Using the Power of Coverage Testing for Creative Plan Design

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Introduction

- Discrimination testing encompasses a plan satisfying a number of rules.
- In particular, discrimination rules require meeting the requirement of IRC §§ 410, 401(a)(4), and 401(a)(26).
  - Last requirement only applies to DB plans, and requires a minimum number, or percentage, of employees benefit (no aggregation for this purpose).
  - Our emphasis will be IRC §410

Introduction

- To pass §410 a plan must meet the requirements of §410(a) and benefit a group of employees that satisfies §410(b). For this latter purpose, multiple plans may be
  - Aggregated for testing, and/or
  - Disaggregated (either on a permissive or mandatory basis) for testing.

Introduction

- §410(a) has maximum minimum age and service requirements that may be imposed to enter a plan.
  - May exclude employees who have not attained age 21.
  - May exclude employees who have not completed a year of service (two years if immediate vesting).

Introduction

- §410(b) requires that a plan either:
  - Satisfy the Ratio Percentage Test;
  - Satisfy the Average Benefits Test;
  - Not benefit any Highly Compensated Employees (HCEs); or
  - The employer has no non-excludable Non-highly Compensated Employees (NHCEs).

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Highly Compensated Employees

- §414(q) defines HCE as employee who
  - Was five percent owner at any time during plan year or previous plan year, or
  - Earned <u>more than</u> threshold amount in preceding plan year - threshold amount
    - $115,000 looking back to 2014
    - $120,000 looking back to 2015

Highly Compensated Employees

- Five percent owner defined in IRC 416(i) as one who owns
  - If the employer is a corporation, either
    - <u>More than</u> five percent of the outstanding stock of the corporation, or
    - More than five percent of the total combined voting power of all stock of the corporation
  - If the employer is not a corporation, more than five percent of the capital or profits interest in the employer
  - Constructive ownership rules of IRC 318 apply

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Highly Compensated Employees

- Constructive ownership rules of IRC 318 apply
- Most relevant are family attribution rules
- A person is considered to own stock (or other interest) owned by his or her
  - Spouse
  - Children (irrespective of age)
  - Parents
  - Grandparents
  - Don’t get burned by different last names – ask!

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Highly Compensated Employees

- Can limit HCEs due to compensation to those in "Top-Paid Group" (TPG) in preceding year
  - Employee in TPG if employee in group consisting of top 20 percent of employees when ranked on basis of compensation. In making determination may exclude union employees and
    - Employees who have not completed six months of service
    - Employees who work less than 17.5 hours per week
    - Employees who work during less six months during the year
    - Employees who have not attained age 21
  - My experience has been TPG election usually only useful for purposes of ADP test

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Ratio Percentage Test

- To satisfy the "Ratio Percentage Test" a Plan must have a "coverage ratio" of at least 70 percent.
  - Plan's coverage ratio:
    - NHCE coverage ratio divided by
    - HCE coverage ratio

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Ratio Percentage Test

- NHCE Coverage Ratio:
  - NHCEs <u>benefiting</u> under the plan divide by
  - Non-excludable NHCEs (even if excluded from plan)
- HCE Coverage Ratio:
  - HCEs <u>benefiting</u> under the plan divided by
  - Non-excludable HCEs (even if excluded from plan)
- "Benefiting" simply means receiving an allocation (or accruing a benefit); amount not relevant

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Ratio Percentage Test

- Except …
  - An employee is treated as benefiting under a 401(k) plan if the employee is eligible to defer, whether or not he/she does so
  - An employee is treated as benefiting under a 401(m) plan if the employee would receive a match had they deferred

Ratio Percentage Test

- Additionally
  - A DB plan may ignore the effect of the 415 limit when determining if the accrued benefit increased
    - Presuming it is also ignored in the 401(a)(4) testing

Ratio Percentage Test

- And, an employee in a DB plan is treated as benefiting if the employee would have benefited except that:
  - The employee's benefit exceeds a uniform plan limit (on benefit, service or compensation);
  - A prior accrued benefit is greater than the accrued benefit otherwise determined;
  - A floor offset arrangement restricts the increase in accrued benefit (but not all offsets apply);
  - The actuarial increase due to a delayed retirement is larger than the benefit that would have otherwise accrued.

