

## Golden executive bonus arrangement (GEBA)

# Foreword to counsel and specimen documents

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# Introduction

## General

The golden executive bonus arrangement (GEBA) is an executive compensation tool designed to provide nonqualified benefits for highly compensated key employees or key employees who are management. It should not be offered to rank-and-file employees.

The GEBA meets employers' common objectives regarding their key employees. Often the employer wishes to provide a benefit to key employees that exceeds the benefits offered to the rank-and-file employees for two primary reasons.

First, employers may have an enhanced sense of responsibility to their key employees. The GEBA enables the employer to offer both protection for the key employee's family while working and supplement the key employee's income at retirement. The GEBA benefit typically provides the key employee with a personal life insurance policy. The life insurance policy provides a death benefit for the key employee's family if the key employee dies while owning the life insurance. The key employee may also access cash values from the life insurance policy upon retirement.

Second, employers wish to motivate their key employees to drive productivity and profitability with a benefit beyond the typical benefits available to rank-and-file employees. The GEBA incorporates "golden handcuffs," which encourages loyalty to the business and motivates key employees to grow productivity and profitability.

Generally, the GEBA is offered only to key employees who are not owners of the business.

However, there are exceptions. Minority owners, who are also key employees, may be candidates for the GEBA. Majority owners of the business would not be probable candidates for a GEBA because the GEBA is designed to encourage loyalty to the business and motivate key employees to grow productivity and profitability. The majority owners already possess these traits.

## Golden handcuffs

Under GEBA, the key employee and employer execute a contract under which the employer restricts the key employee from exercising many of the ownership rights under the policy, such as accessing policy cash values, taking a loan against the policy and other ownership rights. As a result, the key employee cannot access the life insurance cash values until he or she fulfills certain contractual obligations, like working for the employer for a specified number of years.

Once the key employee fulfills the contractual obligation(s) of the GEBA, the employer releases the life insurance contract access in full to the key employee. Under the GEBA arrangement, the employer gains no ownership rights or access rights under the contract and the key employee retains the freedom to change the beneficiary at will.

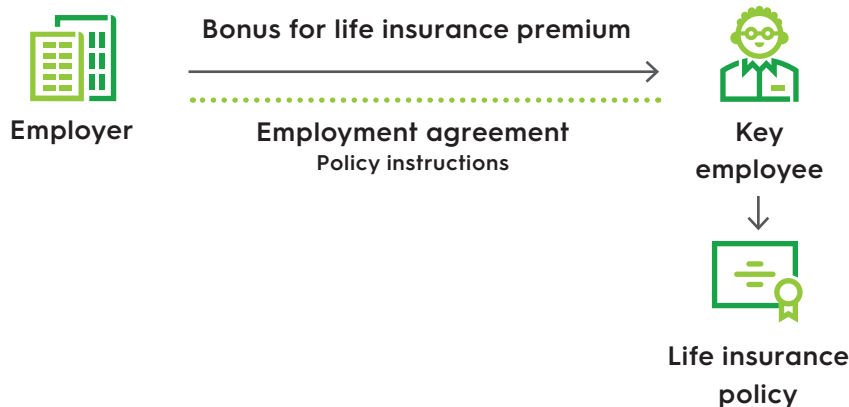
# Structure

## General

The key employee applies for a life insurance policy and as the owner of the life insurance designates the beneficiary. Also, the key employee is typically the insured. The employer pays the policy premiums directly to the insurance company and the amount of the premium payment is included in the key employee's income.

In conjunction with the purchase of the life insurance policy, two additional components must be incorporated into the GEBA, the 1) GEBA policy instructions, and 2) GEBA contract.

1. The GEBA policy instructions is a form that is obtained from the life insurance company. The GEBA policy instructions form is discussed below and is placed on the life insurance policy.
2. The GEBA contract supplements any current employment contract. The GEBA contract specifies the key employee's rights in the premiums paid and the employer's obligation to release the GEBA policy instructions upon fulfillment of the contract. The GEBA contract is discussed below.



