

Split-dollar tax and legal guide with specimen documents

Tax Considerations

This information is a general discussion of the relevant federal tax laws. It is not intended for, nor can it be used by any taxpayer for the purpose of avoiding federal tax penalties. This information is provided to support the promotion or marketing of ideas that may benefit a taxpayer. Taxpayers should seek the advice of their own tax and legal advisors regarding any tax and legal issues applicable to their specific circumstances.

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What are split-dollar arrangements?

A split-dollar arrangement is a strategy in which a life insurance policy's premium, cash values, and/or death benefits are split between two parties (owner and non-owner). It is not a type of life insurance or a reason for buying life insurance; rather, it is a method of financing the purchase of life insurance. Split-dollar is generally most appropriate when one party (the company) has the cash to pay the premiums for life insurance and the other party (the employee) has the need for life insurance. Depending upon the method of split dollar used, the policy owner may be the employer, the insured/employee, and the insured's trust or a third party.

It has been used in various forms to help individuals in estate planning:

- To minimize income and gift taxes connected with the funding of large premiums;
- To reduce the cash flow required to fund a life insurance policy;

In addition, it has been used by businesses as a (n):

- Executive benefit to encourage employees to remain with the company;
- Helps attract new employees when the business expands or has positions it needs to fill;
- Pays the personal life insurance premiums for the owner or select key employee(s) at a potentially lower after-tax cost.

What is the definition of a split-dollar arrangement?

The Final Regulations defined it as any arrangement between an owner and a non-owner of a life insurance contract satisfying the following criteria:

1. Either party to the arrangement pays all or a portion of the premiums on the life insurance contract, including payment by means of loan to the other party that is secured by the life insurance contract);
2. At least one of the parties to the arrangement that is paying premiums is entitled to recover all or a portion of the premiums, and the recovery is to be made from or secured by the proceeds of the life insurance contract; and
3. The arrangement is not part of a group term life insurance plan unless the plan provides permanent benefits.¹

Certain compensatory arrangement and shareholder arrangements are treated as split-dollar arrangements even if they do not meet the general definition of a split-dollar arrangement. A compensatory arrangement is one where:

1. The arrangement is entered into in connection with the performance of services and is not part of a group term life insurance plan;
2. The employer pays all or a portion of the premiums; and
3. Either

¹ Treas. Reg. §1.61-22(b)(1).

What are the basic split-dollar arrangement requirements?

A split-dollar arrangement requires:

1. A corporate resolution or other business documentation and
2. A written split-dollar agreement signed by the business sponsor, the insured employee, and the trustee if a trust is involved.

What are the three split-dollar opportunities today?

1. Endorsement split dollar
2. Non-equity collateral assignment – Economic benefit
3. Equity collateral assignment – Loan regime

How to structure the split-dollar arrangements?

Split-dollar life insurance is typically structured using one of these methods:

1. **Endorsement method** - the business owns the policy and the insured's beneficiaries along with the business are named as beneficiaries.
2. **Collateral assignment method** - the insured or the insured's trust owns the life insurance policy. The policy is assigned back to the business as collateral.

Endorsement arrangement

With the endorsement method, the corporation is the owner of the insurance policy. The employee's rights in the insurance policy are spelled out in a split-dollar agreement between the employer and employee. The insurance proceeds are split by beneficiary designation. For example, the employer is designated beneficiary of the greater of the policy cash value or the premiums it has paid. The employee's spouse or another family member is generally designated as beneficiary of the remainder of the insurance proceeds.

There are some circumstances that may make the endorsement method preferable:

- The employer may wish to show the entire cash value of the policy as an asset of the corporation.
- The corporation may intend to use the policy to informally fund a deferred compensation benefit if the employee lives until retirement (Protection SERP). If that is the case, an entirely separate nonqualified deferred compensation agreement is required and the rules of IRC Section 409A must be met.
- An endorsement split dollar may also be preferred if the employer wants absolute control over all aspects of the policy except the right to name the beneficiary of the employee's portion of the death benefit.

Collateral assignment arrangement

With the collateral assignment split-dollar arrangement, the employee or the employee's trust is designated the owner of the policy. The employee's spouse, other family member, or the trust is named beneficiary of the policy. The employer's premium payments are secured by a collateral assignment on the policy. As in the endorsement method, the rights and duties of the two parties are spelled out in a split-dollar agreement.

Typically, collateral assignment arrangements are used for two reasons:

1. First, it is generally easier to keep the death benefit out of the estate of a controlling shareholder. (See the discussion of estate tax treatment.)
2. Second, the collateral assignment method makes it somewhat easier for the employee to take over the policy unencumbered. Since the employee owns the policy from the outset, it is not necessary to transfer ownership from the corporation to the employee, though the collateral assignment would be released when the split dollar is terminated and taxation would result.

How are split-dollar arrangements taxed?

The IRS requires that a split-dollar policy take one of two approaches to taxation: the **economic benefit approach** or the **loan approach**. With either approach, the business cannot deduct the premium for tax purposes.

Economic benefit approach

Definition	The economic benefit is measured by the insurance protection provided, based on IRS Table 2001 or on one-year term rates if the life insurance carrier provides them. Minnesota Life and Securian Life provide one-year term rates (also called Annually Renewable Term (ART) rates).
Repayment to non-owner	Greater of policy cash value or premiums paid.
Tax value (income and gift)	Based on the economic value of the death benefit (otherwise known as Reportable Economic Benefit (REB)).

Who owns the policy under this approach?

Typically, the employer (i.e., endorsement split dollar) or an irrevocable life insurance trust (ILIT) (i.e., private split-dollar) will own the policy's entire cash value using this approach. A collateral assignment arrangement can be taxed using the economic benefit approach, as long as the policy and its entire cash value are assigned to the employer (i.e., non-equity collateral assignment).

What are the income tax ramifications under this approach?

Under the Final Regulations, the IRS treats the economic benefit portion of the arrangement as rent, and the entire basis accrues in the hands of the owner of the contract. This means the non-owner is renting the net death benefit from the owner. Under this approach, the economic benefit (or the rent) is measured by the insurance protection provided, based on IRS Table 2001 or on one-year term rates if the life insurance carrier provides them. Minnesota Life and Securian Life provide one-year term rates (also called Annually Renewable Term (ART) rates).

For example - Economic benefit for \$1 million of death benefit

Age	Table 2001 Rate	Minnesota Life/Securian Life ART Rate
45	\$1,530	\$710
50	\$2,300	\$970
55	\$4,150	\$1,180
60	\$6,510	\$1,740
65	\$11,900	\$2,720

With endorsement and non-equity collateral assignment arrangements, the employer will receive the entire basis in the contract. The cost of the arrangement will increase at termination to the extent the non-owner is bonused the policy. Under Final Regulations, a bonus would result in income tax on the full cash value, since the non-owner has no basis in the contract. Please note the value of a transferred policy is now the full cash value and it is not reduced by any surrender charges.

What is the tax impact of premium contributions by non-owners?

Under the Final Regulations, the payment of the economic benefit by the non-owner (i.e., employees) will result in income to the owner. In keeping with the rent analogy, a payment by the non-owner is effectively a taxable rent payment to the owner.

Loan regime approach

Definition	Annual premium paid by you or your company is considered an annual loan. You or your ILIT must pay loan interest annually on cumulative premiums paid or loan interest can be capitalized.
Repayment to non-owner	Cumulative premiums paid (including any capitalized interest).
Tax value (income and gift)	Based on the annual loan interest.

What is the loan regime approach?

Under this approach, the employer pays the policy’s premium, and the premium payment is treated as a loan to the employee. Because it is a loan, the employee must pay back both the interest and the principal. Typically, the interest rate is based on the IRS applicable federal interest rates (i.e., AFR). If the employee is not charged at least the AFR, then taxable income equal to the difference between the AFR and the rate the employee is charged is imputed to the employee. Upon termination of the loan arrangement, if the employee does not repay the outstanding loan balance, he or she is taxed on the amount of the loan balance forgiven.

Is the loan regime approach also known as equity split dollar?

Yes, for any equity collateral assignment split-dollar arrangements entered into after September 17, 2003, the parties will be required to use the loan regime. Under the loan regime, the employee owns the policy and collaterally assigns the cash value (not to exceed the outstanding loan balance) of the policy to the business. The employee retains the cash values over and above the outstanding loan balance (i.e., equity). If cash values grow enough, the employee could potentially use that amount as a retirement income supplement after the employer is reimbursed for the loaned premiums.

What is a demand loan?

A demand loan is a loan that is callable in full at any time upon the demand of the lender. If a demand loan is a below market loan (i.e., the interest on the loan is less than the short-term blended rate (an average of the January and July short term rates)), the foregone interest is deemed to be transferred annually from the lender to the borrower.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Easy to administer because the blended short-term rate is simply multiplied times the outstanding loan balance to determine the amount of foregone interest. This income is then imputed to the borrower annually. • Interest rate is much lower than the mid-term or long-term AFRs that are used with term loans. 	<ul style="list-style-type: none"> • Inability to lock-in the interest rate and the resulting uncertainty of future interest costs

What is a term loan?

A term loan is a loan due at the end of a certain term of years or upon the death of an individual. The split-dollar term loan is tested on the day the loan is made to determine if it has adequate stated interest. A loan's term is the period from the date the loan is made to its stated maturity date. The applicable federal rate applied to determine if the split-dollar term loan is a below market loan is the rate appropriate for the fixed term:

Short term	Less than 3 years
Mid term	Between 3-9 years
Long term	Greater than 9 years

Generally, if term loans are desired, it may be best to enter into a loan arrangement with a stated interest rate at least equal to the applicable federal rate. In this way, the parties can avoid the complexities of Section 7872 of the Code, including the possible acceleration of the foregone interest over the term of the loan into the year that the loan is made.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ability to lock in the interest rate during low interest environments. • May be desirable where the insured is a majority shareholder or a party to a private split-dollar arrangement. 	<ul style="list-style-type: none"> • Interest rate is higher than demand loans. • Can be cumbersome to administer since each premium payment is considered a new term loan with a new interest rate.

Care must be exercised when it is important to keep the proceeds out of the insured's estate not to give the corporation (or the insured) any incident of ownership. Any right to demand payment may be considered an incident of ownership and causing inclusion of the proceeds in the insured's estate.

Can the interest rate be locked for future premiums using a term loan?

Yes, the employer can a loan large amount of money to the employee (or trust) so that future premiums can be paid with the loan proceeds. By making a single loan to the employee, the interest rate on the lump sum amount can be locked in at today's rate.

Can the interest on the loan be accrued and paid at some later time?

Yes, as long as the loan is structured so that a rate of interest equal to or greater than the AFR, the interest can be accrued until the end of the term.²

Can the employer bonus or pay the interest directly or indirectly on the loan?

If the employer pays the interest to the borrower – either directly or indirectly – the interest paid will be ignored, and the loan will be treated as an interest-free loan with adverse tax consequences.

Can the parties refinance an existing split-dollar loan?

Yes, the parties to the split-dollar loan arrangement can agree to refinance the outstanding indebtedness by substituting a new note with a lower interest rate for the existing note. While there should not be any income or gift tax consequence to refinance, some commentators believe that the new note with the lower interest rate should alter one or more terms of the loan to help justify the lower rate.

Switch-dollar arrangement

What is switch-dollar arrangement?

The switch-dollar arrangement simply combines the advantages of economic benefit and loan regime into one arrangement. When the economic benefit regime becomes less economical, the collateral assignment is terminated and promissory note is established with an initial loan balance that includes all prior premiums paid. In the alternative, it can also be used immediately before the policy moves into a gain position.

The result of the switch is that any equity transferred to the employee at the time of the switch will be taxable to the employee and deductible to the employer (if considered reasonable compensation). In addition, any gain in the contract will be taxable to the employer upon transfer of the policy. However, if the switch occurs before any equity appears, then there will be no transferred equity to tax.

Endorsement split dollar

	Owner of the policy	Regime	Uses
Endorsement split dollar	Employer	Economic benefit	<ul style="list-style-type: none">• Pre-retirement survivor benefits• Key person protection• Buy-sell strategies• Non-qualified deferred compensation

What is endorsement split dollar?

An endorsement split dollar is an agreement between employee and the employer in which the employee splits the cost of a life insurance policy on his or her life with the employer. It is a cost-effective way for the employer to provide the employee with a pre-retirement survivorship benefit. It can also be incorporated into a non-qualified deferred compensation plan or a key person plan.

² It must be structured so that the loan falls outside of section 7872 of the Code.

Who owns and has access to the cash value of the life insurance policy?

The owner of the life insurance policy on the employee will be the employer. The employee has no interest in the policy other than the right to designate the beneficiary of his or her portion of the death benefit. If the employee has a current or future right to the cash values, and the employee has current access to the cash values or the employer or the employer's creditor do not have current access to the cash values, the employee will have to recognize those cash values as income as they accrue.

What happens if the employee doesn't pay or include in income economic benefit each year?

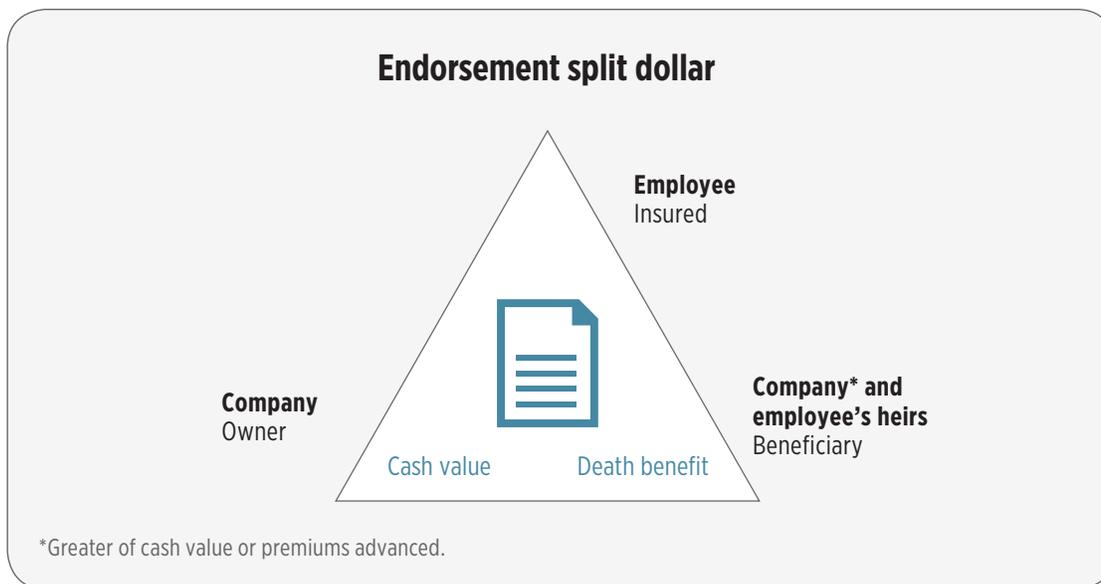
Failure will cause the proceeds to be taxable as income. The Final Regulations assume that where the economic benefit has not been taken into consideration by the non-owner (employee), the death proceeds are paid first to the owner (employer) and then by the owner (employer) as income in respect of a decedent to the non-owner's (employee's) beneficiary.

What is the amount of death benefit endorsed to the employee?

The amount of the death benefit endorsed to employee can be a fixed amount, a multiple of his or her earnings, or death benefit in excess of the cash value.

How does endorsement split dollar work?

