History and Goals of Nondiscrimination Requirements and Safe Harbor 401(k) Plans[1]

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Abstract

We trace the legislative history and goals of the nondiscrimination rules that govern qualified retirement plans. We show that the nondiscrimination tests Congress developed between 1942 and 1986 were designed to limit the gap between contributions received by highly compensated and non-highly compensated employees, while the safe harbor formulas Congress enacted in 1996 prioritized expanding access to 401(k) plans over concerns about pension equity.

1. Introduction

Since 1942, Congress has conditioned the tax-preferred status of employer-sponsored retirement plans on nondiscrimination requirements designed to prevent plan benefits from flowing disproportionately to highly compensated employees. Compliance with nondiscrimination requirements involves annual nondiscrimination testing (NDT), which compares the contribution or deferral rates of highly compensated employees with those of non-highly compensated employees. In 1996, Congress created an alternative to nondiscrimination testing: safe harbor 401(k) plans. Safe harbor plans exempt employers from nondiscrimination testing if they adopt specified contribution formulas. The practical significance of safe harbor 401(k) plans has grown over time. Choukhmane, Dedyo, O'Dea, and Schmidt (2026), using a newly constructed dataset covering a majority of U.S. retirement plans, find that the share of plans with matching formulas that meet or exceed safe harbor match formula requirements has risen from approximately one in five in 2004 and is approaching one in two today.[4] Safe harbor provisions have thus become a dominant force shaping the structure of employer contributions across the private retirement system. Yet, existing scholarship has not, to the best of our knowledge, analyzed the intended goal of NDT or the 401(k) safe harbor plans. Without an understanding of the intended goals of these tax provisions, it is not possible to evaluate their effectiveness in achieving those goals. This article provides an initial step towards correcting that gap in the literature.

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[4] Taha Choukhmane, John Dedyo, Cormac O'Dea & Lawrence D.W. Schmidt, *Using Large Language Models to Measure U.S. Retirement Plan Design at Scale: Methods and Evidence* (unpublished manuscript, 2026) (on file with authors).

This article traces the development of nondiscrimination testing and the safe harbor 401(k) plans. The nondiscrimination tests were designed with a specific distributional goal in mind: to limit the gap between what highly compensated and non-highly compensated employees receive. The safe harbor formulas exempt employers from these tests without pursuing the same distributional goal. The legislative history shows that Congress designed the 401(k) safe harbor plans to increase employer adoption and employee participation. We have found no records from the 1996 legislative debate discussing whether the chosen formulas would preserve the distributional constraints that the nondiscrimination tests were meant to enforce.

2. Nondiscrimination Requirements: The Pursuit of Pension Equity

2.1. Background

The tax code did not initially impose nondiscrimination requirements on qualified retirement plans. The Revenue Act of 1921 allowed contributions to qualify for tax benefits if the plan was established for the exclusive benefit of "some or all of the [company's] employees."[5] Because the statute required only that the plan benefit "some" employees, employers were able to use these tax-advantaged pension trusts exclusively to provide benefits to owners and executives and still qualify as a tax-preferred plan.

For two decades after the enactment of the 1921 Revenue Act, tax benefits for qualified plans flowed disproportionately to owners and executives. The growing use of pension trusts as tax shelters was driven in part by the sharp increase of marginal income tax rates over the 1920s and 1930s, which further increased the value of deferring compensation for highly paid employees through tax-preferred vehicles. By the late 1930s, Treasury had documented that the pension trust exemption had been "twisted into a means of tax avoidance by the creation of pension trusts which include as beneficiaries only small groups of officers and directors who are in the high income brackets."[6]

2.2. 1942-1978

The Revenue Act of 1942 imposed the first nondiscrimination requirements for qualified retirement plans. The House Ways and Means Committee Report explains that the main goal of these requirements was "to insure that stock bonus, pension, or profit-sharing plans are operated for the welfare of employees in general, and to prevent the trust device from being used for the benefit of shareholders, officials, or highly paid employees."[7]

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[5] Revenue Act of 1921, Pub. L. No. 67-98, § 219(f), 42 Stat. 227, 247. The Revenue Act of 1926 extended the exemption to pension trusts, and the Revenue Act of 1928 permitted employer deductions for reasonable trust contributions.

[6] TAX EVASION AND AVOIDANCE: HEARINGS BEFORE THE JOINT COMM. ON TAX EVASION & AVOIDANCE, 75th Cong. 5 (1937) (letter from Henry Morgenthau, Jr., Sec'y of the Treasury, to President Franklin D. Roosevelt (May 29, 1937)), *reprinted in* H.R. DOC. No. 75-260 (1937).

