

FOLLOWING THE TOP HEAVY RULES

Items for Consideration



DATA

As with any set of calculations, the results are only as good as the data provided. To perform the top heavy test, one member of your service provider team with need information on owners, officers, family members, account balances and 5 years of distribution history. If any of the data utilized is incorrect, the top heavy test will not be accurate.

- Which member of your service provider team is responsible for performing the top heavy test?
- Will they review the data they receive for reasonableness and accuracy?
- How will that service provider obtain the information needed?
- Who is liable if the service provider never runs the test or receives incorrect data?

OWNERS, OFFICERS AND ATTRIBUTED STOCK

One of the requirements of performing the top heavy test is to determine who is considered a Key Employee for the year. To correctly make this determination, information about ownership and officers is needed. Ownership is attributed to family members. It passes through trusts in some cases to get attributed to the named beneficiaries or the grantor of the trust. Ownership also attributes through businesses and other entities.

- Which member of your service provider team will make the determination of who is a key employee or are you required to make this determination?
- Where will information about ownership during the year be obtained from and how will it get to the right party?
- Officers for this purpose are based on their job function, not their title. Who will make the determination of who is an officer and provide that information to the right party?
- Who will determine how stock is attributed and who will provide the needed information?

Please see the final page of this document for important information about suggested use.



COMMUNICATION

Once the testing is run, the result will determine if the plan is top heavy or not. If the plan is top heavy, a contribution may be required for some or all plan participants.

- Who will communicate to you the results of the testing?
- How will this information be communicated?
- When can you reasonably expect to receive this information.

REQUIRED CONTRIBUTION

If the plan is determined to be top heavy for the plan year, a top heavy minimum contribution is generally required to be made for that year. The deadline for making that top heavy minimum contribution will vary based on whether you want to deduct the contribution for the year it's attributable or for the year it's made.

- Which member of your service provider team will provide you with the top heavy minimum contribution that is due for the year?
- Who will communicate the appropriate deadlines to you?
- Who monitors to ensure the contribution actually gets made?
- Who is liable if a contribution is due but doesn't get made?

Please see the final page of this document for important information about suggested use.

IMPORTANT INFORMATION ABOUT USING THIS DOCUMENT

The answers to the questions in this questionnaire could, and very well might be, used against you in a DOL audit or a lawsuit. **We do NOT recommend that you complete and retain this questionnaire without first reviewing the answers with ERISA legal counsel.** The intention is to provide you with questions to discuss internally rather than to create a paper trail that can be used against you.

Depending on your particular situation, there may be other items you should consider. Larger entities will have plan document issues with regard to mergers and acquisitions which are not covered by this questionnaire. There may be administrative policies that exist outside of the plan documents that help govern how the plan works that are not addressed here. This questionnaire is not intended to be exhaustive.