Non-Discrimination Testing Reference Guide

Welcome to TASC Non-Discrimination Testing services.

Of all the requirements associated with Cafeteria Plans, Flexible Spending Accounts, Group Term Life Insurance, Health Reimbursement Arrangements, and Self-Insured Medical Plans none are more confusing or more crucial to the compliance of your Plan than Non-Discrimination Testing. This Guide will walk you through the Non-Discrimination Testing process, how to send TASC the needed information, and how to ensure the compliance of your Plan(s). Please retain this Guide for future reference.

If you have questions please call our Non-Discrimination Testing Team at 1-800-422-4661.

Here's what you'll find inside:

Non-discrimination Testing

TC-4959-082216

Non-Discrimination Testing

Cafeteria Plans, Flexible Spending Accounts, Group Term Life Insurance, Health Reimbursement Arrangements, and Self-Insured Medical Plans must be tested on an annual basis to determine whether a Plan discriminates in favor of Highly Compensated Employees (HCEs). Plans must not discriminate in favor of HCEs and ensure that a reasonable number of non-HCEs are eligible to participate. If too many non-HCEs are ineligible to participate, the Plan will fail the eligibility test. No Plan is exempt from testing.

Non-Discrimination Testing Process

Based on the test(s) you selected on the TASC Non-Discrimination Testing Application, TASC will forward the appropriate census to you via email. Please fill in all the cells on the census spreadsheet for every eligible employee on your Plan (s) and then forward the completed spreadsheet census to TASC via email.

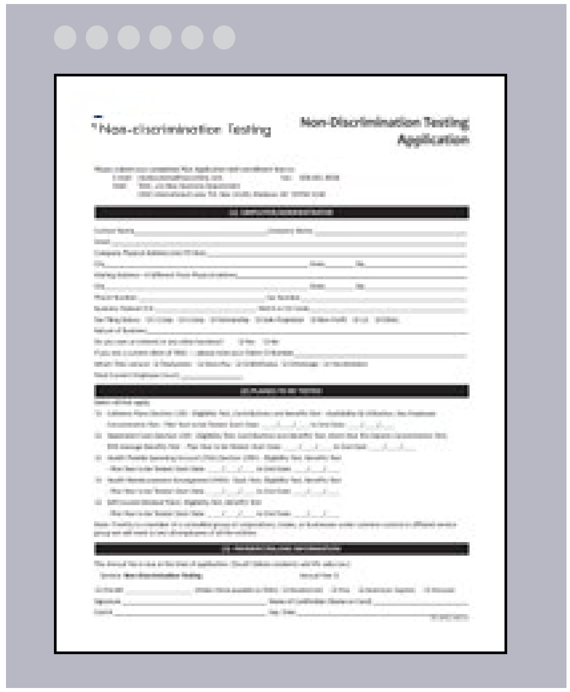
After TASC conducts the non-discrimination testing on your spreadsheet census we will alert you to whether your Plan(s) are discriminatory or not. If discriminatory, we will consult you on the steps needed to bring your Plan(s) into compliance with the non-discrimination rules and regulations.

Explanation of Non-Discrimination Tests

Here is an explanation of all the applicable tests.

IRC Section 125 Eligibility Test (Cafeteria Plan)

Test: Plan must benefit a nondiscriminatory class of employees and pass a numeric eligibility test and meet employment and entry requirements. This numeric eligibility test compares the percentage of Non-Highly Compensated Employees (NHCEs) eligible under the Plan with the percentage of Highly Compensated Employees (HCEs) eligible under the Plan. Under this test a "ratio percentage" is calculated (the percentage of NHCEs eligible divided by percentage of HCEs eligible). This "ratio percentage" must meet or exceed either a "safe harbor percentage" or an "unsafe harbor percentage." These "harbor percentages" are based



Non-discrimination Testing

Non-Discrimination Testing Application

on the size of the NHCE population and are set forth in Treasury Regulations.

For the purposes of this test, HCEs are defined as:

- Officers.
- More than 5 percent owners.
- Spouse or dependent of officers and more than 5 percent owners.
- Individuals making in excess of $115,000 in the previous Plan Year (or top paid group election).

Who can be excluded for this test?

- Employees under 21 years of age (if specified in Plan).
- Employees who have not satisfied the eligibility period.
- Employees covered under a collective bargaining agreement.

