



## Nondiscrimination Testing FAQs

**Q: What is the testing website link?**

A: [Log In \(lifetimebenefitsolutions.com\)](https://lifetimebenefitsolutions.com)

**Q: I am locked out of the website. How do I get back in?**

A: Wait three (3) hours before trying to log in again.

**Q: What if I cannot remember the password?**

A: On the log page, click "Forgot your password?" and follow instructions to reset the password. Please note, the reset email will be sent to the contact person listed in the system. If the contact person has changed, please contact your Welfare Benefit Plan Specialist or your Lifetime Benefit Solutions account representative.

**Q: Can two (2) or more people have access to the nondiscrimination testing (NDT) web portal?**

A: Unfortunately, only one person may have access at a time.

**Q: What data do I need to gather to complete the tests?**

A: When you log in to the portal, there are instructions on what data is needed and how to complete each test. Generally, depending on the test, this data may include (but is not limited to) the following:

- Employee eligibility
- Employee compensation (current and prior year)
- Number of employees
- Number of participants
- Employee contributions
- Employer contributions
- Pre-tax premiums

**Q: The plan year has ended. How long do I have to complete the testing?**

A: You have 30 days after the end of the plan year to complete the testing. After the 30 days, the web portal for the prior plan year is closed and cannot be reopened.

**Q: Do I only include active employees in the tests?**

A: No, employees that have terminated during the plan year you are testing should also be included in the data.

**Q: I failed the Dependent Care Assistance Program (DCAP) 55% Average Benefits Test. What are the next steps?**

A: As you may know, some of the available guidance regarding testing is open to multiple interpretations, so alternative testing methods may also be reasonable in some cases (especially if your plan fails one of the tests using this online service which is based on a good faith interpretation of existing guidance). In using this service, keep in mind that it is up to you to determine if a particular

**\*These materials are for informational purposes only and do not constitute legal and/or tax advice for any particular situation. You should consult your benefits counsel for advice regarding your particular situation.**

testing method is appropriate for your plan. You should consult with qualified legal counsel if you need additional information about testing requirements and methods.

If the test initially fails, you can re-run the test to ensure that you entered the plan data correctly or consider potential alternative testing possibilities in consultation with your legal counsel. For example, you could refer to this test's instructions, under the heading of **TEST FAILURE ONLY—OPTION TO EXCLUDE EMPLOYEES MAKING LESS THAN \$25,000 FROM TESTING**. If there are not any employees that will earn or have earned less than \$25,000 for the plan year or the test fails after excluding those employees, generally, the result is that the benefits provided to highly compensated employees must be included in their gross income. If your DCAP fails the test, you should consult with qualified legal counsel about appropriate next steps.

**Q: For the Cafeteria Plan- Key Employee Concentration Test, what dollar amounts should I include?**

A: **Pre-Tax Premium Plan:** generally, include the employer and employee portions of the premiums (i.e., health, dental, vision, etc.)

**Flexible Spending Account (FSA):** generally, include the employer and employee portions of the premiums (i.e., health, dental, vision, etc.); health FSA employee elections (if any, including employer contributions); DCAP employee elections (if any, including employer contributions); any Health Savings Account (HSA) contributions (including employer (if any) and employee contributions) paid through the plan.

Note: our version of the test assumes that the test will be conducted using contribution amounts rather than total benefits paid. There is some uncertainty (because of limited IRS guidance) about how to calculate the total amount of contributions. The above is based on what we believe is a reasonable, good-faith interpretation of the limited IRS guidance on this issue; however other interpretations may also be reasonable. You may wish to consult with qualified legal counsel for other alternatives.

For example, our view is that if a qualified benefit is provided at no cost to employees and does not require an employee pre-tax contribution, the employer contribution for that benefit should not be included. For example, if the employer pays 100% of the cost of individual health insurance coverage, the employer's contribution for that individual coverage would not be included; however if employees who elect family coverage are required to pay for part of the cost of family coverage, then the employer's contribution for that coverage should be included (along with the amount the employee pays on a pre-tax basis). If you have any question about how to calculate these amounts, you should consult with your own qualified legal counsel.

**Q: How often do I need to complete the tests?**

A: You must complete the tests at least annually. However, many employers perform the required testing as soon as the enrollment process is complete, several months before the end of the plan year (to monitor whether the plan is at risk of failing any required test), and within 30 days after the close of the plan year. You should consult with your own qualified legal counsel as to their view regarding how frequently such tests should be completed and potential action that could be taken to help avoid a testing failure when the plan is at risk of failing a test.

**Q: Why are we required to complete these tests?**

A: Nondiscrimination testing for your Cafeteria Plan and the underlying components is required by the IRS to ensure that employers and participants may enjoy the tax advantages available through the use of such a plan. As an example, for certain employees (e.g., highly compensated individuals, key employees, etc.) the tax advantages of the plan are conditioned upon the plan's compliance with the applicable nondiscrimination requirements.