## The GEBA policy instructions

The GEBA policy instructions form is typically provided by the insurance company. The form is executed by the employer and the key employee to limit the key employee's ability to exercise certain rights in the policy. The policy instructions state that the key employee cannot exercise any ownership rights in the policy, other than naming or changing the beneficiary, without the consent of the employer. For example, while the life insurance policy is in force, the key employee cannot surrender the policy for its cash value, arrange policy loans or make cash withdrawals, assign the policy as collateral security, change the ownership of the policy by further endorsement or assignment, or exercise any other right of ownership without the written consent of the employer. The key employee can only name or change the beneficiary of the policy without the consent of the employer.

The GEBA policy instructions lapse at a date specified on the GEBA policy instructions form. The date typically chosen might be the key employee's retirement date, the date the key employee reaches a certain age or the date the key employee will become fully vested in the premium bonuses. In addition, the policy instructions will lapse at an earlier date if the employer becomes bankrupt or dissolves.

The GEBA policy instructions that are placed on the life insurance policy do not give the employer any rights to the life insurance policy values at death or during the life of the key employee. The GEBA policy instructions do not allow the employer to access the cash values, surrender the policy for its cash value or receive a portion of the death benefit to fulfill this obligation.

The GEBA policy instructions merely allow the employer to prevent the key employee from accessing or depleting the cash values in the policy in any manner. Any rights the employer has in the "unvested" portions of its premium bonuses arise solely out of the GEBA contract, which is discussed below. The employment contract addresses the "golden handcuffs" portion of the arrangement and must be utilized to specify the "vesting" schedule or specify the absence of any vesting schedule.

## **The GEBA contract**

The GEBA contract provides the golden handcuffing portion of the arrangement. The GEBA contract provides that the employer will pay the premiums in exchange for the key employee's promise to continue to make his or her services available to the employer.

The GEBA contract should specify each annual premium payment by the employer is discretionary, if that is desired.

The key employee agrees that if he or she does not fulfill the obligations under the contract, he or she will repay some or all of the bonuses to the employer. This is stated in the specimen document under "Liquidated Damages." Three alternative repayment obligations are included as examples of how the language might be drafted under different vesting scenarios.

The employer must realize the contract provisions of the GEBA contract alone control the key employee's repayment obligation. The GEBA policy instructions placed on the policy do not allow the employer to access the cash values, surrender the policy for its cash value or receive a portion of the death benefit to fulfill this obligation. The GEBA policy instructions on the policy, at best, only provide an incentive for the key employee to satisfy his or her obligation to the employer upon early termination.

The alternative repayment obligation provisions refer to the cash value of the policy only to limit the amount of the repayment obligation. There are two reasons why defining the repayment obligation by reference to the policy cash value has been avoided.

First, if the repayment obligation for early termination is defined as the net cash value of the policy, the key employee has little incentive to surrender the policy to pay the employer as required under the contract because the key employee would be left with nothing. However, if the repayment obligation is something less than the net cash value, there is an incentive for the key employee to satisfy his or her repayment obligation under the contract in exchange for the release of the GEBA policy instructions by the employer. The release of the policy instructions gives the key employee access to any remaining cash value in the policy.

The second reason is to avoid potential adverse tax consequences. Section 264 of the Internal Revenue Code (IRC) of 1986 disallows the income-tax deduction for payments of insurance premiums if the employer is directly or indirectly a beneficiary under the life insurance policy. If the repayment obligation were defined as the policy cash value, the IRS could attempt to characterize the employer as an indirect beneficiary under the policy and thereby disallow the deduction for premium bonuses.

Finally, the contract provides that the employer is obligated to release the policy instructions within 90 days after (a) the termination of the contract or (b) the satisfaction of any repayment obligation arising out of the contract.

## Tax consequences

### Income taxes – employee

Premium payments are treated as compensation to the employee and, therefore, they are subject to income taxation. The premium payments must be reported on the employee's W-2 form.

