22:28 EDT), https://www.cnbc.com/2025/04/07/trump-recession-inflation-job-losses-coming-ceos-say-cnbc-survey.html [https://perma.cc/53U4-SEA3]. Job losses due to layoffs (rather than people quitting) are higher during an economic recession. JOHN A. TURNER, PENSION POLICY FOR A MOBILE LABOR FORCE 89 (1993); Laura D. Quinby & Gal Wettstein*, Is Unemployment Worse for Black Workers?*, CTR. FOR RET. RSCH. BOS. COLL. (June 10, 2025), https://crr.bc.edu/is-unemployment-worse-for-black-workers/ [https://perma.cc/74LF-QKG6].

[218] *See generally* Prince, Azizkhan, Prince, & Gorman, *supra* note 213.

[219] Some plans do not use vesting schedules and therefore no employer contributions would be subject to forfeiture.

[220] *See* Samantha J. Prince, *Employee Turnover & Partial Plan Terminations*, 2022 N.Y.U. REV. ON EMP. BENEFITS. & EXEC. COMP. 6-1, 6-2 (2022).

[221] *Id.* at 6-3.

[222] PSCA 2024 Survey, *supra* note 140, at 79. If a plan permits for cash-outs above $1,000, and the amount is under $7,000, it may be required to roll over those funds into an

cash-outs up to $7,000, which must be rolled over into an IRA for the leaving participant *unless* the participant elects to take the funds as a distribution. Again, if they take this money as a distribution, the amount is subject to taxation and penalties, resulting in less money in participants' pockets.[223]

V. LONG TERM EFFECTS ON SAVINGS

Individuals (and their households) may experience resource volatility and as a result financial vulnerability through various points in their lives, particularly during economically tumultuous times. Accessing 401(k) plan funds to cover present expenses may sometimes be a well-advised strategy but can sometimes lead to financial vulnerability later.[224] Withdrawing from 401(k) plans enables households to exceed their present means and could reduce their ability to save for the future, e.g. for retirement.[225] Still, to avoid debt quick-sand scenarios as discussed earlier, withdrawing or borrowing may be the prudent course.

Saving is difficult for many Americans even without the Trump 2.0 challenges being thrust on them. "Americans feel like they have too many financial goals such as saving for retirement, their children's education, and paying off debt. The majority (62%) of Americans say they are balancing so many financial goals that it is difficult to focus and prioritize their goals. More millennials (73%) than Gen Xers (50%) or boomers (25%) feel this way."[226] This statement underscores the true challenges of saving, which become even greater once inflation and layoffs are factored into the equation.[227]

IRA. Jenny Kiffmeyer, *Case of the Week: New Cash Out Limit Mandatory or Not?*, NAT'L ASS'N PLAN ADVISORS (Jan. 3, 2024), https://www.napa-net.org/news/2024/1/case-week-new-cash-out-limitmandatory-or-not/ [https://perma.cc/FXM3-QSKU].

[223] If the individual is age 55 in the year of separation, no penalty is imposed. Rebecca Lake, *What Is the Rule of 55 and How Does It Work?*, SMARTASSET (Dec. 10, 2025, at 16:42 ET), https://smartasset.com/retirement/401k-55-rule [https://perma.cc/U4GK-5V2M].

[224] *See* Salisbury, Nenkov, Blanchard, Hill, Brown, & Martin, *supra* note 1, at 668; *see also* Copeland, Conrath, & Carson *supra* note 145, at 3.

[225] Copeland, Conrath, & Carson, *supra* note 145, at 6.

[226] Sarah Hauer, *Debt is Limiting American Retirement Savings, Allianz Life Study Finds*, BUSINESSWIRE (Dec. 2, 2024, 10:51 EST), https://www.businesswire.com/news/home/20241202915122/en/Debt-is-Limiting-American-Retirement-Savings-Allianz-Life-Study-Finds [https://perma.cc/P373-PE88].

[227] "[S]avings practices . . . have taken an extra hit thanks to wage stagnation, job loss, and financial emergencies associated with the [2008] Recession." Das Acevedo, *supra* note 123, at 45–46.

