



## Covering Coverage: You Need to Know This Stuff!



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### YOUR CO-HOSTS



**JOANNE PECINA**



**MAUREEN PESEK**



**TIM MCCUTCHEON**




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### DURING THE WEBINAR

- All attendees' lines are muted.
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- Do not use the chat icon.
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- Please review your registration before submitting to make sure
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- You must access the live portion of the webcast for the requisite time to get CE credit. Watching a recording or listening in is not sufficient. The time you are logged in is recorded automatically.
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- Please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
- At the conclusion of the webinar, you will be presented with a short google forms survey. Please let us know how we are doing. Completion of the survey is not a requirement for CE credit but we very much appreciate your feedback!
- Slides and recordings will be available on ERISApedia.com webcast tab.



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## YOUR PRESENTERS TODAY



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Derrin\*



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## WHAT WE'LL COVER

- Plans
- Excludable employees; dual eligibility
- Who's really benefiting?
- Alternative coverage tests
- Plan aggregation and disaggregation
- Otherwise excludable employees
- Correcting failed coverage




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## COVERAGE

All qualified plans must satisfy coverage requirements of 410(b) except:

- A government plan
- A nonelecting church plan
- A plan with no employer contributions since ERISA
- A fraternal lodge

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## PURPOSE OF COVERAGE AND NONDISCRIMINATION TESTS

### Coverage

Make sure enough "little elephants" can get to the watering hole

### Nondiscrimination

Make sure that once the little elephants get to the watering hole, they get a fair share of the water



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## WHAT'S A PLAN?

### §414(l) – The starting point

A plan is a pool of assets which are available on an ongoing to pay benefits to participants and their beneficiaries

Could be governed by more than one document

Could have more than one benefit structure

Typical case: one document = one plan



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## DISAGGREGATION POPULATIONS

Separate one group of employees from another for testing purposes, treating each group as a separate plan

Union/nonunion (separate unions)

QSLOB

Separate employers (not under common control/ASG)



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## DISAGGREGATION SEPARATING PLANS

You must "pull out" and test separately the following benefits:

- 401(k) elective deferrals
- 401(m) matching and after-tax employee contributions
- ESOP/NON-ESOP



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## 3 PLANS BY CONTRIBUTION TYPE

401(k) Plan	401(m) Plan	401(a)(4) Plan
Elective Deferrals	Matching contributions	Profit sharing
Roth elective deferrals	After-tax contributions	Top-heavy
	Forfeitures – match	Forfeitures – nonelective
	SH Match	SH Nonelective
	QMACs	Minimum gateway
		QNEC used in ADP/ACP
		Prevailing wage



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## EXCLUDABLE EMPLOYEES

An employee excluded in performing the coverage test

Whether or not the employee is excluded from participating in the plan

Employee is excluded from both sides of testing fractions



Adriana\*

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## WHO'S AN EMPLOYEE?

Common law employee

Employee of controlled group, common control, or ASG member

Leased employee

Self-employed individual

Full-time life insurance salesperson



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## TYPES OF STATUTORY EXCLUDABLE EMPLOYEES

### AGE AND SERVICE

An employee is excludable based on a plan's minimum age and service requirements until the first entry date after the employee satisfies those requirements

If a plan has more than 1 set of eligibility requirements, only employees who fail to satisfy all sets are excludable

### NONRESIDENT ALIENS

Three requirements:

1. Alien (not US citizen)
2. Nonresident (doesn't have green card or substantial US presence)
3. Doesn't have US source income

### CERTAIN AIRLINE PILOTS AND NONPROFIT EMPLOYEES

### TERMINATED EMPLOYEES

All employees are excludable who satisfy all these conditions:

1. The employee had entered the plan
2. The employee terminated before the last day
3. The employee had less than 501 HOS
4. The plan has a HOS and/or last day requirement to accrue a benefit
5. The employee didn't benefit from the plan because the employee didn't satisfy that condition

### UNION EMPLOYEES

Workers covered by a collective bargaining agreement if retirement benefits were the subject of good faith bargaining

If more than 2% of the employees covered by the agreement are professionals, no union exclusion



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## AGE AND SERVICE REQUIREMENTS

An employee is excludable based on a plan's minimum age and service requirements until the first entry date after the employee satisfies those requirements

If a plan has more than 1 set of eligibility requirements, only employees who fail to satisfy all sets are excludable



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### AGE AND SERVICE EXAMPLE

Employees don't enter the Old Dogs Clothing Profit Sharing Plan until the January 1 or July 1 after they attain age 21

Daisy turns 21 on 8/12/23

Daisy is an excludable employee until January 1, 2024



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### DUAL ELIGIBILITY CONDITIONS

Grandfather's Clocks sets up a pension plan 2/1/23

- All employees on 2/1/23 enter immediately
- Employees hired thereafter enter after 1 YOS

