

# SECTION 125 CAFETERIA PLAN Data Questionnaire for Discrimination Testing

Name of Firm: \_\_\_\_\_

Plan Begin Date: \_\_\_\_\_ Plan End Date: \_\_\_\_\_ Plan Effective Date: \_\_\_\_\_

The following information is needed to perform the discrimination testing for your Cafeteria Plan.

## **Section 1: Controlled Groups**

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Are there any corporations that could be considered as having a parent or subsidiary relationship<sup>1</sup> to your company?  
 Yes  No

Are there any corporations that could be considered to have a brother or sister relationship<sup>2</sup> to your company?  
 Yes  No

<sup>1</sup>A parent/subsidiary group exists when your employer's stockholders own 80% or more of other corporation or other corporations' stockholders own 80% or more of your employer.

<sup>2</sup>A brother/sister controlled group is where five or less shareholders (1) own at least 80% of the combined corporations *and* (2) own more than 50% of the particular group of corporations (with identical ownership interest). In other words, when 5 or less of your company's stockholders own the majority of your company and similarly other companies. "Shareholder" applies to any company whether it is a percentage of stock or percentage of profit.

If you answered *Yes* above, attach a list (marked "Controlled Groups") of these corporations.

## **Section 2: Key Employees**

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Attach a list (marked "Key Employees") of the employees (with SSNs) with Key-Man status (used for § 125 25% concentration test). An employee is considered a Key Man if the employee meets at least one of the following criteria:

- a. An officer<sup>3</sup> of the company with annual compensation exceeding \$130,000 for 2001, *or*
- b. A greater than 5% owner, *or*
- c. A greater than 1% owner and has an annual compensation in excess of \$150,000, *or*

<sup>3</sup>The number of individuals treated as key individuals because of their "officer" status cannot exceed the greater of 3 individuals or 10% of all individuals, but in any event, not more than 50 individuals. The status of an employee as an officer is based not on the employee's title, but on the responsibility that person has. Must be an administrative executive in regular and continuous service, not a nominal officer with limited duties.

## **Section 3: Highly Compensated Employees (HCEs)**

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Attach a list (marked HCEs) of the employees with HCE status and their SSNs. An employee is considered to be a HCE if the employee meets at least one of the following criteria<sup>5</sup>:

- a. An officer (see above definition) of the company, *or*
- b. A more than 5% owner of the employer at any time during current or preceding plan year (or spouse, parent, child, or grandchild of 5+% owner), *or*
- c. Had compensation in excess of \$80,000 for the preceding plan year<sup>6</sup> *and* was a 5% owner. *or*
- d. A spouse or dependent of any of the above.

<sup>5</sup>According to a hybrid 125(e) and 414(q) definition used for 125 eligibility/classification test and 55% Dependent Care testing.

<sup>6</sup>As an alternative, can be any employee who in the preceding year (1) received more than \$80,000 in compensation, AND (2) was in the top paid group (20%) of employees (ranked by compensation for such year). Caution: Once made, this alternative has to apply for all subsequent years and for all retirement and non-retirement plans.