



# FLEXIBLE SPENDING ACCOUNT (FSA) Non-Discrimination Assessment Instructions

Cafeteria Plan regulations impose taxes and penalties for discriminatory FSAs. To retain the TASC Audit Guarantee for your FSA benefit plan, an annual non-discrimination assessment must be performed.

## Assessment Process

1. Please review these Non-Discrimination Assessment Instructions for step-by-step details on completing your Non-Discrimination Data Worksheet, included separately in your email.
2. The assessment should be completed as soon as possible to allow time to make corrections (if needed) before the plan year ends.
3. Complete the Data Worksheet for your current plan year, following the worksheet instructions steps 1 through 4.
4. Refer to the “Definition of a Highly Compensated Employee (HCE)” and the “Compensation Data” sections below for information on determining your HCEs.
5. **Submit your completed Data Worksheet to TASC within 30 days via a Support Request (sign into your account at [www.tasconline.com](http://www.tasconline.com) and click Contact Us), or submit via:**
  - (Fax) 608-245-3623
  - (Mail) 2302 International Lane, Madison, WI 53704-3140
6. Approximately 30 days after receipt of the Data Worksheet, TASC will notify you of the results of your assessment.

*It is important for each employer to monitor their plan at all times during the plan year for possible discrimination issues and to make any corrections before the plan year ends.*

## Important Notes

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

## Definition of a Highly Compensated Employee (HCE)

- All officers\* of the corporation; and/or
  - Owners of more than 5% of all classes of stock; and/or
  - Employees with earnings exceeding the defined limit:
    - Earnings limits are \$135,000 (2022), \$150,000 (2023), and, if elected by the employer, fall within the top 20% of income (refer to the 20% Top Paid Group instructions below); and/or
  - An employee who is a spouse or a dependent (under Code 152) of an employee meeting any of the above definitions.
- \* *An officer is not defined merely by title. All facts and circumstances, including the individual's authority and the nature of duties, are used to determine officer status. An officer may be an administrative executive or an individual who has the authority of an officer without an officer title. Exclude individuals with the title of an officer without officer authority.*



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## Compensation Data

**Compensation** is the employee's total gross compensation. This includes bonuses, commissions, tips and salary deferrals. In the case of a self-employed individual, compensation is that person's earned income for the year.

**Compensation data** used in the Assessment is from your plan's look-back year and may be based on when the benefit plan year starts. For instance, an off-calendar plan has two choices and a calendar plan always uses the prior calendar year compensation.

- **Calendar Plan Year:** Use the *prior* calendar year compensation data and HCE defined limit (e.g. 2023 assessment year, 2022 compensation data, *2022 defined limit*).
- **Off-Calendar Plan Year:** Use compensation data from either the *prior plan year* or *calendar year*:
  - When using *calendar year compensation*, the defined limit from the assessment year applies (e.g. 2023 assessment year, 2022 compensation, *2023 defined limit*).
  - When using *prior plan year compensation*, the defined limit from the prior calendar year applies (e.g. 2023 assessment year, 2022 plan year compensation, *2022 defined limit*).

## 20% Top Paid Group for HCE Determination

If having difficulty passing the non-discrimination assessment, employers may find it advantageous to use the "20% Top Paid Group" HCE determination as an alternative method for reporting who is a highly-compensated employee (HCE). Whichever method an employer uses, the same HCE determination method must be used for all benefit plans (retirement and non-retirement) with respect to all plan years beginning in the same calendar year. Review the [20% Top Paid Group Instructions](#) for details on this HCE determination method.

## Assessment Worksheet Instructions

Enter the employer name, the 12-digit Client ID (if known), and the plan year start and end dates. If there are related employers, combine all information on one worksheet, indicating each employer name and ID.

Report all employer and employee contributions made to group sponsored benefits under your Cafeteria Plan. The benefits to include are **available for employees to contribute to pretax** and are indicated in all or a combination of (1) your Cafeteria Plan Document, (2) in the plan's enrollment materials, and/or (3) in the Summary Plan Description (SPD). The employer pretax group-sponsored benefits to report **may** include:

- Group health insurance premiums
- Dental or Vision insurance premiums
- Supplemental insurance premiums (e.g. voluntary indemnity plans)
- Disability insurance premiums
- Group term life insurance premiums
- Adoption assistance benefits
- Health Savings Account (HSA) contributions
- Paid Time Off/Vacation buying or selling benefits

### Do NOT report:

- Benefits administered in your online TASC account, such as a Healthcare FSA or Dependent Care FSA. TASC has this information and will include these totals in your assessment.
- Transit or parking benefits as these are excluded from a Cafeteria Plan.
- 401(k) or other retirement benefits



# FLEXIBLE SPENDING ACCOUNT (FSA) Non-Discrimination Assessment Instructions

## Worksheet Step 1: Highly Compensated Employees (HCEs)

- Identify your highly compensated individuals (who participate in any pretax benefit offered under your Cafeteria Plan). Attach additional sheets if necessary. If there are no HCEs, write “none”.
- Enter the annualized amount the company contributes to each HCE’s group sponsored premiums offered pretax under the Cafeteria Plan. (If zero, enter 0.00.)
- Enter the amount each HCE pays annually for pretax group sponsored premiums. (If zero, enter 0.00.)
- Enter the amount each HCE contributes annually to a pretax Health Savings Account (HSA) under the Cafeteria Plan.
- Enter the annualized amount the company contributes to each HCE’s pretax HSA.
- Enter the total combined dollar amount (from all boxes) in the HCE subtotal under Step 1.

## Worksheet Step 2: Non-Highly Compensated Employees (NHCEs)

- Enter the annualized amount the company contributes to all other employee’s (non-highly compensated employees) group sponsored premiums offered pretax under the Cafeteria Plan. (If zero, enter 0.00.)
- For all NHCEs, enter the combined annualized amount of their portion of pretax group sponsored premiums offered under the Cafeteria Plan.
- Enter the amount NHCEs contribute annually to a pretax Health Savings Account (HSA) under the Cafeteria Plan.
- Enter the amount the company contributes annually to the HSA under the Cafeteria Plan for NHCEs. (If zero, enter 0.00.)
- Enter the total combined dollar amount from all boxes for the NHCE subtotal under Step 2.

## Worksheet Step 3: Contributions for Other Qualified Pretax Benefits

- **Benefit Type column:**
  - If applicable, enter other pretax contributions and premiums for qualified benefits offered under a Section 125 plan that are not reported above and not included in your online TASC account.
  - *Do not include 401(k), other retirement, transit or parking benefits.*
- **For each Benefit Type:**
  - Enter the contribution amounts (employer and employee) for your NHCEs.
  - Enter the contribution amounts (employer and employee) for your HCEs.
  - **NHCE Subtotal:** Enter the combined Employer and Employee NHCE contribution amount.
  - **HCE Subtotal:** Enter the total combined Employer and Employee HCE contribution amount.

## Worksheet Step 4: Carrier and Coverage Data (optional)

With TASC’s continuing efforts to be a voice for employers and employees in healthcare reform, TASC is requesting information on your current insurance coverage. While this data is not required to complete the non-discrimination assessment, please enter this information to help us continue with these efforts. Your information will not be shared with any outside sources.