

 Benefits Technology, Powered by People

# Non-Discrimination Testing

Keeping MyChoice® Accounts compliant



# What, why, when and how...



# → What?

IRS requires annual testing after end of plan year for these plans:

- Cafeteria plans
- Self-insured medical plans
- Dependent care FSA
- Healthcare FSA
- Health Reimbursement Arrangements (HRA)

Employers are responsible for meeting non-discrimination requirements

Testing looks at employer information, plan design and census data for all benefits-eligible employees

If plan fails, testing results offer remediation suggestions that should be reviewed with your legal counsel



# → Why?

Plans can't favor highly compensated individuals (HCIs) or key employees

Non-discrimination testing (NDT) looks at eligibility, availability and utilization of the plans for HCIs, key employees and other benefits-eligible employees

Consequences of failing NDT

- **Cafeteria plan:** HCIs/keys will be taxed on the amount of salary reductions or "cash out" option, whichever is applicable
- **Self-insured plan:** Certain reimbursements paid to HCIs will be taxable
- **DCSA:** Benefits provided to HCIs will not qualify for exclusion from income



# → When?

Testing must be done annually for each benefit plan; results may be subject to IRS audit

Our best practice is to complete two tests each plan year

- First test is mid-year; allows for appropriate action to be taken before year-end and ensure the plan passes the NDT and preserves tax advantages
- Second and final test is toward end of fourth quarter; confirms compliance with non-discrimination rules, safeguarding tax advantages for all employees



# How?

Three bundles of NDT testing is available from Businessolver

Name of Test Bundle	What's Included?
Standard Tests	<ul style="list-style-type: none"><li>• Cafeteria Plan (Section 125) 25% Key Employee Concentration Test</li><li>• Dependent Care More-Than-5% Owners Concentration Test</li><li>• Dependent Care 55% Average Benefits Test</li></ul>
Expanded Tests – Cafeteria Only	<ul style="list-style-type: none"><li>• Cafeteria Plans (Section 125) Nondiscrimination Tests</li><li>• Health FSA (Section 105(h)) Nondiscrimination Tests</li><li>• Dependent Care (Section 129) Nondiscrimination Tests</li></ul>
Comprehensive Tests – Cafeteria + HRA	<ul style="list-style-type: none"><li>• Cafeteria Plans (Section 125) Nondiscrimination Tests</li><li>• Health FSA (Section 105(h)) Nondiscrimination Tests</li><li>• Dependent Care (Section 129) Nondiscrimination Tests</li><li>• HRA (Section 105(h)) Nondiscrimination Tests</li></ul>

Standard testing is included; check with your Client Services Lead for information on fees for expanded and comprehensive options



# Sample information required for NDT

Most required data is in Businessolver's system

Your Client Services Lead can provide a testing template for you to complete

Employer provides selected additional data that is not collected or stored by Businessolver

Client Services Lead shares final completed template for review and submission

Data Required	Description	Source	Data Used for Which test(s)
Co_Code	Employer code used to identify Employer within benefits advisor's systems and testing formulas	BSC	ALL
Plan Start Date	First day of the current plan year	BSC	ALL
Employee ID	Use any unique Employee ID number.	BSC	ALL
Last Name	Employee's Last Name	BSC	ALL
First Name	Employee's First Name	BSC	ALL
Date of Birth	Date of Birth	BSC	ALL
Date of Hire	Date of Hire	BSC	ALL
Is Officer	Is this employee an officer of the Company?	BSC	
Eligible 125	Indicate if employee is eligible to participate in the Flexible Benefit plans (Medical, Dependent Care, etc.). Please note that this template assumes that eligibility does not vary across Health FSA, Dependent Care FSA and Cafeteria Plan.	Client	Cafeteria Plan, Health FSA, Dep Care FSA
Eligible 105	Indicate if employee is eligible to participate in the Self Insured Medical Plan	Client	Self-Insured Medical Plan
Spouse or Dependent of HCE	Employee who is a spouse or a dependent of a "high earner" at the same organization.	Client	ALL
Spouse or Dependent of >5% Owner	Employee who is a spouse or dependent of a more than 5% owner at the same organization	Client	ALL
Spouse or Dependent of Officer	Employee who is a spouse or dependent of an officer at the same organization (HCE and HCP definition)	Client	ALL
COBRA	Whether or not the employee is participating through COBRA	BSC	ALL
Previous Year Compensation	The employee's compensation for the previous plan year. If hired within the current plan year, please enter \$0.00.	BSC	ALL
Projected Current Year Compensation	Gross compensation the employee is projected to earn within the plan year being tested	BSC	ALL
Collectively Bargained	If the employee is a collectively bargained (union) employee	Client	ALL
Hours Worked per Week	Number of hours worked per week. This is used to determine if the employee is part-time	Client	ALL

