

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 8-K**

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CURRENT REPORT

Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) September 1, 2016

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**BENEFITFOCUS, INC.**

(Exact name of registrant as specified in its charter)

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Delaware

(State or other jurisdiction of incorporation)

001-36061

(Commission File Number)

46-2346314

(IRS Employer Identification No.)

100 Benefitfocus Way, Charleston, South Carolina 29492

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (843) 849-7476

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

On September 1, 2016, Benefitfocus, Inc. (the “Company”) and certain subsidiaries of the Company entered into a Waiver (the “Waiver”) to its Credit Agreement, dated as of February 20, 2015, as amended on June 16 and December 18, 2015 and March 24, 2016 (the “Credit Agreement”) with Silicon Valley Bank, as lender and the administrative agent and collateral agent, and several other lenders party thereto.

The Waiver provides for a waiver of (i) the minimum Liquidity requirements of Section 7.1(a) of the Credit Agreement as of July 31, 2016, and (ii) the payment of a higher rate of interest on the Obligations, as defined in the Credit Agreement, to the extent otherwise required prior to the date of execution of the Waiver. Section 7.1(a) requires the Company to maintain a minimum gross cash and cash equivalent balance at month-end. The Company has the ability to meet the requirement by borrowing under the Credit Agreement ahead of a month-end. As of the end of July 2016, the Company had borrowing capacity under the revolver of \$54.8 million. From time to time the Company draws down and repays its borrowings under the Credit Agreement. In part in order to opportunistically reduce interest expense, during July the Company repaid a significant portion of its borrowings under the Credit Agreement. As a result, as of July 31, 2016, the Company’s cash balance was approximately \$400,000 below the required minimum amount. The Company expects that as of August 31, 2016, it will be in full compliance with the terms of the Credit Agreement.

The description of the Waiver provided above is qualified in its entirety by reference to the full and complete terms of the Waiver which is filed as Exhibit 10.28 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.28	Waiver to Credit Agreement, dated as of September 1, 2016, by and among the Company, Benefitfocus.com, Inc. and BenefitStore, Inc., the several banks and other financial institutions or entities party thereto and Silicon Valley Bank, as administration agent and collateral agent for the lenders.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**BENEFITFOCUS, INC.**

Date: September 1, 2016

/s/ Raymond A. August  
Raymond A. August  
President and Chief Operating Officer

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## WAIVER TO CREDIT AGREEMENT

THIS WAIVER TO CREDIT AGREEMENT (this "**Waiver**"), dated as of September 1, 2016 (the "**Waiver Effective Date**") is entered into by and among BENEFITFOCUS, INC., a Delaware corporation (the "**Parent**"), BENEFITFOCUS.COM, INC., a South Carolina corporation ("**Benefitfocus.com**"), and BENEFITSTORE, INC., a South Carolina corporation ("**BenefitStore**"), and together with the Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**"), the several banks and other financial institutions or entities party hereto (each a "**Lender**" and, collectively, the "**Lenders**"), and SILICON VALLEY BANK, as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**").

## WITNESSETH:

WHEREAS, the Borrowers, the Lenders and the Administrative Agent have entered into that certain Credit Agreement dated as of February 20, 2015, as amended pursuant to that certain First Amendment Agreement dated June 16, 2015, as further amended pursuant to that certain Second Amendment Agreement dated December 18, 2015 and as further amended pursuant to that certain Third Amendment Agreement dated March 24, 2016 (as amended and as the same may from time to time be further amended, modified, supplemented or restated, the "**Credit Agreement**") (as amended, modified, supplemented or restated and in effect from time to time, the "**Credit Agreement**");

WHEREAS, a certain Event of Default has arisen under Section 8.1(c) of the Credit Agreement as a result of the Borrowers' failure to maintain the minimum Liquidity requirement set forth in Section 7.1(a) of the Credit Agreement for the compliance period ended July 31, 2016 (the "**Stated Event of Default**" or "the Event"); and

WHEREAS, the Borrowers have requested that the Lenders and the Administrative Agent waive the Event, and the Administrative Agent and the Lenders are willing to do so, subject to the terms and conditions contained herein;

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Administrative Agent, the Lenders, and the Borrowers agree as follows:

1. **Capitalized Terms.** All capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Credit Agreement.
  2. **Waiver to Credit Agreement.** The Administrative Agent and the Lenders hereby waive (x) the Event, which waiver relates only to the Event described above, and shall not be deemed to constitute a continuing waiver of any provision of the Credit Agreement with respect to any other Events of Default and (y) the payment of the Default Rate on the Obligations to the extent payable prior to the Waiver Effective Date on account of the Event. Except as expressly provided herein, the Credit Agreement and the other Loan Documents shall remain unmodified and in full force and effect.
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3. **Payment of Costs and Fees.** The Borrowers shall pay all reasonable costs, out-of-pocket expenses, and fees and charges of every kind in connection with the preparation, negotiation, execution and delivery of this Waiver and any documents and instruments relating hereto or thereto, in each case, in accordance with Section 10.5 of the Credit Agreement.

4. **No Defenses of Borrowers.** Each Borrower hereby acknowledges and agrees that such Borrower has no offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender with respect to the Obligations, or otherwise, and that if such Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and such Borrower hereby RELEASES the Administrative Agent and each Lender from any liability thereunder.

5. **Choice of Law.** THIS WAIVER AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS WAIVER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

6. **Entire Agreement.** This Waiver, and terms and provisions hereof, the Credit Agreement and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

7. **Reaffirmation of Obligations.** Each Loan Party hereby reaffirms its obligations under each Loan Document to which it is a party. Each Loan Party hereby further ratifies and reaffirms the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Guaranty and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of the Lenders and the Issuing Lender, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof.

8. **Ratification.** Each Loan Party hereby restates, ratifies and reaffirms each and every term and condition set forth in the Credit Agreement and the Loan Documents as such Loan Documents are effective as of the date hereof and as amended hereby.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Waiver to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWERS:

**BENEFITFOCUS.COM, INC.**

By: /s/ Christina Kirk  
Name: Christina Kirk  
Title: Vice President, Corporate Controller

**BENEFITFOCUS, INC.**

By: /s/ Christina Kirk  
Name: Christina Kirk  
Title: Vice President, Corporate Controller

**BENEFITSTORE, INC.**

By: /s/ Christina Kirk  
Name: Christina Kirk  
Title: Vice President, Corporate Controller

**SILICON VALLEY BANK**, as Administrative Agent and as a Lender

By: /s/ Steve Lyons  
Name: Steve Lyons  
Title: VP

**COMERICA BANK**, as a Lender

By: /s/ John Benetti  
Name: John Benetti  
Title: SVP

**PACIFIC WESTERN BANK**, as a Lender

By: /s/ Zack Mansfield  
Name: Zack Mansfield  
Title: SVP

[Signature page to Waiver to Credit Agreement]

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