[7] H.R. REP. No. 77-2333, at 103 (1942).

With the introduction of nondiscrimination requirements, the Act conditioned tax-preferred status on two categories of requirements: coverage tests governing which employees the plan must include, and a qualitative nondiscrimination standard governing the distribution of contributions and benefits. For coverage, the Act required a plan to satisfy one of two tests. Under the "percentage test," the plan had to cover at least 70% of all employees, or at least 80% of eligible employees provided that at least 70% were eligible.[8] Alternatively, under the "classification test," the Commissioner of Internal Revenue could approve a classification of employees found "not to be discriminatory in favor of employees who are not officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees."[9] For contributions and benefits, the Act did not contain a numerical test. Instead, the Act imposed only a qualitative standard: the plan would be tax exempt if "the contributions or benefits provided under the plan do not discriminate in favor of officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees."[10]

The 1942 framework was designed with traditional employer-funded plans in mind, in which the employer decided how much to contribute and employees had no election. In the 1950s, however, Cash or Deferred Arrangements (CODAs) emerged as an increasingly popular pension arrangement. In a typical CODA, employers gave employees a choice: receive their share of profits in cash or have it contributed to a qualified trust on their behalf. CODAs posed a distinct challenge for the existing nondiscrimination regime. Under traditional plans, the employer alone decided how to allocate contributions. Under CODAs, the tax-advantaged benefits each employee received depended on the saving decisions of the eligible employees themselves. In Revenue Ruling 56-497, 1956-2 C.B. 284, the IRS addressed how the existing nondiscrimination requirements for coverage and contributions or benefits would apply in this context. In this ruling, the IRS held that qualification would be judged "by reference only to those employees who elect to participate in the deferred trust."[11] This principle applied to both the nondiscrimination requirements in coverage and in contributions or benefits. For contributions or benefits, the IRS examined whether employer contributions among actual participants were allocated on a nondiscriminatory basis. A plan in which all employees were nominally eligible could still fail if participation skewed toward higher-paid employees.[12] The ruling thus established that, under a CODA plan, eligibility alone would not satisfy nondiscrimination requirements. Instead, the IRS would look through eligibility to actual deferral behavior. This shift became the foundational logic of the ADP test two decades later.

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[8] Revenue Act of 1942, Pub. L. No. 77-753, § 165(a)(3)(A), 56 Stat. 798, 862.
[9] Revenue Act of 1942, § 165(a)(3)(B), 56 Stat. at 862.
[10] Revenue Act of 1942, § 165(a)(4), 56 Stat. at 862.
[11] Rev. Rul. 56-497, 1956-2 C.B. 284.
[12] This is the result the IRS reached for the second employer examined in the ruling (the "N company"). All employees with two years of service in the N company were eligible to participate, but fewer than half of actual trust participants fell in the two lowest compensation brackets, which contained over two-thirds of eligible employees. The IRS held that the plan failed both the coverage requirements and contributions or benefits requirement. *See id.*

2.3. 1974-1996

Concerns about pension fairness and the soundness and integrity of plan funding led Congress to enact the Employee Retirement Income Security Act (ERISA) of 1974.[13] Among other things, ERISA established federal minimum standards for participation, vesting, benefit accrual, funding, and coverage.[14] However, ERISA did not alter the qualitative nondiscrimination standard that had governed contributions and benefits since 1942.

The Revenue Act of 1978 codified § 401(k) and introduced the first numerical nondiscrimination test on elective deferrals: the Actual Deferral Percentage (ADP) test. The ADP test replaced the qualitative standard from the 1942 Act with a numerical formula for elective deferrals in CODAs. The shift from the qualitative standard to mechanical testing reflected Congress's conclusion that a numerical test would provide greater certainty to employers that sought to provide CODAs to their employees and ease their compliance.[15] The ADP test measures the rate of deferral as a percentage of compensation, rather than dollar amounts. This rate-based structure allows the test to compare deferral behavior across employees at different compensation levels. Under the 1978 version, the ADP test compared the elective deferral rate of the highest-paid third of employees with the deferral rate of all other eligible employees. The average ADP for the higher-paid group could not exceed the greater of (i) 1.5 times the ADP of the lower-paid group (the "1.5 test") and (ii) the lesser of 2.5 times the ADP of the lower-paid group or the ADP of the lower paid group plus 3 percentage points (the "2.5 test").[16] To the best of our knowledge, the legislative record does not contain a published rationale for these specific thresholds.