**\*These materials are for informational purposes only and do not constitute legal and/or tax advice for any particular situation. You should consult your benefits counsel for advice regarding your particular situation.**

**Q: What happens if I do not complete the tests?**

A: If you fail to complete the tests timely, any possible corrections methods may be unavailable. In addition, if the plan is found to be discriminatory, it could result in adverse tax consequence for the prohibited groups (e.g., highly compensated individuals, key employees, etc.).

**Q: If I log into the testing website and do not complete all the tests, can I log in again?**

A: If all tests are not completed, you may log into the web-portal at a later date. The testing web-portal also allows you to input and save data until you are ready to submit/run the test. **Remember that the portal closes 30 days after the end of the applicable plan year and cannot be re-opened.**

**Q: Does Lifetime Benefit Solutions (LBS) complete the testing for us?**

A: LBS does not complete the testing on your behalf. LBS allows access to a self-service portal so you may complete the tests. A designated Welfare Benefit Plan Specialist is provided to assist with basic questions you may have as you complete the testing. Keep in mind, the Welfare Benefit Plan Specialist does not provide tax or legal advice.

**Q: We have many locations. Can someone at each location sign into the website and add their individual location's data for each test?**

A: Unfortunately, only one person at a time may access the website.

**Q: Do I have to complete the tests under the SF/HRA tab?**

A: You will complete testing under the SF/HRA tab only if you have self-funded plans or Health Reimbursement Account (HRA) plans.

**Q: We have less than 20 (50, 100) employees. Do we have to complete these tests?**

A: All plans are required to complete testing regardless of the number of employees. There is no minimum number of employees required to complete testing.

**Q: Since none of our employees made a dependent care election, do I need to complete the DCAP tests?**

A: These tests are still required to be completed even if no elections were made. When completing the test, zero (0) will be entered when a dollar amount is required. By completing the test in this manner, the plan will remain in compliance with the nondiscrimination rules.

**Q: For the DCAP 55% Average Benefits Test, why would I want to use the Top-Paid 20% when determining the number of highly compensated employees?**

A: You may want to use the Top Paid 20% if more than 20% of all employees earned over the amount defined as Highly Paid for purposes of this test. Please refer to the instructions for this test for additional details. As a general matter, the election is irrelevant unless more than 20% of all applicable employees earned over the applicable amount. You should consult with qualified legal counsel to determine if this election is right for your plan and if there are any implications of making such an election.

**Q: What do I do if I need assistance understanding and completing the tests?**

A: A designated Welfare Benefit Plan Specialist is available to assist with questions that you may have as you are completing the testing. Please note that the Welfare Benefit Plan Specialist does not provide tax or legal advice. Furthermore, the online testing service has been designed based on a good faith interpretation of the existing guidance from the IRS regarding applicable nondiscrimination testing methods. Also, some of the available guidance is open to multiple interpretations, so alternative testing methods may also be reasonable in some cases. In using this service, keep in mind that it is up to you to determine if a particular testing method is appropriate for your plan. You should consult with qualified legal counsel if you need additional information or assistance.

**\*These materials are for informational purposes only and do not constitute legal and/or tax advice for any particular situation. You should consult your benefits counsel for advice regarding your particular situation.**

**Q: For the Cafeteria Plan Contributions and Benefits Test, how do I know if my plan satisfies the Safe Harbor?**

A: Generally, there are two safe harbor methods of satisfying the benefits and contributions test.

**The first safe harbor** is available for any plan that provides health benefits. A plan satisfies this safe harbor if two conditions are met. First, contributions on behalf of each participant are equal to (a) at least 100% of the cost of health coverage for the majority of similarly situated highly compensated participants; or (b) at least 75% of the cost of health coverage of the similarly situated participant having the highest cost health coverage under the plan. Second, any contributions or benefits in excess of those described in the previous sentence bear a uniform relationship to compensation. For purposes of this safe harbor a participant is "similarly situated" to another participant if they have the same type of coverage. Reasonable differences in plan benefits, such as variations in benefits offered in different locations or differences based on enrollment in individual rather than family coverage, may be taken into account.

**The second safe harbor** applies to "premium-only-plans" (plans that provide no option other than cash or a salary reduction to pay for health coverage). Premium-only plans are deemed to satisfy the benefits and contributions test if they satisfy the safe harbor percentage test described in the Cafeteria Plan Safe Harbor Eligibility Test available at: [Cafeteria Plan Contributions and Benefits Test \(lifetimebenefitsolutions.com\)](http://lifetimebenefitsolutions.com).

Naturally, the preceding is an over-simplification of very complicated rules, and you may wish to consult your qualified legal counsel for the many details that go into this determination and other possible alternatives.

**\*These materials are for informational purposes only and do not constitute legal and/or tax advice for any particular situation. You should consult your benefits counsel for advice regarding your particular situation.**