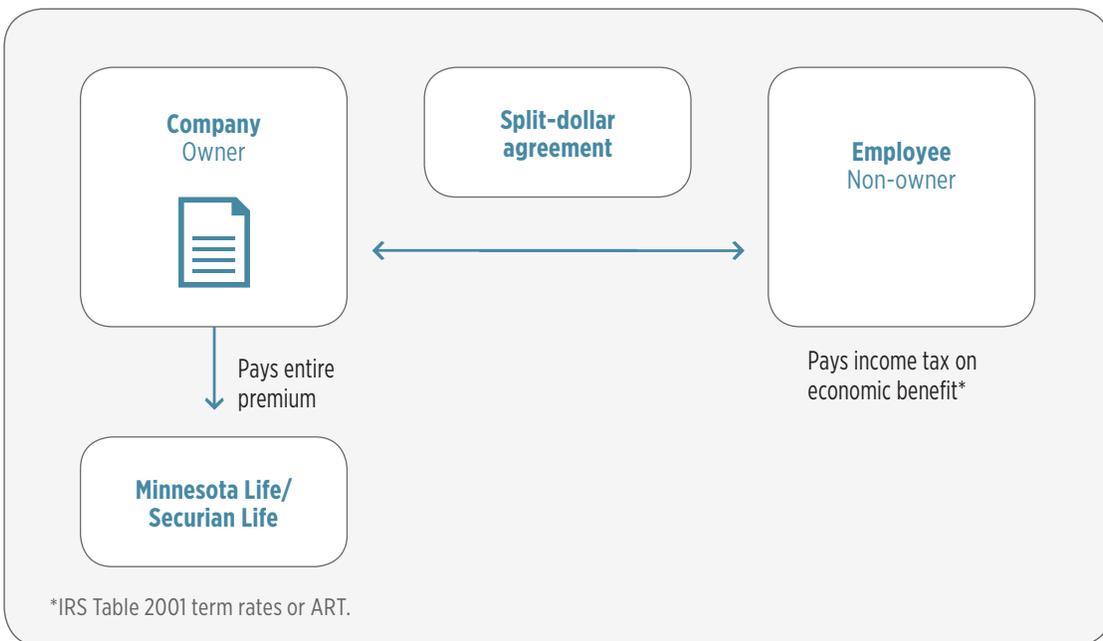
Step One The employee and the employer enter into an endorsement split-dollar agreement.



Step Two The employer acquires and owns a life insurance policy insuring the employee's life and then endorses a portion of the death benefit to the employee as a pre-retirement survivor benefit to his or her heirs in the event of the employee's premature death.³



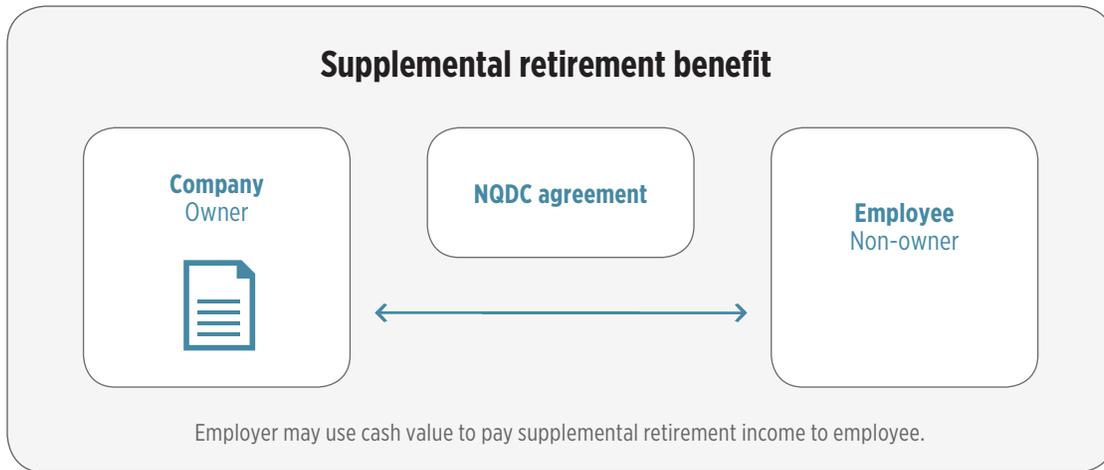
Step Three The employer makes the entire premium payment on the policy and the employee will be taxed the reportable economic benefit. As an alternative, the employee can pay economic benefit portion of the premium to the life insurance company.



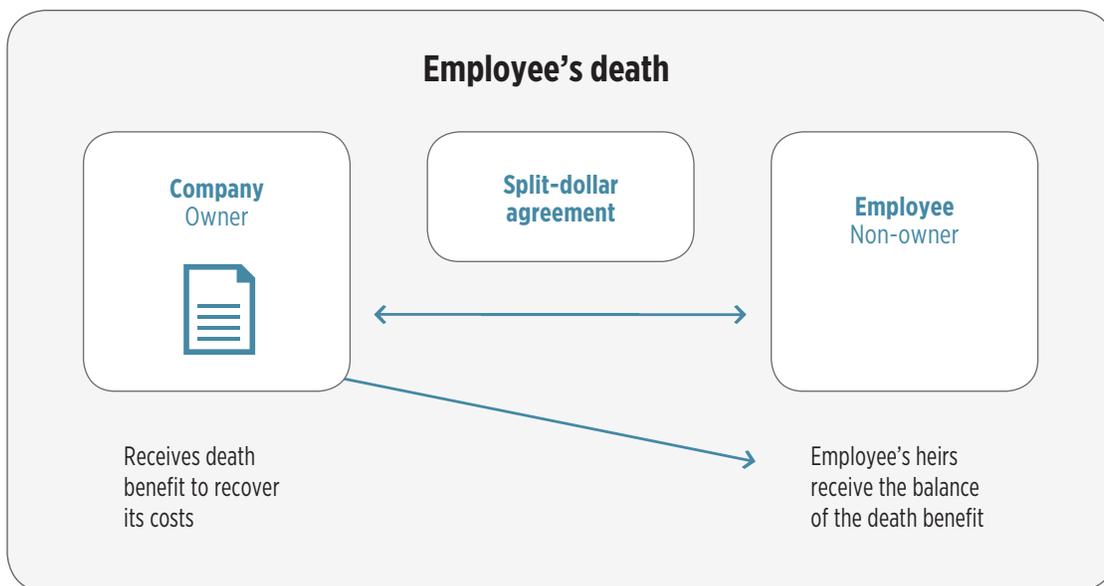
*IRS Table 2001 term rates or ART.

³ The life insurance death benefit will be received income tax-free to the Company if the Company meets the requirements of Internal Revenue Code Section 101(j).

Step Four When the employee retires, the split-dollar agreement terminates and the employer retains ownership of the policy. The employer may use the cash value to pay supplemental retirement income to the employee.



Step Five Upon the employee’s death during the arrangement, the employer will receive a portion of the death benefit and employee’s heirs will receive the other portion of the death benefit.



Employer (Owner)	
Benefits	Considerations
<ul style="list-style-type: none"> Policy cash value is a company asset Simple plan to implement Cost recovery Provide benefits to select executives 	<ul style="list-style-type: none"> Premiums are not deductible Legal split-dollar agreements are necessary The life insurance death benefit will be received income tax-free to the Company if the Company meets the requirements of Internal Revenue Code Section 101(j) Split-dollar arrangements may be subject to IRC 409A

Employee (Non-owner)	
Benefits	Considerations
<ul style="list-style-type: none"> • Low-cost death benefit coverage • Flexibility to meet changing financial needs • Can be coordinated with an ILIT or SLAT to take the death benefit outside your estate 	<ul style="list-style-type: none"> • May be taxed annually on the value of the economic value of the death benefit • No access or control of the policy • Death benefit proceeds will be included in the estate of the employee for estate tax purposes unless an ILIT is used

Combining endorsement split-dollar with Non-Qualified Deferred Compensation (NQDC) – Protection SERP

Many times, employers combine endorsement split-dollar with NQDC plan. Minnesota Life and Securian Life calls these arrangements Protection SERP. In general, NQDC plans must meet three major requirements:

1. Any asset used to informally fund the executive’s account balance must always be reachable by the business creditors. The company’s promise to pay must be unsecured. For the company’s promise to be unsecured, the plan must be considered unfunded (or informally funded).⁴ The definition of unfunded for Internal Revenue Code purposes is the plan assets must be general assets of the business and subject to the claims of creditors. In regards to Protection SERP, the promised to pay at retirement is informally funded with the life insurance contract on the key executive.
2. All deferrals must be made before the executive is in actual or constructive receipt of them. In order to avoid constructive receipt of the account balance, the agreement to defer must be entered into prior to the services being rendered. In regards to Protection SERP, there are no deferrals by the executive.
3. If ERISA applies, NQDC plan eligibility must be limited to the “top-hat” group. The “top-hat group” is defined in the regulations as a “select group of management or highly compensated employees.”⁵ Generally, it is understood that the purpose of the top-hat exception was to remove from ERISA those employees who did not need its protection.⁶ In regards to Protection SERP, in order to comply with ERISA, the only employees who can participate are key executives.

⁴ Treas. Reg. §1.451-2(a); Rev. Rul. 60-31, 1960-1 CB 174; Rev. Proc. 92-65, 1992-2 CB 428.

⁵ DOL Reg. § 2520.104-23.

⁶ DOL Adv. Op. 90-14A.

Non-equity collateral assignment – economic benefit

	Owner of the policy	Regime	Uses
Non-equity collateral assignment	Insured or trust	Economic benefit	Estate planning

What is a non-equity collateral assignment split-dollar arrangement – economic benefit?

Under this arrangement, the employee (or a trust) owns the policy and collaterally assigns all of the cash value of the contract to the company as security for the company’s premium payments. In the event of the termination of the agreement, the Company is entitled to receive the greater of the policy’s cash value or its premiums paid.

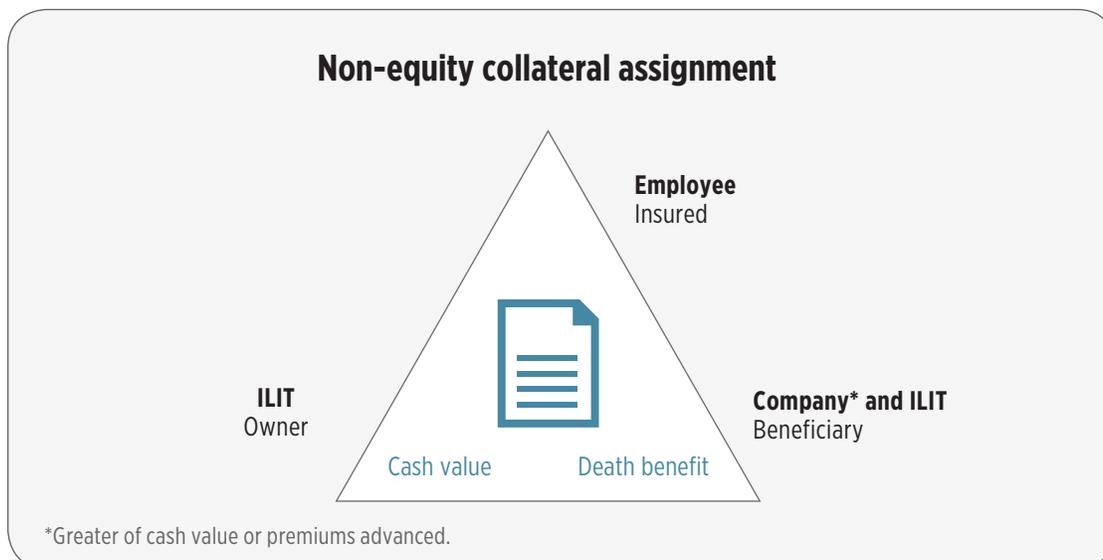
This strategy makes sense when the business owner or the key executive doesn’t have the cash flow to fund premiums or the company is looking for a way to provide the executive or owner a fringe benefit. Typically, this arrangement is used when the policy is owned by a third party such as the employee’s irrevocable life insurance trust (ILIT). Please note - a restricted collateral assignment is necessary to remove the death proceeds from a majority shareholder’s estate for federal estate tax purposes.

Who is the owner of the policy for tax purposes?

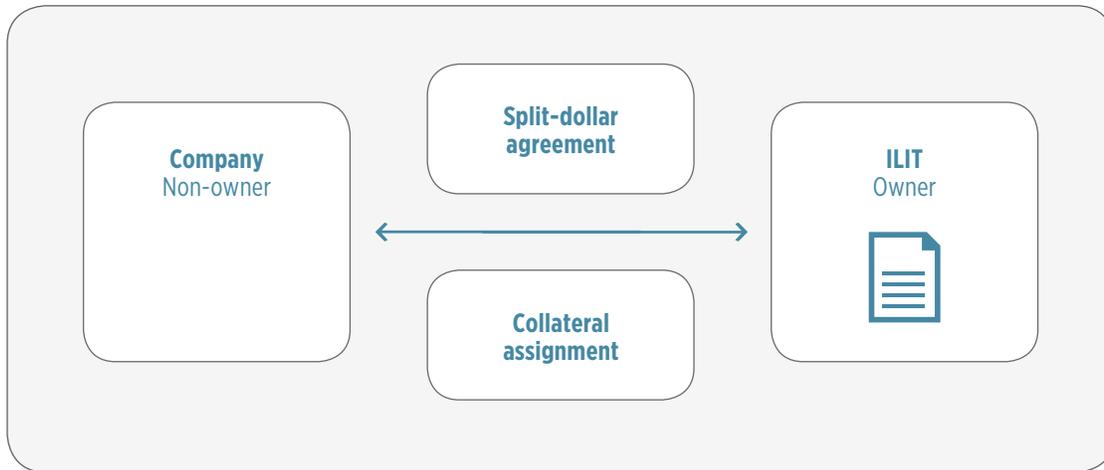
The Final Regulations take the position that the taxpayers can elect which regime will apply to the split-dollar arrangement by their selection of one party or the other as the contract owner. However, the Final Regulations provide an important exception to the general rule. If a non-equity collateral assignment split-dollar arrangement that is entered in connection with the performance of services, the employer is treated as the owner of the contract. Therefore, the only benefit available to the employee under this arrangement would be the value of the current life insurance protection; the service will treat it like an endorsement split-dollar.

How does non-equity collateral assignment split-dollar arrangement – economic benefit work?

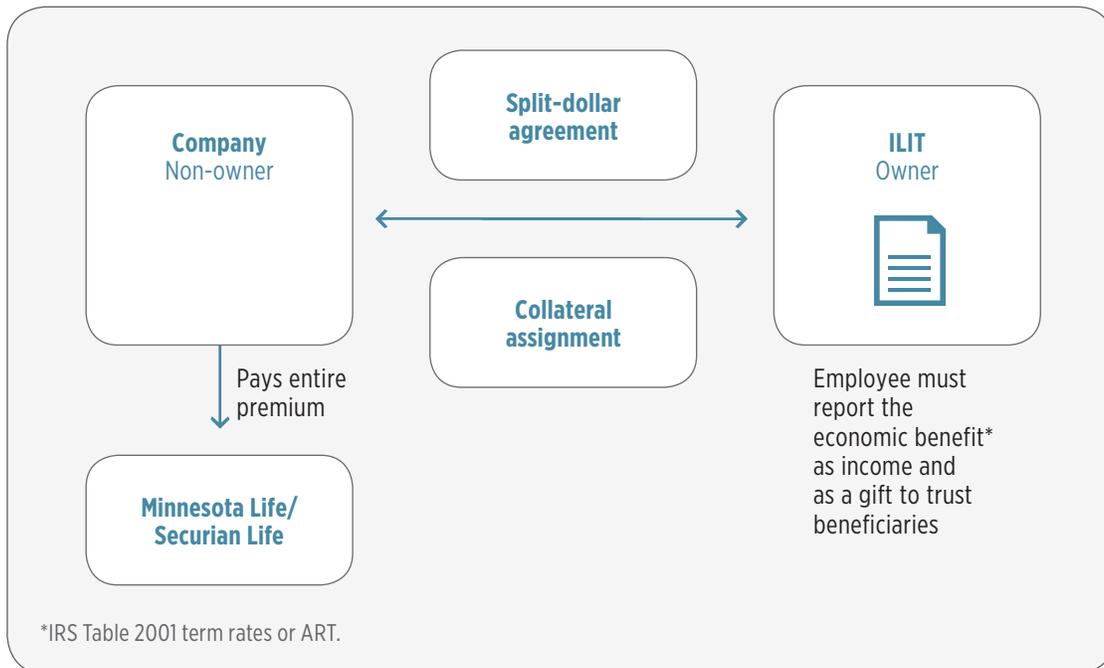
Step One The employee will create an ILIT and it will apply for and own the life insurance policy.