In effect, no service is required of employees hired on or before 2/1/23

So, nobody is excludable for 2023 on account of service



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### NONRESIDENT ALIENS

Three requirements:

- Alien (not US citizen)
- Nonresident (doesn't have green card or substantial US presence)
- Doesn't have US source income



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## UNION EMPLOYEES

Workers covered by a collective bargaining agreement if retirement benefits were the subject of good faith bargaining  
If more than 2% of the employees covered by the agreement are professionals, no union exclusion



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## TERMINATED EMPLOYEES

All employees are excludable who satisfy all these conditions:

1. The employee had entered the plan
2. The employee terminated before the last day
3. The employee had less than 501 HOS
4. The plan has a HOS and/or last day requirement to accrue a benefit
5. The employee didn't benefit from the plan because the employee didn't satisfy that condition

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## EXCLUDABLE EMPLOYEES - EXAMPLE

### Fluffy Inc. Profit Sharing Plan

#### Eligibility Requirements

One year of service

Dual entry date (1/1 and 7/1)

#### Excluded Employees

Boise office

#### Allocation conditions

1,000 HOS

Employed on last day of year

#### Top-heavy plan

Non-keys employed on last day get 3% TH

### ADAM

Adam started work in 2023 and hasn't satisfied the eligibility requirements

Excludable: Didn't satisfy minimum age and service requirements

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**TERMINATED EMPLOYEES - EXAMPLE**

Fluffy Inc. Profit Sharing Plan

**Eligibility Requirements**  
One year of service  
Dual entry date (1/1 and 7/1)



**Excluded Employees**  
Boise office

**Allocation conditions**  
1,000 HOS  
Employed on last day of year

**Top-heavy plan**  
Non-keys employed on last day get 3% TH

**BETTY**  
Betty has four years of service in the Boise office (and has never entered the plan)  
She terminated employment in January 2023, with only 100 hours of service.  
**NOT Excludable: didn't meet all 5 criteria**

1. The employee had entered the plan
2. The employee terminated before the last day
3. The employee had less than 501 HOS
4. The plan has a HOS and/or last day requirement to accrue a benefit
5. The employee didn't benefit from the plan because the employee didn't satisfy that condition

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**TERMINATED EMPLOYEES - EXAMPLE**

Fluffy Inc. Profit Sharing Plan

**Eligibility Requirements**  
One year of service  
Dual entry date (1/1 and 7/1)



**Excluded Employees**  
Boise office

**Allocation conditions**  
1,000 HOS  
Employed on last day of year

**Top-heavy plan**  
Non-keys employed on last day get 3% TH

**CHARLIE**  
Charlie entered the plan in 2022 and terminated employment in July 2023 with more than 1,000 hours of service  
**NOT Excludable: didn't meet all 5 criteria**

1. The employee had entered the plan
2. The employee terminated before the last day
3. The employee had less than 501 HOS
4. The plan has a HOS and/or last day requirement to accrue a benefit
5. The employee didn't benefit from the plan because the employee didn't satisfy that condition

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**TERMINATED EMPLOYEES - EXAMPLE**

Fluffy Inc. Profit Sharing Plan

**Eligibility Requirements**  
One year of service  
Dual entry date (1/1 and 7/1)



**Excluded Employees**  
Boise office

**Allocation conditions**  
1,000 HOS  
Employed on last day of year

**Top-heavy plan**  
Non-keys employed on last day get 3% TH

**DEBORAH**  
Deborah entered the plan in 2019. She had only 400 HOS in 2023, even though she was an employee all year  
She will receive a top-heavy minimum contribution  
**NOT Excludable: didn't meet all 5 criteria**

1. The employee had entered the plan
2. The employee terminated before the last day
3. The employee had less than 501 HOS
4. The plan has a HOS and/or last day requirement to accrue a benefit
5. The employee didn't benefit from the plan because the employee didn't satisfy that condition

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**TERMINATED EMPLOYEES - EXAMPLE**

Fluffy Inc. Profit Sharing Plan

**Eligibility Requirements**  
 One year of service  
 Dual entry date (1/1 and 7/1)



**Excluded Employees**  
 Boise office

**Allocation conditions**  
 1,000 HOS  
 Employed on last day of year

**Top-heavy plan**  
 Non-keys employed on last day get 3% TH

**EVAN**  
 Evan entered the plan in 2019 and terminated employment in April 2023 with exactly 500 hours of service  
Excludable: met all 5 criteria

1. The employee had entered the plan
2. The employee terminated before the last day
3. The employee had less than 501 HOS
4. The plan has a HOS and/or last day requirement to accrue a benefit
5. The employee didn't benefit from the plan because the employee didn't satisfy that condition

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**BENEFITING**

You benefit under a defined contribution plan for a year if you receive an allocation of employer contribution or forfeitures for the year  
 "You get a buck"

You benefit under a defined benefit plan for a year if you accrue a benefit under the plan for the year



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**BENEFITING - 401(k) PLANS**

You benefit under a 401(k) plan if you are eligible to defer, whether you defer or not

You benefit under 401(m) if:

- You would receive a matching contribution if you deferred, or
- You are eligible to make an after-tax employee contribution



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### BENEFITING EXAMPLE

Frank is eligible to participate in his employer's 401(k) plan

Plan provides 100% match for all participants

Frank defers nothing

Is Frank benefiting from:

The 401(k) portion of the plan? **Yes**

The 401(m) portion of the plan? **Yes**

Suppose the plan requires 1,000 HOS for match and Frank has 900 HOS.