Generally, taxation to the employee is governed by IRC Section 61, which includes as gross income all income from whatever source, including compensation for services, fees, commissions, fringe benefits and similar items. The regulations under Section 61 state: "Generally, life insurance premiums paid by an employer on the life of his employee where the proceeds of such insurance are payable to the beneficiary of such employee are part of the gross income of the employee."<sup>1</sup>

This regulation includes "life insurance premiums" as income of the employee in contrast with the "cost of life insurance protection," as used in other parts of the regulations.<sup>2</sup> This implies that the entire premium – not just the economic benefit cost – is currently taxable to the employee, because the employee owns the life insurance contract and the employer pays money on behalf of the employee to purchase or continue that contract. The regulation distinguishes this situation from life insurance on the employee's life "which is carried directly or indirectly by his employer."<sup>3</sup> Only when the insurance is carried by the employer is just the "cost of life insurance protection" and not the entire premium taxable to the employee.

Discussion of the tax consequences to the employee is not complete without an analysis of the effect of IRC Section 83 on the GEBA. Section 83 applies when "property" is transferred in connection with the performance of services. Regulations state the term "property" does not include money.<sup>4</sup> In a GEBA, the employer pays money to an insurance company on behalf of the employee. The money is used to purchase or continue a policy which is owned by the employee. The employer at no time owns the policy and, thus, can make no transfer of property. Consequently, Section 83 does not apply to this type of transaction.

Section 83 applies only to an arrangement whereby a cash value life insurance policy is owned by the employer. In a GEBA, the insurance is owned by the individual employee. As a result, Section 61 controls and the entire premium is taxable to the employee when paid. The ultimate income taxation will be the same or similar under both IRC Section 61 and IRC Section 83.

Policy dividends can be received income tax-free by the employee up to his or her basis regardless of the dividend option he or she chooses.<sup>5</sup> Interest earned on dividend accumulations, however, is taxed to the employee.<sup>6</sup>

At the employee's death, the insurance proceeds are paid out income tax-free.<sup>7</sup> If the employee surrenders the policy, the cash surrender value in excess of the cost of the contract is taxable as ordinary income to the employee.<sup>8</sup>

### **Income taxes – employer**

The employer is allowed an income-tax deduction under IRC Section 162(a) (1) for the full amount of the bonus in each year a bonus is paid. The premium payment is deductible as compensation to the employee provided (1) the employer is not directly or indirectly a beneficiary under the policy and (2) the premiums constitute additional reasonable compensation for services rendered by the employee.<sup>9</sup>

To ensure the employer will be entitled to an income-tax deduction, the arrangement must avoid the application of IRC Section 264(a), which would disallow the deduction if the employer is directly or indirectly a beneficiary under the insurance policy. Therefore, the employer must not be entitled to receive any cash values from the policy, nor any portion of the death benefit. The insurance policy is used merely as an incentive for the employee to satisfy the separate employment agreement.

In the event any previously deducted bonuses, paid to the employee, are repaid to the employer due to the employee's failure to fulfil the contract, the employer may need to include that amount in their current year's income. They must speak to their tax advisor to navigate this.

### **Employee contributions**

An employee may contribute to the executive bonus arrangement; however, this should be carefully considered. If employee contributions are essential, the parties may want to consider a golden executive match arrangement (GEM). The GEM arrangement clearly specifies the amount the employee contributes and the employer contributes a tax match.

### **Social Security taxes**

The premium payments are subject to Social Security and Medicare taxes. The full amount of the premium payment will be subject to Social Security taxes if the employee's salary is below the Social Security taxable wage base. Medicare taxes are payable on the entire amount of the bonus, regardless of the amount.

