



X-TREME CROSS-TESTING

Presented by:

Charles Lockwood, J.D., LL.M.

www.asc-net.com

clockwood@asc-net.com

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Coverage and Nondiscrimination

- **Limits extent to which plans can be designed in favor of HCEs = must pass both coverage and nondiscrimination tests every plan year**
- **Coverage measures relative coverage of HCEs and NHCEs**
- **Nondiscrimination measures level of benefits provided to HCEs and NHCEs**
 - 401(a)(4) nondiscrimination test = ER contributions
 - ADP test = elective deferrals
 - ACP test = matching contributions / after-tax

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Plan Design Case Study

- **Slip `n Fall Orthopedics would like to establish a 401(k) plan for its employees. Slip `n Fall would like to maximize benefits for its 3 physicians while minimizing the cost for its 10 employees (2 of whom are HCEs). Slip `n Fall does not believe NHCEs will be willing to defer under a 401(k) plan. What plan design would be a good fit for Slip `n Fall?**
 - Safe harbor 401(k) plan
 - New comparability cross-tested plan
 - Cash balance plan

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EE Census

EE	Age	Comp
Dr. Hurtz	55	\$260,000
Dr. Payne	50	\$260,000
Dr. Akey	44	\$260,000
HCE 1	40	\$160,000
HCE 2	30	\$120,000
NHCE 1	55	\$100,000
NHCE 2	50	\$85,000
NHCE 3	35	\$47,000
NHCE 4	35	\$42,000
NHCE 5	32	\$42,000
NHCE 6	38	\$39,000
NHCE 7	27	\$30,000
NHCE 8	24	\$25,000
		\$1,470,000

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Cross-Tested Plan

- **Contributions are allocated to participants based on allocation groups defined in plan**
 - Contribution allocated pro rata to all participants within each allocation group
 - Prototype plans used to have limit on number of allocation groups that could be used
 - Restriction eliminated with PPA
- **Contributions are projected to testing age using interest rate between 7.5% - 8.5%**

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Cross-Tested Plan

- **Projected contributions are valued as an annuity at testing age**
 - Projected benefit is divided by compensation to calculate equivalent benefit accrual rate (EBAR)
- **Plan is tested for nondiscrimination based on EBARs for each participant**

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	Factor	Annuity	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%			
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%			
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%			
HCE 1	40	\$160,000	\$10,000					
HCE 2	30	\$120,000	\$12,000					
NHCE 1	55	\$100,000	\$3,000					
NHCE 2	50	\$85,000	\$0					
NHCE 3	35	\$47,000	\$0					
NHCE 4	35	\$42,000	\$0					
NHCE 5	32	\$42,000	\$0					
NHCE 6	38	\$39,000	\$0					
NHCE 7	27	\$30,000	\$0					
NHCE 8	24	\$25,000	\$0					
Total		\$1,470,000	\$77,500					

Slip 'n Fall makes a \$34,500 contribution for each of the 3 doctors to get them to \$52,000 maximum contribution (after deferrals) consulted or distributed without the express permission of ASPPA



Conversion Factor

- **Factor used to convert contribution to equivalent benefit rate (EBR) at testing age**
- **Conversion factor:**
 - Project contribution to NRA at applicable interest rate (e.g., 8.5%) = Contribution * 1.085^N where N is years to NRA
 - Convert projected benefit to life annuity at age 65 based on applicable interest rate and mortality table (e.g., 8.5% and UP 1984 table) = 7.9486 annuity factor
 - Example = Dr. Akey (age 44) has a conversion factor of 0.697805 (1.085²¹ / 7.9486)

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Testing Age

- **Testing age is usually NRA specified in plan = unless that age is not a "uniform NRA"**
- **What if EE has passed testing age?**
 - TR §1.401(a)(4)-12 requires current age to be testing age if EE has passed NRA
 - TR §1.401(a)(4)-8(b)(1)(ii) provides plan does not fail merely because allocations are made at same rate for EEs who are older than testing age
 - Supports use of factor at NRA for all ages after NRA
- **Can plan use SSRA as testing age?**
 - TR §1.401(a)(4)-12 permits SSRA to be considered a uniform retirement age
 - May wish to add language to plan document