Frank is not benefiting from the 401(m) portion



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### COVERAGE TESTING

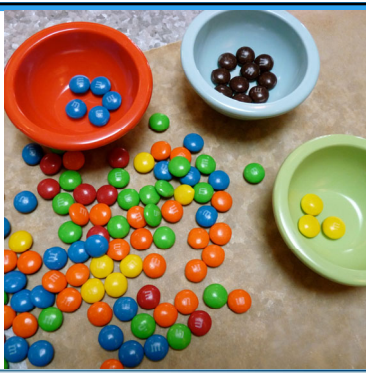
Two tests:

Ratio Percentage Test

Average benefit test

Only have to pass one test

Can change from year to year



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### COVERAGE FRACTION

$$\text{NHCE Ratio} = \frac{\text{Benefiting Includable NHCEs}}{\text{All Includable NHCEs}}$$

$$\text{HCE Ratio} = \frac{\text{Benefiting Includable HCEs}}{\text{All Includable HCEs}}$$

$$\text{Coverage Fraction} = \frac{\text{NHCE Ratio}}{\text{HCE Ratio}}$$

Round the nearest hundredth of a percentage point (.01%)



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### RATIO PERCENTAGE TEST

If coverage ratio  $\geq 70\%$ , YOU PASS!

If NHCE ratio  $\geq 70\%$ , YOU PASS!



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### AUTOMATIC PASS

Employer has no includible NHCES at any time during the year

Plan benefits no HCES at any time during the year

Plan benefits solely union employees

Merger/acquisition free pass (§410(b)(6)(c))

See Getting Together and Getting It Right: Testing Related Employer Plans for related employer examples



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### AVERAGE BENEFIT TEST IN COVERAGE

#### 1. Nondiscriminatory Classification Test

- a) Reasonable, objective criteria
- b) Numerical – either:
  - i. Coverage  $\geq$  Safe harbor %, or
  - ii. Both coverage  $\geq$  Unsafe harbor %, and
    - A. Coverage Ratio  $\geq$  Unsafe harbor %, and
    - B. Plan passes facts and circumstances

#### 2. Average Benefit Percentage Test —

$$\frac{\text{NHCE average benefit \%}}{\text{HCE average benefit \%}} \geq 70\%$$

Average benefit percentage test considers all benefits from all plans ER maintains



Derrin\*



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## REASONABLE OBJECTIVE CLASSIFICATION

Based on all the facts and circumstances, the classification is:

Reasonable and

Established under objective business criteria

Identify the category of employees who benefit under the plan

Reasonable classifications include:

Specified job categories,

Nature of compensation (i.e., salaried or hourly),

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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## SAFE AND UNSAFE HARBORS

NHCE concentration percentage =  $\frac{\text{Includable NHCEs}}{\text{All Includable employees}}$

Round concentration percentage down to nearest whole %

Example: 4 NHCEs; 2 HCEs =  $4/6 = 66\%$

Over 50% = Pass

Under 20% = Fail

Concentration Percentage	Safe Harbor	Unsafe Harbor
0 - 60%	50.00%	40.00%
62%	48.50%	38.50%
66%	45.50%	35.50%
70%	42.50%	32.50%
75%	38.75%	28.75%
80%	35.00%	25.00%
83%	32.75%	22.75%
90%	27.50%	20.00%
99%	20.75%	20.00%



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## NUMERICAL TEST EXAMPLE

Employer has 100 includable NHCEs, 40 of whom benefit, and 10 includable HCEs, 9 of whom benefit

Coverage Fraction =  $40\%/90\% = 44.44\%$

Concentration % =  $100/110 = 90\%$

Safe Harbor % = 27.5%

Since Coverage Fraction  $\geq$  Safe Harbor %, plan passes numerical test

Concentration Percentage	Safe Harbor	Unsafe Harbor
90%	27.50%	20.00%



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## FACTS AND CIRCUMSTANCES

If the coverage ratio is between safe and unsafe harbors, then facts and circumstances must be on your side

- The underlying business reason for the classification
- The percentage of the employer's employees benefiting under the plan
- The number of employees benefiting under the plan in each salary range
- How close the coverage fraction is to the safe Harbor
- Average benefit percentage

Suppose in prior example coverage fraction = 25%

We have to pass facts and circumstances. Yuck!

