# Flawed 401(k) laws putting retirement at risk, expert says

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Congress needs to reform flawed 401(k) laws that could push back retirement for millions of Americans whose savings have collapsed along with the stock market, a University of Illinois elder law expert says.

Law professor Richard L. Kaplan says 401(k) accounts were meant to supplement traditional defined-benefit pensions, but have evolved into the sole nest egg for the bulk of U.S. workers whose employers offer any kind of savings program.

The shift, he says, has left workers with the illusion of a company-funded pension when in fact it's largely their own money in investments that are generally tethered to the stock market, which has lost $8 trillion during an economic meltdown over the last year.

"People mistakenly think they have an employer pension plan and don't understand that their retirement income, other than Social Security, is in very serious jeopardy right now," said Kaplan, who wrote a 2004 article on the risks of 401(k) plans that appeared in the *Arizona Law Review*.

He argues that Congress should rewrite laws to allow 401(k) programs only in concert with defined-benefit pensions, even if it means more companies join the roughly half of U.S. employers that offer no retirement savings plan.

"As matters stand currently, workers are being tricked," Kaplan said. "They think they have a pension plan at work when it's really their own money and every aspect of the 401(k) program – participation, contribution level, investment allocation, withdrawal arrangement – is problematic when it's the person's only savings plan."

Even the lure of cashing in when employers offer matching contributions is "less than compelling," he said. Matches are typically small, and many employers have reduced or eliminated them in recent years. Beyond that, he says, workers who change jobs after just a few years often lose those employer contributions anyway.

"If people want to save for their retirement, they can always set up an Individual Retirement Account at virtually any financial institution, including their neighborhood bank," Kaplan said. "The dollar limit on contributions is lower for IRAs than for employer-based plans, but the vast majority of 401(k) plan contributions are within current IRA limits and thus would not be impacted by this difference."

When 401(k) laws were adopted in 1978, the new savings accounts were envisioned as part of a three-pronged plan for retirement, a supplement for monthly checks from Social Security and conventional defined-benefit plans, he said.

But as 401(k) plans were being launched, Kaplan said, employers already were veering away from defined-benefit programs because of new costs created by the Employee Retirement Income Security Act, adopted four years earlier.

The act, intended to make worker pensions more secure, also made defined-benefit plans more expensive through new regulations and insurance premiums to safeguard pension funds, he said.

Only about half of employers offer any retirement savings program and, of those, nearly 60 percent offer just a 401(k) plan, Kaplan said. Many provide little or no company contribution, a trend he says has quickened in the last few years.

"We're only now beginning to see a cohort of people on the cusp of retirement who have the bulk of their retirement funding coming from 401(k) plans," he said. "It's a relatively new phenomenon."

Because the stock market plunge has withered savings, many of those workers may have to postpone retirement and keep working, Kaplan said. That, in turn, would reduce job openings for younger workers and boost employer health insurance costs due to an older workforce.

"You might also just have more older people who are poor, which was the historical norm," Kaplan said. "Before Social Security, it was not unusual for older people to be poor or to move in with sons or daughters, not because they couldn't physically get around but because those were the people who had a significant source of income."

In his 2004 law review article, Kaplan argued that flaws with 401(k) plans made a case against efforts afoot then to privatize Social Security, which he said would create the same risks and put future retirees in further financial peril. He doubts the move will resurface any time soon in the wake of the lingering turmoil on Wall Street.

"The cause of Social Security privatization has been set back considerably," said Kaplan. His 2004 paper is available online.

Source: University of Illinois at Urbana-Champaign

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