## **ERISA considerations**

### **Plan requirement**

The potential impact of the Employee Retirement Income Security Act of 1974 (ERISA)<sup>10</sup> should be considered when designing any form of employee benefit. ERISA can impose burdensome participation, reporting and disclosure requirements. A GEBA should be able to avoid many ERISA requirements because the existence of a "plan" is a prerequisite to jurisdiction under ERISA.<sup>11</sup> ERISA applies only to "an employee welfare benefit plan or an employee pension benefit plan or a plan which is both."<sup>12</sup>

For example, a U.S. District Court in Kansas provided important guidance in *Lackey vs. Whitehall Corporation*,<sup>13</sup> where it stated that employee benefits “provided in a contract negotiated by an employer and an individual employee is not an employee benefit plan for the purposes of ERISA.”<sup>14</sup>

In determining whether there is a plan, the courts consider the facts and circumstances surrounding the arrangement.<sup>15</sup> In *Lackey*, the facts and circumstances considered important were that the plan was not treated as a general plan for the entire management team; there were no plan documents, no funding accounts, no named fiduciaries or trustees, and no assets held in trust as with typical employee benefit plans. Consequently, under these guidelines, an individually negotiated GEBA would be considered an ERISA plan and will be subject to some of the ERISA requirements.

However, the most burdensome ERISA requirements associated with a qualified plan should be able to be avoided under the “top-hat” exemption discussed below.

The conclusion that the GEBA does not fall beyond the reach of ERISA is supported by the 5th Circuit Court of Appeals in *Murphy vs. Inexco Oil Company*.<sup>16</sup> In the court’s analysis, it observed Congress did not intend to “control every aspect of the employer-employee relationship or every promise made to employees.”<sup>17</sup> Instead it sought only to deal with those types of abusive plans and practices it sought to remedy.<sup>18</sup> The court noted ERISA was intended to be applied only to those plans which permit the employer to take action inconsistent with the employee’s anticipated retirement benefits.

It is clear that GEBA’s policy instructions and the GEBA employment contract allow the employer to take action that would classify the GEBA as a plan under ERISA. Again, the most burdensome ERISA requirements associated with a qualified plan can be avoided under the “top-hat” exemption, discussed below.

### **Top-hat exemption**

A GEBA may avoid ERISA participation, reporting and disclosure requirements by falling under the “top-hat” exemption. If the GEBA was considered a plan for ERISA purposes, it would have to be characterized as a pension benefit plan, a welfare benefit plan or a plan which is both.

The top-hat exemption may apply to both the pension benefit and welfare benefit plans. The top-hat exemption applies to plans providing benefits for a select group of management or highly compensated employees.

The important requirement under the top-hat exemption is the “management or highly compensated” concept. Executives in a top-hat group must qualify as “management or highly compensated” employees. These employees are typically management who impact the profitability of the company or are employees who are usually in the highest paid levels of the company.

Rank-and-file employees cannot be included in the top-hat group. Rank-and-file employees generally provide support services, are not highly compensated, do not influence the direction or management of the business or cannot influence the design of the plan.<sup>19</sup>

## Management

If the executive is clearly management, then the executive can meet the “management” requirement. However, ERISA offers no management definition. Therefore, the facts and circumstances of the client’s individual situation must be evaluated. Some general guidelines might be used to define management. The employee will not qualify as management if the employee provides merely support services. Additionally, the executive should be in a position to influence the design and operation of the plan. The U.S. Department of Labor (DOL) provides some guidance in its informal Advisory Opinions.

Generally, a select group of management would need to consist of individuals who have the “ability to affect or substantially influence, through negotiation or otherwise, the design and operation of their ... plan taking into consideration any risks attendant thereto, and, therefore, would not need the substantive rights and protection of Title I” of ERISA.<sup>20</sup>

One court case indicated that certain positions could be considered members of management. These positions include “order processing manager, assistant general manager, director of purchasing and personnel, assistant controller, fleet equipment manager, and assistant director of manufacturing.”<sup>21</sup>

This list represents only a single court’s opinion and is not recognized as authority by the DOL. Executive participation in the plan does not have to be limited to a strictly narrow group of a company’s top executives. The plan may be allowed to include a broad range of management or highly compensated individuals as long as the plan is not offered to “widely varying levels” of employees.<sup>22</sup>

## Highly compensated

The “highly compensated” requirement is not defined by ERISA. Therefore, the facts and circumstances of the specific situation must again be evaluated in order to determine whether an employee is highly compensated.<sup>23</sup>