Eight years after Congress first introduced the ADP test, Congress decided to expand the nondiscrimination requirements for CODAs. The 1986 Act tightened the nondiscrimination requirements from the 1978 version of the ADP test by replacing the 1.5 test with the 1.25 test (limiting the ADP of the higher paid group to 1.25 times the ADP of the lower-paid group) and the 2.5 test with the 2.0 test (limiting the average ADP for the higher-paid group to the lesser of 2 times the ADP of the lower-paid group or their ADP plus two percentage points).[17] The Act also introduced a uniform statutory definition of "highly compensated employee" (HCE).[18] Although congressional reports do not provide any explanation for the specific numbers selected in the new formulas, Congress's rationale for these changes is clear. Congress stated that it believed the prior tests permitted too great a disparity between higher-paid and lower-paid employees deferral rates

[13] James R. Storey, CONG. RSCH. SERV., 95-1028, PENSION PROPOSALS FOR SIMPLIFICATION AND INCREASED ACCESS 1 (1996).
[14] *See* Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, §§ 201–211, 88 Stat. 829, 852–68 (codified as amended at 29 U.S.C. §§ 1051–1061 (2018)) (eligibility, vesting, and benefit accrual standards); *id.* § 1011, 88 Stat. 898–901 (adding I.R.C. § 410, including the minimum coverage test at § 410(b)).
[15] STAFF OF J. COMM. ON TAX'N, 96TH CONG., GENERAL EXPLANATION OF THE REVENUE ACT OF 1978, at 83 (Comm. Print 1979) (JCS-7-79).
[16] Revenue Act of 1978, Pub. L. No. 95-600, § 135(a), 92 Stat. 2763, 2786.
[17] Tax Reform Act of 1986, Pub. L. No. 99-514, § 1116(a), 100 Stat. 2085, 2454.
[18] Tax Reform Act of 1986, § 1114(a), 100 Stat. at 2448.

and so resolved to impose more stringent requirements on the ADP test. As the House Ways and Means Committee Report explained

> [T]he present-law nondiscrimination rules for qualified cash or deferred arrangements permit excessive tax-favored benefits for highly compensated employees without ensuring that there is adequate saving by rank and- file employees. Because the committee believes that a basic reason for extending significant tax incentives to qualified pension plans is the delivery of comparable benefits to rank-and-file employees who may not otherwise save for retirement, the committee concludes that it is appropriate to revise the nondiscrimination rules for qualified cash or deferred arrangements in order to more closely achieve this goal.[19]

The 1986 Act also created the Actual Contribution Percentage (ACP) test under the new § 401(m), applying the same formulas from the ADP test to employer matching contributions and after-tax employee contributions.[20] Congressional records show that Congress sought to limit disparities between highly compensated employees and lower-compensated employees at the level of matching contributions and after-tax employee contributions, which were not covered under the ADP test.[21]

3. Safe Harbor Plans: The Shift from Equity to Access

3.1. Traditional safe harbor 401(k) plans

Beginning in the 1980s and 1990s, policymakers and employers expressed concern that the nondiscrimination requirements exerted a chilling effect on plan formation, particularly among small employers. In response, a broad political consensus emerged around the need to simplify compliance with nondiscrimination rules in order to expand employer adoption of retirement plans. The traditional safe harbor 401(k) plans created by the Small Business Job Protection Act (SBJPA) of 1996 were the result of this consensus.[22] The House Report stated two objectives for the safe harbor 401(k) plans. First, the House Committee sought to increase employee participation in the plans. In the Report, the House reasoned that "[t]he result that the nondiscrimination rules are intended to produce can also be achieved by creating an incentive for employers to provide certain matching contributions or nonelective contributions on behalf of rank-and-file employees. Such contributions should create a sufficient inducement to rank-and-file employee participation."[23] Second, the Committee sought to increase employer adoption of the plans. The House Report explains that Congress sought to reduce the administrative burden of providing 401(k) plans to

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[19] H.R. REP. No. 99-426, at 687 (1985).
[20] Tax Reform Act of 1986, § 1117(a), 100 Stat. at 2459.
[21] H.R. REP. No. 99-426, *supra* note 18, at 695.
[22] H.R. REP. No. 104-586, at 108 (1996) ("The Committee believes that the complexity of nondiscrimination requirements, particularly after the Tax Reform Act of 1986 changes that imposed a dollar cap on elective deferrals ($9,500 in 1996), is not justified by the marginal additional participation of rank-and-file employees that might be achieved by the operation of these requirements.").
[23] *Id.*

"encourage more employers, particularly small employers, who do not now provide any tax-favored retirement plan for their employees, to set up such plans."[24]

The SBJPA safe harbor provisions created a mechanism for employers to sponsor 401(k) plans without the risk of failing the ADP and ACP tests, provided they adopt specified contribution formulas. Automatic enrollment is optional for traditional safe harbor plans, but they require immediate vesting of all safe harbor contributions. Employers may qualify for the traditional safe harbor through one of two contribution structures: a matching contribution or a non-elective contribution.

