

## Golden executive match (GEM)

# Foreword to counsel and specimen documents

---

Introduction	2
Structure	3
Tax consequences	6
ERISA considerations	7
Other considerations	9
GEBA policy instructions	10
Specimen Resolution Approving Golden Executive Match	12
GEM Contract – Supplement to Employment Agreement	13



# Introduction

## General

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

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

1. Employers may have an enhanced sense of responsibility to the key employees. The GEM accomplishes this primary objective by allowing the employer to offer both protection for the key employee's family while working and to supplement the key employee's income at retirement. The GEM benefit typically assists the key employee with purchasing a personal life insurance policy by paying the income taxes associated with the annual premiums. The life insurance policy provides a survivorship 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.
2. Employers wish to reward their key employees who drive productivity and profitability with a benefit beyond the typical benefits available to rank-and-file employees. The GEM may incorporate "golden handcuffs" into the arrangement, which encourages loyalty to the business and motivates key employees to grow productivity and profitability.

Generally, the GEM is offered 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 GEM with golden handcuffs. Majority owners of the business would not be a probable candidate for a GEM because it is designed to encourage loyalty to the business and motivate key employees to grow productivity and profitability. The majority owners already possess these traits.

The GEM works well when the employer has a qualified plan, such as a 401(k), and the key employees are limited to the contributions they can put into the qualified plan. The employer may consider a "safe harbor" plan to increase the contributions for the key employees. However, the safe harbor plan may be too expensive because additional contributions for all employees must be made and the top employees may still want to contribute more but are limited.

The key employees will contribute a dollar amount to the life insurance contract used in the arrangement. The employee contributes the full dollar amount without any reduction for income taxes owed. The employer pays the income tax obligation for the employee, which is the tax match component. Therefore, the GEM mimics tax deferral for the employee and is less expensive for the employer in comparison to a safe harbor plan for all the employees, a golden executive bonus arrangement (GEBA) or nonqualified deferred compensation (NQDC) plan.

## Golden handcuffs

Under the GEM, the key employee and employer execute a contract under which the employer restricts the key employees 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 the key employee fulfills certain contractual obligations, like working for the employer for a specified number of years or repayment of a portion of the tax match.

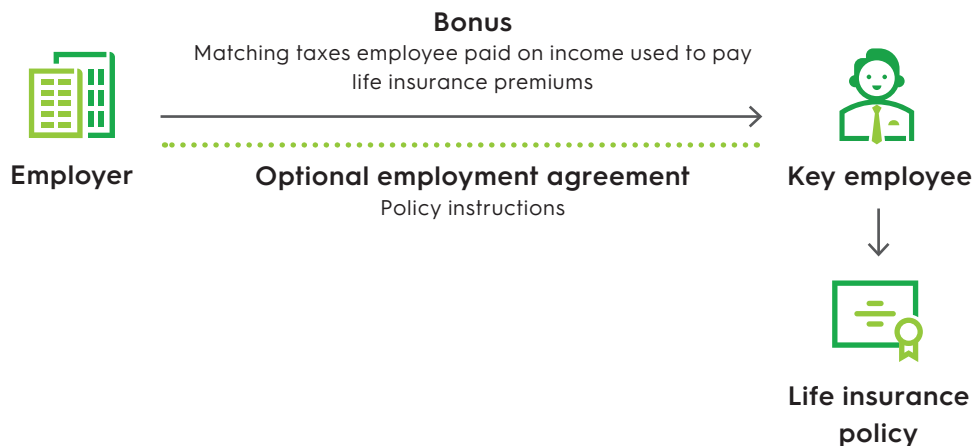
Once the key employee fulfills the contractual obligation of the GEM, the employer releases the life insurance contract access in full to the key employee. Under the GEM arrangement, the employer gains no ownership or access rights and the key employee retains the freedom to change the beneficiary at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

# Structure

## General

The key employee applies for a life insurance policy. The key employee is the owner of the life insurance and designates the beneficiary. Also, the key employee is typically the insured. The employee pays the policy premiums directly to the insurance company. The employer pays a tax match for the premium payments that the employee makes, thus allowing the employee to contribute a greater amount to the tax-deferred life insurance contract and access a greater amount of cash value at retirement.