In contrast to ERISA, the IRC defines highly compensated in several sections. It is important to remember that the IRC does not define the highly compensated employee for ERISA purposes. However, the compensation threshold in IRC Section 414(q) might be considered an initial guideline.<sup>24</sup>

For year 2022, this amount is \$135,000. This amount is indexed for inflation on an annual basis. Any analysis of the highly compensated requirement must take into consideration all facts and circumstances. Although compensation levels less than the \$135,000 compensation threshold could fail to meet the highly compensated test,<sup>25</sup> the definition of highly compensated could vary from location to location. A level of compensation in a rural area with a low cost of living may not be equivalent to a level of compensation in an urban area with a high cost of living. Therefore, the \$135,000 threshold could be adjusted upward or downward depending on the actual circumstances. Also, please note the \$135,000 threshold does not automatically qualify the executive for the “highly compensated” status. The DOL does not recognize the compensation threshold in IRC Section 414(q) as the definition of highly compensated.



In summary, as long as the GEBA is only part of the individual employment agreements of select employees, it should not be an employee welfare benefit plan or pension benefit plan and not be subject to ERISA. However, if the GEBA is considered an ERISA plan, all ERISA requirements can be met as long as the GEBA is for a select group of management or highly compensated employees.

The documents that follow assume the GEBA is an ERISA plan and qualifies for the top-hat exemption. Counsel must draft and modify the documents to apply to a client's particular situation. Counsel is, of course, responsible for the actual wording of a client's documents.

## Other considerations

### Double bonus

The employee is responsible for paying any income taxes associated with an executive bonus arrangement. However, the employee may not find the income taxes associated with the arrangement to be attractive. In this situation, the employer may pay an additional amount or bonus, which is called a "double bonus."

The double bonus refers to two bonuses. The first bonus is the initial bonus previously discussed (i.e. the "premiums" bonused). The second bonus may be incorporated into the GEBA and is used to pay the employee's related income taxes. The second bonus will also be subject to income tax, which creates yet more tax the employer might want to pay. If the employer wishes to pay all income taxes, the exercise results in a circular calculation, which the GEBA software will solve.

### Golden handcuffs

If the employer desires an arrangement with no restrictions, the executive bonus arrangement should be considered. The executive bonus arrangement mirrors the GEBA except that all contributions are fully vested immediately.

Alternatively, the golden executive match could be used. Golden handcuffs are optional with GEM. However, the employee makes the major contribution to the GEM arrangement and the employer pays the income tax associated with the GEM.

### Employee contributions

An employee may contribute to the GEBA; however, this should be carefully considered. The vesting schedule should be modified to accommodate any employee contributions. If employee contributions are essential, the parties may want to consider a GEM arrangement. The GEM arrangement clearly specifies the amount that the employee contributes and the employer contributes a tax match.

### Estate tax planning

If it is desired to exclude the insurance proceeds from the employee-insured's gross estate, the spouse or an irrevocable trust can potentially be named owner. However, like all design parameters and provisions, this should be discussed thoroughly with the client's estate planning attorney.

# Specimen Resolution Approving Golden Executive Bonus Arrangement (GEBA)

Counsel alone is responsible for the actual wording of the final resolution. Neither Minnesota Life Insurance Company, Securian Life Insurance Company, nor their representatives are engaged in the practice of law; these specimen agreements are intended for illustrative purposes and counsel must draft a resolution appropriate for his or her client.

The undersigned, Secretary of \_\_\_\_\_ (hereinafter called the "employer"), does hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, a meeting of the Board of Directors of said Corporation was called pursuant to the corporation's by-laws and a quorum was present, and the following resolution was unanimously adopted.

WHEREAS, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are valuable and efficient employees; and WHEREAS, it is in employer's best interests to provide additional incentives to those key employees to keep them with the employer; RESOLVED THAT the Board of Directors agrees to adopt an executive bonus arrangement in order to provide life insurance protection for the benefit of said employees effective as of \_\_\_\_\_.