Ratio Percentage Test

- Consider an actual case from our office (though ‘covered’ here was relevant for 401(a)(26) instead of 410(b) concept same)
  - Hospital-based medical practice of two Drs. (1 & 2) - no other employees
  - DBP 1 terminated when Dr. 1 retired (each Dr. had $10,500 benefit)
  - Replacement (Dr. 3) hired and 401(k) plan implemented
  - Three years later Dr. 3 wishes to shelter more dollars so wants DB plan
  - IRC 401(a)(26) requires both Drs. to be covered but Dr. 2 not looking for additional retirement
  - DBP 2 created with benefit of $1,750 per year of participation
  - DBP 2 benefit is offset by benefit under DBP 1
  - Dr. 2 considered benefit under DBP 2 even though no actual benefit

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Ratio Percentage Test

- Amount of benefit only relevant for non-discrimination testing under IRC 401(a)(4)
- Important to understand that all Non-Excludable Employees considered in denominator. Including:
  - Non-Excludable Employees excluded from plan
    - Even those signing waiver of participation
  - <u>Participants</u> not benefiting under terms of plan
    - E.g., last day or 1,000 requirement

Ratio Percentage Test

- Consider employer that has 11 Non-Excludable Employees
  - Three HCEs – husband, wife, son
  - Eight NHCs
- Desire to cover husband and wife
  - HCEs coverage ratio = 2/3 = 66.67 percent

Ratio Percentage Test

- To pass ratio test need to cover four NHCs
  - Need coverage ratio of at least 70 percent
  - 70 percent * 66.67 percent = 46.67 percent
  - 46.67 percent * eight (NHCs) = 3.73 (round to four)
- Plan's coverage ratio (if only 4 NHCs covered)
  - NHC ratio 50 percent/HCE ratio 66.67 percent = 75 percent
  - At least 70 percent so ratio test passed

Ratio Percentage Test

- Plan could therefore exclude four of eight NHCs
  - By class
  - By name
- Or cover by inclusion
  - I.e., only those specifically named are in plan
  - Not uncommon in 'carve-out' DB plans

Non-Excludable Employees

- Non-Excludable Employees means <u>all</u> employees <u>except</u> [1.410(b)-6)]:
  - Those that fail to meet age and service -
    - BUT, why exclude 20 year old NHC? Can be VERY helpful in testing –> lose age requirement?
  - Non-resident aliens with no US income
  - Employees subject to collective bargaining
  - Terminated employees with <u>no more than</u> 500 hours
  - Employees of QSLOBs

Non-Excludable Employees

- Important to remember that the employees of all members of related employers must be taken into account
  - Controlled groups - 414(b)
  - Controlled groups of trades or business under common control - 414(c)
  - Affiliated service groups – 414(m)

Non-Excludable Employees

- Consider two companies owned 100 percent by same person
  - Therefore brother/sister controlled group
- Company 1 has three HCEs and 25 NHCs
- Company 2 has two HCEs and 35 NHCs
- Assume only Company 1 sponsors plan
- Ratio percentage is 41.67 percent/60 percent = 69.44 percent
  - NHC 25/60 = 41.67 percent
  - HCE 3/5 = 60 percent
  - Ratio test fails – possibly use average benefits test (later)

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Non-Excludable Employees

- Exclusion of EEs failing to meet statutory age and service requirements
  - Where plan has more liberal eligibility <u>may</u> exclude these "otherwise excludable" employees from testing
    - If excluded from testing don't need gateway for example
  - BUT, if there are otherwise excludable EEs that are HCEs then either:
    - Test otherwise excludables separately, or
    - Test without using exclusion

Non-Excludable Employees

- Terms with ≤ 500 hours only excludable if
  - Plan requires minimum hours and/or EOY employment to receive benefit/allocation
  - And employee:
    - Is eligible to participate in the plan;
    - Does not benefit under the plan for the year;
    - Fails to receive benefit/allocation solely because of above requirement(s); *and*
    - Terminates with no more than 500 hours of service during the year.

