Premium Only Plan (POP) Non-Discrimination Assessment Instructions

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

Assessment Process

1. Find the POP Assessment Worksheet included with this instruction kit.
2. Complete the Worksheet for your current Plan Year. To determine HCE compensation and the HCE threshold limit, refer to details in the Definition of Compensation.
3. Fax or mail your completed Worksheet to TASC within 30 days:
   Fax: 608-245-3623
   Mail: 2302 International Lane, Madison, WI 53704-3140
4. Approximately 30 days after receipt of your completed Worksheet, TASC will notify you on the results of your POP assessment.

IMPORTANT NOTES:
- If your Plan changes significantly after you’ve submitted the POP 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 TASC Premium Services (additional fees may apply).

Worksheet Instructions

Enter your Client Name, TASC ID, and the Plan Year start and end dates at the top of the POP Assessment Worksheet.

Please note the instructions based on your Plan offering:
- POPs that offer one benefit only (in which employees may elect to use pre-tax dollars to pay their share of the premium for employer-provided accident and health insurance) must complete the POP Assessment Worksheet.
- Section 125 Cafeteria Plans with a POP that also include one or more benefits (i.e., Health Savings Account (HSA), Healthcare FSA, Dependent Care FSA, or Non-Employer Sponsored Premium (NESP) Plan) must contact TASC to request the Non-Discrimination Assessment Worksheet and Instructions for a Full FlexSystem Plan.

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 in the preceding year.
  - Earnings limits are $115,000 (2014) and $120,000 (2015/2016), and if elected by the employer are in the top 20% in income (refer to the “20% Top Paid Group Rules” below), and/or
- Employee who is a spouse or dependent (under Code 152) of an employee meeting any of the above definitions.
Definition of Compensation

“Compensation of an HCE” is defined as the employee’s compensation from the employer for the prior Plan Year.

- A calendar Plan Year uses the HCE threshold limit from the prior Plan Year (e.g. 2016 assessment year, 2015 compensation data, 2015 threshold).
- An off-calendar Plan Year may use either prior Plan Year data or calendar Plan Year data:
  - When using prior Plan Year compensation data, the threshold from the prior year applies.
  - When using calendar year compensation data, the threshold from the assessment year applies.

Compensation includes salary deferral and salary reduction amounts from the following sources:

- Section 125 Cafeteria Plan
- SIMPLE Plan under IRS Code 408(p)
- Tax Sheltered Annuity under IRS Code Section 403(b)
- IRS Code 457 Plan
- Simplified Employee Pension Plan (SARSEP)
- 401(k) Plan
- Qualified Transportation Fringe Benefit Plan under IRS Code 132(f)(4)

In the case of a self-employed individual, compensation is defined as that person’s earned income for the year.

“20% Top Paid Group” 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).

- First, identify all HCEs per the definition provided above.
- 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—within respect to all Plan Years beginning in the same calendar year—for all of the employer’s non-discrimination assessments and testing (retirement and non-retirement Plans).

Determining the HCEs in the 20% Top Paid Group is a two-step procedure:

Step 1: Determine how many employees account for 20% of total employees.

- You may exclude the employees below (under Exclusions), 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 from the immediately preceding year and in the current year are added together to determine 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 only 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.
- Non-resident 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.
Step 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 1 above (20% of employees). These employees are the top paid group; any whose compensation exceeds the compensation limit are identified as HCEs 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.

1. 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.

2. Employer X ranks all 200 active employees in order of compensation received during the prior year. The 24 employees who were 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.

POP Non-Discrimination Assessment Data

For purposes of the POP Non-Discrimination Assessment, an excludable employee is one of the following -- if those employees are excluded from participation in the POP:

- Employees with fewer than 3 years of service (if all such employees are excluded from the Cafeteria Plan)
- Non-resident aliens with no US source income
- Union employees
- Employees on COBRA

1. Determine the number of non-excludable employees (generally all employees of the employer except those permissible exclusion noted above).

2. Enter the number of non-highly compensated, non-excludable employees and the highly compensated, non-excludable employees. Then enter the total number of non-excludable employees.

3. Enter the number of non-highly compensated and highly compensated employees that are eligible for the Plan.

Carrier and Coverage Data

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