Requirements for Top Heavy Plans

American United Life Insurance Company® (AUL), if contracted to do so under your AUL Services Agreement, will perform required top heavy testing on an annual basis. Top heavy testing is very dependent on Plan Administrators accurately designating key employees on the census completed at each plan year-end.

The top heavy determination date for a first year plan is the last day of the first plan year. For existing plans, the determination date is the last day of the preceding plan year. A plan is determined to be top heavy if, as of the determination date, the account balances of key employees exceed 60% of the account balances of all employees.

The qualification requirements of a top heavy plan are as follows:

1) Minimum Top Heavy Contribution

The plan must provide a minimum top heavy contribution equal to the lesser of 3% or the highest allocation rate for any key employee in the current year, divided by Internal Revenue Code (Code) Section (§) 415 compensation for the entire year. Code §415 compensation includes elective deferrals under a 401(k) plan, 403(b) plan, SIMPLE IRA or SARSEP, and employee-elected contributions or deferrals to a §125 cafeteria plan or 457 plan.

Elective deferrals, employer contributions, forfeiture reallocations, and the Code §401(a)(17) annual compensation limit should all be taken into consideration when calculating the highest key employee allocation rate. In addition, while key employees' elective deferrals are included in determining their allocation rates, non-key employees' elective deferrals may not be used to satisfy the top heavy minimum contribution. The minimum contribution is to be allocated to either all eligible participants OR only eligible non-key employees, as elected in your plan document. In addition, your Plan may require that participants be employed on the last day of the top heavy plan year to receive the contribution. The minimum contribution may not be reduced or withheld because the Plan has an allocation formula with an hours-of-service requirement or a formula based on permitted disparity, because a participant did not defer, or because the adopting employer did not make a profit.

We recommend that the top heavy minimum contribution be made by the tax-filing deadline for the top heavy plan year. An employer profit sharing contribution, reallocation of forfeitures, matching contributions, Safe Harbor Match, or Safe Harbor non-elective contribution can all satisfy this minimum contribution. Employee deferrals cannot be used to satisfy the minimum contribution. Please contact your AUL Plan Services Consultant for any assistance you may need in calculating the minimum required contribution.

2) Top Heavy Vesting Schedule

The plan must immediately put a vesting schedule in place which vests participants at least as quickly as one of the two schedules listed below (appropriate schedule may already be in place):
1) Three-Year Cliff  

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<tr>
<th>Years of Service</th>
<th>Vesting %</th>
<th>Years of Service</th>
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<tbody>
<tr>
<td>Less than 3</td>
<td>0%</td>
<td>Less than 2</td>
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<td>3 or more</td>
<td>100%</td>
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2) 2/20% Graded Vesting

The majority of plans already have vesting schedules that satisfy this requirement. Additionally, most plans have provisions that automatically amend the vesting schedule upon determination of top heavy status. Note that all account balances are subject to the top heavy vesting schedule, not just the top heavy minimum contribution. Please refer to your plan document for more information.

Account balances are subject to the top heavy vesting schedule only for employees credited with an hour of service during the plan year for which the plan is deemed top heavy. An employee who does not have an hour of service after the plan becomes top heavy is not required to be vested under the top heavy vesting schedule.

Once a plan is determined to be top heavy, it must comply with the minimum vesting and contribution requirements described above to remain qualified. This document is intended to inform you of some of the general requirements of a top heavy plan. However, it should not be considered a complete explanation of the top heavy requirements.

**Summary**

Please review the top heavy section of your plan document for further explanation of your Plan's top heavy provisions before making the top heavy minimum contribution. Please consult with your tax advisor to ascertain the appropriate timing and deductibility of the top heavy minimum contribution.

**Top Heavy Exemption**

If you sponsor a Safe Harbor 401(k) plan or have implemented a Qualified Automatic Contribution Arrangement (QACA), your plan may be exempt from the top heavy requirements. The determination of whether the top heavy exemption applies under either of these arrangements is made on a year-to-year basis.

Please contact your AUL Plan Services Consultant with any questions regarding the results of your top heavy test, the top heavy requirements or the top heavy exemption guidelines.