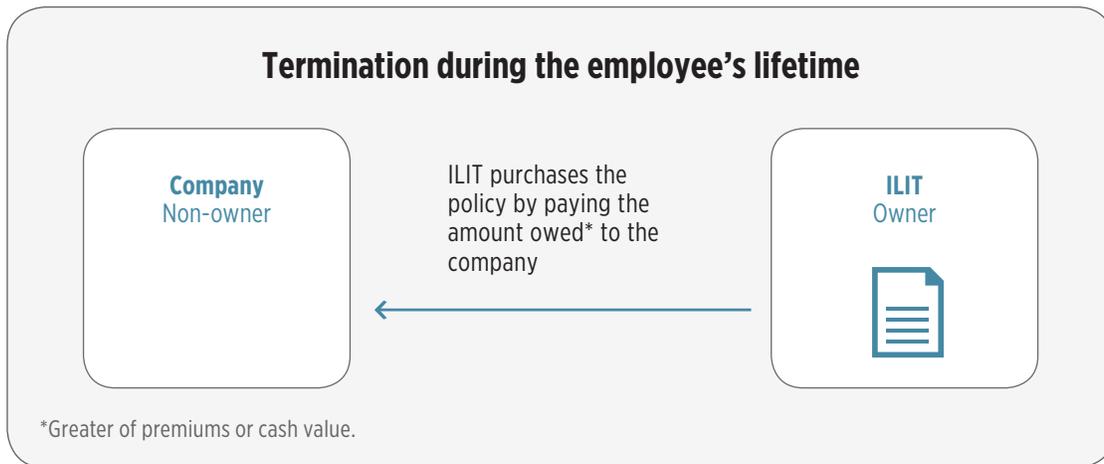
Step Two The company and the ILIT will enter into a non-equity collateral assignment split-dollar agreement. The ILIT will provide a restricted collateral assignment of the policy cash value to corporation as security if the employee is a majority shareholder of the company.



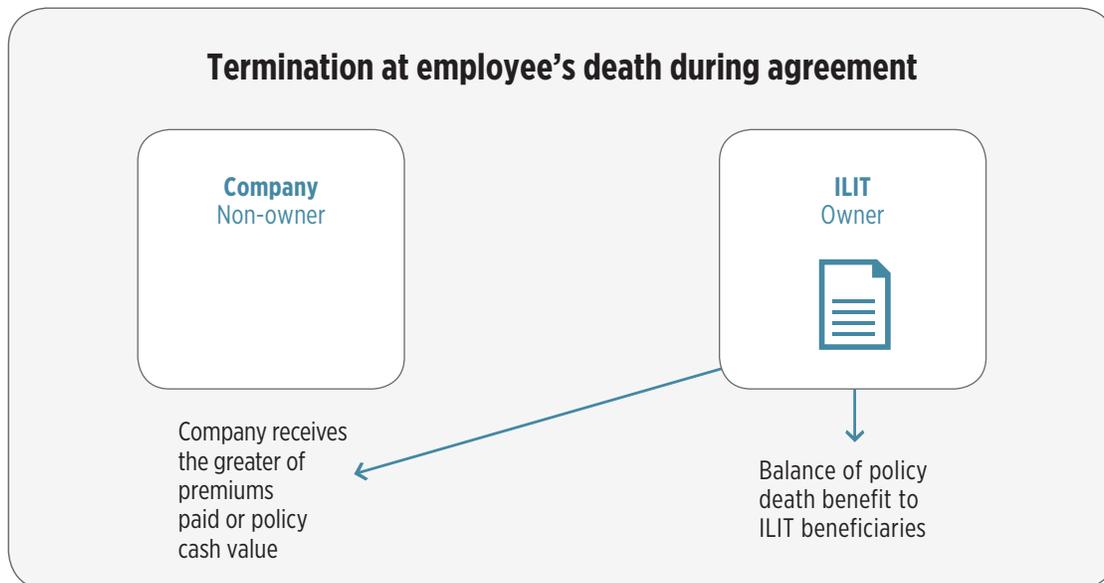
Step Three Premiums will be paid by the company and the economic benefit will be treated as a gift from the employee to the ILIT.



Step Four Once arrangement is terminated, the company will receive the greater of the premiums paid or the policy cash value.



Step Five In the alternative; if the employee dies during the split-dollar agreement, then the death benefit will be paid partially to the company and partially to the ILIT.



Special note for pass-through entities

- Pass-through entities are S Corporations, Partnerships, and LLCs (taxed as either an S Corporation or a Partnership).
- In a pass-through entities, all income generated is taxed to the owner.
- Split-dollar arrangements will result in the business owner paying income tax on a greater amount than income used for premium payments.
- For example, \$20,000 premium with \$500 term cost:
 - Business owner will pay income tax on the \$20,000 of business income to pay premium because it is non-deductible business expense.
 - In addition, business owner must report the \$500 value of economic benefit.
 - Therefore, business owner will pay income tax on an amount greater than the annual premium.
- Therefore, this strategy is typically used by owners of C Corporations.

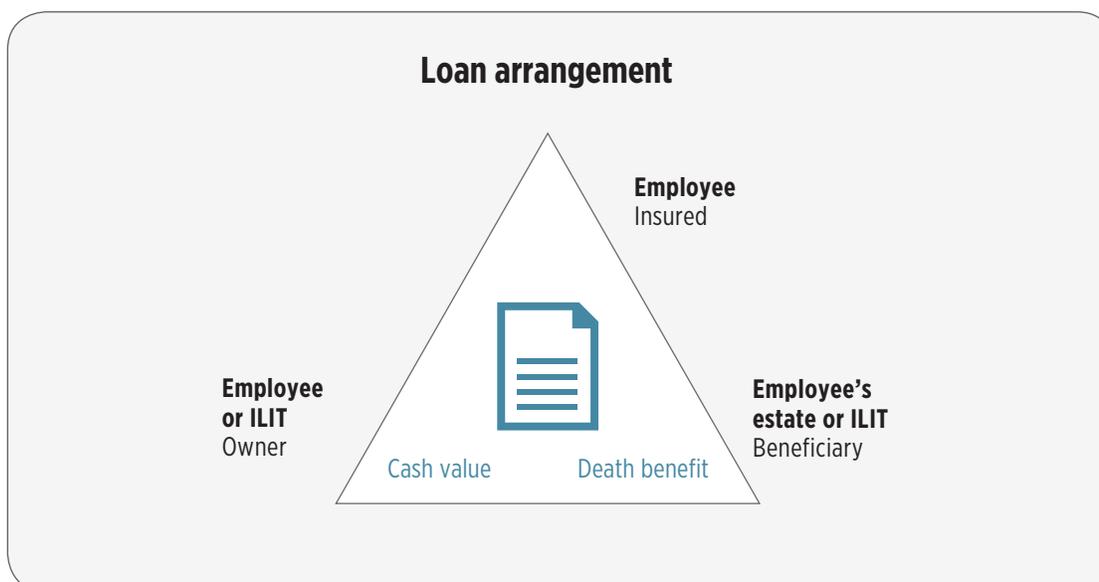
Equity collateral assignment - loan regime

	Owner of the policy	Regime	Uses
Loan arrangement	Insured or trust	Loan regime	Estate planning

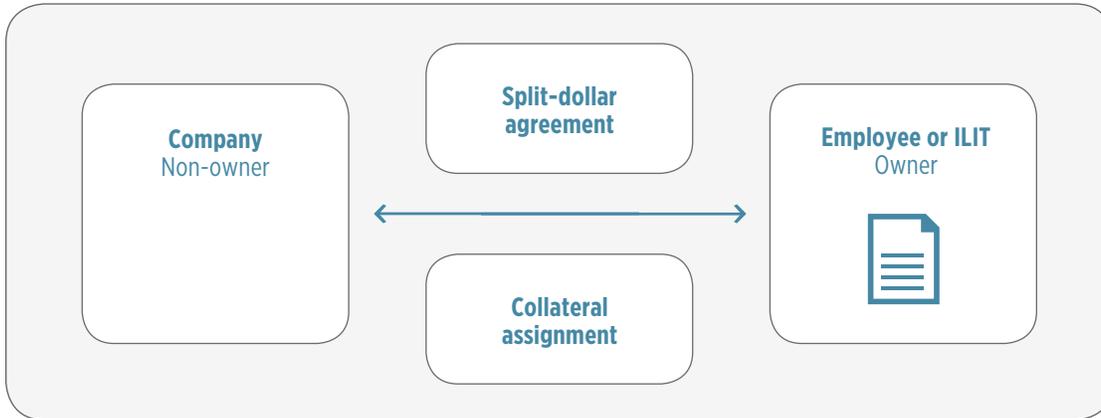
This strategy makes sense when an employee either doesn't have the cash flow to fund premiums or the company is looking for a way to provide a key executive a fringe benefit.

How do loan regime arrangements work?

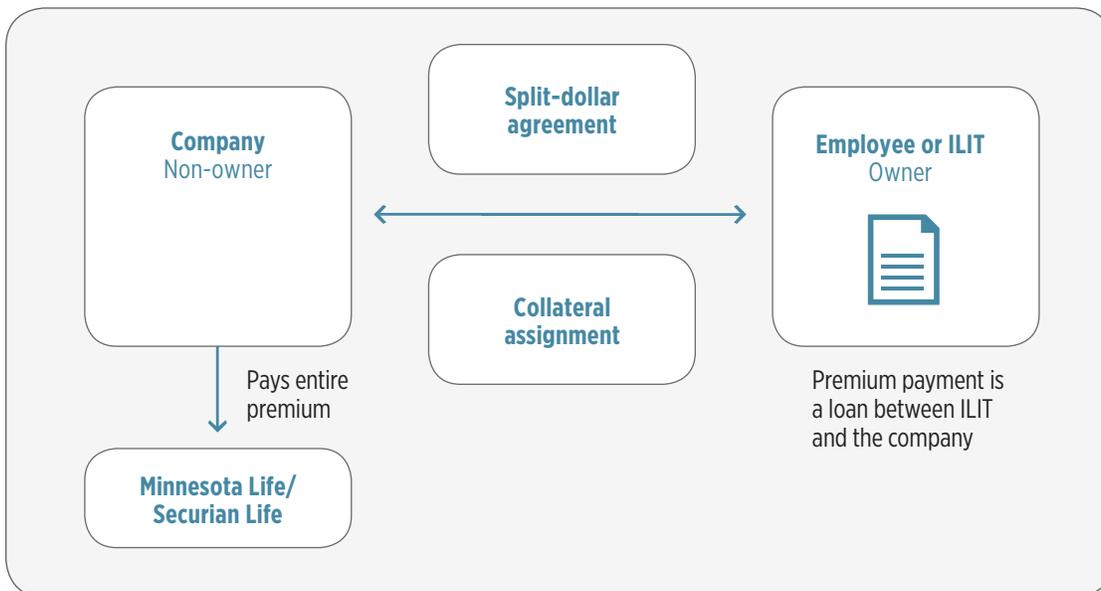
Step One The employee (or an ILIT) will apply for and own the life insurance policy.



Step Two The company and the employee (or ILIT) will enter into an equity collateral assignment split-dollar agreement. Employee (or ILIT) will provide a restricted collateral assignment of the policy cash value to corporation as security. Employee (or ILIT) will retain the cash value over and above the outstanding loan balance.



Step Three The company will pay the premiums and the premiums are treated as a loan to the employee. If the employee is not charged at least the government established interest rate for the type of loan (applicable federal rate or AFR), then taxable income equal to the employee.



Step Four Once loan arrangement is terminated (during lifetime or death), the employee will need to pay off the loan balance to the company. If the employee doesn't repay the outstanding loan balance, he will be taxed on the amount of the loan balance forgiven.



Income tax considerations

When was the split-dollar arrangement entered into?

The income tax treatment of split-dollar arrangements depends on when the arrangement was entered into. The Final Regulations apply to those arrangements entered into after September 17, 2003, or to older arrangements materially modified after that date.⁷ The taxation of arrangements entered into before September 17, 2003, is subject to prior law.

Can the business deduct the premiums?

Regardless of when the split-dollar arrangement was executed, the business cannot income tax-deduct the life insurance premium, because the business is directly or indirectly a beneficiary of the policy.⁸ The business also cannot income tax-deduct the one-year term costs or Table 2001 costs that are taxed to the insured employee.

Can publicly traded companies participate in split-dollar arrangements?

Sarbanes-Oxley Act has called into question the validity of split-dollar arrangements for employees of publicly traded companies. Therefore, most publicly traded companies no longer offer split-dollar arrangements to their employees. As a result, split-dollar arrangements are generally utilized by privately held companies only.

How about second-to-die life insurance contracts in a split-dollar arrangement?

Split-dollar arrangements using second-to-die insurance are subject to the same taxation rules as are other split-dollar arrangements. One difference is the measure of the economic benefit. Since second-to-die insurance is much less expensive than single-life insurance, the economic benefit should be correspondingly lower. The IRS informally issued a formula approach for valuing second-to-die policies.⁹ When applied to the P.S. 58 table, the formula produced a second-to-die table referred to as P.S. 38.

While neither Notice 2001-10 nor Notice 2002-8 issued a replacement for the P.S. 38 rates, a similar formula which generated the original P.S. 38 table can be applied to Table 2001 to determine the economic benefit for future split-dollar arrangements using second-to-die life insurance. Some life carriers have second-to-die one-year term rates which may be used subject to the rules of the Final Regulations. For periods after 2003, an insurer's rates may not be used unless the insurer generally makes the availability of the rates known to those who apply for term coverage from the insurer; and the insurer regularly sells term insurance at those rates to individuals who apply for term coverage through the insurer's normal distribution channels.¹⁰

In designing a split-dollar strategy using a second-to-die policy, the effect of the first death must be considered if the economic benefit approach is used. At the first death, the taxable economic benefit will increase. That is because the life insurance protection is no longer based on joint life expectancy. After the first death, the economic benefit

⁷ Treas. Reg. §1.61-22(j).

⁸ IRC §264(a).

⁹ Based on an unofficial informational letter of Norman Greenberg, Chief, Actuarial Branch, Department of the Treasury, August 1983.

¹⁰ IRS Notice 2002-08.

must be calculated using the single-life rates instead of the lower second-to-die rates. This change applies to the valuation of the economic benefit for both income and gift tax purposes.¹¹

How about Notice and Consent Requirement under Section 101(j)?

IRC §101(j) defines an employer-owned life insurance (EOLI) contract as a life insurance policy issued after August 17, 2006, that:

- Is owned by a person engaged in a trade or business and under which such person (or a related person) is directly or indirectly a beneficiary under the contract, and
- Insures an employee of the trade or business of the policy owner or a related person (collectively the “applicable policyholder”) on the date of the contract’s issuance.¹²

Unless an exception applies, an applicable policyholder must include in gross income the death benefits received under an EOLI contract that exceed the total premiums and other amounts paid by the policyholder for the contract.