Data Required	Description	Source	Data Used for Which test(s)
Customary Months per Year (for seasonality)	Number of months worked per year. This is used to determine if the employee is seasonal	Client	ALL
Alien Employee	Nonresident aliens who receive no U.S. source earned income	Client	ALL
Annual HSA Contributions	Include both the ANNUAL HSA employer contribution and the HSA employee pre-tax contribution made through the cafeteria plan	BSC	Cafeteria Plan
Annual Pre-Tax Premiums	Include the total amount of all non-taxable premiums paid by the employer (if applicable and if part of the Plan document) AND pre-tax by the employee for all qualified nontaxable benefits offered under the Cafeteria Plan	BSC	Cafeteria Plan
Annual Med FSA Contribution	Enter the total annual election amount for the health flexible spending account. Please include BOTH the employee and employer portions of the election amount.	BSC	Health FSA
Annual Dep Care FSA Contribution	Enter the total annual election amount for the dependent care flexible spending account	BSC	Dep Care FSA
Annual Self Insured Medical Plan Contribution	Enter the total annual contribution amount for the self-insured medical plan. Please include BOTH the employee and employer contributions	BSC	Self-Insured Medical Plan
Ownership % of Company	Ownership held by the employee	Client	ALL
Ownership % Attributed	Ownership held by employee AND employee's spouse (other than one who is legally separated), parent, child or grandchild as reported for the owner	Client	ALL
Voting Percentage	Shareholder's Voting power percentage of all classes of stock of the employer	Client	ALL

Note: This is a sample only. The data required for your requested tests may vary.



# Sample Report – Pass/Fail Results

Date: 04/15/2016

Employer Name: TECO

Company Code: TECO

Plan Start Date: 01/01/2012

File Name: TR\_Demo\_expanded\_PASS\_1402.xlsx

## 1.1A THE ELIGIBILITY TEST (TEST #1 OF 3 FOR CAFETERIA PLANS) - EMPLOYMENT & ENTRY REQUIREMENTS

1. Questions related to employment requirement:

a. Are any employees required to complete more than three years employment to participate in the cafeteria plan?

No

b. Is the employment requirement (i.e., waiting period) the same for all employees in the cafeteria plan?

Yes

2. Is any employee restricted from entering the cafeteria plan beyond the first day of the plan year following the date the employee has satisfied the waiting period (if any)?

No

**Test Result :**

Pass

**Brief Explanation:** This test checks if a reasonable number of non-highly compensated individuals are eligible to participate in the cafeteria plan. If enough non-highly compensated individuals can't get in, the cafeteria plan will fail the Eligibility Test. For purposes of the Eligibility Test, the prohibited group is highly compensated individuals. This includes the following employees: officers, more-than-5% shareholders, highly compensated individuals, and spouses or dependents of such individuals. The 2007 proposed regulations provide that the following employees are excluded from the testing group: (1) employees (other than Keys) covered by a collectively bargained plan (if cafeteria plan benefits were the subject of bargaining); (2) nonresident aliens with no U.S. source income from the employer; and (3) employees participating in the cafeteria plan under a COBRA continuation provision.