Optional:

RESOLVED FURTHER, that in conjunction with this plan, the Corporation hereby awards \_\_\_\_\_ and \_\_\_\_\_ bonuses of \_\_\_\_\_ and \_\_\_\_\_, respectively.

\_\_\_\_\_  
Date

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

# GEBA Contract – Supplement to Employment Agreement

This bonus arrangement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, (hereinafter "Employer") and \_\_\_\_\_ (hereinafter "Employee").

WHEREAS, Employer wishes to reward Employee for past service and provide additional incentives to encourage Employee to continue employment with Employer; and WHEREAS, Employer wishes to reward Employee with additional compensation in the form of tax match bonuses.

Now, therefore, in consideration of the mutual promises and covenants made herein, Employer and Employee agree to the following:

## 1. Premium bonus

In addition to Employee's regular salary and fringe benefits, Employer agrees to pay an annual bonus of \$ \_\_\_\_\_ to the Minnesota Life/Securian Life Insurance Company on behalf of Employee in the form of an annual premium payment on a life insurance policy ("the Policy") insuring the life of Employee;

## 2. Gross up bonus

In addition to payment of the premium bonus, Employer agrees to pay an annual gross up bonus to Employee [in the amount of \$ \_\_\_\_\_] [equal to \_\_\_\_\_% of the premium bonus] to cover the state and federal individual income taxes payable by Employee on bonuses paid under this bonus agreement. The entire amount of this gross up bonus shall be withheld from Employee and deposited with the appropriate state and federal payroll authorities as payroll income tax withholding on behalf of Employee. Employer will bonus and withhold this gross up bonus prior to the close of the calendar year in which the corresponding premium bonus is paid.

## 3. Life insurance policy

The policy shall be purchased and owned by Employee. The policy shall be solely for the benefit of Employee. Employee shall have the right to name the beneficiary of the policy and to change the named beneficiary of the policy at any time. However, Employee agrees not to name Employer directly or indirectly as beneficiary of the Policy nor assign any values in the Policy to Employer. Employer shall release any restrictions, restrictive rights or other instructions it may have on the Policy within ninety (90) days after termination of agreement. Notwithstanding anything to the contrary, the Employer's obligations under this arrangement terminate at the earlier of the Employee's death, disability, termination of service for any reason or the Employee's attainment of age \_\_\_\_\_.

### [Optional to avoid characterization as a pension benefit plan under ERISA]

Despite any restrictions placed on the policy, Employee shall have access to any policy values in excess of the liquidated damages determined under Paragraph five below.

#### **4. Termination of agreement**

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

- a. The bankruptcy or dissolution of the Employer;
- b. Death of the Employee;
- c. \_\_\_\_\_, \_\_\_\_\_;
- d. Either party's submission of written notice, to the other party, of intent to terminate this Agreement, provided, however, if Employee provides written notice of intent to terminate this Agreement under this paragraph 4(d), the Employee shall remain responsible for the liquidated damages determined under Article 5 below; or
- e. Satisfaction of the liquidated damages determined under Article 5 below.

#### **5. Liquidated damages**

Liquidated damages represents the amount owed back to the employer in the event that the participant does not fulfill the requirement to become fully vested.

##### **Alternative 1 – Immediate vesting**

If Employee ceases to make his/her services available to Employer prior to Termination of Agreement, Employee agrees to repay to Employer the lesser of [Employer's share of] all premium bonuses paid within one year of the date on which employment terminates or the cash surrender value of the policy.

##### **Alternative 2 – Five-year rolling vesting**

If Employee ceases to make his/her services available to Employer prior to Termination of Agreement, Employee agrees to repay to Employer a portion [of Employer's share] of the premium bonuses paid within five years of the date on which employment terminates. The amount of such repayment shall be the lesser of the cash surrender value of the Policy reduced (but not below zero) by the Employee's cumulative share of the premiums or the sum of the following amounts:

- For premiums paid within one calendar year of the date of termination of employment, 100 percent [of Employer's share] shall be repaid.
- For premiums paid at least one year but less than two years from such date, 80 percent [of Employer's share] shall be repaid.
- For premiums paid at least two years but less than three years from such date, 60 percent [of Employer's share] shall be repaid.
- For premiums paid at least three years but less than four years from such date, 40 percent [of Employer's share] shall be repaid.
- For premiums paid at least four years but less than five years from such date, 20 percent [of Employer's share] shall be repaid.