Concentration Percentage	Safe Harbor	Unsafe Harbor
90%	27.50%	20.00%



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## AVERAGE BENEFIT PERCENTAGE TEST

NHCE average benefit percentage must be at least 70% of HCE average benefit percentage

An employee's benefit percentage is the sum of employer contributions, deferrals, matching contributions, and forfeitures, divided by compensation; exclude after-tax employee contributions and earnings

Include all plans employer sponsors. However, the following are still disaggregated:

- Union and nonunion
- QSLOBs
- Employers in multiple employer plan

Include all nonexcludable employees; if they don't benefit, add them as a 0



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## NEXTGEN - EXAMPLE

### NextGen MP Plan

Eligibility – 1 YOS  
10% contribution for participants employed on last day with 1,000 HOS

3% top-heavy minimum to other participants employed on last day

1 HCE

Jean-Luc, gets 10%

6 NHCEs:

Bill and Beverly get 10%

Guinan gets 3%

Wesley and Tasha left with > 500 hours, got 0%

Reggie never had YOS (excludable)

NHCE ratio =  $3/5 = 60\%$

HCE ratio =  $1/1 = 100\%$

Coverage ratio = 60%

Plan fails ratio percentage test

Concentration percentage =  $5/6 = 83\%$

Safe harbor = 32.75%

Unsafe harbor = 22.75%

Plan passes the numeric nondiscrim  $60\% > 32.75\%$



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### NEXTGEN AB%T

- ✓ Reasonable objective class
- ✓ Numeric nondiscrim 60% > 32.75%
- X Average Benefit Percentage Test
  - HCE gets 10%
  - 5 NHCEs get 23%; average = 4.6%
  - Average Benefit Percentage = 4.6%
- PLAN FAILS

Employee	Gets
Jean-Luc	10%
Bill	10%
Beverly	10%
Guinan	3%
Wesley	0%
Tasha	0%



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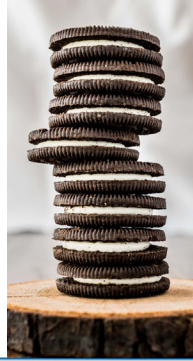
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### OTHERWISE EXCLUDABLE PERMISSIVE AGGREGATION



Adriana\*



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### OTHERWISE EXCLUDABLE EMPLOYEE RULE

A 401(k) plan allows employees to defer beginning on the first day of the quarter following date of hire

Employer can separate the plan into two plans for coverage and nondiscrimination purposes

- Those who satisfy 1 YOS/age 21, maximum entry date are in one plan
- All other employees who have entered the plan are in the second plan
- Employees who haven't entered are excludable



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### OTHERWISE EXCLUDABLE EXAMPLE

Profit sharing plan excludes shipping department but otherwise allows immediate entry

No HCEs in shipping

	< 1 YOS	≥ 1 YOS	Total
HCE (benefiting)	0	4	4
Other NHCE (benefiting)	1	8	9
Shipping (not benefiting)	4	2	6
Coverage Ratio	Pass	80%	60%



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### PERMISSIVE AGGREGATION

An employer can aggregate (treat as a single plan) two plans for coverage so long as:

The plans have the same plan year

The plans pass nondiscrimination on an aggregated basis

SH and NonSH plans can't be aggregated

The plans aren't disaggregated under earlier rules (other than QSLOB)

Be wary of the definition of HCE. To use top-paid group, all plans must elect TPG and TPG is determined across ALL related employers/employees. Otherwise, default to the regular HCE definition.



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### CHOOSE YOUR PARTNER

A given plan can be aggregated only once

Example: company has three plans, A, B, C

You can't aggregate AB and AC

Testing possibilities:

ABC

AB C

AC B

BC A

A B C



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### PERMISSIVE AGGREGATION EXAMPLE

We, Inc. has two divisions, Me and Thee  
Me Plan and Thee Plan are calendar year PS plans  
Coverage is shown at the right

The Me Plan fails coverage on its own

Aggregate Me and Thee and the Me Plan passes

But, you must test Me and Thee as a single plan for nondiscrimination

	Me	Thee	We
NHCE	2	18	20
HCEs	2	1	3
NHCE Ratio	10%	90%	100%
HCE Ratio	67%	33%	100%
Coverage	15%	270%	100%
Concentration %			90%
Unsafe Harbor			20%



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### APPLY ALL RULES AND TESTS TO "PLAN" AFTER AGGREGATION/DISAGGREGATION

Income Inequality Shipping has Plan H for hourly workers and Plan S for salaried employees

H requires 1 YOS to enter

S allows immediate entry

S will not pass coverage unless Income Inequality Shipping permissively aggregates it with H

