

Brett Arends's ROI

Catch-up contribution? Good luck with that.
Congressional snafu leaves older retirement savers
in limbo.

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By [Brett Arends](#) [Follow](#)



Uncle Sam wants you ... to know that he just screwed up your tax break. COURTESY EVERETT COLLECTION



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In case you missed it, when Congress passed the [Secure 2.0 retirement bill](#) at the end of December, the legislators who insisted they were trying to give the middle class more tax breaks ended up giving us fewer.

They accidentally eliminated a provision that was supposed to let people make extra catch-up

contributions to their retirement plans in their early 60s. Instead, the actual law these people passed *did the exact opposite*: As of next year it will make catch-up contributions impossible.

“According to wording in the current legislation, beginning in 2024, no participants will be able to make catch-up contributions (pretax or Roth),” [reports](#) the National Association of Plan Advisers, a trade body affiliated with the American Retirement Association. “The current legislative text puts all such future contributions at risk.”

Brian Anderson, editor in chief of industry website 401kSpecialist.com, explains: “The bill’s Section 603, which is intended to require that all catch-up contributions be Roth contributions, contains a mistake that inadvertently means no participants will be able to make catch-up contributions (pretax or Roth) beginning in 2024.”

Marcia Wagner, a top retirement-law expert and founder of the Wagner Law Group, tells me: “The clear intention of the change was to require catch-up contributions for plan participants to be Roth contributions, unless the plan participant’s FICA compensation was less than \$145,000. However, as drafted, the statutory language precludes any catch up contributions to be made in 2024, either pretax or Roth.”

In other words, at a time when a retirement crisis is looming so menacingly that even members of Congress have agreed to do something about it, *they managed to make it even worse*.

And nobody noticed.

For almost a month. Until eagle-eyed analysts at the American Retirement Association, a trade group, spotted it.

The snafu leaves older middle-class workers, and retirement-plan operators, floundering in no-man’s-land.

Will the glitch be fixed this year? Will older workers be able to save the extra money from next year? Nobody knows.

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Wagner says that in an ideal world Congress would just pass a simple bill fixing the error. Unfortunately, such bills are vanishingly rare these days. “Technical corrections legislation is generally not enacted on an accelerated basis,” she says.

Without action by Congress, potential savers — and retirement-plan operators — are flying blind.

“It is not clear whether the IRS has the regulatory authority to interpret the statutory language to reflect what was intended, rather than what was drafted,” she says. The IRS “might rely on a rarely applied rule of statutory interpretation, that the plain, literal meaning of a statute should not be followed if it would lead to an absurd result or a result that could not possibly have been unintended.” Failing that, she says, “if neither Congress nor IRS takes action in 2023, many plan sponsors will follow the intended meaning of the law, on the reasonable assumption that even if the error was not fixed in 2023, the error will eventually be corrected.”

But can we assume the mistake will be fixed in time?

In 2010, some remember, a divided Congress actually let the entire federal estate tax expire for a single year because it couldn’t agree on a fix. That was the policy outcome that absolutely everybody, on all sides of the aisle, had insisted wouldn’t happen. And yet it did.

(It was [great news for the heirs of New York Yankees owner George Steinbrenner](#), who died that year.)

In 2011 it caused a political and financial crisis by taking the U.S. to the edge of default in debt-ceiling negotiations.

Richard Kaplan, a law professor at the University of Illinois and an expert in retirement law, says a simple, stand-alone bill to fix the latest snafu is unlikely. Instead, he said, a fix might be attached to another bill — like, he said, the next one raising “the debt ceiling.”

Oh, no. Here we go again.

Complicating matters further is that not everyone thinks the snafu is bad news, either.

“This technical error feels almost like divine intervention in retirement tax policy,” jokes Daniel Hemel, a law professor at New York University. “This was definitely a mistake, but in my view the mistake actually improves the law!”

The reason? “Congress never should have allowed catch-up contributions in the first place,” he says.

“Notwithstanding the name, catch-up contributions have little to do with catching up: the people age 50 and up who can afford to contribute \$30,000 a year to their 401(k) plans — \$22,500 plus a \$7,500 catch-up contribution — end to be people who were ahead of the pack already. Increasing catch-up contributions even further for individuals in their early 60s — which is what the drafters of Secure 2.0 thought they were doing — would have made a bad situation even worse.”

It would probably be excessively cynical to suggest that this was deliberate.

But have you ever heard of Congress accidentally eliminating a tax break that benefited their rich, donor class rather than regular working stiffs? And if it had, can you imagine nobody noticing *for an entire month*, and nobody rushing in with an emergency plan to fix it?

Pretty much answers itself.

It is probably no surprise that Congress’s approval rating with the public languishes at around 20%. Maybe worse: Nobody in Congress seems to care.

Meanwhile: The latest snafu is yet another reason to contribute as much as you can to your IRA and 401(k) in 2023.

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