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Non-Excludable Employees

- So, e.g., employee excluded from plan <u>not</u> excludable -
  - Employee not eligible to participate
  - I.e., a terminated employee with ≤ 500 hours of service that was <u>excluded from participation</u> in plan is NOT an excludable employee and therefore must be counted in denominator when determining coverage ratio

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Non-Excludable Employees

- Employee receiving three percent SH not excludable -
  - Employee is <u>benefiting</u>
  - So e.g., they need gateway

Non-Excludable Employees

- Similarly, PS plan with no hours or EOY requirement may NOT exclude from testing terminees ≤ 500 hours to whom employer could have but decided not to give an allocation-
  - Termination ≤ 500 hours not SOLE reason allocation not provided

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Non-Excludable Employees

- Exclusion of such terminees from testing is elective and consistency is only required within a plan year -
  - So in a given year if you exclude such folks from testing you must exclude all terminated NHCs and HCEs with no more than 500 hours of service
  - But you may, e.g.,
    - Exclude such folks from testing in years where it helps testing – i.e., you're excluding from testing non-benefiting NHCs
    - But include such folks in years when it helps testing – i.e., you're including in testing non-benefiting HCEs.

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Non-Excludable Employees

- Consider an employer with three HCEs and nine NHCs
- All covered under employer's PS plan
- Under plan each employee in own class for purposes of PS allocation
  - Employer determines on ee by ee basis who gets PS $$
  - Terms with ≤ 500 hours <u>may not</u> get allocation
  - Goal is to allocate $$ to all actives

Non-Excludable Employees

- Assume three of nine NHCs terminate
  - One of whom worked ≤ 500 hours
- Ignoring terminee rule ratio test fails
  - NHC ratio = 6/**9** = 66.67 percent
  - HCE ratio = 3/3 = 100 percent
  - 66.67 percent/100 percent = 66.67 percent < 70 percent

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Non-Excludable Employees

- But may exclude terminee ≤ 500 hrs from test
- Ratio test passes
  - NHC ratio = 6/**8** = 75 percent
  - HCE ratio = 3/3 = 100 percent
  - 75 percent/100 percent = 75 percent > 70 percent
- Important that under terms of plan terminee could not receive an allocation
  - But was otherwise a participant

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Non-Excludable Employees

- Assume instead that all three NHCs termed with <u>more than</u> 500 hours
- But an HCE also termed but with ≤ 500 hours
- If elect to exclude terms ≤ 500 hours from testing ratio test <u>fails</u>
  - NHC ratio = 6/9 = 66.67 percent
  - HCE ratio = 2/**2** = 100 percent
  - 66.67 percent/100 percent = 66.67 percent < 70 percent

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Non-Excludable Employees

- Here we would <u>not</u> elect to exclude terms ≤ 500 hours from testing
- Ratio test passes
  - NHC ratio = 6/9 = 66.67 percent
  - HCE ratio = 2/**3** = 66.67 percent
  - 66.67 percent/66.67 percent = 100 percent > 70 percent

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Non-Excludable Employees

- A special applies under the regulations for plans that cover otherwise excludable employees
- Such a plan may be bifurcated and tested as two plans
  - One covering otherwise excludable employees
  - One covering <u>not</u> otherwise excludable employees
- Or may be tested as single plan

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Non-Excludable Employees

- In either case need to compare what eligibility can be (i.e., 21/1) and what it is (e.g., three months)
- Where tested as single plan non-excludable employee definition expanded to all who have met more liberal eligibility

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Non-Excludable Employees

- Where tested separately
  - One plan would include in testing those that would be non-excludable if plan had statutory requirements (21/1)
  - Other would include in testing those that did not meet such requirements but did meet lesser requirements (three months)

Don’t Blow Top-Heavy Waiver!

- Maybe I’m the only one that didn’t know this
- IRC 416(g)(4)(H) provides that the term ‘‘top-heavy plan’’ does not include a plan which consists <u>solely of</u>
  – A cash or deferred arrangement which meets the requirements of section 401(k)(12) or 401(k)(13), and
  – Matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met

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Don’t Blow Top-Heavy Waiver!

- So an otherwise top-heavy safe harbor plan that provides no other contributions does not need to provide top-heavy minimums (this much I knew!)
- <u>But</u> what if plan allows for early entry but gives SH only to those that meet 21/1?
- Since early entry folk get no SH, TH exemption blown and top-heavy minimums must be provided (See Revenue Ruling 2004-13)
  - This can be particularly painful if SH match as those not deferring would get no employer dollars if TH exempt

Average Benefits Test

- To satisfy the Average Benefits Test for of 410(b) purposes a Plan must pass both the average benefit percentage test and the nondiscriminatory classification test
  - A plan passes the nondiscriminatory classification test if the plan benefits a classification of employees that is both <u>reasonable</u> and <u>nondiscriminatory</u>