Treating the two as one plan, there are dual eligibility requirements

No employees are excludable from coverage testing on account of service



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### CORRECTING FAILED COVERAGE



Derrin®

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## THE PRICE OF FAILURE

Plan disqualified  
Stays disqualified until corrected  
Penalty: entire HCE vested accounts included in their income



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## USE WHAT YOU HAVE – COVERAGE FAIL-SAFE

If the plan fails the ratio percentage test for 401(m) match or 401(a) employer contributions after applying the OEE rules, look to the plan document

The plan document may include a fail-safe or suspension provision that defines how to correct the failed coverage test

If you selected the coverage fail-safe in a pre-approved plan, you are forced to pass the ratio percentage test

No ABT unless you won't pass ratio % after you bring in employees that don't satisfy allocation conditions

**Suspension.** The suspension of allocation conditions of Section 3.06(f) (select one of (i), (ii), or (iii)):

(i) **1 | Suspension applies.**

For 401(k) plans, applies as follows (select one of (1), (2), or (3)):

(1) **1 | Both.** Applies both to Nondefective Contributions and to Matching Contributions.

(2) **1 | Nondefective.** Applies only to Nondefective Contributions.

(3) **1 | Match.** Applies only to Matching Contributions.

(ii) **1 | Suspension does not apply.**

(2) **Methodology.** If this Section 3.06(f) applies for a Plan Year, the Plan Administrator, in the manner described herein, will suspend the allocation conditions for the NHCEs who are included in the coverage test and who are Participants in the Plan (or component part of the Plan) but who are not benefiting thereunder (within the meaning of Treas. Reg. § 1.410(b)-3), such that enough additional NHCEs are benefiting under the Plan (or component part of the Plan) to pass coverage under the ratio percentage test. The ordering of suspension of allocation conditions is in the following priority tier and if more than one NHCE in any priority tier satisfies the conditions for suspension (that all are not needed to benefit to pass coverage), the Plan Administrator will apply the suspension beginning first with the NHCE(s) in the suspension tier with the lowest Compensation during the Plan Year.

(a) **Last day.** Those NHCE(s) employed by the Employer on the last day of the Plan Year, without regard to the number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(f)(2)(b).

(b) **Latest Separation.** Those NHCE(s) who have the latest Separation from Service date during the Plan Year, without regard to the number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(f)(2)(c).

(c) **Most Hours of Service (more than 500).** Those NHCE(s) with the greatest number of Hours of Service during the Plan Year but who have more than 500 Hours of Service.

Get Answers. Win Clients.

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## FAIL-SAFE EXAMPLE

Eligibility – 1 YOS

New comparability profit sharing contribution for participants employed on last day with 1,000 HOS

Plan fails coverage as follows. The plan has a fail-safe provision - 2 NHCEs need to benefit to pass the ratio percentage test

	Benefiting	Total Nonexcludable
HCE	4	4
NHCE	5	10
Coverage Ratio	50%	

Which employees based on the prior definition should benefit?

Last day is the first tier under the document. Bring in Jake and Odo - employed on the last day and have the lowest compensation.

Excluded Employees	Compensation	Hours
<b>1 NHCE participant who terminated before last day of PY</b>		
Bashir (DOT 12/01/2022)	100,000	800
<b>3 NHCE participants employed last day of PY but who completed less than 1,000 HOS (Nonexcludable)</b>		
Jake	20,000	950
Quark	60,000	400
Odo	50,000	850

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## USE WHAT YOU HAVE – ADDITIONAL ALLOCATIONS

Plan does not have the coverage fail-safe for 401(m) or 401(a)(4) employer contributions and does not pass AB%T

Allocate additional contributions pursuant to the plan document to NHCEs to increase the AB%T

The contribution can be subject to a vesting schedule (does not have to be a QNEC)

Any money you put in to help pass coverage will help you pass nondiscrimination



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## NEXTGEN AB%T

Take our NEXTGEN example

- ✓ Reasonable objective class
- ✓ Numeric nondiscrim 60% > 32.75%

X Average Benefit Percentage Test

HCE gets 10%

5 NHCEs get 23%; average = 4.6%

Average Benefit Percentage = 46%

Plan fails ABT Test and Ratio % - Fails Coverage

Increase Guinan's contribution to 15%. 5 NHCEs get 35%; average = 7%. AB%T = 70%

Employee	HCE NHCE	Gets
Jean-Luc	HCE	10%
Bill	NHCE	10%
Beverly	NHCE	10%
Guinan	NHCE	3%
Wesley	NHCE	0%
Tasha	NHCE	0%



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## CORRECTIVE 11(g) AMENDMENT 1.401(a)(4)-11(g)

If all else fails, you are permitted to correct a coverage failure by adopting a retroactive amendment to increase benefits. The amendment must meet the following criteria:

1. Must be adopted no later than the 15th day of the 10th month after the close of the plan year. October 15<sup>th</sup> for calendar year plans.
2. May increase accruals or allocations to benefiting employees or grant accruals or allocations to employees who did not benefit under the plan. Must be a nondiscriminatory group under 401(a)(4)
3. You cannot take away money!
4. Must increase benefits for the entire prior plan year. For a calendar year plan, effective 01/01.
5. The amendment must have substance. The employees must actually receive a benefit.