New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	Factor	Annuity	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	0.284451	\$9,814	
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	0.427716	\$14,757	
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	0.697805	\$24,076	
HCE 1	40	\$160,000	\$10,000					
HCE 2	30	\$120,000	\$12,000					
NHCE 1	55	\$100,000	\$3,000					
NHCE 2	50	\$85,000	\$0					
NHCE 3	35	\$47,000	\$0					
NHCE 4	35	\$42,000	\$0					
NHCE 5	32	\$42,000	\$0					
NHCE 6	38	\$39,000	\$0					
NHCE 7	27	\$30,000	\$0					
NHCE 8	24	\$25,000	\$0					
Total		\$1,470,000	\$77,500					

Drs.' contribution is converted to annuity at age 65 by multiplying \$34,500 allocation times conversion factor

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New Comp/SH 401(k) Plan

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Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	0.427716	\$14,757	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	0.697805	\$24,076	9.26%
HCE 1	40	\$160,000	\$10,000					
HCE 2	30	\$120,000	\$12,000					
NHCE 1	55	\$100,000	\$3,000					
NHCE 2	50	\$85,000	\$0					
NHCE 3	35	\$47,000	\$0					
NHCE 4	35	\$42,000	\$0					
NHCE 5	32	\$42,000	\$0					
NHCE 6	38	\$39,000	\$0					
NHCE 7	27	\$30,000	\$0					
NHCE 8	24	\$25,000	\$0					
Total		\$1,470,000	\$77,500					

Drs.' contribution is converted to Equivalent Benefit Rate (EBR) by dividing annuity at age 65 by compensation (\$260,000)

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Minimum Gateway Requirements

- **Gateway test = to use "cross-testing" for discrimination testing, plan must satisfy one of "gateway" tests:**
 - All benefiting NHCEs must receive at least 5% allocation (based on §415(c) compensation) OR
 - Lowest allocation to any NHCE must be at least 1/3 of highest allocation to any HCE (based on any definition of §414(s) compensation)
- **Example. If highest HCE rate is 12%, lowest NHC rate must be 4%. If highest HCE rate is 18%, lowest NHC rate must be 5%.**



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Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	0.427716	\$14,757	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	0.697805	\$24,076	9.26%
HCE 1	40	\$160,000	\$10,000					
HCE 2	30	\$120,000	\$12,000					
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%			
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%			
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%			
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%			
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%			
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%			
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%			
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%			
Total		\$1,470,000	\$77,500					

Slip 'n Fall must make a contribution on behalf of all NHCEs equal to 4.43% of compensation (1/3 of 13.27%)

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Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	0.427716	\$14,757	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	0.697805	\$24,076	9.26%
HCE 1	40	\$160,000	\$10,000					
HCE 2	30	\$120,000	\$12,000					
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	0.284451	\$1,260	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	0.427716	\$1,611	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	1.454124	\$3,028	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	1.454124	\$2,706	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	1.857337	\$3,456	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	1.138446	\$1,967	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	2.792797	\$3,712	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	3.567210	\$3,951	15.80%
Total		\$1,470,000	\$77,500					

EEs' allocations are converted to EBRs by multiplying allocation by conversion factor to get annuity at age 65 and dividing by compensation


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Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	0.284451	\$9,814	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	0.427716	\$14,757	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	0.697805	\$24,076	9.26%
HCE 1	40	\$160,000	\$10,000	\$21,232	13.27%	0.967059	\$20,533	12.83%
HCE 2	30	\$120,000	\$12,000	\$15,924	13.27%	2.186504	\$34,818	29.02%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	0.284451	\$1,260	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	0.427716	\$1,611	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	1.454124	\$3,028	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	1.454124	\$2,706	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	1.857337	\$3,456	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	1.138446	\$1,967	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	2.792797	\$3,712	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	3.567210	\$3,951	15.80%
Total		\$1,470,000	\$77,500	\$158,821				


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Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	0.284451	\$9,814	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	0.427716	\$14,757	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	0.697805	\$24,076	9.26%
HCE 1	40	\$160,000	\$10,000	\$0	0%	0.967059	\$0	0%
HCE 2	30	\$120,000	\$12,000	\$0	0%	2.186504	\$0	0%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	0.284451	\$1,260	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	0.427716	\$1,611	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	1.454124	\$3,028	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	1.454124	\$2,706	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	1.857337	\$3,456	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	1.138446	\$1,967	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	2.792797	\$3,712	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	3.567210	\$3,951	15.80%
Total		\$1,470,000	\$77,500	\$121,665				