Contributions & Benefits Test (Cafeteria Plan)

The Availability Standard Test: Plan must make benefits available on a nondiscriminatory basis and that Highly Compensated Participants (HCPs) do not elect more nontaxable benefits than Non-Highly Compensated Participants (NHCPs). This test looks at whether actual Plan benefits are available on a nondiscriminatory basis.

The Utilization Standard Test: Looks at whether the actual Plan benefits through a cafeteria Plan are "disproportionately" made by HCPs. This numeric test compares the percentage of total HCPs benefits over total HCPs gross compensation which should be less than the percentage of total NHCPs benefits over total NHCPs gross compensation in order to pass.

For the purposes of this test, HCPs are defined as:

- Officers.
- More than 5 percent owners.
- Individuals making in excess of $115,000 in the previous Plan Year (or top paid group election).
- Spouse or dependent of above.

Who can be excluded for this test?

- Employees not participating in the Plan.
- Employees covered under a collective bargaining agreement.

IRC Section 125 25 Percent Concentration Test (Cafeteria Plan)

Test: Benefits (elections) for Key Employees cannot exceed 25 percent of total benefits under the Plan. Benefits involved in this testing are only those pre-tax benefits offered under the cafeteria Plan. (For insured Plans we look at total annual premium. For self-insured Plan we look at annual employee contribution only.)

For the purposes of this test, Key Employees are defined as:

- Oficers making in excess of $165,000 in the previous year,
- A more than 5 percent owner, or;*
- A more than 1 percent owner earning in excess of $150,000 in the previous Plan year.*

* Note: Ownership attribution rules come into play here and certain employed relatives of owners (parents, children, grandparents, spouses) are viewed as having the same ownership as that owner. Thus if the child of a more than 5 percent owner works for the company, that child is viewed also as a more than 5 percent owner and their benefits are counted as key benefits.

Who can be excluded for this test?

- Everyone with pre-tax benefits under the Plan is included in this test.

IRC Section 105 Eligibility Test (Health FSAs)

Plan must pass one (1) of three (3) alternative tests:

1. 70 Percent Test – 70 percent or more of all non-excludable employees participate in the Plan.
2. 70 Percent/80 Percent Test – 80 percent or more of all excludable employees are eligible under the Plan and 70 percent or more participate in the Plan.
3. Non-discriminatory Classification Test – Plan benefits a nondiscriminatory class of employees and pass a numeric eligibility test which compares the percentage of Non-Highly Compensated Individuals (NHCIs) benefitting under the Plan with the percentage of Highly Compensated Individuals (HCIs) benefitting under the Plan. Under this test a "ratio percentage" is calculated (percentage of NHCIs eligible divided by percentage of HCIs eligible). This "ratio percentage" must meet or exceed either a "safe harbor percentage" or an "unsafe harbor percentage." These harbor percentages are based on the size of the NHCI population and are set forth in Treasury Regulations.

For the purposes of this test, HCIs are defined as:

- The five highest paid officers,
- More than 10 percent owners*, and
- All other individuals in the top-paid 25 percent of all employees.

* Note: Ownership attribution rules come into play here and certain employed relatives of owners (parents, children, grandparents, spouses) are viewed as having the same ownership as that owner. Thus if the child of a more than 5 percent owner works for the company, that child is viewed also as a more than 5 percent owner and their benefits are counted as key benefits.

Who can be excluded for this test?

- Employees under 25 years of age (if specified in Plan).
- Employees who have not satisfied the eligibility period.

- Part-time or seasonal employees.
- Employees covered under a collective bargaining agreement.

IRC Section 129 Eligibility Test (Dependent Care FSAs)

Test: Plan must benefit a nondiscriminatory class of employees and pass a numeric eligibility test. This numeric eligibility test compares the per¬centage of Non-Highly Compensated Employees (NHCEs) eligible under the Plan with the percent¬age of Highly Compensated Employees (HCEs) eligible under the Plan. Under this test a “ratio percentage” is calculated (the percentage of NHCEs eligible divided by percentage of HCEs eligible). This “ratio percentage” must meet or exceed either a “safe harbor percentage” or an “unsafe harbor percentage.” These “harbor percentages” are based on the size of the NHCE population and are set forth in Treasury Regulations.