Under the matching contribution path, the employer's contribution is contingent on employee deferrals. The basic match formula requires employers to match 100% of all non-highly compensated employees (NHCEs) elective contributions up to 3% of compensation and 50% of the next 2%.[25] Legislative materials link the basic safe harbor matching formula to the Federal Thrift Savings Plan (TSP) matching structure. The TSP, established under the Federal Employees' Retirement System Act of 1986, uses the same matching structure and was cited in congressional discussions that preceded the safe harbor design.[26] The TSP formula also includes a 1% automatic agency contribution to all employees regardless of whether they defer, although such a feature was not included in the safe harbor plan. An alternative match formula is permitted while retaining safe harbor status, provided that the match rate does not increase as the deferral rate increases and that the formula is at least as generous as the basic formula at every deferral level.[27] In practice, the most common alternative formula provides a 100% match on employee contributions up to 4% of compensation.

A plan that provides a qualifying safe harbor matching contribution using the basic match formula or the alternative match formula automatically satisfies the ACP test with respect to those matching contributions if the plan: (i) does not match elective deferrals exceeding 6% of the employee's compensation; (ii) does not have a matching rate that increases as the employee's deferral rate increases; (iii) does not provide an HCE with a higher matching rate than any NHCE at the same deferral level.[28] If an employer uses the matching contribution path and provides additional discretionary matching contributions beyond the safe harbor formula, the plan remains exempt from ACP testing only if the discretionary match meets requirements (i), (ii), (iii), and (iv)

[24] *Id.* at 109.
[25] I.R.C. § 401(k)(12)(B)(i).
[26] *See* H.R. REP. No. 104-280, vol. II, at 1016 (1995) (additional views of Reps. Cardin and Portman). This report accompanied an earlier bill, the Seven-Year Balanced Budget Reconciliation Act of 1995 (H.R. 2491). This House report included additional views by Representatives Cardin and Portman discussing the TSP matching formula as a model for the safe harbor match. The safe harbor provisions in this bill were carried forward into the SBJPA. The match formula of the Federal Thrift Savings Plan (TSP) plan is also a 100% match on the first 3% and 50% on the next 2% of employee contributions. However, the TSP formula also includes a mandatory 1% nonelective contribution in addition to the basic formula. The congressional report does not explain why the 1% nonelective contribution was not included as part of the safe harbor formulas.
[27] I.R.C. § 401(k)(12)(B)(iii).
[28] I.R.C. § 401(m)(11)(B).

these matching contributions do not exceed 4% of the employee's safe harbor compensation.[29] Unlike the mandatory safe harbor contributions, these additional discretionary matching contributions are not required to be vested in full immediately.

Under the non-elective contribution path, the employer's contribution does not depend on whether the employee makes any deferrals. The employer must contribute a minimum of 3% of each eligible NHCE's compensation. In this scheme, even employees who make no deferrals receive an employer contribution. In contrast, under the matching path non-deferring employees receive nothing. Congress may have selected 3% as the minimum nonelective safe harbor contribution to mirror the 3% contribution that allows defined contribution plans classified as top-heavy—those in which the value of accrued benefits for key employees[30] and their beneficiaries exceeds 60 percent of the value of accrued benefits for all employees and their beneficiaries[31]—to remain qualified as tax exempt.[32] Aligning the two thresholds permits nonelective safe harbor contributions to also satisfy the top-heavy minimum, which likely made 3% a more administrable and defensible floor.[33]

The 3% nonelective contribution simultaneously satisfies the ADP and the ACP safe harbor contribution requirements.[34] A plan that satisfies the ADP safe harbor through the nonelective contribution path may also provide matching contributions. To exempt these matching contributions from ACP testing, those matching contributions must satisfy the three limitations that apply to matching contributions and the additional limitation that applies to discretionary matching contributions.[35]

