Non-Discrimination Assessment Instructions

Cafeteria Plan regulations impose taxes and penalties for non-discrimination Flexible Spending Accounts (FSAs). To retain the TASC Audit Guarantee for your Flexible Benefits Plan, an annual non-discrimination assessment must be performed.

Assessment Process

1. The Non-discrimination Assessment Instructions and Data Worksheet are included with this kit.
2. Complete the Data Worksheet for your current Plan Year. To determine HCE compensation and the HCE defined limit, refer to details under the “Definition of Compensation” below.
3. Fax or mail your completed Data Worksheet to TASC within 30 days:
   (Fax) 608-245-3623, or
   (Mail) 2302 International Lane, Madison, WI 53704-3140
4. Approximately 30 days after receipt of the Data Worksheet, TASC will notify you of the results of your Plan Assessment.

IMPORTANT NOTES:

- If your Plan changes significantly after you’ve submitted the Data Worksheet, we recommend an additional assessment to ensure the Plan remains in compliance.
- One non-discrimination assessment is provided annually at no charge. Request additional assessments at any time (through Premium Services; additional fees may apply).

Definition of a Highly Compensated Employee (HCE)

- All officers of the corporation; and/or
- Owners of more than 5% of all classes of stock; and/or
- Employees with earnings exceeding the defined limit:
  - Earnings limits are $120,000 (2016 & 2017) and, if elected by the employer, fall within the top 20% of income (refer to the 20% Top Paid Group Rules below); and/or
- Employee who is a spouse or a dependent (under Code 152) of an employee meeting any of the above definitions.

Definition of Compensation

Compensation is known as the employee’s total gross compensation. This includes bonuses, commissions, and salary deferrals from the following sources:

- Code §125 Cafeteria Plan
- Code §132 Transportation Plan
- Code §401(k) Plan
- Code §457 Plan
- Code §403(b) Tax Sheltered Annuity
- SIMPLE Plan under Code §408(p)
- Simplified Employee Pension Plan (SAR-SEP)

In the case of a self-employed individual, compensation is defined as that person’s earned income for the year.
In determining the compensation data, review the information below, applicable to your benefit Plan Year. Please note an off-calendar Plan Year has two choices, compensation from your prior Plan Year or Calendar year.

- **Calendar Plan Year**: use the prior calendar year compensation data and HCE defined limit (e.g. 2017 assessment year, 2016 compensation data, 2016 defined limit).
- **Off-calendar Plan Year**: use compensation data from either the prior Plan Year or calendar year:
  - When using calendar year compensation, the defined limit from the assessment year applies (e.g. 2017 assessment year, 2016 compensation, 2017 defined limit).
  - When using prior Plan Year compensation, the defined limit from the prior calendar year applies (e.g. 2017 assessment year, 2016 Plan Year compensation, 2016 defined limit).

### 20% Top Paid Group for HCE Determination

If having difficulty passing the non-discrimination assessment, employers may find it advantageous to use the “20% Top Paid Group Rules” as an alternative method for determining who is a highly compensated employee (HCE).

1. First, identify all HCEs per the definition provided above.
2. Next, complete the alternative process below (20% Top Paid Group Rules) to identify the number of HCEs. If fewer HCEs result, using this method may help the Plan pass the non-discrimination assessment.

This HCE determination method may be used for any Plan Year, but once elected must be applied consistently—with respect to all Plan Years beginning in the same calendar year—for all the employer’s non-discrimination assessments and testing (retirement and non-retirement Plans).

### Process to Determine HCEs in the 20% Top Paid Group (two steps):

1. **Determine how many employees account for 20% of total employees.**
   
   In determining this number, you may exclude the employees listed below, even if the Plan allows their participation. Take the total number of employees, remove any who fit the exclusions below, and multiply the remainder by 20%. The result is the “20% number.”

   **Exclusions when calculating the 20% number:**
   - Employees who have not completed six months of service by the end of the year. In this scenario, an employee’s service in the immediately preceding year and in the current year are added together when determining if the exclusion applies to a particular employee in the current year.
   - Employees who normally work fewer than 17.5 hours per week.
   - Employees who normally work no more than six months during any year. The determination is based on the particular employer’s facts and circumstances, as shown by the employer’s customary experience in the years preceding the determination year. An employee who works on one day during a month is deemed to have worked during that month.
   - Employees who have not attained age 21 by the end of the year.
   - Nonresident aliens with no U.S. source income.
   - Employees included in a unit of employees covered by a collective bargaining agreement, if at least 90% are covered by the collective bargaining agreement and the Plan tested covers only non-union employees.