For the purposes of this test, HCEs are defined as:

- More than 5 percent owners* or in previous or current year.
- Individuals making in excess of $115,000 in the previous Plan Year (or top paid group election).

* Note: Ownership attribution rules come into play here and certain employed relatives of owners (parents, children, grandparents, spouses) are viewed as having the same ownership as that own¬er. Thus if the child of a more than 5 percent owner works for the company, that child is viewed also as a more than 5 percent owner.

Who can be excluded for this test?

- Employees under 21 years of age (if specified in Plan).
- Employees who have not satisfied the eligibility period.
- Employees covered under a collective bargaining agreement.

Contributions & Benefits Test (Dependent Care FSAs)

Contributions and benefits provided under the Plan cannot discriminate in favor of Highly Compensated Participants (HCPs). Non-Highly Compensated Participants (NHCPs) must be afforded the same amount of employer contributions to the plan (if applicable) that are afforded HCPs. NHCPs must be entitled to the same maximum reimbursement as HCPs.

For the purposes of this test, HCPs are defined as:

- More than 5 percent owners*.
- Individuals making in excess of $115,000 in the previous Plan Year (or top paid group election).
- Dependents of the above

* Note: Ownership attribution rules come into play here and certain employed relatives of owners (parents, children, grandparents, spouses) are viewed as having the same ownership as that owner. Thus if the child of a more than 5 percent owner works for the company, that child is viewed also as a more than 5 percent owner.

Who can be excluded for this test?

- Employees under 21 years of age (if specified in Plan).
- Employees who have not satisfied the eligibility period.
- Employees covered under a collective bargaining agreement.

IRC Section 105 Benefits Test (Health FSAs)

Test: This test stipulates that the benefits provided under the self-insured medical plan cannot discriminate in favor of Highly Compensated Individuals (HCIs).

To be non-discriminatory, the Plan must satisfy the following requirements:

- Waiting periods must be the same,
- Required employee contributions must be the same for each benefit level,
- The same type of benefits provided to HCIs must be provided to all Participants, and

- The maximum benefit that can be elected cannot vary based on age, compensation or years of service.

IRC Section 129 55 Percent Average Benefit Test (Dependent Care FSAs)

Test: This test stipulates that the average dependent care benefit for Non-Highly Compensated Employees (NHCE's) must be at least 55 percent of the benefit for Highly Compensated Employees (HCEs).

For the purposes of this test, HCEs are defined as:

- More than 5 percent owners*, and
- Individuals making in excess of $115,000 in the previous Plan Year (or top paid group election).

* Note: Ownership attribution rules come into play here and certain employed relatives of owners (parents, children, grandchildren, spouses) are viewed as having the same ownership as that owner. Thus if the child of a more than 5 percent owner works for the company, that child is viewed also as a more than 5 percent owner and they are considered a HCE for this test.

Who can be excluded for this test?

- Employees under 21 years of age (if specified in Plan).
- Employees who have not satisfied the eligibility period.
- Employees covered under a collective bargaining agreement.
- Employees who made less than $25,000 in the previous Plan Year

Running the test:

1. Determine the current number of HCEs and the total dependent care benefit (election) for all HCEs. Divide the total election by the number of HCE's to arrive at an average HCE benefit.

2. Determine the current number of NHCEs and the total dependent care benefit for all NHCEs. Divide the total election by the number of NHCE's to come up with an average NHCE election.

3. If test is failed, rerun with exclusions and different combination of exclusions.

Section 129 25% Concentration Test (Dependent Care FSA)

Test: This test stipulates that the dependent care benefits (elections) for more than 5 percent owners* cannot exceed 25 percent of total dependent care benefits under the Plan.

*Note: Ownership attribution rules do not come into play here

Who can be excluded for this test?

- Everyone with dependent care benefits under the Plan is included in this test.

IRC Section 79 Eligibility Test (Group Term Life Insurance)

Test: This test stipulates that a plan must pass one of the four following tests:

- The Plan must benefit 70 percent or more of employees.
- At least 85 percent of the participants in the Plan are not key employees.
- The Plan benefits employees who qualify under a classification set up by the employer that is found to be non-discriminatory by the Secretary of the Treasury; or
- The Plan is part of a cafeteria plan and meets the nondiscrimination requirements of Internal Revenue Code Section 125.