Historically, inflation has been a persistent challenge for the United States.[228] However, this economic feature was exacerbated during the COVID-19 pandemic.[229] And despite inflation slightly tempering when President Joseph Biden's term was ending, it is surging again due to Trump's policies.[230] Consumers are expecting prices to rise by 4.5% through November 2026,[231] a number less than

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[228] Hiranmayi Srinivasan, *Historical U.S. Inflation Rate by Year: 1929 to 2025*, INVESTOPEDIA (Aug. 12, 2025), https://www.investopedia.com/inflation-rate-by-year-7253832 [https://perma.cc/896J-DEY4].

[229] Lawrence H. Leith, *What Caused the High Inflation During the COVID-19 Period?*, U.S. BUREAU LAB. STATS. (Dec. 2023), https://www.bls.gov/opub/mlr/2023/beyond-bls/what-caused-the-high-inflation-during-the-covid-19-period.htm#:~:text=The%20combined%20effects%20of%20increased,through%20the%20end%20of%202022 [https://perma.cc/3V7W-DAC4] (explaining that the combined effects of increased demand for durables and shortages caused by supply-chain disruptions were the main source of inflation in the second quarter of 2021 and that both the direct and indirect effects of those supply-chain problems remained substantial through the end of 2022). *See generally* Rob Arnott & Omid Shakernia, *History Lessons: How "Transitory" is Inflation?* (Dec. 28, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4305206 [https://perma.cc/L8D2-3XHT] ("We are fools if we allow our hopes for a rapid dissipation of inflation to become our central expectation.").

[230] Jeff Cox, *Consumer Prices Rise 2.7% Annually in July, Less than Expected amid Tariff Worries*, CNBC (Aug. 12, 2025, at 11:14 EDT), https://www.cnbc.com/2025/08/12/cpi-inflation-report-july-2025.html [https://perma.cc/L5QM-WFNC]; Bryan Mena, *Jerome Powell Warns on Trump's Tariffs: High Inflation Could Be Here to Stay*, CNN (Apr. 4, 2025, at 18:24 EDT), https://www.cnn.com/2025/04/04/economy/jerome-powell-fed-tariffs-jobs/index.html [https://perma.cc/773C-R4SC]; *see* Barbara Kollmeyer, *The Market's Been Wrong on the Fed for Three Straight Years—This Deutsche Bank Strategist Says it's Now Looking Like Four*, MARKETWATCH (July 16, 2025, at 08:53 ET), https://www.marketwatch.com/story/the-markets-been-wrong-on-the-fed-for-three-straight-years-this-deutsche-bank-strategist-says-its-now-looking-like-four-729f74d1 [https://perma.cc/F93F-4HMG] (noting that other countries are prepared to counter-tariff the US, which would lessen demand on American products and further sink the US economy).

[231] Tim Smart, *Consumer Sentiment Falls Again in November*, U.S. NEWS & WORLD REP. (Nov. 21, 2025, at 10:50), https://money.usnews.com/money/personal-finance/articles/consumer-sentiment-falls-again-in-november [https://perma.cc/T9T6-ED33]; *see* Lauren Aratani, *75% of Americans Report Soaring Prices as Trump Claims*

the 6.7% sentiment prediction noted in April 2025 but indicating consumer concern.[232] And the number of Americans who say their financial situation is getting worse is higher than ever, even higher than during the 2007-8 financial crisis or the COVID-19 pandemic.[233] This matters for various reasons. "People who are afraid the economy is headed into a ditch won't buy new cars or houses, go out to eat, or go on vacations."[234] In other words, tariffs and inflation reduce disposable income.[235] And as a result, people tend to keep their money in easily accessible accounts, which makes them less likely to contribute to their 401(k) plans.[236] This lack of contribution can have several unwieldy consequences. First, people may not contribute enough to be eligible for the company matching contribution – ultimately hindering the growth of their retirement savings. Second, individuals over 50 may be unable to afford taking advantage of the extra "catch-

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Inflation 'Over', GUARDIAN (Oct. 16, 2025, at 07:00 EDT), https://www.theguardian.com/business/2025/oct/16/inflation-economic-pessimism-poll [https://perma.cc/89L8-TMTE] ("[A] clear majority of Americans say their monthly costs have risen by between $100 and $749.").