There are two exceptions:

1. **Insured’s status as an employee.** The insured under the contract was (1) an employee at any time during the 12 months prior to his or her death, or (2) a director or a highly compensated employee or individual at the time the contract was issued.¹³
2. **Death benefits paid to insured’s heirs.** The contract death benefits are either (1) paid to the insured’s estate, family members, or other designated beneficiaries (other than the policyholder), or a trust for the benefit of any such individuals, or (2) used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described above.

However, these exceptions are applicable only if the notice and consent requirements are met before the issuance of an EOLI contract.

As a general rule, whenever a business entity will own a life insurance policy (including wholly owned corporations and sole proprietorships). Specifically:

- **Entity redemption buy-sell** - The business owns the policy insuring the business owner and receives the death benefits to fund the owner’s buyout.
- **LifeCycle LLC buy-sell** - A separate partnership or LLC is used to hold life insurance on the owners of an operating business to fund the buy-sell arrangement of the operating business.
- **Key person life insurance** - A business owns policy to protect it against the loss of a key employee, owner, director, etc.
- **Non-qualified deferred compensation plans** - Any policy used to fund a nonqualified plan which is owned by the business. IRC §457(f) plans may have similar considerations.

¹¹ Greenberg letter, supra note xxiv.

¹² For this purpose: (1) a “related person” is any person with a relationship to the policy owner as specified in IRC §§267(b), 707(b)(1), 52(a) or 52(b); and (2) an “employee” is a U.S. citizen or resident who is an officer, director or certain highly compensated employees as defined in IRC §414(q).

¹³ For this purpose, (1) a “highly compensated employee” is defined in Code §414(q) but ignoring paragraph (1)(B)(ii) (i.e., any employee who is a 5% owner or had compensation from the employer in excess of \$115,000 (inflation adjusted)), and (2) “highly compensated individual” is defined in Code §105(h)(5), but substituting 35% for 25% (i.e., an individual who is (a) one of the five highest paid officers, (b) a shareholder who owns (with the application of the constructive ownership rules of IRC §318) more than 10% of the employer’s stock, or (c) among the highest paid 35% of all employees).

- **SERPs** - Policies purchased as general asset reserves to fund nonqualified voluntary salary/bonus deferral plans or supplemental executive retirement plans.
- **Endorsement split-dollar arrangements** - Any policy where the business owns the policy, and the business (or a related person) will receive the death benefits.
- **Changes or exchanges of grandfathered policies** - Any change to a grandfathered policy or an IRC §1035 exchange of a grandfathered policy for a new policy if there is (1) a material increase in the death benefit or (2) another material change in the policy.

In Notice 2009-48, the IRS stated that life insurance policies issued in the following situations generally would not qualify as EOLI contracts for purposes of IRC §101(j):

- **Cross-purchase arrangements** - Policies owned by the owner of an entity engaged in a trade or business for purposes of financing the purchase of another owner's equity interest.
- **Qualified plans and VEBAs** - Policies held in a qualified plan or voluntary employees' beneficiary association (VEBA) that is sponsored by an entity engaged in a trade or business.

To fit within any exception to EOLI taxation, policyholders must satisfy certain notice and consent requirements prior to issuance of the EOLI contract. The IRS issued the following guidance in Notice 2009-48 regarding compliance with the notice and consent requirements:

Notice - The employee must receive written notification that the applicable policyholder:

- Intends to insure the employee's life;
- Reasonably expects to purchase a specified maximum amount of life insurance (stated either in dollars or as a multiple of salary) on the employee during the employee's tenure; and
- Will be a beneficiary of any proceeds payable upon the death of the employee.

Consent - The employee must provide written consent to being the insured and to the continuation of coverage after termination of the insured's employment. The contract must be issued (1) within one year after the employee's consent or (2) before the termination of the employee's employment, whichever is earlier.

Policyholder's responsibility. EOLI compliance is the policyholder's responsibility. In any potential EOLI situation involving a Minnesota Life or Securian Life policy, there are two steps:

1. The employer must sign a copy of Minnesota Life's form F66015 or Securian Life's form FSL-66015, "Employer Notification Regarding the Potential Taxation of Death Benefits" before the policy is issued, and return it to the financial representative. This form simply notifies the employer of its potential obligations under these rules. It does not relieve the employer of its obligation to obtain a signed notice and consent from the prospective insured.
2. The client should discuss the EOLI rules with an attorney and, if the EOLI rules apply, obtain a signed Notice and Consent from the insured before the policy is issued. Minnesota Life and Securian Life have a sample "Insured's Acknowledgement of Notice and Consent - Employer Owned Life Insurance Policy" at the end of this Foreword to Counsel. It is the employer's obligation to obtain a signed form from each prospective insured before the policy is issued. The employer should retain these signed forms and file them along with their life insurance policies. The employer must also report these policies to the IRS annually by attaching completed Form 8925 to the employer's annual income tax return.

Form of compliance. While Notice 2009-48 presumes that an employee will receive a separate form for notice and consent, recently PLR 201217017 held that a separate document was not required where the totality of the applicable policyholder's documentation in connection with the EOLI contract evidenced that all the notice and consent requirements were met prior to contract issuance (specifically a buy-sell agreement and a life insurance application, both executed by the insured employee prior to issuance of the contract, which together contained all the required notice and consent information).

Accordingly, for existing EOLI contracts, an employer may be able to evidence notice and consent without separate documentation if it can demonstrate that all required notice and consent information was included in one or more documents that were provided to and/or executed by the insured employee prior to the contract's issuance. For newly issued contracts, however, obtaining a separately executed Notice & Consent form from the insured employee will more easily and clearly document compliance.

Additional reporting requirements. Policyholders of EOLI contracts must file Form 8925 with their annual federal tax returns for each year that an EOLI contract is owned to report certain information regarding EOLI contracts, including the number of employees insured and the total insurance held under EOLI contracts and the number of non-consenting insured employees (if any). The policyholder must also keep whatever records may be necessary to evidence compliance with IRC §§ 101(j) and 6039I.

How can I correct an EOLI issue?

Per Notice 2009-48, the only situations in which the IRS will not challenge inadvertent failures to satisfy the notice and consent requirements are if:

- The applicable policyholder made a good faith effort to satisfy the notice and consent requirements (e.g., maintains a formal system for notice and consent for new employees);
- The failure to satisfy the requirements was inadvertent; and
- The failure to obtain the notice and consent was discovered and corrected by the due date of the tax return for the taxable year in which the EOLI contract was issued (failure to obtain consent cannot be corrected if the insured employee has died).

Otherwise, removing the "taint" of an improperly issued EOLI contract often involves:

1. Cancelling the existing policy and issuing a new one or
2. Affecting a material increase in the policy death benefit or other material change in the contract.

The notice and consent requirements must be satisfied prior to the issuance of a new policy or to a material change in an existing policy.

Estate and gift tax considerations

When will life insurance proceeds be included in the gross estate of the insured?

In general, life insurance proceeds will be included in the gross estate of the insured if the insured possesses any incidents of ownership in the policy, or the policy is payable to the insured's estate.¹⁴ It is possible to keep the policy out of the insured's estate if the insured has no incidents of ownership in the policy, and the policy is not payable to the insured's estate. The split-dollar arrangement most often used to accomplish estate tax exclusion is to have the policy owned by an irrevocable life insurance trust (ILIT) and have a restricted collateral assignment back to the business.

What are the special problems when the insured is a controlling shareholder of the corporation?

Any corporate incidents of ownership will be attributed to an insured who is a controlling shareholder to the extent the insurance proceeds are not payable to the corporation.¹⁵ The IRS generally defines a controlling shareholder as one who owns more than 50 percent of the voting power of the corporation. A decedent is considered to own stock that he owns in his own name or jointly with another. If all the stock in a corporation is owned by a husband and wife as community property, apparently neither spouse is a controlling shareholder.

In an endorsement split-dollar arrangement, the corporation's incidents of ownership will always be attributed back to an insured who is a controlling shareholder. In a collateral assignment arrangement, careful drafting can avoid giving the corporation any incidents of ownership which would be attributed to the insured controlling shareholder.

The IRS indicated that any incidents of ownership held by a corporation would be attributed to the insured who is a controlling stockholder in a split-dollar arrangement.¹⁶ This includes a corporate right to borrow money from the contract. As a result of this ruling, it is generally recommended that all corporate policy rights be eliminated.

Since that Revenue Ruling, many split-dollar strategies on controlling shareholders have attempted to avoid inclusion in the insured's estate, by limiting the corporation's interest in the policy so that the corporation has no incidents of ownership and only a right to recover premium advances upon termination of the policy or death of the insured. These split-dollar strategies have prohibited the corporation from borrowing or otherwise exercising any ownership rights in the policy. Most of these strategies secured the corporation's interest with a limited collateral assignment.

In a subsequent ruling, the IRS held that the death proceeds paid from a policy owned by an irrevocable trust and subject to a split-dollar arrangement would not be included in the taxable estate of the controlling shareholder insured when a limited (or restricted) collateral assignment was utilized.¹⁷ In the ruling, an irrevocable trust was both the owner and beneficiary of the life insurance policy. The insureds were husband and wife who each owned 50 percent of the S corporation. Upon the death of either spouse, the surviving spouse would become owner of 100 percent of the corporation and, therefore, would be a "controlling shareholder." An independent trustee was

¹⁴ IRC §2042.

¹⁵ Treas. Reg. §20.2042-1(c)(6).

¹⁶ Rev. Rul. 82-145.

¹⁷ PLR 9511046.

entitled to all “benefits, rights and privileges” of the policy. The corporation was prohibited from borrowing any of the cash value and had an interest in the policy cash value only if it were surrendered or terminated. The corporation also had an interest in the death proceeds. The trustee of the trust executed a collateral assignment securing the corporation’s interest in the policy. Other rulings have had similar results.¹⁸

What are the gift tax ramifications of a split-dollar arrangement?

- If the collateral assignment method is used and ownership of the split-dollar policy is placed in some person other than the insured (i.e. a trust), an actual or constructive gift from the insured-employee to the owner will take place.
- If the arrangement uses the economic benefit approach to taxation, the amount of the gift will be equal to the economic benefit amount that the employee realizes as income.
- If the loan approach to taxation is used, the amount of the gift will be equal to the annual interest on the loan if the insured gifts that amount to the trust, or the deemed interest amount if the loan is interest-free.

ERISA requirements

A split-dollar life insurance agreement is considered a welfare benefit plan under ERISA.¹⁹ Consequently, the strategy is subject to the following fiduciary provisions of ERISA:²⁰

- It must be established and maintained pursuant to a written agreement.
- It must provide for one or more named fiduciaries that are to have authority to control and manage the operation of the plan. This requirement is typically met by designating the employer acting through one of its officers to be the named fiduciary.
- It must provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan.
- It must describe a procedure for the allocation of responsibilities for the operation and administration of the plan.
- It must provide a procedure for amending the strategy and for identifying those persons who have authority to amend the plan.
- It must specify the basis on which payments are made to and from the plan.

A split-dollar arrangement maintained by an employer for a select group of management or highly compensated employees (where benefits are provided through insurance contracts and premiums are paid directly by the employer from its general assets) is exempt from all reporting and disclosure requirements of ERISA. This total exemption apparently applies solely to the employer pay-all split-dollar arrangements.²¹

Nevertheless, a split-dollar plan with fewer than 100 participants which provides benefits through insurance contracts (the premiums for which are paid solely by the employer or partly with employee contributions) qualifies for a partial exemption from

¹⁸ PLRs 9651030, 9709027, 9746006, 9808024.

¹⁹ ERISA, §3(1).

²⁰ ERISA, Title I, Subtitle B, Part 4.

²¹ DOL Reg. §2520.104-24.

the reporting and disclosure requirements of ERISA.²² Under this partial exemption, no reporting is required to the Department of Labor unless the Department of Labor makes a special request to be furnished with a copy of the document or other books and records of the strategy. However, participants and their beneficiaries must be provided with a Summary Plan Description which is kept up-to-date in the event of any changes in the strategy.²³ Employers should provide copies of the final signed split-dollar agreement and any other related materials to covered employees. These materials may help meet the requirements of a Summary Plan Description.

Every employee benefit plan must also establish and maintain reasonable claims procedures. Related requirements include if there is a denial of a claim, a written explanation must be provided.²⁴ Also the plan administrator must make available any plan documents for inspection by a participant or beneficiary and provide copies upon written request for a reasonable charge.

What to do with existing split-dollar arrangements entered into prior to September 18, 2003?

When the IRS published the Final Regulations, it created a separation between split-dollar arrangements before and after January 28, 2002. It also provided limited “grandfathering” for existing split-dollar arrangements. Clients with existing split-dollar arrangements were given the option to convert to the new tax regime or terminate arrangements without taxation by December 31, 2003. However, many clients did nothing. If you find that your client has a policy subject to old split dollar, what should you do?

Is the existing split-dollar an equity or a non-equity arrangement?

Equity refers to the cash value in excess of premiums paid. There are two components of a cash value permanent life insurance policy: premiums paid and the excess over the premium paid. For example, Client A pays a total of \$200,000 in premiums for a policy that will pay \$1.0 million death benefit, and the policy has a cash value of \$300,000. The policy has equity of \$100,000 (\$300,000 cash value minus \$200,000 total premium paid).

Elements of Cash Value Life Insurance Policy	
Premiums Paid \$200,000	Equity \$100,000
Cash Value \$300,000	

In order to determine whether your client’s split-dollar arrangement is an equity or non-equity arrangement, you need to review the underlying agreement to see who is entitled to the “equity” portion of the life insurance policy.

Type of arrangement	Agreement reads:
Non-equity agreement	If the employer is entitled to an amount equal to the greater of the total premiums paid or the policy’s cash value.
Equity agreement	If the employer is only entitled to an amount equal to the total premiums paid.

²² DOL Reg. §2520.104-20.

²³ DOL Reg. §2520.102.

²⁴ DOL Reg. §2560.503-1(b).

Non-equity arrangements

Non-equity split-dollar arrangements were permanently grandfathered.²⁵ However, if an arrangement is modified after that date, the Final Regulations will apply instead. These regulations took away the ability of parties to split-dollar arrangements to freely choose to use the insurance carrier's one-year term rates as a substitute for the rates published by the IRS in Table 2001.

For arrangements entered into on or after January 28, 2002, the insurance carrier's one-year term rates cannot be used unless:

1. "Insurer generally makes the availability of such rates known to persons who apply for term insurance coverage from the insurer, and
2. Insurer regularly sells term insurance coverage through the insurer's normal distribution channels."²⁶

Currently, Minnesota Life and Securian Life's ART rates qualify under this two part test.

Equity arrangements

Prior to the Final Regulations, employers and employees could establish split-dollar arrangements where a portion of the policy's cash value would be transferred to the employee income tax-free, as long as the employee paid income taxes on the economic benefits associated with the death benefit coverage. However, after the Final Regulations, any equity split dollar will be treated only under the loan regime split dollar.

For existing equity split-dollar arrangements, there is limited grandfathering. In order to avoid taxation of the existing equity buildup, participants had until December 31, 2003, to convert to loan regime or terminate the arrangements. Many participants did nothing.

The question that comes up is whether the client's failure to convert or terminate their arrangement means that they owe taxes for the equity buildup in the policy. The answer is no, according to the Final Regulations. While missing the window for limited grandfathering means that your client has lost the opportunity to access whatever equity then existed income tax-free, it does not force your client to recognize that equity buildup as income until your client actually accesses the policy's cash value or until the split dollar is terminated, so long as the employee continues to pay taxes on the economic benefits for the death benefit coverage under the arrangement.²⁷ If the client does terminate the arrangement or accesses cash from the policy, then all of the equity buildup will have to be recognized as income in that year.