The GEM may or may not incorporate golden handcuffs.



## GEM – Without vesting (no golden handcuffs)

If no golden handcuffs are incorporated into the GEM arrangement, the key employee may access the cash value whenever he or she wishes.

## **GEM – With vesting (golden handcuffs)**

In conjunction with the purchase of the life insurance policy, two additional components must be incorporated into a GEM that uses golden handcuffs. These two additional components are the: (1) policy instructions, and (2) GEM contract.

The policy instructions is a form that is obtained from the life insurance company. The policy instructions form is discussed below and is placed on the life insurance policy.

The GEM contract supplements any current employment contract. The GEM contract specifies the key employee's rights in the premiums paid, tax match and the employer's obligation to release the policy instructions upon fulfillment of the contract. Typically a GEM contract requires the employee to reimburse the employer for a portion of the tax match until the key employee has completed the terms of the GEM contract. The key employee's contributions to the GEM arrangement are always vested and do not have golden handcuffs attached to them. The GEM contract is discussed below.

### **The policy instructions**

The 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 policy instructions are 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 policy instructions lapse at a date specified on the policy instructions form. The date 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 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 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 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 tax-match bonuses arise solely out of the GEM 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 GEM contract

The GEM contract provides the golden handcuff portion of the arrangement. The GEM contract provides that the employer will pay a tax match on the premiums in exchange for the key employee's promise to continue to make his or her services available to the employer. The GEM contract should specify that each annual tax-match 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 tax match bonuses to the employer. This is included 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 that the contract provisions of the GEM contract alone control the key employee's repayment obligation. The policy instructions that are 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 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 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

The tax match payments made by the employer are treated as compensation to the employee and, therefore, they are subject to income taxation. The tax match 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>

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>2</sup> Interest earned on dividend accumulations, however, is taxed to the employee.<sup>3</sup>

At the employee's death, the insurance proceeds can generally be received income tax free.<sup>4</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>5</sup>

## Income taxes – employer

The employer is allowed an income-tax deduction under IRC Section 162(a)(1) for the full amount of the tax match bonus in each year a bonus is paid. The tax match payment is deductible to the employer as compensation 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>6</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 tax-match 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.

## 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>7</sup> should be considered when designing any form of employee benefit. ERISA can impose burdensome participation, reporting and disclosure requirements. A GEM can avoid many ERISA requirements because the existence of a “plan” is a prerequisite to jurisdiction under ERISA.<sup>8</sup> ERISA applies only to “an employee welfare benefit plan or an employee pension benefit plan or a plan which is both.”<sup>9</sup> For example, a U.S. District Court in Kansas provided important guidance in *Lackey vs. Whitehall Corporation*,<sup>10</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>11</sup>

In determining whether there is a plan, the courts consider all facts and circumstances surrounding the arrangement.<sup>12</sup> In *Lackey*, the facts and circumstances that were 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 GEM would be considered an ERISA plan and subject to some of the ERISA requirements. However, the most burdensome ERISA requirements associated with a qualified plan can be avoided under the “top hat” exemption discussed below.

The conclusion that the GEM does not fall beyond the reach of ERISA is supported by the 5th Circuit Court of Appeals in *Murphy vs. Inexco Oil Company*.<sup>13</sup> In the court’s analysis, it observed that Congress did not intend to “control every aspect of the employer/employee relationship or every promise made to employees.”<sup>14</sup> Instead it sought only to deal with those types of abusive plans and practices it sought to remedy.<sup>15</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 GEM’s policy instructions and the GEM employment contract allow the employer to take action that would classify the GEM as a plan under ERISA. Again, the most burdensome ERISA requirements associated with a qualified plan should be able to be avoided under the top hat exemption discussed below.

## Top hat exemption

A GEM may avoid ERISA's burdensome participation, reporting and disclosure requirements by falling under the top hat exemption. If the GEM 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 at 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>16</sup>

## Management

If the executive is clearly management, then the executive would be able to meet the management requirement. However, ERISA offers no definition of management. 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>17</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>18</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 "wildly varying levels" of employees.<sup>19</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>20</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>21</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>22</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 that 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, the GEM is considered an ERISA plan and is subject to ERISA. However, all ERISA requirements can be met as long as the GEM is for a select group of management or highly compensated employees.