[232] *Id*. ("[C]onsumers remain frustrated about the persistence of high prices and weakening incomes. This month, current personal finances and buying conditions for durables both plunged more than 10%"). *Id*. quoting Joanne Hsu. de Visé, *supra* note 27.

[233] Stephen Semler, *Americans Still Haven't Recovered From the Pandemic*, POLYGRAPH (Sep. 3, 2025), https://www.stephensemler.com/p/americans-still-havent-recovered [https://perma.cc/7QV8-AWPR] (relying on Gallup poll data indicating that in 2025 a "record number of Americans answered "getting worse.").

[234] *Id*. (quoting Bill Adams, Chief Economist at Comerica Bank).

[235] *See* Hatzius, Phillips, Mericle, Walker, Abecasis, Peng, & Rindels, *supra* note 33. *See generally* Grace Broadbent, *Credit Card Issuers Won't Escape the Impact of Trump's Tariffs*, EMARKETER (Apr. 4, 2025), https://www.emarketer.com/content/credit-card-issuers-won-t-escape-trump-tariffs [https://perma.cc/E57C-C24E] ("In January 31% of US adults said tariffs would lead them to prioritize spending on essential items only. . . . More than half of US consumers are at least somewhat concerned about their ability to cover unexpected emergency expenses this year."); *see State of US Tariffs: July 10, 2025*, YALE BUDGET LAB (Sep. 26, 2025), https://budgetlab.yale.edu/research/state-us-tariffs-september-26-2025 [https://perma.cc/H7PL-PA2Y] (detailing the updates on present tariffs, their present impact on the cost of goods, and both short and long-term effects on the economy).

[236] "As the economy falters, workers first lower their contribution amounts and later change their decision to participate. Lower contributions precede recessions, while lower participation follows recessions." Barbara A. Butrica & Karen E. Emith, *401(k) Participant Behavior in a Volatile Economy*, CTR. FOR RET. RSCH. BOS. COLL. (Nov. 2012) https://crr.bc.edu/wp-content/uploads/2012/10/wp_2012-24-5081.pdf [https://perma.cc/2FJQ-PLX4].

up" contributions,[237] which are intended to help individuals boost their retirement savings as they approach retirement age. Third, people lose out on compounding. When people cannot contribute to cover pre-retirement withdrawals or avoid saving shortfalls, retirement insecurity is exacerbated.

High amounts of debt further add to the challenge.[238] Inflation directly leads to higher spending and increases credit card debt, which in turn leads to higher interest rates.[239] "When inflation outpaces income growth, many people turn to credit cards to cover the gap, resulting in balances creeping up month after month."[240] When people have to pay more to cover expenses, credit card and now BNPL spending goes up.[241] When people lose their job, credit card and BNPL spending often goes up.[242] When people cannot pay their credit card bills on time

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[237] The IRS website outlines details regarding catch-up contributions. *Retirement Topics—Catch-up Contributions*, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-catch-up-contributions#:~:text=Individuals%20who%20are%20age%2050,a%20SIMPLE%20401(k) [https://perma.cc/9Y7V-9NAU] (last updated Nov. 20, 2025).

[238] Hauer, *supra* note 226 ("Among Americans who wish they would have saved more for retirement, 46% say non-housing debt from car loans, credit cards and student loans are keeping them from additional saving. In particular, millennials (56%) more than Gen Xers (50%) or boomers (35%) feel that non-housing debt is limiting their retirement savings."); Copeland, Conrath, & Carson, *supra* note 145 ("Higher credit card utilization is associated with lower contribution rates.").

[239] Matt Richardson, *How Does Inflation Impact Credit Card Debt? Experts Weigh In*, CBS NEWS (Mar. 3, 2025, at 08:42 EST), https://www.cbsnews.com/news/how-does-inflation-impact-credit-card-debt-experts-weigh-in/#:~:text=Unfortunately%2C%20that%20inflation%20leads%20to,at%20Georgia's%20Own%20Credit%20Union [https://perma.cc/48GT-3KUV]; the 2025 Employee Financial Wellness Report collected responses from 250 full-time adult employees and HR leaders across four age groups and found that 42% of Gen Z workers have dipped into their retirement accounts to pay debt while only 6% Millennials, 17% of Gen X, and 0% of Boomers have withdrawn for debt. This response underscores the financial insecurity younger workers face as inflation rises. PAYROLL INTEGRATIONS, EMPLOYEE FINANCIAL WELLNESS REPORT 2025, https://www.payrollintegrations.com/employee-financial-wellness-report-2025 [https://perma.cc/5JGP-FZ6H].