Providing an additional allocation to nonvested terminated employees would not provide a real benefit

\*You can also use an 11(g) amendment for nondiscrimination and minimum participation.



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### 11(g) 401(k) and 401(m) details

#### 401(k) Coverage Failure

Can only bring in nonexcludable employees who were not eligible employees. You can pick and choose which nonexcludable employees you bring in.

$QNEC = \text{full plan year compensation} \times \text{NHCE ADP}$

Note, this is more than a corrective 50% QNEC for a missed deferral opportunity ("MDO"). You can only use the MDO QNEC if the employees were eligible and improperly excluded

#### 401(m)

Nonexcludable employees who were not eligible employees

$QNEC = \text{full plan year compensation} \times \text{NHCE ADP}$

Treas. Reg. does not require lost earnings.



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### 11(g) EXAMPLE

We, Inc. has two divisions, Me and Thee.

Me Plan is a 401(k) Plan that excludes Thee Division

The Me Plan fails coverage for 401(k) and 401(m) because of failed AB%T

Need to bring in 5 nonexcludable Thee NHCEs to pass

Me Plan NHCE ADP for 2022 was 2%

Me Plan NHCE ACP for 2022 was 1%

Ex. John is a Thee nonexcludable employee. His compensation for the affected plan year was \$50,000. He should receive a QNEC of \$1,500 = \$1,000 (2% ADP) + \$500 (1% ADP).

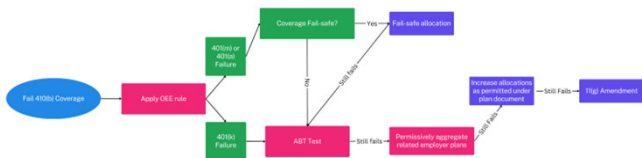
	Me Benefiting	Thee Not Benefiting	Ratio
NHCE	6	14	30%
HCEs	3	1	75%
Coverage		40%	



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### COVERAGE TESTING FLOW CHART WHAT TO DO WHEN PLAN FAILS RATIO PERCENTAGE



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### FOR FURTHER STUDY...

Practice examples follow main program slides

Download from [ERISApedia.com](https://ERISApedia.com) WEBCAST tab

It shows a company with two divisions in different cities with different plans

You will be asked to determine, for each plan, who is excludable, nonexcludable and benefiting

Then you will be asked to determine the coverage fractions for each plan, and if necessary the average benefit test

Answers are in the back

Good luck

PS: The analysis would be exactly the same if we were dealing with a controlled group with separate plans



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### A FEW REMINDERS

- ASPPA/NIPA and ERPA certificates will be emailed within a day or two.
- Go to [ERISApedia.com](https://ERISApedia.com) WEBCAST tab to retrieve previous certificates.
- After the webcast you will be presented with a short google forms survey. Please let us know how we are doing.
- Joanne Pecina will demonstrate how to find more information on today's topic from the [ERISApedia.com](https://ERISApedia.com) resources



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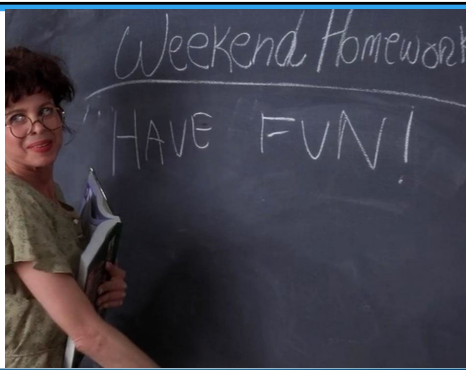
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### ADDITIONAL EXAMPLES



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DETAILED COVERAGE EXAMPLES	
<b>JACKSONVILLE PLAN</b>	<b>DENVER PLAN</b>
Plans Sponsor: X, Inc.	Plan Sponsor: X, Inc.
Excluded Employees	Excluded Employees
Denver Division	Union, Commissioned, Jacksonville Division
Allocation conditions	Allocation
1,000 HOS	1,000 HOS
Employed on last day of year	Employed on last day of year
Employer Contribution	Employer Contribution
4% of compensation	10% of compensation