The first issue to review when examining a grandfathered equity arrangement is whether or not there is any equity in the policy (i.e., Is the policy's cash value greater than the total premiums paid?).

If there is no equity ...

A grandfathered arrangement with no equity may suggest a need to re-evaluate your client's needs and start from scratch.

If there is equity ...

²⁵ Notice 2002-8.

²⁶ Notice 2002-8.

²⁷ Notice 2002-8, section IV.1 and IV.2.

Any changes to a grandfathered equity split dollar can have immediate adverse tax consequences. If there was equity in the policy and the client wanted to make changes, then they would recognize income on the equity buildup in the policy. They have four options:

1. Leave the plan intact - keep paying the economic benefit each year.
2. Roll out policy and terminate the plan - income and gift tax consequences.
3. Recast as a loan - possibility with low AFRs (and economic benefit cost go up as the client gets older), but it brings in 409A consequences.
4. Roll in policy and terminate the plan.

SAMPLE – Employer-Owned Life Insurance Contract Acknowledgement

Insured’s Acknowledgement of Notice and Consent

I, *[NAME OF PROPOSED INSURED (EMPLOYEE)]* understand that *[NAME OF PROPOSED POLICY OWNER (EMPLOYER)]*, the “Employer,” intends to insure my life for a maximum face amount of \$*[MAXIMUM FACE AMOUNT]*, and that such coverage may continue after I terminate my employment with Employer. I also understand that the *[NAME OF PROPOSED POLICY OWNER (EMPLOYER)]* will be a beneficiary of all or part of the policy proceeds. I give consent to authorize and allow Employer the authority to purchase such life insurance on my life.

Proposed Insured Information

Name: _____

Date of Birth: _____

Home address: _____

City: _____ State: _____ Zip Code: _____

Business Phone Number: _____

Proposed Insured Signature: _____

Witness: _____

Date Signed: _____ City: _____ State: _____

Please note: Forms should be signed before the policy is issued. For second-to-die life insurance policies, use a separate form for each proposed insured. Employers should keep copies of signed consent forms in their files. Taxpayers should consult with their own legal counsel for guidance on this form.

SAMPLE - Resolution Authorizing Split-dollar Life Insurance

I, *[NAME OF SECRETARY]*, Secretary of *[NAME OF CORPORATION]*, a Corporation duly organized and existing under and by virtue of the laws of the state of *[NAME OF STATE]*, DO HEREBY CERTIFY:

That on the *[DAY]* day of *[MONTH]*, *[YEAR]*, a meeting of the Board of Directors of said Corporation was duly called and held at *[ADDRESS]* at which a quorum was present, and the following resolution was unanimously adopted by said Board of Directors, to wit:

WHEREAS, *[NAME OF EMPLOYEE]*'s competent and faithful efforts on behalf of the Corporation have resulted in substantial growth and profits to the corporation, and,

WHEREAS, the Corporation in order to retain the services of *[NAME OF EMPLOYEE]* is willing to establish a Split-dollar Strategy of Insurance on the life *[NAME OF EMPLOYEE]*.

THEREFORE, BE IT RESOLVED that the officers of this Corporation are hereby authorized and directed to enter into a Split-dollar Agreement on behalf of the Corporation with *[NAME OF EMPLOYEE]* , with said agreement to call for the purchase of a life insurance policy from *[Minnesota Life Insurance Company/Securian Life Insurance Company]*, St. Paul, Minnesota, upon the life of *[NAME OF EMPLOYEE]* in the amount of \$*[MAXIMUM FACE AMOUNT]* with *[NAME OF OWNER]* designated as owner and *[NAME OF BENEFICIARY]* designated as beneficiary of the policy; and

BE IT FURTHER RESOLVED, that the Secretary of this Corporation is hereby authorized and directed to advance to **Minnesota Life Insurance Company/Securian Life Insurance Company** each year, as the initial and each subsequent premium becomes due from said policy, (specify the amount to be advanced in accordance with terms of Split-dollar Agreement), such amounts advanced to be secured by a collateral assignment of the policy to the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation in the city of *[NAME OF CITY]*, State of *[NAME OF STATE]*, on the *[DAY]* day of *[MONTH]*, *[YEAR]*.

(Corporate Seal and other formalities of execution in compliance with local law.)

Signature of Secretary

SAMPLE - Endorsement Method Split-Dollar Life Insurance Agreement

(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties. This specimen agreement should not be used if an attempt will be made to exclude the policy from the gross estate of a controlling shareholder.)

THIS AGREEMENT is entered into this [DAY] day of [MONTH], [YEAR], by and between [NAME OF CORPORATION] (hereinafter called "the Employer") and between [NAME OF EMPLOYEE] (hereinafter called "the Employee").

WHEREAS, the Employee is a valued employee of the Employer and the Employer wishes to retain him/her in its employ; and

WHEREAS, the Employer, as an inducement to such continued employment, wishes to assist the Employee with his/her personal life insurance program;

NOW THEREFORE, the Employer and the Employee agree as follows:

Section 1 Policy Title and Ownership

The Employer will purchase and own a life insurance policy on the life of the Employee, being Policy No. [POLICY NUMBER] issued by the [Minnesota Life Insurance Company/Securian Life Insurance Company] (hereinafter called "the Insurer") with an initial face amount of \$ [FACE AMOUNT] (said policy being hereinafter called "the Policy"). The Employer alone shall be able to exercise all rights of ownership with respect to the Policy; including, but not limited to, the right to borrow or withdraw upon the policy cash values.

In addition, to the extent the Insurer declares dividends on the Policy, the Employer shall have the right to choose the option or combination of options it desires from among those offered by the Insurer. The Employer shall notify the Insurer of its choice.

Section 2 Beneficiary Designation Rights

Employee shall have the right and power to designate a beneficiary or beneficiaries to receive his or her share of the proceeds payable on his or her death and to elect and change a payment option for such beneficiaries but subject to any right or interest the Employer may have in such proceeds as provided in the Agreement.

Section 3 Payment of Premiums

Each premium on the Policy shall be paid in full by the Employer as it becomes due. Premiums shall be payable annually.

Section 4 Division of Death Proceeds of the Policy

The division of death proceeds of the policy is as follows:

- A. The Employer shall be entitled to an amount equal to the cumulative premiums paid as of the date of death or, if greater, the policy's cash value determined as of the date to which premiums are paid, less any indebtedness, and interest on such indebtedness determined as of the date of death. Such cash value shall include any outstanding accumulations or cash value of any paid-up additions and any

postmortem dividends determined as of the date of death.

- B. The Employee's beneficiary or beneficiaries, designated in accordance in Section 2, shall be entitled to the remainder of such proceeds.
- C. Employer and Employee's beneficiary or beneficiaries shall share in any interest due on the death proceeds as their respective share of the proceeds as defined above bears to the total proceeds excluding any such interest.

Section 5 Division of the Cash Surrender Value of the Policy

If the policy is surrendered while this Agreement is in effect, the Employer shall be entitled to an amount equal to the policy's cash surrender value, determined as of the date to which premiums are paid less any indebtedness and interest on such indebtedness determined as of the date of the surrender. Such cash value shall include any outstanding dividend accumulations or cash value of any paid-up additions determined as of the date of surrender.

Section 6 Disability Waiver of Premium

If the policy contains a premium waiver provision, any premium waived shall be considered for all purposes of this Agreement as having been paid by the Employer.

Section 7 Termination of Agreement

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Employee's employment with the Employer for reasons other than death;
- B. At either party's submission of thirty (30) day written notice to the other party of intent to terminate the Agreement;
- C. Performance of the Agreement's terms following the death of the Employee; or
- D. Failure by either the Employer or the Employee, for any reason, to make the premium contributions required under Section 3 of this Agreement.

Section 8 Disposition of Policy upon Termination of Agreement

Upon the termination of this Agreement for any reason other than Section 7(C) above, the Employee shall have a thirty (30) day option to purchase the Policy from the Employer. The purchase price of the Policy shall be an amount equal to the greater of (a) the total premium contributions made by the Employer (pursuant to Section 3 herein) or (b) the cash surrender value, including dividend accumulations and the cash value of dividend additions existing in the Policy at the end of the period for which premiums have been paid. If the Policy shall then be encumbered by assignment, policy loan, or otherwise, the Employer shall either remove such encumbrance or reduce the sale price to the Employee by the total amount of indebtedness outstanding against the Policy. If the Employee exercises such an option to purchase, the Employer shall execute all necessary documents required by the Insurer to affect a transfer of ownership, or absolute assignment, of the Policy over to and in favor of the Employee. If the Employee does not exercise his/her right to acquire the policy, continued ownership by the Employer shall constitute satisfaction of any obligation the Employee has to the Employer with respect to the Policy and arising out of its purchase and premium payments.

Section 9 Taxable Income

The Employee is responsible for determining the amount, if any, includable in his/her gross income for tax purposes as a result of this Agreement.

Section 10 Employee's Right to Assign Interest

The Employee shall have the right to assign his/her entire interest in this Agreement by written notice of assignment, which executed assignment shall then be attached to this Agreement and made a part hereof. The provisions of such assignment shall be binding on the Employee and the Employer notwithstanding any provisions herein to the contrary, provided that such assignment shall be effective only if all rights and interests of the Employee herein are assigned in full and irrevocably.

Section 11 Insurer's Obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such policy of insurance, the Insurer shall have no liability except as set forth in the policy and except as set forth in Sections 12 and 14 of this Agreement. Except as set forth in Sections 12 and 14, the Insurer shall not be bound to inquire into, or take notice of, any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy. Except as set forth in Sections 12 and 14, upon the death of the Insured the Insurer shall be discharged from all liability on payment of the proceeds in accordance with the policy provisions and without regard to this Agreement or any amendment hereof.

Section 12 Fiduciary Provisions

[NAME OF NAMED FIDUCIARY] is hereby designated as the "Named Fiduciary" for this Agreement, and he/she shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 14.

Section 13 Allocation of Fiduciary Responsibilities

[NAME OF NAMED FIDUCIARY] may allocate his or her responsibilities for the operation and administration of this Agreement, including the designation of persons to carry out fiduciary responsibilities under such strategy. [NAME OF NAMED FIDUCIARY] shall effect such allocation of his or her responsibilities by delivering to the Employer a written instrument signed by him or her that specifies the nature and extent of the responsibilities allocated under this Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

Section 14 Claims Procedure

The following claims procedure shall apply to this Split-dollar Agreement:

- A. **Filing of a claim for benefits.** The Employee or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claim denials according to the terms of the Policy.

- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits written notice setting forth in a manner calculated to be understood by the claimant, the following:
1. The specific reason or reasons for the denial;
 2. Specific reference to pertinent Policy or provisions of this agreement on which the denial is based;
 3. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 4. An explanation of this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.
- E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under the Split-dollar Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or his/ her duly authorized representative:
1. May request a review upon written application to the Insurer;
 2. May review pertinent Split-dollar Agreement documents or agreements; and
 3. May submit issues and comments in writing. A claimant or his/her duly authorized representative shall request a review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the claim.
- F. **Decision on review.** A decision on review of a denial of claim shall be made in the following manner:
1. The decision on review shall be made by the Insurer, which may, in its discretion, hold a hearing on the denied claim. The Insurer shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
 2. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent policy or provisions of this Agreement on which the decision is based.

Section 15 Amendments

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

Section 16 Choice of Law

This Agreement shall be subject to and construed according to the laws of the State of [STATE].

Section 17 Binding Agreement

This Agreement shall bind the Employer and its successors and assigns, this Employee and his/her heirs, executors, administrators, and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Employee Name

Employer Name

By _____

By _____

SAMPLE - Non-Equity Collateral Assignment Arrangement – Economic Benefit Approach – Minority Owner or Key Executive Owned

An exception to the general rule of split-dollar ownership occurs where at all times the only economic benefit being provided by the non-owner to the owner is current life insurance protection. In that case, the employer is treated as the owner for split-dollar purposes. As long as the Agreement never gives the employee a current or future right in the cash values, the plan will be taxed as a split-dollar arrangement under the economic benefit regime and not the loan regime. See Reg. Section 1.61-22(c)(1)(ii).

(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties. This specimen agreement should not be used if an attempt will be made to exclude the policy from the estate of a controlling shareholder.)

THIS AGREEMENT is entered into this [DAY] day of [MONTH], [YEAR], by and between [NAME OF CORPORATION] (hereinafter called “the Employer”) and between [NAME OF EMPLOYEE] (hereinafter called “the Employee”).

WHEREAS, the Employee is a valued Employee of the Employer and the Employer wishes to retain him/her in its employ; and

WHEREAS, the Employer, as an inducement to such continued employment, wishes to assist the Employee with his/her personal life insurance program;

NOW, THEREFORE, the Employer and the Employee agree as follows:

Section 1 Description of Policy: Policy Ownership

In furtherance of the purposes of this Agreement, the Employee will purchase and own a certain policy of life insurance on his own life, being Policy No. [POLICY NUMBER], issued by the [Minnesota Life Insurance Company/Securian Life Insurance Company] (hereafter called “the Insurer”) in a face amount of \$[FACE AMOUNT] (said policy being hereinafter called “the Policy”). The Employee’s ownership shall be subject to the terms and conditions contained in this Agreement.

Section 2 Premium Payment Method

Premiums shall be paid annually as of the date of issue and upon each subsequent premium due date. The Employer shall pay the entire premium and the Employee shall recognize the plan’s economic benefit as taxable income.

Section 3 Collateral Assignment and Possession of Policy

To secure the advance provided for in Section 2, the Employee shall execute a collateral assignment of the Policy and transfer possession of the Policy to the Employer. A copy of said collateral assignment is attached hereto as Schedule A. The Employer covenants that it will not exercise its rights under the collateral assignment in such a manner as to defeat the rights of the Employee or the policy beneficiary under this Agreement. Specifically, the Employer covenants that it will not surrender the Policy unless the Employee has defaulted on his or her obligations under this Agreement, or the Agreement has terminated as provided in Section 9.

The Employer shall have all incidents of ownership of the Policy during the period of the advances. The Employee shall have the right to name the Policy beneficiary. The Employer shall make the Policy available to the Insurer, in order to make any change desired by the Employee as to the designation of beneficiary subject to the collateral assignment.

To the extent that the Insurer declares dividends on the Policy, the Employer shall have the right to choose the option or combination of options it desires from among those offered by the Insurer. The Employer shall notify the Employee and Insurer of its choice, and the Employee agrees to execute any documents necessary to choose or change the policy's dividend option.

Section 4 Division of Death Proceeds of the Policy

The division of death proceeds of the policy is as follows:

- A. The Employer shall be entitled to an amount equal to the cumulative premiums paid as of the date of death or, if greater, the policy's cash value determined as of the date to which premiums are paid, less any indebtedness, and interest on such indebtedness determined as of the date of death. Such cash value shall include any outstanding accumulations or cash value of any paid-up additions and any postmortem dividends determined as of the date of death.
- B. The Employee's beneficiary or beneficiaries, designated in accordance in Section 2, shall be entitled to the remainder of such proceeds.
- C. Employer and Employee's beneficiary or beneficiaries shall share in any interest due on the death proceeds as their respective share of the proceeds as defined above bears to the total proceeds excluding any such interest.

Section 5 Incident of Ownership in Policy Cash Values

While this Agreement is in effect, the Employee shall retain all incidents of ownership in the policy except those assigned to the Employer. Through collateral assignment from the Employee, the Employer shall have all incidents of ownership in policy cash values, including the right to surrender or cancel the policy and the right to borrow against the policy.