For the purposes of this test, Key employees are defined as above for the IRC Section 125 25 percent Concentration Test.

Who can be excluded for this test?

- Employees who have not satisfied the eligibility period.
- Part time or seasonal employees.
- Employees covered under a collective bargaining agreement.
- Non-resident aliens with no US source income.

IRC Section 79 Benefits Test (Group Term Life Insurance)

Test: This test stipulates that the amount of life insurance coverage (excluding supplemental coverage) must meet one of the following three safe harbors:

- The amount of insurance under the Plan bears a uniform relationship to total compensation or the basic rate of an employee's compensation.
- The Plan provides a fixed amount of insurance which is the same for all employees.
- Where a group of employees (including Key Employees) receive greater benefits than other employees, the group must be able to pass the eligibility test when tested on its own. The amount of insurance received by individuals in that group must be equal to or greater than the amount of insurance received by key employees.

For the definition of Key employees and who can be excluded from this test, see above IRC Section 79 Eligibility Test.

IRC Section 105 Eligibility Test (Self-Insured Medical Plan, Self-Insured Dental Plan, Self-Insured Vision Plan, Self-Insured Rx Plan, Health Reimbursement Arrangements (HRAs))

Plan must pass one (1) of three (3) alternative tests:

1. 70 percent Test – 70 percent or more of all non-excludable employees participate in the Plan.
2. 70 percent/80 percent Test – 80 percent or more of all excludable employees are eligible under the Plan and 70 percent or more participate in the Plan.
3. Nondiscriminatory Classification Test – Plan benefits a nondiscriminatory class of employees and pass a numeric eligibility test which compares the percentage of Non-Highly Compensated individuals (NHCIs) benefitting under the Plan with the percentage of Highly Compensated Individuals (HCIs) benefitting under the Plan. Under this test a "ratio percentage" is calculated (percentage of NHCIs eligible divided by percentage of HCE eligible). This "ratio percentage" must meet or exceed either a "safe harbor percentage" or an "unsafe harbor percentage." These harbor percentages are based on the size of the NHCE population and are set forth in Treasury Regulations.

For the purposes of this test, HCE is defined as:

- The five highest paid officers,
- More than 10 percent owners*, and
- All other individuals in the top-paid 25 percent of all employees.

* Note: Ownership attribution rules come into play here and certain employed relatives of owners (parents, children, grandchildren, spouses) are viewed as having the same ownership as that owner. Thus if the child of a more than 5 percent owner works for the company, that child is viewed also as a more than 5 percent owner and they are considered a HCE for this test.

Who can be excluded for this test?

- Employees under 25 years of age (if specified in Plan).
- Employees who have not satisfied the eligibility period.
- Part-time or seasonal employees.
- Employees covered under a collective bargaining agreement.

IRC Section 105 Benefits Test (Self-Insured Medical Plan, Self-Insured Dental Plan, Self-Insured Vision Plan, Self-Insured Rx Plan, Health Reimbursement Arrangements (HRAs))

Test: This test stipulates that the benefits provided under the self-insured medical plan cannot discriminate in favor of Highly Compensated Individuals (HCIs).

To be nondiscriminatory, the plan must satisfy the following requirements:

- Waiting periods must be the same,
- Required employee contributions must be the same for each benefit level,
- The same type of benefits provided to HCIs must be provided to all Participants, and
- The maximum benefit that can be elected cannot vary based on age, compensation or years of service.

Note: In general, all employees under a controlled group of corporations; trades or businesses under common control; or an affiliated service group must be taken into account when performing plan non-discrimination testing.

All Clients are obliged to maintain up-to-date contact information in MyTASC; this includes email and mailing addresses, and phone numbers. TASC periodically sends important Plan notifications (regarding balances, deadlines, and/or Plan changes). We are not responsible for any consequences resulting from communications not received due to inaccurate contact information.

Annual Plan Renewal

Near the end of the Plan Year, you will have the opportunity to re-enroll for the upcoming Plan Year. In addition, each year you will have to complete the required census(es) as the non-discrimination testing must be performed on an annual basis. TASC will provide the required census(es) to you via email every year.