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INSTRUCTIONS; ANSWERS ARE AT THE BACK
On the next two slides, you will see the employees in the Denver and Jacksonville divisions
Using the plan descriptions from the prior page, determine who is excludable, nonexcludable, and benefiting, and fill out the charts
We have filled in the Denver HCEs as an example
Transfer your totals to the Coverage page. Again, we filled in the Denver HCEs
Compute the coverage fractions
Remember, all the nonexcludable employees from Jacksonville are counted in the denominator of the Denver plan, and vice versa
Next compute the AB%T. We've done the HCEs as an example
We will then show you how it's different for deferrals
Good luck



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DENVER DIVISION	Excludable	Nonexcludable	Benefiting
10 NHCEs w/ less than 1 YOS			
5 NHCE participants who terminated before last day of PY with less than 501 HOS			
5 NHCE participants employed last day of PY but who completed less than 1,000 HOS			
50 NHCE participants who have completed the allocation conditions			
5 NHCE sales associates who have satisfied the eligibility requirements			
12 union employees who have satisfied the eligibility requirements			
<b>NHCEs Totals</b>			
1 HCE participant who terminated before the last day of PY with more than 501 HOS		1	
2 HCE participants who have completed allocation conditions		2	2
<b>HCEs Totals</b>	0	3	2

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Jax Division	Excludable	Nonexcludable	Benefiting
6 NHCEs w/ less than 1 YOS			
4 NHCE participants who terminated before last day of PY with more than 501 HOS			
2 NHCE participants who terminated before the last day of PY but who completed less than 501 HOS			
1 NHCE participant employed last day of PY but who completed less than 1,000 HOS			
35 NHCE participants who completed allocation conditions			
<b>NHCEs Totals</b>			
7 HCE participants who have completed allocation conditions			
<b>HCEs Totals</b>			

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### COVERAGE

Complete coverage fractions for each plan

Hint: The Jax employees are excluded from the Denver plan and vice versa (but does doesn't impact their status as nonexcludable for coverage testing)

We've filled in a few cells



	Denver	Jax	Total
Benefiting NHCEs			
Benefiting HCEs	2		
Nonexcludable NHCEs			
Nonexcludable HCEs	3		

	Denver		Jax	
	NHCE	HCE	NHCE	HCE
Benefiting		2		
Nonexcludable		10		
Ratio				
Coverage %			50%	

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### AVERAGE BENEFIT TEST COVERAGE

What are the classifications in the X plans? Are the classifications reasonable?

What is the concentration percentage for X? What are the safe and unsafe harbors?

Does the Jax plan satisfy the nondiscriminatory classification test?

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AVERAGE BENEFIT PERCENTAGE TEST			
	NHCE	HCE	
A	Benefiting EEs in Denver plan	2	Does either plan pass ratio percentage? Does either plan pass ABT?
B	Denver contribution	4%	
C	Total Denver benefit (A x B)	8%	
D	Benefiting EEs in Jax plan	7	
E	Jax contribution	10%	
F	Total Jax benefit (D x E)	70%	
G	Denver + Jax benefit (C + F)	78%	
H	Nonexcludable employees	10	
I	Average benefit (G / H)	7.8%	
J	Average benefit % (NHCE/HCE)		

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401(m) COVERAGE
X's plans (Denver and Jax) have elective deferrals and matching contributions
The matching contributions are subject to the last day and 1,000 HOS allocation conditions
Since the eligibility and allocation conditions of the match is identical to the eligibility and allocation conditions of the profit sharing, the coverage test has the same results
No allocation conditions for deferrals, so the excludable, nonexcludable, and benefiting employees are different
We've marked changes in red

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DENVER DIVISION (Deferrals)	Excludable	Nonexcludable	Benefiting
10 NHCEs w/ less than 1 YOS	10		
5 NHCE participants who terminated before last day of PY with less than 501 HOS		5	5
5 NHCE participants employed last day of PY but who completed less than 1,000 HOS		5	5
50 NHCE participants who have completed the allocation conditions		50	50
5 NHCE sales associates who have satisfied the eligibility requirements		5	
12 union employees who have satisfied the eligibility requirements	12		
<b>NHCEs Totals</b>	<b>22</b>	<b>65</b>	<b>60</b>
1 HCE participant who terminated before the last day of PY with more than 501 HOS		1	1
2 HCE participants who have completed allocation conditions		2	2
<b>HCEs Totals</b>	<b>0</b>	<b>3</b>	<b>3</b>

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Jax Division	Excludable	Nonexcludable	Benefiting
6 NHCEs w/ less than 1 YOS	6		
4 NHCE participants who terminated before last day of PY with more than 501 HOS		4	4
2 NHCE participants who terminated before the last day of PY but who completed less than 501 HOS		2	2
1 NHCE participant employed last day of PY but who completed less than 1,000 HOS		1	1
35 NHCE participants who completed allocation conditions		35	35
<b>NHCEs Totals</b>	<b>6</b>	<b>42</b>	<b>42</b>
7 HCE participants who have completed allocation conditions		7	7
<b>HCEs Totals</b>	<b>0</b>	<b>7</b>	<b>7</b>