Code §125(g)(3) states that a plan does not discriminate as to eligibility to participate if it meets three requirements:

(A) no employee is required to complete more than three years of employment to participate, and the same employment requirement applies to all employees (the





# Sample Report – Prohibited Group

Employee_id	Name	Key	HCP	HCI(Cafeteria)	HCI (Health FSA)	HCI(Self-Insured)	HCI(HRA)	> 5% Owner	HCE	Dependents of HCEs
0083	MICHAEL WILLIAMS1	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
0097	RONALD WILLIAMS17	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
0139	THOMAS ATKINS14	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
0141	PALIN ATKINS20	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
0142	FRANZ ATKINS22	No	Yes	Yes	No	N/A	N/A	No	Yes	No
0147	SCOTT ATKINS28	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
0151	KHALIL ATKINS33	No	Yes	Yes	No	N/A	N/A	No	Yes	No
0564	ALEKSANDR WILLIAMS27	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
1006	CLARK ATKINS4	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
1134	JEAN PIERRE ATKINS39	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
1483	CARLOS WILLIAMS5	No	Yes	Yes	No	N/A	N/A	No	Yes	No
1534	PATRICK WILLIAMS6	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
1590	GEORGE WILLIAMS16	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
1969	RICHARD ATKINS10	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
2012	STEPHEN ATKINS23	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
2527	CRAIG WILLIAMS14	No	Yes	Yes	No	N/A	N/A	No	Yes	No
2607	EGOR SMITH20	No	Yes	Yes	No	N/A	N/A	No	Yes	No
2709	SEBASTIAN WILLIAMS23	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
2716	ZACHARY WILLIAMS25	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
4060	ERIN ATKINS5	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
4283	TODD WILLIAMS13	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
4418	CHANDER WILLIAMS7	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
4641	ERIC SMITH12	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
4934	RON SMITH19	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
6514	ANTHONY WILLIAMS19	No	Yes	Yes	Yes	N/A	N/A	No	No	No
6530	MANUEL ATKINS6	No	Yes	Yes	Yes	N/A	N/A	No	No	No
6564	LEE WILLIAMS32	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
6644	GREGG ATKINS24	No	Yes	Yes	Yes	N/A	N/A	No	No	No
6913	TANVEER ATKINS1	No	Yes	Yes	Yes	N/A	N/A	No	No	No
7020	SALVATORE ATKINS42	No	Yes	Yes	Yes	N/A	N/A	No	Yes	No
8153	MARC ATKINS15	No	Yes	Yes	Yes	N/A	N/A	No	No	No



# Sample Report – Recommendation

## FINAL LIST AFTER ADJUSTMENTS

Employee_id	Last Name	First Name	Original DCAP Contributions	Recommended DCAP Contributions	Original Total Cafeteria Contributions	Recommended Total Cafeteria Contributions
5	SMITH5	Whitney	\$0.00	\$0.00	\$6,000.00	\$3,054.68
7	SMITH7	Dante	\$0.00	\$0.00	\$6,000.00	\$3,054.68
8	SMITH8	John	\$0.00	\$0.00	\$153.84	\$78.31
9	SMITH9	Paul	\$0.00	\$0.00	\$6,000.00	\$3,054.68
10	SMITH10	Stephen	\$0.00	\$0.00	\$6,000.00	\$3,054.68
11	SMITH11	Eric	\$0.00	\$0.00	\$6,000.00	\$3,054.68
12	SMITH12	Charles	\$0.00	\$0.00	\$6,000.00	\$3,054.68
13	SMITH13	Jeffrey D.	\$900.00	\$124.28	\$6,900.00	\$3,178.96
14	SMITH14	Tom	\$0.00	\$0.00	\$6,000.00	\$3,054.68
15	SMITH15	Edward	\$0.00	\$0.00	\$6,000.00	\$3,054.68
16	SMITH16	Christine	\$0.00	\$0.00	\$6,000.00	\$3,054.68
17	SMITH17	John	\$1,049.88	\$144.97	\$7,049.88	\$3,199.65
18	SMITH18	Martine	\$850.00	\$117.37	\$6,850.00	\$3,172.05
19	SMITH19	Robert	\$800.00	\$110.46	\$6,800.00	\$3,165.14



# Next steps

1. Connect with your Client Services Lead to discuss testing options and timing
2. Receive and complete the NDT template; return to Businessolver
3. Businessolver populates template with data from our system
4. Review final data and return to Client Services Lead to submit template for testing
5. Receive and review test results; discuss with your Client Services Lead and MyChoice Accounts Account Manager for system impacts
6. Share with your legal counsel to discuss any remediation





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