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Average Benefits Test

- A plan satisfies the average benefit percentage test (ABPT) if plan's average benefit percentage at least 70 percent
- Average benefit percentage determined by dividing actual benefit percentage of NHCEs by actual benefit percentage of HCEs
- Actual benefit percentage of NHCEs (HCEs) is average of employee benefit percentages for each non-excludable NHCE (HCE)

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Average Benefits Test

- With certain exceptions all plans of employer aggregated when calculating employee benefit percentages for ABPT
- Elective deferrals and matching contributions under a 401(k) plan <u>are</u> taken into account in determining employee benefit percentages<u> for ABPT</u>
  - Even though otherwise disaggregated for coverage and nondiscrimination testing
  - Same for ESOPs

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Average Benefits Test

- Employee benefit percentages determined on *either* contributions or benefits basis,
  - Consistently for all plans in testing group
- This is same rate that would be determined for purposes of rate group testing but with all plans are aggregated
- For example, if employee benefit percentages are determined on a benefits basis, and there are both DC and DB plans in testing group, an employee's employee benefit percentage is his/her aggregate normal accrual rate but *with* the inclusion of elective deferrals and matching contributions

Average Benefits Test

- Plans with differing plan years
- In general, plans must have the same plan year to be combined for testing
- However, for purposes of the average benefits percentage test, all plans must be aggregated
- Accordingly, the regulations provide that employee benefit percentages in such a case are determined based on all plan years ending with or within the same calendar year

Average Benefits Test

- There is a special rule, for purposes of the average benefits test only, that allows the EBARs to be averaged over the current and prior year or the current and two prior years
  - Assume sole HCE with ABPT EBAR of 10 percent in 2015, 8.5 percent in 2014 and 7 percent in 2013
  - The only NHC has EBAR of 6 percent for each of the 3 years
    - I.e., numerator 6 percent whether or not average used
  - Looking at 2015 ABPT is 6 percent/10 percent = 60 percent and fails
  - Averaging 2014 and 2013 is 6 percent/9.25 percent = 64.6 percent and fails
  - Averaging all 3 years -> 6 percent / 8.5 percent = 70.5 percent and passes

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Average Benefits Test

- A plan passes the first part nondiscriminatory classification test if it covers a classification of employees that is "reasonable and is established under objective business criteria”
  - Examples under regulations are "specified job categories, nature of compensation, geographic location"
  - “An enumeration of employees by name or other specific criteria having substantially the same effect as an enumeration by name is not considered a reasonable classification.”

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Average Benefits Test

- The second piece of the nondiscriminatory classification test requires the plan to have a coverage ratio that is
  - At least as high as the Safe Harbor Percentage, or
  - At least as high as the Un-Safe Harbor Percentage <u>and</u> pass a facts and circumstances test

Average Benefits Test

- Safe harbor percentage is 50 percent, less .75 percent for each whole point by which the "NHCE concentration percentage" exceeds 60 percent
  - ***So safe harbor never greater than 50 percent***
- Unsafe harbor is 40 percent, less .75 percent for each whole point by which the NHCE concentration exceeds 60 percent, but not less than 20 percent
- NHCE concentration percentage = percent of Non-Excludable Employees who are NHCEs

Average Benefits Test

- Let's return to our employer with three HCEs and nine NHCs
- Let's further assume that four of the NHCs were hired after 12/31/2012 and the plan was frozen to new participants as of such date
- So only five of nine NHCs are covered under the plan
- Plans coverage ratio is therefore 55.56 percent
  - Since over 50 percent, we know safe harbor passed

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Average Benefits Test

- All participants receive allocation of nine percent of compensation
- All NHCs under taxable wage base
- All HCEs over $265K
- Let's first look at average benefits percentage test
  - As indicated on next slide ABPT over 70 percent so passes

Average Benefits Test

PERMITTED DISPARITY ON ALLOCATION BASIS

A	Unadjusted allocation rate	9.00%	9.00%
B	Plan Year comp.	265,000	30,000
C	TWB	118,500	118,500
D	Covered comp (lesser B/C)	118,500	30,000
E	PD rate (5.7%)	5.70%	5.70%
F	Max PD (lesser A/E)	5.70%	5.70%
G	Theoretical Disparity Allocation (F*D)	6,755	1,710
H	Imputed PD G/B	2.55%	5.70%
I	Adjusted allocation base (B - (.5*D))	205,750	15,000
J	Max adjusted allocation rate (A*B/I)	11.59%	18.00%
K	Adjusted allocation rate (lesser A+H or J)	11.55%	14.70%
L	Average HCE - > 3/3 all get same	11.55%	
M	Average NHC - 5 of 9 all get same (others zero)		8.17%
	Average benefit percentage M / L		70.71%