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COVERAGE CALCULATION TESTING DEFERRAL COVERAGE				
	Denver		Jax	
	NHCE	HCE	NHCE	HCE
Benefiting	60	3	42	7
Nonexcludable	107	10	107	10
Ratio	65.42%	30.00%	39.25%	70.00%
Coverage %	186.92%		56.07%	

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COMPUTING AB%T WITH DEFERRALS, MATCH						
Name	Comp.	Defer.	Match	PS	Total	AB%
Anne	\$200,000	\$15,000	\$9,000	\$20,000	\$44,000	22.00%
Bob	\$80,000	\$10,000	\$3,600	\$8,000	\$21,600	27.00%
Carol	\$60,000	\$4,000	\$2,700	\$6,000	\$12,700	21.17%
Dave	\$50,000	\$0	\$0	\$5,000	\$5,000	10.00%
Eve	\$30,000	\$2,000	\$1,350	\$3,000	\$6,350	21.17%
Fred	\$10,000	\$500	\$0	\$0	\$500	5.00%
<b>NHCE Average</b>						<b>16.87%</b>

Fred was fired midyear and doesn't satisfy allocation conditions for deferrals or match

Anne is the only HCE

$AB\%T = 16.87\% / 22.00\% = 76.67\%$

If no NHCE deferred more than 6% we would fail at 69.55%

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DENVER DIVISION	Excludable	Nonexcludable	Benefiting
10 NHCEs w/ less than 1 YOS	10		
5 NHCE participants who terminated before last day of PY with less than 501 HOS	5		
5 NHCE participants employed last day of PY but who completed less than 1,000 HOS		5	
50 NHCE participants who have completed the allocation conditions		50	50
5 NHCE sales associates who have satisfied the eligibility requirements		5	
12 union employees who have satisfied the eligibility requirements	12		
<b>NHCEs Totals</b>	<b>27</b>	<b>60</b>	<b>50</b>
1 HCE participant who terminated before the last day of PY with more than 501 HOS		1	
2 HCE participants who have completed allocation conditions		2	2
<b>HCEs Totals</b>	<b>0</b>	<b>3</b>	<b>2</b>

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Jax Division	Excludable	Nonexcludable	Benefiting
6 NHCEs w/ less than 1 YOS	6		
4 NHCE participants who terminated before last day of PY with more than 501 HOS		4	
2 NHCE participants who terminated before the last day of PY but who completed less than 501 HOS	2		
1 NHCE participant employed last day of PY but who completed less than 1,000 HOS		1	
35 NHCE participants who completed allocation conditions		35	35
<b>NHCEs Totals</b>	<b>8</b>	<b>40</b>	<b>35</b>
7 HCE participants who have completed allocation conditions		7	7
<b>HCEs Totals</b>	<b>0</b>	<b>7</b>	<b>7</b>

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## COVERAGE

Complete coverage  
fractions for each plan

	Denver	Jax	Total
Benefiting NHCEs	50	35	85
Benefiting HCEs	2	7	9
Nonexcludable NHCEs	60	40	100
Nonexcludable HCEs	3	7	10

	Denver		Jax	
	NHCE	HCE	NHCE	HCE
Benefiting	50	2	35	7
Nonexcludable	100	10	100	10
Ratio	50%	20%	35%	70%
<b>Coverage %</b>	<b>250%</b>		<b>50%</b>	



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## AVERAGE BENEFIT TEST COVERAGE

What are the classifications in the X plans? Are the classifications reasonable?

- Age and service
- Last day and 1000 hour allocation conditions
- Commissioned and union
- Jax excluded from Denver and vice versa
- Those are reasonable classifications

What is the concentration percentage for X? What are the safe and unsafe harbors?

- Concentration % = 100/110; round down to 90%
- Safe harbor = 27.5%; unsafe harbor = 20%

Does the Jax plan (coverage fraction = 50%) satisfy the nondiscriminatory classification test?

Yes



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## AVERAGE BENEFIT PERCENTAGE TEST

	NHCE	HCE
<b>A</b> Benefiting EEs in Denver plan	50	2
<b>B</b> Denver contribution	4%	4%
<b>C</b> Total Denver benefit (A x B)	200%	8%
<b>D</b> Benefiting EEs in Jax plan	35	7
<b>E</b> Jax contribution	10%	10%
<b>F</b> Total Jax benefit (D x E)	350%	70%
<b>G</b> Denver + Jax benefit (C + F)	550%	78%
<b>H</b> Nonexcludable employees	100	10
<b>I</b> Average benefit (G / H)	5.5%	7.8%
<b>J</b> Average benefit % (NHCE/HCE)	70.51 %	

The Denver plan passes ratio percentage  
The Jax plan passes ABT; it satisfies nondiscriminatory classification and AB%T  
Both plans pass



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