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Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	0.284451	\$9,814	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	0.427716	\$14,757	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	0.697805	\$24,076	9.26%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	0.967059	\$6,855	4.28%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	2.186504	\$11,624	9.69%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	0.284451	\$1,260	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	0.427716	\$1,611	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	1.454124	\$3,028	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	1.454124	\$2,706	6.44%
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NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	3.567210	\$3,951	15.80%
Total		\$1,470,000	\$77,500	\$134,069				

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New Comp/SH 401(k) Plan

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HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
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NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	15.80%
Total		\$1,470,000	\$77,500	\$134,069		

Plan must be tested under general nondiscrimination test on the basis of EBRs

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General Nondiscrimination

- **Applies if plan fails to satisfy safe harbor nondiscrimination test**
- **Each HCE rate group must satisfy a minimum coverage test under Code §410(b)**
 - Rate group includes all equal or higher allocation or equivalent benefit rates
- **Rate groups may be expressed as allocation rates or equivalent benefit rates (cross-testing)**
- **Allocation rate = $\frac{\text{allocation}}{414(s) \text{ comp}}$**

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Coverage Tests

- **Ratio test**

$$\frac{\text{NHC benefiting \%}}{\text{HCE benefiting \%}} \geq 70\%$$
- **Average benefits test**
 - Nondiscriminatory classification test
 - Average benefit percentage test (ABPT)

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Nondiscriminatory Classification Test

- **Use same ratio as under ratio test**
- **Must satisfy safe harbor percentage**
 - Safe harbor and unsafe harbor determined based on NHCE concentration % [total NHCEs / total employees]
 - Use mid-point between safe harbor and unsafe harbor percentage from chart
- **Midpoint between safe harbor and unsafe harbor is never above 45%**

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Nondiscriminatory Classification Test

NHCE concent.	SH %	UH %	Midpoint	NHCE concent.	SH %	UH %	Midpoint
0-60	50.00	40.00	45.00	80	35.00	25.00	30.00
61	49.25	39.25	44.25	81	34.25	24.25	29.25
62	48.50	38.50	43.50	82	33.50	23.50	28.50
63	47.75	37.75	42.75	83	32.75	22.75	27.75
64	47.00	37.00	42.00	84	32.00	22.00	27.00
65	46.25	36.25	41.25	85	31.25	21.25	26.25
66	45.50	35.50	40.50	86	30.50	20.00	25.50
67	44.75	34.75	39.75	87	29.75	20.00	24.875
68	44.00	34.00	39.00	88	29.00	20.00	24.50
69	43.25	33.25	38.25	89	28.25	20.00	24.125
70	42.50	32.50	37.50	90	27.50	20.00	23.75
71	41.75	31.75	36.75	91	26.75	20.00	23.375
72	41.00	31.00	36.00	92	26.00	20.00	23.00
73	40.25	30.25	35.25	93	25.25	20.00	22.625
74	39.50	29.50	34.50	94	24.50	20.00	22.25
75	38.75	28.75	33.75	95	23.75	20.00	21.875
76	38.00	28.00	33.00	96	23.00	20.00	21.50
77	37.25	27.25	32.25	97	22.25	20.00	21.125
78	36.50	26.50	31.50	98	21.50	20.00	20.750
79	35.75	25.75	30.75	99	20.75	20.00	20.375

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Average Benefit Percentage Test

- Average benefits provided to NHCEs must be at least 70% of average benefits provided to HCEs
- $$\frac{\text{NHCE avg. benefit percentage}}{\text{HCE avg. benefit percentage}} \geq 70\%$$
- Must include benefits under all plans of the employer = including 401(k)/401(m) plans
- May test on basis of allocations or equivalent benefit rates (EBRs)

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Rate Group Testing

- NHCE concentration % = $8/13 = 61.54\%$

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Nondiscriminatory Classification Test


