

DRAFT

Delivered via email

The Honorable Jason Smith
1010 Longworth House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Richard Neal
372 Cannon House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Ron Wyden
221 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Mike Crapo
239 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chair Smith, Ranking Member Neal, Chair Wyden and Ranking Member Crapo:

The undersigned organizations commend you for your leadership in enacting the SECURE 2.0 Act of 2022. This historic legislation will usher in a new era of retirement security.

We also wanted to raise an urgent issue that we have discovered as we have been working on implementation of SECURE 2.0. Briefly, unless transition relief is granted as soon as possible, many retirement plan participants will lose the ability to make catch-up contributions at the end of this year.

Specifically, although some plans may be able to comply (including some signatories to this letter) at great cost and burden, a vast number of plans and employers will not be able to comply with the new requirement, effective for 2024, that workers who earned over \$145,000 in the preceding year from the current employer must make their catch-up contributions on a Roth basis. For many of these plans, unless this requirement is delayed very quickly (i.e., this summer), their only means of compliance will be to eliminate *all* catch-up contributions for 2024. If a delay is not announced until, for example, the fourth quarter, it will be too late to prevent this adverse result, since compliance systems need to be designed well before the effective date.

These challenges exist in part because systems do not exist – and certainly cannot be built in 2023 – to instantly coordinate payroll systems (which determine who earned over \$145,000 in the prior year) with plan recordkeeper systems that must ensure compliance with the new catch-up rule. These circumstances pose a long list of other obstacles including, for many plans, the challenges of adding a Roth feature and communicating that feature to participants, as well as special challenges for state and local governments and collectively bargained plans.

Obviously, any new rule requires new administrative work to implement. **But we have been struck by the overwhelming input from the retirement community that this particular task simply cannot be done in time by a vast number of plans.**

To ensure that this change in the law does not unintentionally result in the elimination of catch-up contributions, the undersigned are seeking a two-year delay of the Roth catch-up requirement described in Section 603 of SECURE 2.0, plus (1) any time necessary to give state and local governments the opportunity to consider and enact needed legislation and (2) any additional time to avoid requiring changes during the term of a collective bargaining agreement or other applicable binding agreements.

Ideally, Congress would pass legislation that provides our requested relief. Accordingly, we are asking Congress to provide such relief as expeditiously as possible.

However, even if Congress does not act, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) have the authority to unilaterally provide the necessary relief. For example, the issue could be addressed simply by an announcement that the IRS will not seek taxes, interest, penalties or any other sanctions from any party by reason of noncompliance with the new Roth catch-up contribution rule prior to January 1, 2026. There are many precedents for such action. A more detailed analysis of this issue will be provided very shortly.

In light of the urgent need for a delayed effective date, this letter addresses only that issue and does not address issues related to (1) the plans to which the Roth catch-up contribution rule applies or does not apply, (2) the application of the rule to employees without FICA wages or (3) the numerous issues on which guidance would be needed well before a delayed effective date.

We thank you for your consideration of this urgent request.

cc: The Honorable Janet Yellen