Section 6 Disability Waiver of Premium

If the policy contains a premium waiver provision, any premium waived shall be considered for all purposes of this Agreement as having been paid by the Employer.

Section 7 Division of the Cash Surrender Value of the Policy

If the policy is surrendered while this Agreement is in effect, the Employer shall be entitled to an amount equal to the policy's cash surrender value, determined as of the date to which premiums are paid less any indebtedness and interest on such indebtedness determined as of the date of the surrender. Such cash value shall include any outstanding dividend accumulations or cash value of any paid-up additions determined as of the date of surrender.

Section 8 Employer's Loan Rights

The Employer shall have the right to obtain policy loans from the Insurer, subject to the policy's maximum value.

Please Note: The inclusion of this language will likely cause the inclusion of the death benefit proceeds for a Controlling Owner. Please use the SAMPLE - Collateral Assignment Method Split-dollar Life Insurance Agreement Economic Benefit Approach – Trust Owned.

Section 9 Termination of Agreement

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Employee's employment with the Employer for reasons other than death;
- B. Either party's submission of written notice, to the other party, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Employee; or
- D. Failure by either the Employer or the Employee, for any reason, to make the premium contributions required under Section 2 of this Agreement.

Section 10 Disposition of Policy upon Termination of Agreement

Upon the termination of this Agreement for any reason other than Section 9(C) above, the Employee shall have a ninety (90) day option to receive from the Employer a release of the Employer's interest in the policy in consideration of a cash payment to the Employer, whereupon this Agreement shall terminate. Such cash payment shall be the greater of the Employer's share of the cash value of the policy on the date of such release of assignment as defined in this Agreement, or the amount of the premiums which have been paid by the Employer prior to the date of such release of assignment. These provisions are subject to the terms of Section 6, which covers situations in which the Policy's supplemental agreements have been activated.

If the Employee exercises such an option, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the collateral assignment outstanding on the Policy.

If the Employee does not exercise his or her right to acquire the Policy, he or she shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Employee has to the Employer with respect to this Agreement.

Section 11 Taxable Income

The Employee is responsible for determining the amount, if any, includable in his or her gross income for tax purposes as a result of this Agreement.

Section 12 Employee's Right to Assign His or Her Interest

The Employee shall have the right to transfer his/her entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Employee makes such a transfer, all his or her rights shall be vested in the Transferee and the Employee shall have no further interest in this Policy and Agreement.

Section 13 Insurer's Obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at

its Home Office and in Sections 14 and 16 of this Agreement. Except as set forth in Sections 14 and 16, the Insurer shall not be bound to inquire into or take notice of any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy. Upon the death of the insured, the payment of the proceeds in accordance with Sections 14 and 16 of this agreement, the Insurer shall be discharged from all liability.

Section 14 Fiduciary Provisions

[NAME OF NAMED FIDUCIARY] is hereby designated as the “Named Fiduciary” for this Split-dollar Agreement, and he or she shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

Section 15 Allocation of Fiduciary Responsibilities

[NAME OF NAMED FIDUCIARY] may allocate his/her responsibilities for the operation and administration of this Split-dollar Agreement, including the designation of a person to carry out fiduciary responsibilities under such strategy. [NAME OF NAMED FIDUCIARY] shall effect such allocation of his or her responsibilities by delivering to the Employer a written instrument signed by him or her that specifies the nature and extent of the responsibilities allocated under this Split-dollar Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

Section 16 Claims Procedure

The following claims procedure shall apply to this Split-dollar Agreement:

- A. **Filing of a claim for benefits.** The Trust or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, written notice setting forth in a manner calculated to be understood by the claimant, the following:
 - 1. The specific reason or reasons for the denial;
 - 2. Specific reference to pertinent Policy or provisions of this Agreement on which the denial is based;
 - 3. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 - 4. An explanation of this Agreement’s claim review procedure, as set-forth in Sections (E) and (F) below.

- E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under this Split-dollar Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or his or her duly authorized representative:
 1. May request a review upon written application to the Insurer;
 2. May review pertinent Split-dollar documents or agreements; and
 3. May submit issues and comments in writing. A claimant (or his/her duly authorized representative), shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the claim.

- F. **Decision on review.** A decision on review of a denial of a claim shall be made in the following manner:
 1. The decision on review shall be made by the Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
 2. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Policy or provisions of this Agreement on which the decision is based.

Section 17 Amendments

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

Section 18 Choice of Law

This Agreement shall be subject to and construed according to the laws of the State of [STATE].

Section 18 Binding Agreement

This Agreement shall bind the Employer and its successors and assigns, this Employee and his/her heirs, executors, administrators, and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Employee Name	Employer Name
By _____	By _____
Signature	Signature

Schedule A

Collateral Assignment

For value received the undersigned hereby assign, transfer and set over to [NAME OF EMPLOYER] of [EMPLOYER'S ADDRESS], and its successors (herein called the "Assignee"), Policy No. [POLICY NUMBER] issued by [The Minnesota Life Insurance Company/The Securian Life Insurance Company], (herein called the "Policy"), upon the life of [NAME OF EMPLOYEE] of [EMPLOYEE'S ADDRESS] and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior lien's, if any, which the Insurer may have against the Policy. The undersigned by this instrument jointly and severally agree and the Assignee by the acceptance of this assignment also agrees to the conditions and provisions set forth herein.

- A. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in this agreement and pass by virtue hereof:
1. The sole right to collect from the Insurer the net proceeds of the Policy when it becomes a claim by death or maturity;
 2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow;
 3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer, or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances;
 4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the strategy in force at the time of this assignment; and
 5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.
- B. It is expressly agreed that the following specific rights, as long as the Policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:
1. The right to collect from the Insurer any disability benefits payable in cash that does not reduce the amount of insurance;
 2. The right to designate any change in the beneficiary;
 3. The right to elect any optional mode of settlement permitted by the Policy or allowed by the Insurer; but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.

- C. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of the undersigned, or any of them, to the Assignee, arising under an Agreement dated [DATE OF AGREEMENT], (all of which liabilities secured or become secured are herein called "Liabilities"). It is expressly agreed that all sums received by the Assignee hereunder either in event of death of the Insured, the maturity or surrender of the Policy, the obtaining of a loan or advance on the Policy, or otherwise, shall first be applied to the payment of one or more of the following in such order of preference as the Assignee shall determine: (a) principal of and/or interest on Liabilities; (b) premiums paid by the Assignee on the Policy.
- D. The Assignee covenants and agrees with the undersigned as follows:
1. That any balance of sums received hereunder from the Insurer remaining after payment of the existing Liabilities, matured or unmatured, shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;
 2. That the Assignee will not exercise either the right to surrender the Policy or the right to obtain policy loans from the Insurer, until there has been either default in any of the Liabilities pursuant to said Agreement or termination of said Agreement as therein provided; and
 3. That the Assignee will upon request forward without reasonable delay to the Insurer the Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement.
- E. Each of the undersigned declares that no proceedings in bankruptcy are pending against him/her and that his/her property is not subject to any assignment for the benefit of creditors.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

Policy Owner

Witness Signature

Witness Name

Witness Name

Witness Signature

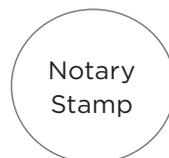
Individual Acknowledgment

State of [STATE]

County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that he/she executed the same.

Notary Public



SAMPLE – Non-Equity Collateral Assignment - Economic Benefit Approach - Limited Collateral Assignment for Controlling Owners – Trust Owned

An exception to the general rule of split-dollar ownership occurs where at all times the only economic benefit being provided by the non-owner to the owner is current life insurance protection. In that case, the employer is treated as the owner for split-dollar purposes. As long as the Agreement never gives the employee a current or future right in the cash values, the plan will be taxed as a split-dollar arrangement under the economic benefit regime and not the loan regime. See Reg. Section 1.61-22(c)(1)(ii).

(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties.)

THIS AGREEMENT is entered into this [DAY] day of [MONTH], [YEAR], by and between [NAME OF EMPLOYER] (hereinafter called “the Employer”) and between [NAME OF TRUSTEE] or its successors in trust as trustee of [NAME OF TRUST] dated [DATE OF TRUST] (hereinafter called “the Trust”).

WHEREAS, the Employer in recognition of the unique and essential services of [NAME OF EMPLOYEE] (hereinafter called “the Employee”) to the Employer and his or her contributions to the Employer, has determined that its best interests would be served by entering into this Agreement with the Trust, (hereinafter called “the Agreement”), whereby the Employer will assist the Trust in maintaining certain life insurance for the benefit and protection of the Employee’s family, subject to the condition that certain rights be assigned to the Employer as security for repayment of the Employer’s premium contributions;

NOW, THEREFORE, the Employer and the Trustee agree as follows:

Section 1 Policy Ownership

In furtherance of the purposes of this Agreement, the Trust will purchase and own a policy of life insurance on the Employee’s life, that is Policy Number [POLICY NUMBER], issued by the [Minnesota Life Insurance Company/Securian Life Insurance Company] (hereinafter called “the Insurer”) in a face amount of \$[FACE AMOUNT] (said policy being hereinafter called “the Policy”). The Trust’s ownership shall be subject to the terms and conditions contained in this Agreement.

Section 2 Advance to Trust

The Employer shall advance to the Trust each year, without interest, the entire amount necessary to pay the entire premium due each year for the Policy, less any dividend applied to reduce premiums. The Employer shall pay this amount directly to the Insurer. The Employee will recognize the plan’s economic benefit as taxable income and is deemed to have made a gift of that amount to the Trust.

Section 3 Limited Collateral Assignment

To secure the advance provided for in Section 2, the Trust shall execute a Limited Collateral Assignment of certain rights of the Policy. A copy of said Limited Collateral Assignment is attached hereto as Schedule A. The Employer covenants that it will not exercise its rights under the Limited Collateral Assignment in such a manner as to defeat the rights of the Trust or the policy beneficiary under this Agreement.

Section 4 Division of Death Proceeds of the Policy

The division of death proceeds of the policy is as follows:

- A. The Employer shall be entitled to an amount equal to the cumulative premiums paid as of the date of death or, if greater, the policy's cash value determined as of the date to which premiums are paid. Such cash value shall include any outstanding accumulations or cash value of any paid-up additions and any postmortem dividends determined as of the date of death.
- B. The Employee's beneficiary or beneficiaries, designated in accordance in Section 2, shall be entitled to the remainder of such proceeds.
- C. Employer and Employee's beneficiary or beneficiaries shall share in any interest due on the death proceeds as their respective share of the proceeds as defined above bears to the total proceeds excluding any such interest.

Section 5 Incident of Ownership in Policy Cash Values

While this Agreement is in effect, the Trust shall retain all incidents of ownership in the policy except those assigned to the Employer. Through collateral assignment from the Trust to the Employer, the Employee shall have no current or future right in the cash values, and, while this Agreement is in effect, neither the Trust nor the Employer shall have the power to access or pledge cash values for purposes of making a loan, partial surrender, or withdrawal of policy values.

Notwithstanding anything to the contrary, to the extent that the Insurer declares dividends on the Policy, the Trustee shall have the right to choose the option or combination of options it desires from among those offered by the Insurer.

Section 6 Disability Waiver of Premium

If the policy contains a premium waiver provision, any premium waived shall be considered for all purposes of this Agreement as having been paid by the Employer.

Section 7 Division of the Cash Surrender Value of the Policy

If the policy is surrendered while this Agreement is in effect, the Employer shall be entitled to an amount equal to the policy's cash surrender value, determined as of the date to which premiums are paid less any indebtedness and interest on such indebtedness determined as of the date of the surrender. Such cash value shall include any outstanding dividend accumulations or cash value of any paid-up additions determined as of the date of surrender.

Section 8 Loan, Partial Surrender and Withdrawal Rights

Neither the Trust nor the Employer shall have the right to obtain policy loans, partial surrenders, or withdrawals from the Policy while this Agreement is in effect.

Section 9 Termination of Agreement

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Employee's employment with the Employer for reasons other than death;
- B. The Trust's submission of written notice, to the Employer, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Employee; or
- D. Failure by either the Employer or the Trust, for any reason, to make the premium contributions required under Section 2 of this Agreement.

Section 10 Disposition of Policy upon Termination of Agreement

Upon the termination of this Agreement for any reason other than Section 9(C) above, the Trustee shall have a ninety (90) day option to receive from the Employer a release of the Employer's interest in the policy in consideration of a cash payment to the Employer, whereupon this Agreement shall terminate. Such cash payment shall be the greater of the Employer's share of the cash value of the policy on the date of such release of assignment as defined in this Agreement, or the amount of the premiums which have been paid by the Employer prior to the date of such release of assignment. These provisions are subject to the terms of Section 6, which covers situations in which the Policy's supplemental agreements have been activated.

If the Trustee exercises such an option, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the Limited Collateral Assignment outstanding on the Policy.

If the Trustee does not exercise his or her right to acquire the Policy, he or she shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Employee has to the Employer with respect to this Agreement.

Section 11 Taxable Income

The Employee is responsible for determining the amount, if any, includable in his or her gross income for tax purposes and for any determining the value of any gifts for gift tax purposes, as a result of this Agreement.

Section 12 Trust's Right to assign its Interest

The Trust shall have the right to transfer its entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Trust makes such a transfer, all its rights shall be vested in the Transferee and the Trust shall have no further interest in this Policy and Agreement.

Section 13 Insurer's Obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such Policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at its Home Office and in Sections 14 and 16 of this Agreement. Except as set forth in Sections 14 and 16, the Insurer shall not be bound to inquire into, or take notice of any of the covenants herein

contained as to the policy of insurance or as to application of proceeds of such policy. Upon the death of the Insured, and payment of the proceeds in accordance with Sections 14 and 16 of this Agreement, the Insurer shall be discharged from all liability.

Section 14 Fiduciary Provisions

[*NAME OF NAMED FIDUCIARY*] is hereby designated as the “Named Fiduciary” for this Agreement, and he or she shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

Section 15 Allocation of Fiduciary Responsibilities

[*NAME OF NAMED FIDUCIARY*] may allocate his or her responsibilities for the operation and administration of the Split-dollar Agreement, including the designation of persons to carry out fiduciary responsibilities under such strategy. [*NAME OF NAMED FIDUCIARY*] shall effect such allocation of his or her responsibilities by delivering to the Employer a written instrument signed by him or her that specifies the nature and extent of the responsibilities allocated under this Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

Section 16 Claims Procedure

The following claims procedure shall apply to this Split-dollar Agreement:

- A. **Filing of a claim for benefits.** The Trust or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) below following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, written notice setting forth in a manner calculated to be understood by the claimant, the following:
 1. The specific reason or reasons for the denial;
 2. Specific reference of this agreement on which the denial is based;
 3. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 4. An explanation of this Agreement’s claim review procedure, as set forth in Sections (E) and (F) below.

E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under this Split-dollar Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or his/her duly authorized representative:

1. May request a review upon written application to the Insurer;
2. May review pertinent Split-dollar documents or agreements; and
3. May submit issues and comments in writing. A claimant, or his/her duly authorized representative, shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the claim.

F. **Decision on review.** A decision on review of a denial of a claim shall be made in the following manner:

1. The decision on review shall be made by the Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
2. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Policy or provisions of this Agreement on which the decision is based.

Section 17 Amendments

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

Section 18 Choice of Law

This Agreement shall be subject to, and construed according to, the laws of the State of [STATE].