[240] *Id*.

[241] Anna Marie D. Lee, *2 in 5 U.S. Credit Card Holders Have Topped Out Their Spending Limit, Report Finds*, CBS NEWS, (Oct. 17, 2024, at 09:15 EDT), https://www.cbsnews.com/news/credit-card-inflation-apr-spending-limits/ [https://perma.cc/KX4J-TVJ8].

[242] Michelle Clardie, *Coping with Debt When You're Laid Off*, BANKRATE (Feb. 21,

and start accruing interest, interest rates increase.[243] When people stack BNPL debt, it rapidly accumulates creating a snowball effect. This type of landslide impacts people on various income levels. An August 2025 report showed that people—and even those with excellent credit scores—are defaulting on debt as well, including secured loans such as auto loans and mortgages.[244] All of this can cause people to turn to 401(k) plan accounts to rescue them from debt and potentially save them from auto repossessions and home foreclosure.[245]

While pre-retirement withdrawals are permissible and commonly used by participants, they carry significant long-term consequences for retirement savings and can hinder a participant's ability to retire securely. Some withdrawals are involuntarily made via forced cash-outs; but as shown, many withdrawals are sourced voluntarily. Because most of these withdrawals are not ones that can be—or are being—repaid, account balances are lower, thereby stifling long-term, compounding growth.

If individuals are laid off or placed in positions in which they need to use their retirement savings to cover current costs, they not only lose these savings for retirement, but they also lose the valuable time they need to grow more savings to cover future retirement costs. The risk of these individuals not having enough retirement savings for when they can no longer work increases, likely leading them to rely on family for financial support during their later years. When family members are compelled to use their own resources to financially support parents, grandparents, and other relatives, their ability to save for retirement is consequently eroded, perpetuating the cycle of inadequate savings across

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2025), https://www.bankrate.com/personal-finance/debt/coping-with-debt-when-youre-laid-off/ [https://perma.cc/FE5W-VJ9D].

[243] "Inflation doesn't just raise prices; it hikes interest rates, too. That credit card that once charged 18% interest might now be up to 22%. That's because inflation eats into the profits of credit card issuers just like it eats into your household budget." Richardson, *supra* note 239.

[244] Nupur Anand, *US Consumers With Prime Credit are Starting to Slip on Payments*, REUTERS (Aug. 25, 2025, at 12:37 MST), https://www.reuters.com/business/finance/us-consumers-with-prime-credit-are-starting-slip-payments-2025-08-25/?taid=68ace8a2f3b52800011c4ed8&utm_campaign=trueanthem&utm_medium=social&utm_source=twitter [https://perma.cc/4ZTW-BQSL] (noting that when consumers with high credit scores are falling behind on payments, it is a "sign that Americans' financial health may be deteriorating more broadly.").

[245] *See* Copeland, Conrath, & Carson, *supra* note 145, at 13 ("Higher credit card utilization was correlated with a higher likelihood of taking a plan loan.").

generations.[246]

When family members can no longer provide assistance, the financial shortfall is socialized, forcing individuals to fall back on public assistance programs. When more individuals require public assistance (related to healthcare, housing, and food costs) in their retirement years, the government will have to compensate by collecting more from taxpayers. This in turn transfers the financial burden to taxpayers.[247] This added burden reduces taxpayers' ability to save for their own retirement and meet their future needs.[248] At the same time, political pressures and the cost of living also place a cap on the realistic amount of taxes that can be collected from the public, reminding us that government resources are finite. In such a scenario, governments that must cover increased needs for public assistance will have to choose which other critical public services like infrastructure, national security, transportation, and education get less funding.