NHCE concent.	SH %	UH %	Midpoint	NHCE concent.	SH %	UH %	Midpoint
0-60	50.00	40.00	45.00	80	35.00	25.00	30.00
61	49.25	39.25	44.25	81	34.25	24.25	29.25
62	48.50	38.50	43.50	82	33.50	23.50	28.50
63	47.75	37.75	42.75	83	32.75	22.75	27.75
64	47.00	37.00	42.00	84	32.00	22.00	27.00
65	46.25	36.25	41.25	85	31.25	21.25	26.25
66	45.50	35.50	40.50	86	30.50	20.00	25.50
67	44.75	34.75	39.75	87	29.75	20.00	24.875
68	44.00	34.00	39.00	88	29.00	20.00	24.50
69	43.25	33.25	38.25	89	28.25	20.00	24.125
70	42.50	32.50	37.50	90	27.50	20.00	23.75
71	41.75	31.75	36.75	91	26.75	20.00	23.375
72	41.00	31.00	36.00	92	26.00	20.00	23.00
73	40.25	30.25	35.25	93	25.25	20.00	22.625
74	39.50	29.50	34.50	94	24.50	20.00	22.25
75	38.75	28.75	33.75	95	23.75	20.00	21.875
76	38.00	28.00	33.00	96	23.00	20.00	21.50
77	37.25	27.25	32.25	97	22.25	20.00	21.125
78	36.50	26.50	31.50	98	21.50	20.00	20.750
79	35.75	25.75	30.75	99	20.75	20.00	20.375

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Rate Group Testing

- NHCE concentration % = $8/13 = 61.54\%$
- Midpoint % = 44.25%



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HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	15.80%
Total		\$1,470,000	\$77,500	\$134,069		

Plan must be tested under general nondiscrimination test on the basis of EBRs

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Rate Group Testing

- **NHCE concentration % = 8/13 = 61.54%**
- **Midpoint % = 44.25%**
 - HCE 2 = 9.69% rate group – HCE 1 = 4.28% rate group
 - $$\frac{\text{NHCE \%} = 2/8 = 25\%}{\text{HCE \%} = 1/5 = 20\%} = 125\% \qquad \frac{\text{NHCE \%} = 6/8 = 75\%}{\text{HCE \%} = 4/5 = 80\%} = 93.75\%$$
 - Dr. Akey = 9.26% rate group – Dr. Hurtz = 3.78% rate group
 - $$\frac{\text{NHCE \%} = 2/8 = 25\%}{\text{HCE \%} = 2/5 = 40\%} = 62.5\% \qquad \frac{\text{NHCE \%} = 6/8 = 75\%}{\text{HCE \%} = 5/5 = 100\%} = 75\%$$
 - Dr. Payne = 5.68% rate group
 - $$\frac{\text{NHCE \%} = 5/8 = 62.5\%}{\text{HCE \%} = 3/5 = 60\%} = 104.17\%$$

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	15.80%
Total		\$1,470,000	\$77,500	\$134,069		

Plan must be tested under general nondiscrimination test on the basis of EBRs

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR	Adj. EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%	5.69%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%	8.55%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%	13.96%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%	10.33%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%	31.55%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%	2.11%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	15.80%	15.80%
Total		\$1,470,000	\$77,500	\$134,069			

Average Benefits Percentage Test (ABPT) must include deferrals and ER contributions

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Rate Group Testing

- **Average benefit percentage test = average HCE benefits must not be more than 70% of average NHCE benefits**
 - Must include deferrals in average benefits
- **Average benefit percentage test**
 - NHCE ratio = $(2.11\% + 1.90\% + 6.44\% + 6.44\% + 8.23\% + 5.04\% + 12.37\% + 15.80\%) / 8 = 7.29\%$
 - HCE ratio = $(5.69\% + 8.55\% + 13.96\% + 10.33\% + 31.55\%) / 5 = 14.02\%$
 - Average benefit ratio = $7.29\% / 14.02\% = 52\%$

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Correction Options

- **Increase contributions to NHCEs in order to satisfy ABPT**
 - Does plan need to be amended to increase benefits?
 - Depends on plan design = e.g., separate groups
 - If so, can plan be amended after end of plan year?

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§1.401(a)(4)-11(g) Amendment

- **Can amend plan within 9½ months after end of Plan Year to correct violation**
 - Amendment may not reduce benefits under Plan
- **Increase in benefits must satisfy 401(a)(4) independently**
 - Always satisfied if increase is for NHCEs only
- **Amendment must have substance – cannot apply increase to terminated nonvested EEs**
- **Can amend plan to provide additional contribution necessary to pass discrimination**

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Correction Options

- **Increase contributions to NHCEs in order to satisfy ABPT**
 - Does plan need to be amended to increase benefits?
 - Depends on plan design = e.g., separate groups
 - If so, can plan be amended after end of plan year?
 - Can amendment provide for increased benefits to specific employees by name?
 - Could plan be amended to reduce contributions to HCEs?
 - If haven't made contributions = could reduce contributions to satisfy coverage test