3.2. QACA safe harbor 401(k) plans: PPA 2006

The traditional safe harbor simplified compliance but did not address a separate problem: employees who were eligible for a plan, but did not actively participate, did not benefit from the employer matching. Participation rates remained low among lower-income workers, who were least likely to make affirmative deferral elections. The Pension Protection Act (PPA) of 2006 responded with a second safe harbor design that conditioned reduced employer costs on mandatory automatic enrollment.[36] The House Ways and Means Committee Report explains that Congress

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[29] Conditions (i), (ii), and (iii) are found in I.R.C. § 401(m)(11)(B) and apply to all matching contributions. Condition (iv) is found in Treas. Reg. § 1.401(m)-3(d)(3)(ii) and applies specifically to discretionary matching contributions.

[30] I.R.C. § 416(i) defines key employees (a narrower category than highly compensated employees from the nondiscrimination test) and is generally limited to officers above a compensation threshold and significant owners.

[31] I.R.C. § 416(g)(1).

[32] Under I.R.C. § 416(c)(2), top-heavy defined contribution plans must provide a minimum employer contribution of 3% of compensation to non-key employees.

[33] *See* IRS Notice 98-52, § VIII.C.1, 1998-46 I.R.B. 16 (confirming that employers can count the 3% nonelective safe harbor contribution toward the minimum contribution requirement for top-heavy plans).

[34] I.R.C. § 401(m)(11)(A)(i).

[35] *See* I.R.C. § 401(m)(11)(B); Treas. Reg. § 1.401(m)-3(d)(3)(ii).

[36] Participation in 401(k) plans is optional for employees, who typically must affirmatively elect to participate in the plan. Automatic enrollment flips the default option and instead requires employees to affirmatively opt out if they choose not to participate in the plan. *See generally* Brigitte C. Madrian & Dennis F. Shea, *The Power of Suggestion:*

introduced the QACA safe harbor 401(k) plans under the understanding that: "Various studies indicate that an automatic enrollment feature can improve retirement savings rates, particularly for low- and middle-income participants. The Committee believes that providing nondiscrimination safe harbors for elective deferrals and matching contributions under plans that include an automatic enrollment feature, as well as allowing erroneous contributions to be distributed, will encourage employers to adopt such a feature."[37]

QACA plans differ from traditional safe harbor plans in several respects. First, QACA plans require automatic enrollment of eligible employees, with initial default deferrals of at least 3% (but no more than 10%) of compensation. The default rate must then increase by 1% or more annually until reaching at least 6% but no more than 10% (the SECURE Act of 2019 raised this escalation cap to 15%).[38] Second, the QACA basic match is less generous than the traditional basic match: the maximum employer cost is 3.5% of compensation rather than 4%, reflecting a trade-off between reduced employer cost per employee and mandatory participation. Third, QACA plans permit a two-year cliff vesting schedule for safe harbor contributions, whereas traditional safe harbor plans require immediate vesting.[39]

As with traditional safe harbor plans, employers may satisfy the QACA safe harbor through either a matching contribution or a non-elective contribution to satisfy the ADP test. Under the matching contribution path, the QACA basic match formula requires employers to match 100% of the first 1% of compensation contributed, plus 50% on the next 5%.[40] This is less generous on the initial tranche than the traditional basic match but extends the match over a wider contribution range. The QACA alternative match formula follows the same logic of the traditional alternative: the match rate may not increase as the deferral rate increases, and the formula must be at least as generous as the QACA basic match at every deferral level.[41] Under the non-elective contribution path, the requirement is identical to the traditional safe harbor: a minimum contribution of 3% of each eligible NHCE's compensation, regardless of whether the employee makes deferrals.[42] As with traditional safe harbor plans, QACA matching contributions that satisfy the basic or alternative formula also satisfy the ACP test, subject to the same limitations described in subsection 3.1.

4. Success of safe harbor 401(k) plans in achieving their stated goals: what does the evidence say?

Inertia in 401(k) Participation and Savings Behavior, 116 Q.J. ECON. 1149 (2001) (documenting the short-run effects of automatic enrollment on participation and savings behavior); Taha Choukhmane, *Default Options and Retirement Saving Dynamics*, 115 AM. ECON. REV. 3749 (2025) (examining the medium and long-run effects of automatic enrollment on retirement savings).

[37] H.R. REP. No. 109-232, pt. 2, at 138 (2005).
[38] I.R.C. § 401(k)(13)(C)(iii).
[39] I.R.C. § 401(k)(13)(D)(iii).
[40] I.R.C. § 401(k)(13)(D)(i)(I).
[41] I.R.C. § 401(k)(13)(D)(ii).
[42] I.R.C. § 401(k)(13)(D)(i)(II).