TASC Invoicing Practices

TASC's Invoicing Practices aim to communicate expectations to all Clients and Providers, ensuring compliance to TASC Plans and services, creating consistency between all of TASC's divisions, and ensuring the continuation of services.

Philosophy

To ensure that TASC operations continue to run smoothly, various actions need to occur in a timely manner, including the payment of TASC administrative fees. Paying in advance demonstrates that the Plan is for the benefit of employees and provides further evidence that the Plan has been established on a pre-thought basis. TASC invoices in advance for two additional reasons:

1. TASC requires a commitment in advance of the business being processed, and
2. TASC requires a payment history for its Clients, so as to determine the Clients' status of good standing.

Administrative Fees

Because your TASC service begins before the Plan start date, TASC invoices forty-five (45) calendar days prior to the Plan start date. For example, for Plans with a January 1 start date, the first invoice is mailed on November 15 and is due seven (7) calendar days from the invoice date. TASC fees are calculated on the number of known employees at the time the invoice is generated, and Clients are charged a minimum administrative fee.

Types of Payments for Administrative Fees

- Check
  - Clients may pay by check.
- E-Pay
  - Clients may pay electronically as long as they use E-Pay, and as long as these fees are debited no later than seven (7) calendar days prior to the Service Period start date. Therefore, if a Service Period begins January 1, Clients will be debited on December 23.
- ACH Credit
  - Clients may pay administrative fees via an electronic ACH Credit transfer. A $40 per transaction Service Charge will be assessed. Clients should contact their Provider for details.
- ACH Debit
  - Clients may pay administrative fees via an electronic ACH Debit transfer. There is no Service Charge for this method.

Types of Invoices

- Administrative Fee
  - Generated annually for TASC Services that are provided during the Service Period.
- Premium Services Fee
  - Generated when a Client has elected a Premium Service.

Standard Invoicing Procedures

- Invoice
  - Generated and sent forty-five (45) calendar days prior to the Service Period start.
- Due Date
  - Seven (7) calendar days from the date the invoice was generated (invoice date).

- Service Charge Date
  - An additional $20 fee will be assessed sixty (60) calendar days from the original invoice date if the invoice is not paid by the Service Charge due date, and the account will be placed on hold.
- Statement
  - A Statement (second notice) of unpaid invoices will be mailed fifteen (15) calendar days prior to the start of the Service Period.

- Past Due Email Notification
  - On the first day of the Service Period or forty-five (45) calendar days after the original invoice date (whichever comes first), an email will be sent to any account with unpaid invoices older than forty (40) calendar days. This email will inform the Client that the account will be put on hold and that a $20 service fee will be charged if the invoice is not paid within sixty (60) calendar days of the original invoice issue date.

- Final Notice Statement
  - A Final Notice Statement (third notice) will be mailed fifteen (15) calendar days into the Service Period, with a Service Charge of $20.00, a notice of "default" status, and an additional notice that all account services have been placed on hold.
- Collections
  - The account will be placed in Collections forty-five (45) calendar days into the Service Period start, or ninety (90) calendar days after the original invoice date, whichever comes first.
- Plan Termination
  - The account will be terminated one hundred four (104) calendar days into the Service Period start. Letters will be sent to each Client being terminated.

Client Responsibilities

- Please make your checks payable to TASC Administration. Checks incorrectly payable to TASC IRS Form 5500 Preparation can cause some confusion and may delay the administration of your Plan.
- Mail invoices and payments in the envelope provided (goldenrod color) to: TASC, 2302 International Lane, Madison, WI 53704-7098.
  - All invoice payments must be submitted separately from all other payments and transactions.
  - All invoice payments must be made separately (i.e. one check with one invoice).
- Notify TASC of any disputes or any changes.

Contacting TASC

Technical and Customer Service Support - TASC has a team of employee benefit experts to assist you with your Plan. Our experts can give you guidance and expertise to help ensure you remain compliant with all regulations. You may call toll-free (from 8 am-5 pm weekdays except Wednesdays 9 am-5 pm) to address questions regarding compliance, technical issues, or other questions relevant to TASC.

For Your Benefit

TASC distributes For Your Benefit, a bi-annual newsletter that includes Plan updates and a calendar of important dates, along with information about other TASC Plans and guidance for managing and developing your business.

Phone: 1-800-422-4661
Fax: 763-489-1568
Web: www.tasconline.com