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR	Adj. EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%	5.69%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%	8.55%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%	13.96%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%	10.33%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%	31.55%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%	2.11%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	15.80%	15.80%
Total		\$1,470,000	\$77,500	\$134,069			

Average Benefits Percentage Test (ABPT) must include deferrals and ER contributions

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR	Adj. EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%	5.69%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%	8.55%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%	13.96%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%	10.33%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%	31.55%
NHCE 1	55	\$100,000	\$3,000	\$6,000	6.00%	1.71%	2.56%
NHCE 2	50	\$85,000	\$0	\$5,100	6.00%	2.57%	2.57%
NHCE 3	35	\$47,000	\$0	\$2,820	6.00%	8.73%	8.73%
NHCE 4	35	\$42,000	\$0	\$2,520	6.00%	8.73%	8.73%
NHCE 5	32	\$42,000	\$0	\$2,520	6.00%	11.14%	11.14%
NHCE 6	38	\$39,000	\$0	\$2,340	6.00%	6.83%	6.83%
NHCE 7	27	\$30,000	\$0	\$1,800	6.00%	16.76%	16.76%
NHCE 8	24	\$25,000	\$0	\$1,500	6.00%	21.40%	21.40%
Total		\$1,470,000	\$77,500	\$140,504			

Could provide additional contribution to all NHCEs in sufficient amount to satisfy ABPT

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Rate Group Testing

- **Average benefit percentage test = average HCE benefits must not be more than 70% of average NHCE benefits**
 - Must include deferrals in average benefits
- **Average benefit percentage test**
 - NHCE ratio = $(2.56\% + 2.57\% + 8.73\% + 8.73\% + 11.14\% + 6.83\% + 16.76\% + 21.40\%) / 8 = 9.84\%$
 - HCE ratio = $(5.69\% + 8.55\% + 13.96\% + 10.33\% + 31.55\%) / 5 = 14.02\%$
 - Average benefit ratio = $9.84\% / 14.02\% = 70.19\%$

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR	Adj. EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%	5.69%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%	8.55%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%	13.96%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%	10.33%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%	31.55%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%	2.11%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%	12.37%
NHCE 8	24	\$25,000	\$0	\$2,538	10.15%	36.21%	36.21%
Total		\$1,470,000	\$77,500	\$135,166			

Could provide additional benefits only to NHCE8 sufficient to satisfy ABPT

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Rate Group Testing

- **Average benefit percentage test = average HCE benefits must not be more than 70% of average NHCE benefits**
 - Must include deferrals in average benefits
- **Average benefit percentage test**
 - NHCE ratio = $(2.11\% + 1.90\% + 6.44\% + 6.44\% + 8.23\% + 5.04\% + 12.37\% + 36.21\%) / 8 = 9.84\%$
 - HCE ratio = $(5.69\% + 8.55\% + 13.96\% + 10.33\% + 31.55\%) / 5 = 14.02\%$
 - Average benefit ratio = $9.84\% / 14.02\% = 70.18\%$

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR	Adj. EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%	5.69%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%	8.55%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%	13.96%
HCE 1	40	\$160,000	\$0	\$7,088	4.43%	4.28%	4.28%
HCE 2	30	\$120,000	\$0	\$5,316	4.43%	9.69%	9.69%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%	2.11%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	15.80%	15.80%
Total		\$1,470,000	\$55,500	\$134,069			

Can also correct problem by having HCEs stop deferring (or having NHCEs increase deferrals) under plan = would only apply for future years

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Rate Group Testing

- **Average benefit percentage test = average HCE benefits must not be more than 70% of average NHCE benefits**
 - Must include deferrals in average benefits
- **Average benefit percentage test**
 - NHCE ratio = $(2.11\% + 1.90\% + 6.44\% + 6.44\% + 8.23\% + 5.04\% + 12.37\% + 15.80\%) / 8 = 7.29\%$
 - HCE ratio = $(5.69\% + 8.55\% + 13.96\% + 4.28\% + 9.69\%) / 5 = 8.42\%$
 - Average benefit ratio = $7.29\% / 8.42\% = 86.58\%$

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Any Other Options?