2. **Identify the employees who received the most compensation during the prior year.**
   
   Only two exclusions may be applied for this step:
   - Employees who have not performed any services in the assessment year.
   - Employees covered by a bargaining unit (as noted above).

   *For example*, an employee who normally works fewer than 17.5 hours—and is thereby excluded in determining the number of HCEs—may nevertheless be among the top paid group.
List employees in descending order of compensation (highest to lowest paid). Stop after reaching the number determined in step one (20% of employees). These employees are the top paid group; an employee with compensation that exceeds the compensation limit is an HCE for the non-discrimination assessment.

If the 20% Top Paid Group determination reduces the number of HCEs, this method is likely more advantageous for an employer’s non-discrimination assessment. Keep in mind the consistency requirement in respect to all Plan non-discrimination assessment and testing as noted above.

**Example of 20% Top Paid Group Determination:**
During the determination year, Employer X has 200 active employees; 80 work fewer than 17.5 hours per week.

- In determining the number of employees in the top paid group, Employer X excludes (from 200 total employees) all employees who normally work fewer than 17.5 hours per week (80 employees). The top paid group for the determination year equals 20 percent of 120 (200-80), or 24 employees.
- Employer X ranks all 200 active employees in order of compensation received during the prior year. The 24 employees paid the greatest compensation above the compensation limit for the prior year are considered the top paid employees and as such are the HCEs for non-discrimination assessment.

**Assessment Worksheet Instructions**
Enter your Client Name, Client ID (if known), and the Plan Year start and end dates at the top of the form.

When completing the data worksheet, consider all employer and employee contributions made through your Cafeteria Plan for:

- Insurance
- Healthcare FSA
- Dependent Care FSA
- Non-Employer Sponsored Insurance Premiums (NESP)
- Health Savings Account (HSA)

**Worksheet Step 1 – Highly Compensated Employees (HCEs)**

- Identify your highly compensated individuals (who participate in any pre-tax account offered under your Cafeteria Plan) associated with the Client ID (if none, write “none”). Attach additional sheets if necessary.
- Enter the annual amount the company contributes to each HCE’s group health insurance premiums offered under your Cafeteria Plan. (If zero, enter 0.00.)
- Enter the annual amount each HCE pays for insurance premiums offered under your Cafeteria Plan. (If zero, enter 0.00.)
- Enter the annual amount the HCE contributes to a Health Savings Account (HSA) under the Cafeteria Plan.
- Enter the annual amount the company contributes to an HCE’s Health Savings Account (HSA) under the Cafeteria Plan.
- Enter the total combined dollar amount from all boxes for the HCE subtotal under Step 1.

**Worksheet Step 2 – Non-Highly Compensated Employees (NHCEs)**

- Enter the annual amount the company contributes to all other employee’s (non-highly compensated employees) group health insurance premiums offered under your Cafeteria Plan. Enter “none” if the company does not provide any insurance benefits.
- Enter the annual amount of the employee’s portion of group health insurance premiums offered under the Cafeteria Plan (all non-highly compensated employees added together).
  - Do not include daycare, medical reimbursement, transit and parking, or Non-Employer Sponsored Insurance Premium elections.

(continued next page)
• Enter the annual amount the NHCEs contribute to a Health Savings Account (HSA) under the Cafeteria Plan.
• Enter the annual amount the company contributes to a Health Savings Account (HSA) under the Cafeteria Plan for NHCEs. (If zero, enter 0.00.)
• Enter the total combined dollar amount from all boxes for the NHCE subtotal under Step 2.

**Worksheet Step 3 – Contributions for Other Qualified Pre-Tax Benefits**

- **Benefit Type column**: If applicable, enter any other pre-taxed contributions and premiums for qualified benefits under an FSA Plan that are not reported above and not included in your online MyTASC account.
  - *For example*, this may include an Adoption Assistance benefit or benefits under another FSA Plan Document that is not administered on the TASC platform, such as a separate Premium Only Plan (POP) for dental premiums.
  - *Do not include 401(k), other retirement, or FlexSystem contributions.*

*For each Benefit Type:
- Enter the contribution amounts (employer and employee) for your non-highly compensated employees.
- Enter the contribution amounts (employer and employee) for your highly compensated employees.
- **NHCE Subtotal**: Enter the combined Employer and Employee NHCE contribution amount.
- **HCE Subtotal**: Enter the total combined Employer and Employee HCE contribution amount.

**Worksheet Step 4 – Carrier and Coverage Data**

With TASC’s continuing efforts to be a voice for employers and employees in healthcare reform, TASC is requesting information on your current insurance coverage. Please enter this information to help us continue with these efforts. Your information will not be shared with any outside sources.