Section 19 Binding Agreement

This Agreement shall bind the Employer and the Employer's successors and assigns, the Trust and its successors and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Trustee

Employer

Schedule A

Limited Collateral Assignment

THIS ASSIGNMENT, made and entered into effective this [DAY] day of [MONTH], [YEAR], by the undersigned as owner (hereinafter called "the Trust") of the certain Life Insurance Policy No. [POLICY NUMBER] issued by [Minnesota Life Insurance Company/ Securian Life Insurance Company], St. Paul, Minnesota (hereinafter called "the Insurer"), and any supplementary contracts issued in connection therewith (said policy and contracts being herein called "the Policy"), upon the life of [NAME OF EMPLOYEE] (hereinafter called "the Insured"), to the [NAME OF EMPLOYER] (hereinafter called "the Assignee").

WHEREAS, the Insured is a valued employee of the Assignee, and

WHEREAS, said Assignee desires to assist the Insured with his personal life insurance program by advancing to the Trust all or a portion of the annual premium due on the Policy, as more specifically provided for in the Split-dollar Insurance Agreement entered into between the Trust and the Assignee (hereinafter called "the Agreement"); and

WHEREAS, in consideration of the Assignee's agreement to make said advances, the Trust agrees to grant the Assignee a security interest in said Policy as collateral security for the repayment of said advances by the Trust;

NOW THEREFORE, for value received, the undersigned hereby assigns, transfers and sets over to the Assignee, its successors and assigns the following specific rights in the Policy, subject to the following terms and conditions:

1. The Assignee's interest in the policy shall be limited to:
 - A. The right to be repaid the greater of (a) the total value of the advances made by the Assignee, or its transferee, pursuant to Section 2 of the Agreement as of the date to which premiums have been paid, or (b) the total cash value of the policy, including dividend accumulations and the cash value of the dividend additions at the last Policy anniversary, in the event the Policy is surrendered or canceled by the Trust or its transferee, as provided in Section 9 of the Agreement.
 - B. The right to be repaid the greater of (a) the total value of the advances made by the Assignee, or its transferee, pursuant to Section 2 of the Agreement as of the date to which premiums have been paid, or (b) the total cash value of the policy, including dividend accumulations and the cash value of the dividend additions at the last Policy anniversary as of the date of death, in the event of the death of the Employee as provided in Section 4 of the Agreement; and
 - C. The right to be repaid the greater of (a) the total value of the advances made by the Assignee, or its transferee, pursuant to Section 2 of the Agreement as of the date to which premiums have been paid, or (b) the total cash value of the policy, including dividend accumulations and the cash value of the dividend additions at the last Policy anniversary as of the date to which premiums have been paid, in the event the waiver-of-premium benefit becomes operational, as provided in Section 6 of the Agreement.

2. The Trust retains no current or future rights to policy cash values. Policy cash values as assigned to the Employer, except that while this Agreement is in effect neither the Trust nor the Employer shall have the power to access or pledge cash values for purposes of making a loan, partial surrender, or withdrawal of policy values.
3. Except as specifically herein granted to the Assignee and Section 3, the Trust shall retain all other incidents of ownership in the Policy, including but not limited to:
 - A. The sole and exclusive right to cancel or surrender the Policy;
 - B. The right to assign its interest in the Policy;
 - C. The right to change the beneficiary of that portion of the proceeds to which it is entitled under Section 4 of the Agreement; and
 - D. The right to exercise all settlement options permitted by the terms of the Policy, provided, however, that all rights retained by the Trust shall be subject to the terms and conditions of the Agreement.
4. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, the validity or amount of any of the liabilities of the Trust to the Assignee under the Agreement, the existence of any default therein, the giving of any notice required herein, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned to the Assignee and the receipt of the Assignee for any sums received by it shall be a discharge and release therefore to the Insurer.
5. The Insurer shall be fully protected in recognizing the requests made by the Trust for surrender of the Policy with or without the consent of the Assignee, and upon such surrender the Policy shall be terminated and shall be of no further force of effect.
6. Upon the full payment of the liabilities advanced pursuant to the Agreement, the Assignee shall reassign to the Trust all specific rights included in this Collateral Assignment.
7. In the event of any conflict between the provisions of this assignment and the Agreement, or any other evidence of any liability with respect to the Policy or the rights of collateral security therein, the provisions of this Assignment shall prevail, as to the Insurer, and this Agreement shall prevail between the parties thereto.
8. It is the intent of the undersigned to assign an interest in proceeds becoming payable under the Policy as security for certain advances from the Assignee, without giving the Assignee any incidents of ownership (as defined in Treasury Regulation 20.2042-1(c)(6)) in the Policy. It is agreed that this Assignment shall be construed so as to accomplish this intent.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

Policy Owner

Witness Signature

Witness Name

Witness Name

Witness Signature

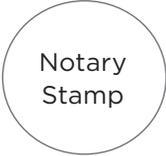
Individual Acknowledgment

State of [STATE]

County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that he/she executed the same.

Notary Public



SAMPLE – Equity Collateral Assignment - Loan Regime Approach

(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties.)

[NAME OF EMPLOYER], hereinafter referred to as the “Employer,” and [NAME OF TRUSTEE OR EMPLOYEE], hereinafter referred to as the “Owner,” agree for themselves, their successors, and assigns, as follows:

The purpose of this Agreement is for the Employer to assist [NAME OF EMPLOYEE], hereinafter referred to as the “Key Employee” or “Insured,” in purchasing a life insurance policy. To do so, the Owner has purchased policy number [POLICY NUMBER] with an initial face amount of \$[FACE AMOUNT] on the Key Employee’s life from [Minnesota Life Insurance Company/ Securian Life Insurance Company], hereinafter referred to as the “Insurer.”

Section 1 Premium Loans from Employer

The Employer agrees to pay the premiums due on the above referenced life insurance policy which premiums shall be considered loans from the Employer to the Owner of the policy. The loans will be subject to the following conditions and as further described in Section 3 of this Agreement.

If the loan is a Demand Loan, include the following language:

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by Section 2. In addition to any premium he or she may be required to pay, the Owner promises to pay to the order of the Employer at such place as the Employer may designate in writing interest annually on the cumulative loan at an annual, short-term interest rate as shown on the attached Schedule A. The unpaid principal of the cumulative loan shall be payable by the Owner at any time on demand of the Employer. Loan principal and unpaid interest shall be secured by policy death benefits and cash values. If the policy values are not sufficient to secure full repayment of the loan when due, the Employer shall have recourse against the Owner to obtain full payment of the loan.

If the loan is a Term Loan, include the following language:

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by the preceding selection. In addition to any premium he/she may be required to pay, the Owner promises to pay to the order of the Employer at its domicile (or at such other place as the Employer may designate in writing) interest annually on the cumulative loan at an annual interest rate as shown on attached Schedule A. When a lump-sum loan is made to include the payment of more than one premium, the entire lump sum shall be secured by policy death benefits and cash values at the time the loan is made; and if policy values are not sufficient to secure full repayment of the loan when due, the Lender shall have recourse against the Borrower to obtain full payment of the loan.

Borrower agrees to repay this loan and any accrued interest to Lender, or Lender’s successor or assigns, at the end of [YEARS] years from the date of this Agreement (or on [DATE]).

Please Note: To avoid application of the below-market-rate rules of Section 7872, the parties should use a stated loan rate at or above the applicable federal rate in effect at the time the loan is made and which is appropriate for the selected term. The Section 7872(f) (2)(A) loan interest rate varies each month in accordance with the applicable federal rates provided by the IRS, depending upon whether the loan is considered a short-term loan (3 years or less), mid-term loan (over 3 years but not over 9 years) or long-term loan (over 9 years).

Section 2 Premium Payment Method

The Employer shall pay the annual premium due on the policy as:

For Scheduled Premium Loans, include the following language: an amount equal to the full, scheduled annual premium due on the life insurance policy.

For Flexible Premium Loans, include the following language: an amount equal to [PERCENTAGE] percent of Employee's compensation for the prior year for a period of [YEARS] on the life insurance policy.

For a single loan amount (using Minnesota Life's Premium Deposit Account (not available in all states)), include the following language: as a single loan amount to be placed into the Premium Deposit Account attached to the life insurance policy.

Section 3 Beneficiary Designation Rights

The Owner may designate a beneficiary or beneficiaries to receive any proceeds payable on death of the Insured which are in excess of the Employer's share of such proceeds.

Section 4 Owner's Retained Incidents of Ownership

Except as to the limited security rights specifically granted the Employer in a separate Collateral Assignment, the Owner retains all incidents of ownership, including the right to surrender or cancel the policy and the right to borrow against the policy. The Owner's right to borrow shall be limited to an amount equal to the maximum policy loan value reduced by the cumulative premium loan provided by the Employer under the split-dollar arrangement described above.

Section 5 Policy Death Benefit

The death benefit of the policy shall be divided into two parts: one part for the Employer and the other part for the beneficiary designated by the Owner as allowed in Section 3. The Employer shall be entitled to an amount equal to its cumulative premium loan payments, plus any outstanding interest. The beneficiary(s) designated by the Owner in accordance with Section 3 above shall be entitled to the balance of the death benefit, if any.

If any interest is due upon the death proceeds under the terms of the insurance contract, the Owner and the Employer shall share such interest as their respective share of the death proceeds (as defined in the preceding paragraph) bears to the total death proceeds excluding such interest.

Section 6 Policy Cash Surrender Value

The cash surrender value of the policy shall be divided into two parts: one part for the Employer and one part for the Owner. The Employer shall be entitled to an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. The Owner shall be entitled

to the remainder of the cash surrender value, if any. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

Section 7 Employer's Limited Policy Rights

The Employer shall have no right to obtain policy loans, make withdrawals, or otherwise access cash values from the policy.

Please Note: when the insured is a controlling shareholder, any rights to take loans or withdrawals from the policy provided to the corporation will be attributed to the controlling shareholder as an incidence of ownership and included in the shareholder's estate. Rev. Rul. 82-145.

Section 8 Termination of Agreement

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Key Employee's employment with the Employer for reasons other than death;
- B. The Owner's submission of written notice, to the Employer, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Key Employee; or
- D. Failure by either the Employer or the Owner, for any reason, to make the premium contributions required under Section 2 of this Agreement.

Section 9 Disposition of Policy upon Termination of Agreement

Upon the termination of this Agreement for any reason other than Section 8(C) above, the Owner shall have a sixty (60) day period to satisfy the repayment obligation to the Employer. The repayment obligation shall be an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

If the Owner satisfies the repayment obligation, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the Limited Collateral Assignment outstanding on the Policy. If the Owner does not satisfy the repayment obligation, it shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Owner has to the Employer with respect to this Agreement.

Section 10 Taxable Income

The Key Employee is responsible for determining the amount, if any, includable in his/her gross income for tax purposes and for determining the value of any gifts for gift tax purposes, as a result of this Agreement.

Section 11 Owner's Right to Assign Its Interest

The Owner shall have the right to transfer its entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Owner makes such a transfer, all its rights shall be vested in the Transferee and the Owner shall have no further interest in this Policy and Agreement.

Section 12 Disability Waiver of Premium Benefit

If the policy contains a disability waiver of premium benefit, any premium waived shall be considered as having been paid by the Owner.

Section 13 Insurer's Obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such Policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at its Home Office. The Insurer shall not be bound to inquire into, or take notice of any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy except as may be provided in any assignment of the Policy filed at its Home Office.

Section 14 Fiduciary Provisions

(Named fiduciary, e.g., President of Employer) is hereby designated as the "Named Fiduciary" for the Split-dollar Loan Agreement established herein, and he/she shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

Section 15 Allocation of Fiduciary Responsibilities

(Named fiduciary) may allocate his/her responsibilities for the operation and administration of the Split-dollar Loan Agreement, including the designation of persons to carry out fiduciary responsibilities under such strategy. *(Named fiduciary)* shall effect such allocation of his/her responsibilities by delivering to the Employer a written instrument signed by him/her that specifies the nature and extent of the responsibilities allocated under the Split-dollar Loan Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

Section 16 Claims Procedure

The following claims procedure shall apply to this Split-dollar Loan Agreement:

- A. **Filing of a claim for benefits.** The Owner or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) below following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.

- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, written notice setting forth in a manner calculated to be understood by the claimant, the following:
1. The specific reason or reasons for the denial;
 2. Specific reference of this agreement on which the denial is based;
 3. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 4. An explanation of this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.
- E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under the Split-dollar Loan Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or his/her duly authorized representative:
1. May request a review upon written application to the Insurer;
 2. May review pertinent Split-dollar Loan Agreement documents or agreements; and
 3. May submit issues and comments in writing. A claimant, or his/her duly authorized representative, shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the claim.
- F. **Decision on review.** A decision on review of a denial of a claim shall be made in the following manner:
1. The decision on review shall be made by the Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
 2. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Policy or provisions of this Agreement on which the decision is based.

Section 17 Amendments

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

Section 18 Choice of Law

This Agreement shall be subject to, and construed according to, the laws of the State of [STATE].

Section 19 Binding Agreement

This Agreement shall bind the Employer and the Employer’s successors and assigns, the Owner and its successors and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Owner Name	Employer Name
By _____	By _____
Owner’s Signature	Signature
	Title

(Use this Schedule A for a Demand Loan)

Schedule A - Demand Loan

Date of Loan	Amount of Loan	Interest Rate	Current AFR

(Use this Schedule A for a Term Loan)

Schedule A - Term Loan

Date of Loan	Term of Loan	Amount of Loan	Interest Rate	Current AFR

Schedule A

Limited Collateral Assignment

THIS ASSIGNMENT made and entered into effective this [DAY] day of [MONTH], by the undersigned as owner (hereinafter called "the Trust") of the certain Life Insurance Policy No. [POLICY NUMBER] issued by [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota (hereinafter called "the Insurer"), and any supplementary contracts issued in connection therewith (said policy and contracts being herein called "the Policy"), upon the life of [INSURED'S NAME] (hereinafter called "the Insured"), to the [NAME OF COMPANY], a corporation (hereinafter called "the Assignee").

WHEREAS, the Insured is a valued employee of the Assignee, and

WHEREAS, said Assignee desires to assist the Insured with his personal life insurance program by lending to the Trust all or a portion of the annual premium due on the Policy, as more specifically provided for in the Split-dollar Loan Agreement entered into between the Trust and the Assignee (*hereinafter called "the Agreement"*); and

WHEREAS, in consideration of the Assignee's agreement to make said advances, the Trust agrees to grant the Assignee a security interest in said Policy as collateral security for the repayment of said loans by the Trust;

NOW THEREFORE, for value received, the undersigned hereby assigns, transfers and sets over to the Assignee, its successors and assigns the following specific rights in the Policy, subject to the following terms and conditions:

1. The Assignee's interest in the policy shall be limited to:
 - A. The right to be repaid the total value of the outstanding loans made by the Assignee, or its transferee, pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the Policy is surrendered or canceled by the Trust or its transferee, as provided in Section VI of the Agreement.
 - B. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event of the death of the Employee as provided in Section 5 of the Agreement; and
 - C. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the waiver-of-premium benefit becomes operational, as provided in Section 7 of the Agreement.
2. Except as specifically herein granted to the Assignee, the Trust shall retain all incidents of ownership in the Policy, including but not limited to:
 - A. The sole and exclusive right to borrow against the Policy;
 - B. The sole and exclusive right to cancel or surrender the Policy;
 - C. The right to assign its interest in the Policy;

D. The right to change the beneficiary of that portion of the proceeds to which it is entitled under Sections 3 and 4 of the Agreement; and

E. The right to exercise all settlement options permitted by the terms of the Policy, provided, however, that all rights retained by the Trust shall be subject to the terms and conditions of the Agreement.

3. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, the validity or amount of any of the liabilities of the Trust to the Assignee under the Agreement, the existence of any default therein, the giving of any notice required herein, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned to the Assignee and the receipt of the Assignee for any sums received by it shall be a discharge and release therefore to the Insurer.
4. The Insurer shall be fully protected in recognizing the requests made by the Trust for surrender of the Policy with or without the consent of the Assignee, and upon such surrender the Policy shall be terminated and shall be of no further force of effect.
5. Upon the full payment of the liabilities advanced pursuant to the Agreement, the Assignee shall reassign to the Trust all specific rights included in this Collateral Assignment.
6. In the event of any conflict between the provisions of this assignment and the Agreement, or any other evidence of any liability with respect to the Policy or the rights of collateral security therein, the provisions of this Assignment shall prevail, as to the Insurer, and the Agreement dated [DATE OF AGREEMENT] shall prevail between the parties thereto.
7. It is the intent of the undersigned to assign an interest in proceeds becoming payable under the Policy as security for certain loans from the Assignee, without giving the Assignee any incidents of ownership (as defined in Treasury Regulation 20.2042-1(c)(6) in the Policy. It is agreed that this Assignment shall be construed so as to accomplish this intent.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

Policy Owner

Witness Signature

Witness Name

Witness Name

Witness Signature

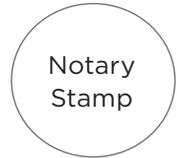
Individual Acknowledgment

State of [STATE]

County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that he/she executed the same.

Notary Public



SAMPLE – Non-Equity Loan Regime Split-Dollar Agreement for Minority Owners and Key Executives

(This specimen agreement should only be used as a guide. The drafting of the final agreement is the sole responsibility of the attorneys representing the parties.)

[NAME OF EMPLOYER], hereinafter referred to as the “Employer,” and [NAME OF TRUSTEE OR EMPLOYEE], hereinafter referred to as the “Owner,” agree for themselves, their successors, and assigns, as follows:

The purpose of this Agreement is for the Employer to assist [NAME OF EMPLOYEE], hereinafter referred to as the “Key Employee” or “Insured,” in purchasing a life insurance policy. To do so, the Owner has purchased policy number [POLICY NUMBER] with an initial face amount of \$[FACE AMOUNT] on the Key Employee’s life from Minnesota Life Insurance Company, hereinafter referred to as the “Insurer.”

Section 1 Premium Loans from Employer

The Employer agrees to pay the premiums due on the above referenced life insurance policy which premiums shall be considered loans from the Employer to the Owner of the policy. The loans will be subject to the following conditions and as further described in Section 3 of this Agreement.

If the loan is a Demand Loan, include the following language:

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by Section 2. In addition to any premium he/she may be required to pay, the Owner promises to pay to the order of the Employer at such place as the Employer may designate in writing interest annually on the cumulative loan at an annual, short-term interest rate as shown on the attached Schedule A. The unpaid principal of the cumulative loan shall be payable by the Owner at any time on demand of the Employer.

If the loan is a Term Loan, include the following language:

Each premium payment made by the Employer shall be a new loan that is added to all prior loans from the Employer. The Owner shall pay any balance of a scheduled premium not payable by the Employer as required by the preceding selection. In addition to any premium he/she may be required to pay, the Owner promises to pay to the order of the Employer at its domicile (or at such other place as the Employer may designate in writing) interest annually on the cumulative loan at an annual interest rate as shown on attached Schedule A. When a lump-sum loan is made to include the payment of more than one premium, the entire lump sum shall be secured by policy death benefits and cash values at the time the loan is made; and if policy values are not sufficient to secure full repayment of the loan when due, the Lender shall have recourse against the Borrower to obtain full payment of the loan.

Borrower agrees to repay this loan and any accrued interest to Lender, or Lender’s successor or assigns, at the end of _____ years from the date of this Agreement (or on [DATE]).

Please Note: To avoid application of the below-market-rate rules of Section 7872, the parties should use a stated loan rate at or above the applicable federal rate in effect at the time the loan is made and which is appropriate for the selected term. The Section 7872(f) (2)(A) loan interest rate varies each month in accordance with the applicable federal rates provided by the IRS, depending upon whether the loan is considered a short-term loan (3 years or less), mid-term loan (over 3 years but not over 9 years) or long-term loan (over 9 years).

Section 2 Premium Payment Method

The Employer agrees to pay the planned annual premiums due on the life insurance policy to the Insurer on behalf of the owner as a scheduled premium loan equal to the full, planned annual premium due on the life insurance policy [OR The Employer agrees to pay a portion of the planned annual premiums due on the life insurance policy to the Insurer on behalf of the owner as a level premium loan in the level amount of \$ _____ towards the planned annual premium due on the life insurance policy.]

Section 3 Beneficiary Designation Rights

The Owner may designate a beneficiary or beneficiaries to receive any proceeds payable on death of the Insured which are in excess of the Employer's share of such proceeds.

Section 4 Owner's Retained Incidents of Ownership

Except as to the limited security rights specifically granted the Employer in a separate Limited Collateral Assignment (Schedule B), the Owner retains all incidents of ownership including the right to surrender or cancel the policy and the right to borrow against the policy. The Owner's right to borrow shall be limited to an amount equal to the maximum policy loan value reduced by the cumulative premium loan provided by the Employer under the split-dollar arrangement described above.

Section 5 Policy Death Benefit

The death benefit of the policy shall be divided into two parts, one part for the Employer and the other part for the beneficiary designated by the Owner as allowed in Section 3. The Employer shall be entitled to an amount equal to its cumulative premium loan payments, plus any outstanding interest. The beneficiary(s) designated by the Owner in accordance with Section 3 above shall be entitled to the balance of the death benefit, if any.

If any interest is due upon the death proceeds under the terms of the insurance contract, the Owner and the Employer shall share such interest as their respective share of the death proceeds (as defined in the preceding paragraph) bears to the total death proceeds excluding such interest.

Section 6 Policy Cash Surrender Value

The cash surrender value of the policy shall be divided into two parts, one part for the Employer and one part for the Owner. The Employer shall be entitled to an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. The Owner shall be entitled to the remainder of the cash surrender value, if any. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

Section 7 Employer's Limited Policy Rights

The Employer shall have no right to obtain policy loans, make withdrawals, or otherwise access cash values from the policy.

Please Note: when the insured is a controlling shareholder, any rights to take loans or withdrawals from the policy provided to the corporation will be attributed to the controlling shareholder as an incidence of ownership, and included in the shareholder's estate. Rev. Rul. 82-145.

Section 8 Termination of Agreement

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Key Employee's employment with the Employer for reasons other than death;
- B. The Owner's submission of written notice, to the Employer, of intent to terminate the Agreement;
- C. Performance of the Agreement's terms, following the death of the Key Employee; or
- D. Failure by either the Employer or the Owner, for any reason, to make the premium contributions required under Section 2 of this Agreement.

Section 9 Disposition of Policy upon Termination of Agreement

Upon the termination of this Agreement for any reason other than Section 8(C) above, the Owner shall have a sixty (60) day period to satisfy the repayment obligation to the Employer. The repayment obligation shall be an amount equal to its cumulative share of premium loan payments plus any outstanding interest due, or the entire cash surrender value of the policy, if less. If the cash surrender value of the policy is less than the Employer's cumulative premium loan payments when the policy is surrendered, the Owner is obligated to pay the difference due on the loan to the Employer out of assets other than those contained in the policy.

If the Owner satisfies the repayment obligation, the Employer shall execute all necessary documents required by the Insurer to remove and satisfy the Limited Collateral Assignment outstanding on the Policy. If the Owner does not satisfy the repayment obligation, it shall execute all documents necessary to transfer ownership of the Policy to the Employer. Such transfer shall constitute satisfaction of any obligation the Owner has to the Employer with respect to this Agreement.

Section 10 Taxable Income

The Key Employee is responsible for determining the amount, if any, includable in his/her gross income for tax purposes and for determining the value of any gifts for gift tax purposes, as a result of this Agreement.

Section 11 Owner's Right to Assign Its Interest

The Owner shall have the right to transfer its entire interest in the Policy (other than rights assigned to the Employer pursuant to this Agreement). If the Owner makes such a transfer, all its rights shall be vested in the Transferee and the Owner shall have no further interest in this Policy and Agreement.

Section 12 Disability Waiver of Premium Benefit

If the policy contains a disability waiver of premium benefit, any premium waived shall be considered as having been paid by the Owner.

Section 13 Insurer's Obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such Policy of insurance, the Insurer shall have no liability except as set forth in the Policy and except as set forth in any assignment of the Policy filed at its Home Office. The Insurer shall not be bound to inquire into, or take notice of any of the covenants herein contained as to the policy of insurance or as to application of proceeds of such policy except as may be provided in any assignment of the Policy filed at its Home Office.

Section 14 Fiduciary Provisions

(Named fiduciary, e.g., President of Employer) is hereby designated as the "Named Fiduciary" for the Split-dollar Loan Agreement established herein, and he/she shall have the authority to control and manage the operation and administration of such strategy. However, [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota, shall have the sole authority with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 16.

Section 15 Allocation of Fiduciary Responsibilities

(Named fiduciary) may allocate his/her responsibilities for the operation and administration of the Split-dollar Loan Agreement, including the designation of persons to carry out fiduciary responsibilities under such strategy. *(Named fiduciary)* shall effect such allocation of his/her responsibilities by delivering to the Employer a written instrument signed by him/her that specifies the nature and extent of the responsibilities allocated under the Split-dollar Loan Agreement, together with a signed acknowledgment of their acceptance by the persons to whom the responsibilities were allocated.

Section 16 Claims Procedure

The following claims procedure shall apply to this Split-dollar Loan Agreement:

- A. **Filing of a claim for benefits.** The Owner or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. **Claim denial.** With respect to a claim for benefits under said Policy, [Minnesota Life Insurance Company/Securian Life Insurance Company] shall be the entity which reviews and makes decisions on claims denials according to the terms of the Policy.
- C. **Notification to claimant of decisions.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) below following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. **Content of notice.** The Insurer shall provide, to any claimant who is denied a claim for benefits, written notice setting forth in a manner calculated to be understood by the claimant, the following:

1. The specific reason or reasons for the denial;
2. Specific reference of this agreement on which the denial is based;
3. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
4. An explanation of this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.

E. Review procedure. The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under the Split-Dollar Loan Agreement may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or his/her duly authorized representative:

1. May request a review upon written application to the Insurer;
2. May review pertinent Split-Dollar Loan Agreement documents or agreements; and
3. May submit issues and comments in writing. A claimant, or his/her duly authorized representative, shall request review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the claim.

F. Decision on review. A decision on review of a denial of a claim shall be made in the following manner:

1. The decision on review shall be made by the Insurer, which may, at its discretion, hold a hearing on the denied claim. The Insurer shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
2. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Policy or provisions of this Agreement on which the decision is based.

Section 17 Amendments

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

Section 18 Choice of Law

This Agreement shall be subject to, and construed according to, the laws of the State of [STATE].

Section 19 Binding Agreement

This Agreement shall bind the Employer and the Employer's successors and assigns, the Owner and its successors and assigns, and any Policy beneficiary.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Owner Name	Employer Name
By _____	By _____
Owner's Signature	Signature
	Title

(use this Schedule A for a Demand Loan)

Schedule A - Demand Loan

Date of Loan	Amount of Loan	Interest Rate	Current AFR

(Use this Schedule A for a Term Loan)

Schedule A - Term Loan

Date of Loan	Term of Loan	Amount of Loan	Interest Rate	Current AFR

Schedule B

Limited Collateral Assignment

THIS ASSIGNMENT made and entered into effective this [DAY] day of [MONTH], [YEAR] by the undersigned as owner (hereinafter called "the Trust") of the certain Life Insurance Policy No. [POLICY NUMBER] issued by [Minnesota Life Insurance Company/Securian Life Insurance Company], St. Paul, Minnesota (hereinafter called "the Insurer"), and any supplementary contracts issued in connection therewith (said policy and contracts being herein called "the Policy"), upon the life of [NAME OF EMPLOYEE] (hereinafter called "the Insured"), to the [NAME of EMPLOYER] Company, a [CORPORATION TYPE] corporation (hereinafter called "the Assignee").

WHEREAS, the Insured is a valued employee of the Assignee, and

WHEREAS, said Assignee desires to assist the Insured with his personal life insurance program by lending to the Trust all or a portion of the annual premium due on the Policy, as more specifically provided for in the Split dollar Loan Agreement entered into between the Trust and the Assignee (hereinafter called "the Agreement"); and

WHEREAS, in consideration of the Assignee's agreement to make said advances, the Trust agrees to grant the Assignee a security interest in said Policy as collateral security for the repayment of said loans by the Trust;

NOW THEREFORE, for value received, the undersigned hereby assigns, transfers and sets over to the Assignee, its successors and assigns the following specific rights in the Policy, subject to the following terms and conditions:

1. The Assignee's interest in the policy shall be limited to:
 - A. The right to be repaid the total value of the outstanding loans made by the Assignee, or its transferee, pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the Policy is surrendered or canceled by the Trust or its transferee, as provided in Section 6 of the Agreement.
 - B. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event of the death of the Employee as provided in Section 5 of the Agreement; and
 - C. The right to be repaid the total value of the outstanding loans made by the Assignee pursuant to Sections 1 and 2 of the Agreement as of the date to which premiums have been paid, in the event the waiver-of-premium benefit becomes operational, as provided in Section 12 of the Agreement.
2. Except as specifically herein granted to the Assignee, the Trust shall retain all incidents of ownership in the Policy, including but not limited to:
 - A. The sole and exclusive right to borrow against the Policy;
 - B. The sole and exclusive right to cancel or surrender the Policy;
 - C. The right to assign its interest in the Policy;

- D. The right to change the beneficiary of that portion of the proceeds to which it is entitled under Sections 3 and 5 of the Agreement; and
- E. The right to exercise all settlement options permitted by the terms of the Policy, provided, however, that all rights retained by the Trust shall be subject to the terms and conditions of the Agreement.
3. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, the validity or amount of any of the liabilities of the Trust to the Assignee under the Agreement, the existence of any default therein, the giving of any notice required herein, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned to the Assignee and the receipt of the Assignee for any sums received by it shall be a discharge and release therefore to the Insurer.
 4. The Insurer shall be fully protected in recognizing the requests made by the Trust for surrender of the Policy with or without the consent of the Assignee, and upon such surrender the Policy shall be terminated and shall be of no further force of effect.
 5. Upon the full payment of the liabilities advanced pursuant to the Agreement, the Assignee shall reassign to the Trust all specific rights included in this Collateral Assignment.
 6. In the event of any conflict between the provisions of this assignment and the Agreement, or any other evidence of any liability with respect to the Policy or the rights of collateral security therein, the provisions of this Assignment shall prevail, as to the Insurer, and the Agreement dated [DATE OF AGREEMENT] shall prevail between the parties thereto.
 7. It is the intent of the undersigned to assign an interest in proceeds becoming payable under the Policy as security for certain loans from the Assignee, without giving the Assignee any incidents of ownership (as defined in Treasury Regulation 20.2042-1(c)(6) in the Policy. It is agreed that this Assignment shall be construed so as to accomplish this intent.

Signed and sealed this [DAY] day of [MONTH], [YEAR].

Policy Owner

Witness Signature

Witness Name

Witness Name

Witness Signature

Individual Acknowledgment

State of [STATE]

County of [COUNTY]

On the [DAY] day of [MONTH], [YEAR], before me personally came [NAME OF EMPLOYEE] to me known to be the individual described in and who executed the assignment above and acknowledged to me that he/she executed the same.

Notary Public



Please keep in mind that the primary reason to purchase a life insurance product is the death benefit.

Life insurance products contain fees, such as mortality and expense charges, and may contain restrictions, such as surrender periods. Policy loans and withdrawals may create an adverse tax result in the event of a lapse or policy surrender, and will reduce both the cash value and death benefit.

Securian Financial Group, Inc.

www.securian.com

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