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Rate Group Testing

- **NHCE concentration % = 8/13 = 61.54%**
- **Midpoint % = 44.25%**
 - HCE 2 = 9.69% rate group – HCE 1 = 4.28% rate group
 - $\frac{\text{NHCE \%} = 2/8 = 25\%}{\text{HCE \%} = 1/5 = 20\%} = 125\%$
 - $\frac{\text{NHCE \%} = 6/8 = 75\%}{\text{HCE \%} = 4/5 = 80\%} = 93.75\%$
 - Dr. Akey = 9.26% rate group – Dr. Hurtz = 3.78% rate group
 - $\frac{\text{NHCE \%} = 2/8 = 25\%}{\text{HCE \%} = 2/5 = 40\%} = 62.5\%$
 - $\frac{\text{NHCE \%} = 6/8 = 75\%}{\text{HCE \%} = 5/5 = 100\%} = 75\%$
 - Dr. Payne = 5.68% rate group
 - $\frac{\text{NHCE \%} = 5/8 = 62.5\%}{\text{HCE \%} = 3/5 = 60\%} = 104.17\%$

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR	Adj. EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%	5.69%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%	8.55%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%	13.96%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%	10.33%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%	31.55%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%	2.11%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%	6.44%
NHCE 5	32	\$42,000	\$0	\$2,100	4.99%	9.26%	9.26%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%	5.04%
NHCE 7	27	\$30,000	\$0	\$1,329	4.43%	12.37%	12.37%
NHCE 8	24	\$25,000	\$0	\$1,108	4.43%	15.80%	15.80%
Total		\$1,470,000	\$77,500	\$134,069			

Could provide additional contribution to NHCE5 in order to bring NHCE5 into Dr. Akey's rate group

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Rate Group Testing

- **NHCE concentration % = 8/13 = 61.54%**
- **Midpoint % = 44.25%**
 - HCE 2 = 9.69% rate group – HCE 1 = 4.28% rate group
 - $\frac{\text{NHCE \%} = 2/8 = 25\%}{\text{HCE \%} = 1/5 = 20\%} = 125\%$ $\frac{\text{NHCE \%} = 6/8 = 75\%}{\text{HCE \%} = 4/5 = 80\%} = 93.75\%$
 - Dr. Akey = 9.26% rate group – Dr. Hurtz = 3.78% rate group
 - $\frac{\text{NHCE \%} = 3/8 = 25\%}{\text{HCE \%} = 2/5 = 40\%} = 93.75\%$ $\frac{\text{NHCE \%} = 6/8 = 75\%}{\text{HCE \%} = 5/5 = 100\%} = 75\%$
 - Dr. Payne = 5.68% rate group
 - $\frac{\text{NHCE \%} = 5/8 = 62.5\%}{\text{HCE \%} = 3/5 = 60\%} = 104.17\%$

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
Total		\$1,415,000	\$77,500	\$131,632		

What if Slip 'n Fall "lays off" NHCE 7 and 8? How can plan be corrected to fix failed test?

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Testing Alternatives

- **Amend plan to provide additional contribution to NHCs**
 - Amendment not required if everyone in own group
 - Be careful if using separate groups for partnership
 - Not aware of IRS challenging such a plan design
 - May amend after end of plan year under TR 1.401(a)(4)-11(g)
- **Top-paid group test**
- **Imputing permitted disparity**
- **Average compensation**
- **Plan restructuring**

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%
NHCE 1	55	\$100,000	\$3,000	\$6,370	6.37%	1.81%
NHCE 2	50	\$85,000	\$0	\$5,415	6.37%	2.72%
NHCE 3	35	\$47,000	\$0	\$2,994	6.37%	9.26%
NHCE 4	35	\$42,000	\$0	\$2,675	6.37%	9.26%
NHCE 5	32	\$42,000	\$0	\$2,472	6.37%	11.83%
NHCE 6	38	\$39,000	\$0	\$2,484	6.37%	7.25%
Total		\$1,415,000	\$77,500	\$138,314		

What if Slip 'n Fall "lays off" NHCE 7 and 8? How can plan be corrected to fix failed test?

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%
NHCE 4	35	\$42,000	\$0	\$2,675	6.37%	9.26%
NHCE 5	32	\$42,000	\$0	\$2,192	5.22%	9.69%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
Total		\$1,415,000	\$77,500	\$132,777		

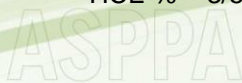
Can plan be amended after end of year to provide only NHCE4 and NHCE5 with additional benefits?

