



# 401(k) Plan Nondiscrimination Testing Solution

## PRACTICE AREAS

Benefits & Compensation

Retirement Plans

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*Amidst the recent economic downturn, many companies have suspended their 401(k) matching contributions, and plan participants have been reducing their elective deferral levels. These trends could lead to failures in the ADP and ACP nondiscrimination tests that 401(k) plans must pass each year. With some advance planning and plan design adjustments, these problems can be permanently eliminated.*

There are a number of well-known potential solutions to the nondiscrimination testing problem that arises when contribution levels to 401(k) plans wane - for example, qualified automatic contribution arrangements (QACAs), safe harbor plan designs, caps on deferrals for highly compensated employees, and qualified nonelective contributions (QNECs). But all have downsides - participants may cancel automatic contributions, safe harbor and QNECs can be costly, HCE limits are not popular with HCEs.

Another way to fix the problem is to take advantage of the flexibility provided under Internal Revenue Code section 410(b), which sets forth the minimum coverage requirements for qualified retirement plans. Ivins, Phillips & Barker has devised plan designs that utilize these rules to eliminate nondiscrimination testing problems and reduce long-term compliance costs for 401(k) plan sponsors.