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Average Benefits Test

- Recall nondiscriminatory classification requirements. Classification of employees covered must be
  - Reasonable, and
  - Nondiscriminatory
    - Cover safe harbor percent <u>or</u> unsafe harbor and facts/circ
    - Our safe harbor is 39.75 percent
      - NHC concentration = 9/12 = 75 percent (15 more than 60)
      - Safe harbor = 50 percent - (15 * .75) = 39.75 percent
    - With coverage of 55.56 percent we pass here – no F/C requirement.

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Average Benefits Test

- But is our classification reasonable?
- Specifically asked in Q&A 18 of 2015 Gray Book
- "Such a classification is reasonable as long as it is not a substitute for listing by name. Regulation 1.410(b)-4 provides that a reasonable classification is based on objective business criteria … There is nothing to indicate date of hire would <u>not</u> be an "objective" business classification."

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Average Benefits Test

- What if all nine were covered under the plan, but four of the nine terminated (with more than 500 hours) and this is why they did not receive an allocation?
- All of the math is the same
- Only question is whether those employed at end of year is a “reasonable” classification
- IRS has given conflicting answers to this question at ASPPA meetings – I have zero concern –
  - In my opinion it clearly IS a reasonable classification

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Dealing With Failure

- Failsafe language
- OR
- Corrective amendments

Failsafe Language

- Some plans include failsafe language
- Such language prevents plan from failing coverage testing
  - Normally requires passage of 70 percent ratio test
  - Normally results from end of year or hours requirement reducing benefiting group to a level where coverage ratio less than 70 percent

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Failsafe Language

- If plan fails coverage, failsafe language causes a group of employees that otherwise would not have benefited to benefit for the plan year
  - Group of employees added back must be definitely determinable in document

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Failsafe Language

- Norm is in order of termination dates
  - Such that if coverage ratio below 70 percent terminees benefit (last terminee first) until coverage ratio reaches 70 percent
- Note that if such language is in plan there is no discretion as to who to bring in
  - Must follow terms of the plan
  - Often not best (least expensive) result

Failsafe Language

- On the other hand, since there is no amendment bringing the terminees in, their vested status is <u>not</u> relevant
- Whereas vesting <u>is</u> relevant to corrective amendments … which we discuss next

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Corrective Amendments

- Post year-end amendments may be made to "correct" failed 410(b) or 401(a)(4) tests. Such amendments may either –
  - Increase benefits for existing participants; or
  - Create benefits for employees that otherwise did not benefit under plan
- Such amendments must meet each of the following requirements:

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Corrective Amendments

- Benefits may not be reduced
- The amendment must be made by the 15th day of the 10th month after the plan year-end
- The increase in benefits must satisfy 410(b) and 401(a)(4) on a stand-alone basis
  - Automatic if only NHCEs increased/added
- The increase must have substance
  - E.g., cannot increase benefit to non-vested terminated employee

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Corrective Amendments

- Consider the following:
  - Owner and four NHCs
  - NHCE1 - Non-excludable– comp $200K – NHC due to prior year comp; terminated 10/1/14
  - NHC2 - Non-excludable– comp $50K – NHC due to prior year comp ; terminated 9/30/14
  - NHC3 and NHCE4 non-excludable and active

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Corrective Amendments

- Goal to benefit owner and active NHCs
- But assume coverage cannot pass without bringing at least one terminee back in
- Failsafe language normally would require bringing in NHCE1 – with higher comp would likely be more expensive – e.g., if cross testing would need gateway
- If no failsafe corrective amendment could specify NHCE2 brought in instead

Corrective Amendments

- Consider the following:
  - Owner, comp $265K
  - EE1 - Non-excludable – comp $200K – NHC due to prior year comp
    - Or top-paid group election
  - EE2 - Newly hired (excludable) earned $10K
    - Not yet eligible for plan

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Corrective Amendments

- No other employees
- Company maintains PS plan
- Owner looking to maximize benefit
  - i.e., $53K or 20 percent of comp
- Assume ages such that cross testing will not work
- Would like to give EE1 allocation of five percent ($10K)
- As is would need to give EE1 19.17 percent (over $38K)