The legislative record reveals a tension at the heart of safe harbor 401(k) plans. The nondiscrimination tests created between 1942 and 1986 explicitly pursued a distributional objective: limiting the gap between benefits received by highly compensated and non-highly compensated employees. The safe harbor provisions created in 1996 pursued a different objective: expanding employer adoption and employee participation. Congress exempted safe harbor plans from the nondiscrimination tests without assessing whether the specified formulas would preserve the distributional constraints those tests were designed to enforce.[43]

Recent empirical work suggests that they do not. Choukhmane, Colmenares, O'Dea, Rothbaum, and Schmidt (2025) document that matching contributions are more unequally distributed than wage compensation, with non-participants receiving nothing and lower-income workers systematically contributing less.[44] Because the safe harbor matching formulas tie employer spending entirely to employee deferral behavior, the safe harbor formulas channel benefits toward higher-saving employees while excluding those who do not participate. Carranza, Choukhmane, Greig, O'Dea, and Schmidt (2026) offer further evidence that the specific structure of safe harbor formulas is poorly targeted: employee saving responds only modestly to the match rate, and the high initial match rates in the current formulas subsidize contributions that would largely have occurred anyway.[45] Their analysis suggests that formulas pairing non-elective contributions with lower match rates applied over wider contribution ranges can generate more total savings and a more equitable distribution of employer spending, without raising employer costs.

Building on these findings, Choukhmane, O'Dea, and Schmidt (2026) propose in a policy brief that Congress add a new safe harbor matching formula that combines a non-elective contribution with a stretched match.[46] The proposal would require legislative amendment to I.R.C. §401(k)(12)(B) and §401(k)(13)(D). Notably, the TSP formula that served as the model for the 1996 safe harbor included a 1% non-elective agency contribution that was not carried forward into

[43] The 1996 legislative record contains no explicit distributional analysis of the safe harbor formulas enacted by Congress. Yet the same formulas had drawn distributional objections in earlier legislative cycles. *See, e.g.*, CERTAIN PENSION ACCESS AND SIMPLIFICATION ISSUES: HEARINGS BEFORE THE SUBCOMM. ON SELECT REVENUE MEASURES OF THE H. COMM. ON WAYS & MEANS, 102d Cong. 44 (1991) (statement of Kenneth W. Gideon, Ass't Sec'y for Tax Pol'y, U.S. Dep't of the Treasury) (testifying that match-based safe harbor provisions in H.R. 2641 and H.R. 2742 "represent a significant change in policy, not a simplification" because "they provide no assurance that benefits will be provided to nonhighly compensated employees"); *id.* at 63–64 (clarifying that Treasury did not oppose the nonelective contribution path in the same bills, only "the portion that would say if you simply make a match available, that that is enough"). H.R. 2742's matching formula (100% of elective deferrals up to 3% of compensation, plus 50% of deferrals between 3% and 5%) and nonelective formula (3% of compensation to all nonhighly compensated employees) are the same formulas Congress enacted in SBJPA § 1433(a). *See* I.R.C. § 401(k)(12)(B)–(C).

[44] Taha Choukhmane, Jorge Colmenares, Cormac O'Dea, Jonathan L. Rothbaum & Lawrence D.W. Schmidt, *Who Benefits from Retirement Saving Incentives in the U.S.? Evidence on Gaps in Retirement Wealth Accumulation by Race and Parental Income* (Nat'l Bureau of Econ. Rsch., Working Paper No. 32843, 2025).

[45] Guillermo Carranza, Taha Choukhmane, Fiona Greig, Cormac O'Dea & Lawrence D.W. Schmidt, *Improving 401(k) Matches Using Hypothetical Choices* (unpublished manuscript, 2026) (on file with authors).

[46] Taha Choukhmane, Cormac O'Dea & Lawrence D.W. Schmidt, *Rethinking Safe Harbor for Employer Matching Rules* (unpublished manuscript, 2026) (on file with authors).

the statutory safe harbor. The proposed reform would, in a sense, restore this feature while extending the match incentive over a broader range.

Whether and how Congress chooses to act on this evidence, the legislative history documented in this article underscores a broader lesson: the safe harbor formulas were designed as instruments of administrative simplification, not to optimize contribution structures. As safe harbor plans have grown to cover a large and increasing share of U.S. retirement plans, the formulas written into the statute have taken on a significance that their original architects may not have anticipated.