##### **Alternative 3 – Vesting at retirement**

If Employee ceases to be employed by Employer before reaching the age of \_\_\_\_\_, Employee agrees to repay the lesser of [ \_\_\_\_\_ percent of] [Employer's share of] all premium bonuses or the cash surrender value of the policy to Employer.

GEBA Policy Instructions:  
Life Insurance

Securian Life Insurance Company  
400 Robert Street North • St. Paul, Minnesota 55101-2098



Policy No. \_\_\_\_\_ issued on the life of \_\_\_\_\_ (the Insured) by  
SECURIAN LIFE INSURANCE COMPANY (herein called the Company).

Employee/ Owner: \_\_\_\_\_

Employer name: \_\_\_\_\_

Employer address: \_\_\_\_\_

It is agreed by the undersigned that:

1. Upon execution of this agreement, the Owner shall not have the right, without the written consent of the Employer, or successor, to (a) surrender the policy, (b) arrange policy loans, (c) make cash withdrawals, (d) change the death benefit, (e) assign the policy as collateral security, (f) change the ownership of the policy, (g) pledge or assign the policy, or (h) change the policy dividend option.
2. This arrangement shall in no way alter the Owner's right under the policy to change and successively change the beneficiaries entitled to receive payment or payments upon the death of the Insured named under this policy of insurance.
3. On or after the first to occur of (1) death of the insured, (2) \_\_\_\_\_  
\_\_\_\_\_ or (3) the bankruptcy or dissolution of the Employer, these restrictions will lapse and the Owner may exercise and enjoy every right, privilege, option, and benefit granted by this policy on his/ her sole signature.
4. The Employer shall not be entitled to receive any of the benefits or proceeds of the policy.

Employer \_\_\_\_\_ Employee/ Owner \_\_\_\_\_

Witness \_\_\_\_\_ Witness \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

GEBA Policy Instructions:  
Life Insurance

Minnesota Life Insurance Company - A Securian Company  
400 Robert Street North • St. Paul, Minnesota 55101-2098

**MINNESOTA LIFE**

Policy No. \_\_\_\_\_ issued on the life of \_\_\_\_\_ (the Insured) by  
MINNESOTA LIFE INSURANCE COMPANY (herein called the Company).

Employee/ Owner: \_\_\_\_\_

Employer name: \_\_\_\_\_

Employer address: \_\_\_\_\_

It is agreed by the undersigned that:

1. Upon execution of this agreement, the Owner shall not have the right, without the written consent of the Employer, or successor, to (a) surrender the policy, (b) arrange policy loans, (c) make cash withdrawals, (d) change the death benefit, (e) assign the policy as collateral security, (f) change the ownership of the policy, (g) pledge or assign the policy, or (h) change the policy dividend option.
2. This arrangement shall in no way alter the Owner's right under the policy to change and successively change the beneficiaries entitled to receive payment or payments upon the death of the Insured named under this policy of insurance.
3. On or after the first to occur of (1) death of the insured, (2) \_\_\_\_\_  
\_\_\_\_\_ or (3) the bankruptcy or dissolution of the Employer, these restrictions will lapse and the Owner may exercise and enjoy every right, privilege, option, and benefit granted by this policy on his/ her sole signature.
4. The Employer shall not be entitled to receive any of the benefits or proceeds of the policy.