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Rate Group Testing

- **NHCE concentration % = 8/13 = 61.54%**
- **Midpoint % = 44.25%**
 - HCE 2 = 9.69% rate group – HCE 1 = 4.28% rate group
 - $$\frac{\text{NHCE \%} = 1/6 = 16.67\%}{\text{HCE \%} = 1/5 = 20\%} = 125\%$$
 - $$\frac{\text{NHCE \%} = 4/6 = 66.67\%}{\text{HCE \%} = 4/5 = 80\%} = 83.3\%$$
 - Dr. Akey = 9.26% rate group – Dr. Hurtz = 3.78% rate group
 - $$\frac{\text{NHCE \%} = 2/6 = 33.33\%}{\text{HCE \%} = 2/5 = 40\%} = 83.3\%$$
 - $$\frac{\text{NHCE \%} = 4/6 = 66.67\%}{\text{HCE \%} = 5/5 = 100\%} = 66.67\%$$
 - Dr. Payne = 5.68% rate group
 - $$\frac{\text{NHCE \%} = 3/6 = 50\%}{\text{HCE \%} = 3/5 = 60\%} = 83.3\%$$



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Top Paid Group Test

- **EE must have compensation > dollar amount in lookback year and must be in top-paid group**
 - Top 20% of EEs ranked by compensation
 - Election must be made in plan
- **Allows plan to treat HCEs over 20% threshold as NHCEs**
 - Be careful when defining allocation groups to ensure HCEs do not lose benefits
 - Once become NHCE = must receive gateway
- **When must top paid group election be made?**

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New Comp / SH 401(k) Plan

EE	Age	Comp.	Defer	Total ER Contrib	Alloc. %	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
HCE 2	30	\$120,000	\$12,000	\$5,316	4.43%	9.69%
NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%
NHCE 4	35	\$42,000	\$0	\$1,861	4.43%	6.44%
NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
		\$1,415,000	\$77,500	\$131,632		

20% x 11 = 2.2. Therefore, can treat 2 HCE as NHCE

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Imputing Permitted Disparity

- **Takes into account the fact that HCEs do not receive SS on all compensation**
- **By imputing permitted disparity – NHCEs EBRs are increased at greater rate than HCE EBRs**
- **Do not have to be using permitted disparity – can use in rate group test**
- **Cannot use imputed permitted disparity with deferrals, matching contributions or SH contributions**

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Average Compensation

- **Do not have to use only current year compensation**
- **Regulations permit rate groups to be determined on basis of average comp**
 - Can use average compensation over period of at least 3 years
 - Does not have to be defined in plan document
- **Using average comp compared to current comp will improve test results if NHCEs have higher increases (as a percentage of compensation) than HCEs**

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New Comp/SH 401(k) Plan

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%
Dr. Payne	50	\$260,000	\$17,500	\$34,500	13.27%	5.68%
Dr. Akey	44	\$260,000	\$17,500	\$34,500	13.27%	9.26%
HCE 1	40	\$160,000	\$10,000	\$7,088	4.43%	4.28%
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NHCE 1	55	\$100,000	\$3,000	\$4,430	4.43%	1.26%
NHCE 2	50	\$85,000	\$0	\$3,766	4.43%	1.90%
NHCE 3	35	\$47,000	\$0	\$2,082	4.43%	6.44%
NHCE 4	35	\$42,000	\$0	\$2,675	6.37%	9.26%
NHCE 5	32	\$42,000	\$0	\$2,192	5.22%	9.69%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
Total		\$1,415,000	\$77,500	\$132,777		

What if Slip 'n Fall "lays off" NHCE 7 and 8? How can plan be corrected to fix failed test?