The documents that follow assume the GEM 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 actual wording of a client’s documents.

# Other considerations

## 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 drafting attorney.

## Double bonus

The employee is responsible for paying any income taxes associated with the GEM arrangement. The double bonus refers to two bonuses. The first bonus is the initial tax-match bonus that has been previously discussed. The second bonus may be incorporated into the GEM and is used to pay the employee’s additional income taxes. The tax-match bonus will 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 GEM software will solve.

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 \_\_\_\_\_

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 \_\_\_\_\_

# Specimen Resolution Approving Golden Executive Match (GEM)

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 bylaws and a quorum was present, and the following resolution was unanimously adopted.

WHEREAS, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are valuable and efficient employees; and WHEREAS, it is in the 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 a golden executive match 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

# GEM 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. Tax match bonus

In addition to Employee’s regular salary and fringe benefits, Employer agrees to pay an annual tax match bonus of \$\_\_\_\_\_ to the Employee. The tax match bonus is a discretionary bonus by the employer decided on an annual basis.

## 2. Life insurance policy

The Employee agrees to purchase a life insurance policy (“the Policy”) insuring the life of Employee and make annual premium payments on the 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.

## 3. 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. Satisfaction of the liquidated damages determined under Article 4 below.

## 4. Liquidated damages (select alternative 1 or 2)

\_\_\_\_\_ **Alternative 1 – Immediate vesting – No golden handcuffs**

The Employee has no obligation to repay any amount of the tax match bonus to the Employer.

\_\_\_\_\_ **Alternative 2 – Employee repayment obligation**

**Part A of Alternative 2 – Golden handcuffs**

If Employee ceases to make his/her services available to Employer prior to termination of agreement, Employee agrees to repay to Employer all or a portion of the lesser of:

1. All tax match bonuses paid by the Employer; or
2. A proportional amount of the cash surrender value of the policy. The proportional amount is defined as a fraction where the numerator is the accumulated tax match bonuses and the denominator is the accumulated premiums paid by Employee and the tax match bonus paid by the Employer.

**Part B of Alternative 2 – Vesting schedule**

**Option 1:**

100% vested in years

**Option 2:**

- a. vesting starts in \_\_\_\_\_ years
- b. \_\_\_\_\_% vested each year
- c. 100% vested in \_\_\_\_\_ years

**Option 3:**

Other \_\_\_\_\_

1. Treas. Reg. §1.61-2(d)(2)(ii)(a).
2. IRC §72(e)(1) B; IRS Reg. §1.72-11(b)(1).
3. IRS Reg. §1.451-2.
4. IRC §101(a); IRS Reg. §1.101-1(a).
5. IRC §72(e); IRS Reg. §1.72-11(d).
6. 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.
7. 29 U.S.C. §1001-1381.
8. Jervis v. Elerding, 504 F.Supp. 606, 608 (C.D. Cal. 1980).
9. 29 U.S.C. §1002(3).
10. 704 F.Supp. 201 (D. Kan. 1988).
11. Id. at 204.
12. 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).
13. 611 F.2d 570 (5th Cir. 1980).
14. Id. at 574.
15. Id.
16. DOL Adv. Op. 92-13A (May 19, 1992); DOL Adv. Op. 90-14A (May 8, 1990).
17. DOL Adv. Op. 90-14A (May 8, 1990).
18. Belka v. Rowe Furniture Corp., 571 F. Supp. 1249 (1983).
19. 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.
20. Id. at 574.
21. IRC Sec. 414(q)(1).
22. 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 fifteen 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. 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.

This is a general communication for informational and educational purposes. The materials and the information are 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.

Securian Financial is the marketing name for Securian Financial Group, Inc., and its subsidiaries. Minnesota Life Insurance Company and Securian Life Insurance Company are subsidiaries of Securian Financial Group, Inc.



INSURANCE  
INVESTMENTS  
RETIREMENT

[securian.com](http://securian.com)

400 Robert Street North, St. Paul, MN 55101-2098  
©2022 Securian Financial Group, Inc. All rights reserved.

F71834-19 Rev 3-2022 DOFU 3-2022  
2062601