Impacts of lower retirement savings—from lower balances or from early withdrawals—lead to a heavier reliance on social security long-term.[249] Social security benefits are quickly draining, and some of the most devastating effects of Trump's policies exacerbate this drainage.[250] Job losses stemming from Trump's policies mean that individuals will have less opportunity to save.[251] They also could experience lower savings due to the need to address expenses not covered by unemployment costs. At the same time, these individuals have no ability to generate additional income that can contribute to retirement savings growth over

[246] There are racial and socio-economic implications associated with family supporting elder family members. *See* Prince, *supra* note 97, at 36–37. For instance, generational low-income and agricultural workers are less likely to have parents who have saved for retirement. *Id*. at 37. Additionally, women who face inequality in pay and have work gaps while serving as care-givers for elders have less saved for retirement. *Id*. In these cases, the "responsibility of financially supporting familial elders falls on those who are still working." *Id.*

[247] *See*, Scott & Blevins, *supra* note 73.

[248] Higher taxes also negatively impact those taking retirement distributions, forcing them to liquidate funds more quickly to cover the tax burden. This accelerates the depletion of their savings and compromises their own retirement savings.

[249] Clendening & Phue, *supra* note 97.

[250] Teresa Ghilarducci, *Four Threats to Social Security from Trump Policies*, FORBES (Mar. 8, 2025, at 16:36 EST), https://www.forbes.com/sites/teresaghilarducci/2025/03/05/four-trump-threats-to-social-security/ [https://perma.cc/Y922-FB7D].

[251] *See* GAO, *supra* note 107, at 1 (referring to the 2008 recession, "unemployed participants can no longer make tax-deferred contributions to employer-sponsored plans and will likely have more difficulty saving anything at all.").

time. Inadequate retirement savings will increase the importance of social security benefits, but long-term, these individuals will be receiving a benefit they are not paying into while unemployed. This practice could lead to these individuals qualifying for lower social security benefits to cover their retirement costs, assuming there are still benefits for them to receive from social security at the time of their retirement.

All of this is to say that the economic turmoil created by Trump policies yields a cascading series of negative ripple effects across varying levels of society. This crisis first directly impacts the individual who has failed to accumulate sufficient retirement savings to afford to retire. The resulting financial failure then necessitates that family members utilize their savings to provide support, thereby forgoing their own retirement accumulation and creating an intergenerational burden. When such support runs out, the individual must ultimately rely on public assistance programs, consequently putting a drain on taxpayer resources and further diminishing the ability of those taxpayers to save for their own retirement.

CONCLUSION

A period of economic volatility, driven by aggressive Trump 2.0 policies, including escalating tariffs and intensified trade wars, has led to rising inflation, job losses, and heightened instability in both stock and bond markets. Many economists and banks are concerned that a recession is likely. During this economic disruption, people need access to more money for current consumption, and while credit cards and BNPL schemes are options, they are not the answer, as their high fees and interest rates bring more potential harm than relief to Americans who use them.

While it is understandable that Americans must have access to funds to survive economic turmoil, being forced to use 401(k) plan savings puts them in a position of retirement precarity. Throughout their working years, they need to afford to continue saving for retirement. Unfortunately, saving for retirement can be difficult in normal conditions, but perhaps impossible under recessionary conditions, particularly for those who become unemployed and have no income. Further, reductions by employers in 401(k) plan benefits exacerbate deficiencies in retirement saving. Additionally, some people may fear market and economic volatility so much that they may be reluctant (or unable) to save. The current tariff turmoil, market instability, and consumer sentiment indicates that Americans' retirement accounts, while already scarce for many, may become even more bleak during and following Trump 2.0.[252]

When individuals withdraw their retirement savings—whether due to retirement needs, required minimum distributions, or early withdrawals out of necessity or fear during times of turmoil—they realize a permanent loss on the value of their account. That money is no longer there to compound, and if it is withdrawn pre-retirement, it could be subject to an early withdrawal penalty, thereby resulting in less money to spend.

The bottom line is that Americans all have individual needs and experiences. Plummeting 401(k) plan balances is not just about retirement savings but also about how much financial assistance Americans have access to in times of need. The data are clear: Americans need access to funds to make it through current inflationary trends, and to still afford coveted retirement. The financial harm caused by chaotic tariff policies puts all Americans, whether they be the savers, their family, or the taxpayers, in a worse, and possibly unrecoverable, financial position both now and in the future.

[252] Even if Trump's initial attempts at levying tariffs are found unconstitutional, the damage to many businesses and individuals has already been done—and for some it is irreversible. Furthermore, there are other statutory powers that Trump can utilize to issue arbitrary tariffs.