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Example

- **Dr. Akey's compensation history**
 - 2014 – 260,000
 - 2013 – 255,000
 - 2012 – 250,000
 - 2011 – 245,000
 - 2010 – 230,000
- **Average compensation = \$248,000**
- **New EBR for Dr. Akey = 9.71% (instead of 9.26%)**

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Example

- **NHCE 5's compensation history**
 - 2014 – \$42,000
 - 2013 – \$38,000
 - 2012 – \$36,000
 - 2011 – \$32,000
 - 2010 – \$30,000
- **Average compensation = \$35,600**
- **New EBR for NHCE 5 = 10.93% (instead of 9.26%)**

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Example

- **Can have significant impact if have NHCE hired during year with low compensation**
- **NHCE 5's compensation history**
 - 2014 – \$42,000
 - 2013 – \$38,000
 - 2012 – \$36,000
 - 2011 – \$32,000
 - 2010 – \$10,000
- **Average compensation = \$31,600**
- **New EBR for NHCE 5 = 12.31% (instead of 9.26%)**

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Restructuring

- **Plans may be “restructured” into component plans for purposes of coverage and nondiscrimination testing**
- **Can be useful in certain circumstances to allow plan to pass without having to provide additional benefits**
 - Can be very helpful where have young HCE or family member of owner
- **Restructuring may not be used to avoid gateway = must provide gateway to NHCEs**

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Restructuring

- **Each component plan must separately satisfy coverage**
- **If component plan satisfies coverage = can be tested separately for nondiscrimination**
- **Plan can be restructured differently each year in any manner**
 - No plan amendment is required = restructuring occurs only for testing purposes
 - Probably will need to satisfy 70% coverage test unless have “reasonable classification”

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Restructuring

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR
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NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
Total		\$1,415,000	\$77,500	\$131,632		

What if Slip 'n Fall "lays off" NHCE 7 and 8? How can plan be corrected to fix failed test?

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Restructuring

- **Divide plan into 2 plans and test separately for coverage and nondiscrimination**
- **Plan #1 = young HCE and 2 older NHCEs**



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Restructuring

EE	Age	Comp.	Deferral	Alloc.	Alloc %	EBR
Dr. Hurtz	55	\$260,000	\$17,500	\$34,500	13.27%	3.78%
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NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
Total		\$1,415,000	\$77,500	\$131,632		

Plan can be restructured into component plans = Plan #1 includes HCE2 and NHCE1 and NHCE2.

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Restructuring

- **Divide plan into 2 plans and test separately for coverage and nondiscrimination**
- **Plan #1 = young HCE and 2 older NHCEs**
 - HCEs = 1/5 = 20%; NHCEs = 2/6 = 33.33%
 - 33.33%/20% = 166.65% = Passes ratio coverage test
 - Since all EEs receive 4.43% allocation = passes uniform nondiscrimination test



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Restructuring

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NHCE 5	32	\$42,000	\$0	\$1,861	4.43%	8.23%
NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
Total		\$1,415,000	\$77,500	\$131,632		

Plan can be restructured into component plans = Plan #2 includes Drs., HCE1 and remaining NHCEs.

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Restructuring

- **Divide plan into 2 plans and test separately for coverage and nondiscrimination**
- **Plan #2 = 3 doctors, HCE 1 and 4 younger NHCEs**
 - HCEs = $4/5 = 80\%$; NHCEs = $4/6 = 66.67\%$
 - $66.67\%/80\% = 83.34\% =$ passes ratio coverage test
 - Plan is cross-tested = will need to increase benefit for NHCE5 to pass reasonable classification test
 - Still have to deal with ABPT = will still need to include EEs in Plan #1 (if plan is subject to ABPT)



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Restructuring

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NHCE 6	38	\$39,000	\$0	\$1,728	4.43%	5.04%
Total		\$1,415,000	\$77,500	\$131,865		

Plan can be restructured into component plans = Plan #2 includes Drs., HCE1 and remaining NHCEs.

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Rate Group Testing

- **NHCE concentration % = 6/11 = 54.55%**
- **Midpoint % = 45%**
 - Dr. Akey = 9.26% rate group – Dr. Payne = 5.68% rate group
 - $$\frac{\text{NHCE \%} = 1/4 = 25\%}{\text{HCE \%} = 1/4 = 25\%} = 100\% \qquad \frac{\text{NHCE \%} = 3/4 = 75\%}{\text{HCE \%} = 2/4 = 50\%} = 150\%$$
 - HCE1 = 4.28% rate group – Dr. Hurtz = 3.78% rate group
 - $$\frac{\text{NHCE \%} = 3/4 = 75\%}{\text{HCE \%} = 3/4 = 75\%} = 100\% \qquad \frac{\text{NHCE \%} = 4/4 = 100\%}{\text{HCE \%} = 4/4 = 100\%} = 100\%$$
- **No need to perform ABPT since all rate groups satisfy ratio test**



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