Corrective Amendments

A	Unadjusted allocation rate	20.00%	19.17%
B	Plan Year comp.	265,000	200,000
C	TWB	118,500	118,500
D	Covered comp (lesser B/C)	118,500	118,500
E	PD rate (5.7%)	5.70%	5.70%
F	Max PD (lesser A/E)	5.70%	5.70%
G	Theoretical Disparity Allocation (F*D)	6,755	6,755
H	Imputed PD G/B	2.55%	3.38%
I	Adjusted allocation base (B - (.5*D))	205,750	140,750
J	Max adjusted allocation rate (A*B/I)	25.76%	27.24%
K	Adjusted allocation rate (lesser A+H or J)	22.55%	22.55%

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Corrective Amendments

- Consider amending plan to lower eligibility and bring in EE2
- Provide EE2 with allocation of 20 percent of comp
- And give EE1 desired five percent
- Total cost now $12K

Corrective Amendments

A	Unadjusted allocation rate	20.00%	5.00%	20.00%
B	Plan Year comp.	265,000	200,000	40,000
C	TWB	118,500	118,500	118,500
D	Covered comp (lesser B/C)	118,500	118,500	40,000
E	PD rate (5.7%)	5.70%	5.70%	5.70%
F	Max PD (lesser A/E)	5.70%	5.00%	5.70%
G	Theoretical Disparity Allocation (F*D)	6,755	5,925	2,280
H	Imputed PD G/B	2.55%	2.96%	5.70%
I	Adjusted allocation base (B - (.5*D))	205,750	140,750	20,000
J	Max adjusted allocation rate (A*B/I)	25.76%	7.10%	40.00%
K	Adjusted allocation rate (lesser A+H or J)	22.55%	7.10%	25.70%
L	Average HCEs	22.55%		
M	Average NHCs			16.40%
	Average benefit percentage M / L			72.74%

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Corrective Amendments

- Things to note from previous example
- Coverage did not fail – 100 percent before amendment
  - But to pass 401(a)(4) would have been costly
  - Bringing in new employee coverage still 100 percent
    - Definition of non-excludable employee broadened
    - But 401(a)(4) passes much less expensively

Corrective Amendments

- Must perform rate group testing
- Single rate group (one HCE)
  - Rate group includes those with benefit of at least 22.55 percent
- One of two NHCs in rate group (EE2 = 25.7 percent)
- Rate group coverage ratio = 50 percent
  - Always enough to pass if ABPT passes
  - I.e., midpoint never greater than 45 percent
  - No need to check gateway as not cross testing

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Corrective Amendments

- Recall earlier discussion of plan covering otherwise excludable employees
  - I.e., eligibility something less than 21/1
- With corrective amendment we have such a case
  - And we're testing as single plan – <u>not</u> bifurcating
- What if EE2 had three months of service and a second new employee (EE3) was hired the same day?

Corrective Amendments

- EE3 would need to be brought into the testing
- Coverage would now be 2/3 / 1/1 = 66.67 percent
  - Would probably fail as under 70 percent and likely not a reasonable classification
- ABPT would also fail as a zero would need to be averaged in
- Would therefore likely need to also cover EE3

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Corrective Amendments

- But if EE3 hired any later than EE2 could avoid by making eligibility with corrective amendment such that EE3 still excludable
- E.g., if EE3 had two months of service and EE2 had three months of service, broaden eligibility to three months

Transition Rule

- Applies where change in related group members occurs due to acquisition or disposition
  - Plan deemed to pass coverage during transition period if satisfied coverage at time of event. Transition period:
    - Year of transaction and following plan year
  - Cannot be substantial change in coverage or benefits during transition period

Combining Plans for Testing

- Plans can be combined to pass coverage testing
  - Not if they must be disaggregated
  - Plans must have same plan year
- Often helpful with controlled groups
- When combining plans must do so for <u>all</u> testing
- Also beware of need to aggregate for TH (e.g., if covers no keys and otherwise THMs not required)

Combining Plans for Testing

- When combining plans the combined plan is considered to be a single plan ("the plan")
- So employee benefiting in any of the combined plans is considered to be benefiting in "the plan"
- Benefits under all plans then added together
  - Either on a benefits basis or a contributions basis
  - I.e., benefits in all plans making up the combined plan must be determined on a consistent basis

Questions?

Making Retirement Plans Work

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