Employer \_\_\_\_\_ Employee/ Owner \_\_\_\_\_

Witness \_\_\_\_\_ Witness \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

1. Treas. Reg. §1.61-2(d)(2)(ii)(a).
2. See e.g. Treas. Reg. §1.83-1(a)(2).
3. Treas. Reg. §1.61-2(d)(2)(ii)(a).
4. Treas. Reg. §1.83-3(e).
5. IRC §72(e)(1) B; IRS Reg. §1.72-11(b)(1).
6. IRS Reg. §1.451-2.
7. IRC §101(a); IRS Reg. §1.101-1(a).
8. IRC §72(e); IRS Reg. §1.72-11(d).
9. IRC §162(a); IRS Reg. §1.162.-7; IRS Reg. §1.264-1(b); Brown Agency, Inc. 21 BTA 1111, Acq XI-1 CB 9; Berizzi Bros. Co. BTA 1307, Acq XI-1 CB 6; Peerless Pacific Co. 10 BTA 103.
10. 29 U.S.C. §1001-1381.
11. Jervis v. Elerding, 504 F.Supp. 606, 608 (C.D. Cal. 1980).
12. 29 U.S.C. §1002(3).
13. 704 F.Supp. 201 (D. Kan. 1988).
14. Id. at 204.
15. See Williams v. Wright, 927 F.2d 1540 (11th Cir. 1991); Barrowclough v. Kidder, Peabody & Co., Inc., 752 F.2d 923 (3d Cir. 1985); Murphy v. Inexco Oil Co., 611 F.2d 570 (5th Cir. 1980); Jervis v. Elerding, 504 F. Supp.606 (C.D. Cal. 1980); Lackey v. Whitehall Corp., 704 F. Supp. 201 (D. Kan. 1988); McQueen v. Salida Coca-Cola Bottling Co., 652 F. Supp. 1471 (D. Colo. 1987).
16. 611 F.2d 570 (5th Cir. 1980).
17. Id. at 574.
18. Id.
19. DOL Adv. Op. 92-13A (May 19, 1992); DOL Adv. Op. 90-14A (May 8, 1990).
20. DOL Adv. Op. 90-14A (May 8, 1990).
21. Belka v. Rowe Furniture Corp., 571 F. Supp. 1249 (1983)).
22. Demery, et al. v. Extebank Deferred Compensation Plan, et al., 216 F.3d 283 (2nd Cir. 2000), U.S. App. Lexis 13972, 24 E.B.C. 2095.
23. See Williams v. Wright, 927 F.2d 1540 (11th Cir. 1991); Barrowclough v. Kidder, Peabody & Co., Inc., 752 F.2d 923 (3d Cir. 1985); Murphy v. Inexco Oil Co., 611 F.2d 570 (5th Cir. 1980); Jervis v. Elerding, 504 F. Supp.606 (C.D. Cal. 1980); Lackey v.Whitehall Corp., 704 F. Supp. 201 (D. Kan. 1988); McQueen v. Salida Coca-Cola Bottling Co., 652 F. Supp. 1471 (D. Colo. 1987).
24. IRC Sec. 414(q)(1).
25. Plazzo v. Nationwide Mutual Insurance Co., 697 F.Supp. 1437 (N.D. Ohio 1987).

Life insurance products contain fees, such as mortality and expense charges (which may increase over time), and may contain restrictions, such as surrender charges.

Policy loans and withdrawals may create an adverse tax result in the event of lapse or policy surrender, and will reduce both the surrender value and death benefit. Withdrawals may be subject to taxation within the first 15 years of the contract. Clients should consult their tax advisor when considering taking a policy loan or withdrawal.

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

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

This is a general communication for informational and educational purposes. The information is not designed, or intended, to be applicable to any person's individual circumstances. It should not be considered investment advice, nor does it constitute a recommendation that anyone engage in (or refrain from) a particular course of action. If you are seeking investment advice or recommendations, please contact your financial professional.

Insurance products are issued by Minnesota Life Insurance Company in all states except New York. In New York, products are issued by Securian Life Insurance Company, a New York authorized insurer. Minnesota Life is not an authorized New York insurer and does not do insurance business in New York. Both companies are headquartered in St. Paul, MN. Product availability and features may vary by state. Each insurer is solely responsible for the financial obligations under the policies or contracts it issues.

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