Securian Financial

Individual Life Insurance
Employer-owned life insurance

Insurance products issued by:
Minnesota Life Insurance Company
Securian Life Insurance Company

Employer-Owned Life Insurance (EOLI)

Foreword to counsel and notice and consent requirements

Tax Considerations

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 avoiding federal tax penalties. Taxpayers should seek the advice of their own advisors regarding any tax and legal issues specific to their situation.

Overview of the EOLI rules

One of the tax advantages of life insurance is that the death benefit paid from the life insurance policy is generally not subject to federal income taxes.[1] However, the Pension Protection Act of 2006 (PPA) changed this general rule for Employer-Owned Life Insurance policies. The PPA added Internal Revenue Code (IRC) Section 101(j) which includes special requirements that must be met to obtain a tax-free death benefit for any EOLI policy.[2] The penalty for not complying with these rules is significant – **the death benefit is taxable.**

The main requirement for a tax-free death benefit under the EOLI rules is that before the policy is issued, the business must provide to the potential insured a written notice of the insurance to be purchased, and the potential insured must sign a consent for this life insurance purchase.[3] In addition, the employer must report these policies to the Internal Revenue Service (IRS) annually by completing a form which is filed along with the employer's federal income tax return.[4]

Noncompliance with the EOLI rules is just one way that a death benefit could be taxed in a business setting. There are other income tax rules such as the transfer-for-value rule[5] and others that could subject a business life insurance policy to taxation. These other tax rules are beyond the scope of this document.

When the EOLI rules apply:

The EOLI rules apply to any new EOLI policy issued after August 17, 2006, and to any older policy materially changed since then.[6] An EOLI policy is one that meets this definition:

1. The policy is owned by a business, and
2. The business is directly or indirectly a beneficiary of the policy, and
3. The insured is one of the following:
   - An employee of the business
   - A director of the business
   - An officer of the business
   - A highly compensated employee
   - An owner of the business owning more than 5 percent of the stock or more than 5 percent of the interest in the business (a "5-percent owner," which is technically defined as someone owning more than 5 percent of the business).[7]

A policy issued on or before August 17, 2006, that is materially changed after that date is subject to the EOLI rules of IRC Section 101(j).[8] The general rule is that a new policy issued after that date pursuant to a Section 1035 exchange of an older policy issued prior to that date is not a material change and not subject to 101(j). However, if the new contract has a material increase in its death benefit or other material change, then the new contract is subject to 101(j). Also, any policy issued prior to that date could be subject to 101(j) if any change made to it after that date is considered material.[9] An increase in the death benefit that was not part of the original contract and that required the insured to go through medical underwriting would presumably be considered a material change.

There is little guidance on what is considered a material change, though it is clear that a material increase in a death benefit is a material change.

Overview of the EOLI rules continued

Notice 2009-48 provides some guidance on what is not considered a material change. An increase in the death benefit resulting from the operation of IRC Section 7702 or the terms of the original contract, an administrative change, or a change resulting from the exercise of an option or right granted under the original contract are not considered material changes. In general, if a policy issued on or before August 17, 2006, is exchanged for a new policy with no other changes to the features of the policy, the change should not be considered material for purposes of these rules.[10]

The EOLI requirements include related party and control group attribution of ownership rules which apply generally to the "applicable policyholder" or the trade or business owning the policy.[11] The applicable policyholder includes a beneficiary that bears a relationship to the owner of the policy.[12] The relationship rules include:

- Members of a family
- An individual and a corporation when more than 50 percent of the outstanding stock is owned directly or indirectly by the individual
- Two corporations which are members of the same controlled group
- A corporation and a partnership when more than 50 percent of one entity is owned directly or indirectly by the other entity
- An S corporation and another S corporation if a similar 50 percent rule applies
- An S corporation and a C corporation if a similar 50 percent rule applies
- A partnership and another partnership if a similar 50 percent rule applies
- Two partnerships if a similar 50 percent rule applies
- And other situations.[13]

The applicable policyholder also includes any person engaged in trades or businesses with such person who is under common control.[14] Under these control group rules, all employees of all common control businesses are considered to be treated as employed by a single employer.

Examples when the EOLI rules apply

IRS Notice 2009-48 provided a number of clarifications about when the 101(j) rules apply and how to comply. The following are examples of situations when the EOLI rules clearly apply:

1. **Key employee life insurance –** The business is owner and beneficiary of the policy.
   a. A corporation, S corporation, partnership or LLC purchases life insurance on an employee, officer, director or someone who owns more than 5 percent of the business.
   b. A sole proprietor purchases life insurance on an employee (but not the sole proprietor).
2. **Split-dollar life insurance policy –** A policy is purchased insuring an employee, director, officer or more than 5 percent owner, under a split-dollar arrangement, and the business is a beneficiary of a portion of the death benefit.

Overview of the EOLI rules continued

3. **Entity redemption/Entity purchase buy-sell/LifeCycle buy-sell –** A business purchases life insurance insuring a shareholder owning more than 5 percent of the outstanding stock, or insuring someone owning more than 5 percent of the business, for an entity redemption or entity purchase buy-sell arrangement or for a LifeCycle buy-sell.
4. **Nonqualified deferred compensation plan –** A life insurance policy is purchased to informally fund a nonqualified deferred compensation plan, and the insured is an employee, director, officer or more than 5 percent owner. The business is owner and beneficiary of the policy.
5. **Rabbi Trust –** A Rabbi Trust purchases a life insurance policy insuring an employee, director, officer or more than 5 percent owner, to informally fund a nonqualified deferred compensation plan. The trust is owner and beneficiary of the policy.
6. **Material change to an EOLI policy issued on or before August 17, 2006 –**
   a. The face amount is increased on an EOLI policy issued on or before August 17, 2006, and the insured went through medical underwriting. The right to increase coverage was not part of the original policy.
   b. An EOLI policy issued on or before August 17, 2006, is exchanged tax free for a new policy with a larger face amount.[15]

Examples when the EOLI rules do not apply

In the following examples, the notice and consent EOLI rules do not apply to obtain a tax-free death benefit.

1. A qualified retirement plan purchases life insurance on a plan participant.
2. A voluntary employees' beneficiary association (VEBA) purchases life insurance on a VEBA participant.
3. A sole proprietor purchases life insurance on the sole proprietor's life.
4. Two or more business owners purchase life insurance on each other for a cross-purchase buy-sell arrangement.
5. An employee irrevocably transfers a life insurance policy to his employer. No other policy changes are made.[16]

How to comply – the notice and consent requirements

To obtain an income tax-free death benefit for those EOLI policies subject to the rules, the employer must obtain a written notice and consent from the insured **before the policy is issued.** This requirement is the employer's responsibility. The notice and consent document must be signed by the prospective insured and state all of the following:

- The employer's intent to insure the employee.
- The maximum face amount of life insurance being applied for
- The employer will be a beneficiary of the policy.
- The coverage may continue after the insured terminates employment.
- The insured consents to this life insurance coverage.[17]

Overview of the EOLI rules continued

Notice 2009-48 clarified a number of issues about how to comply with 101(j). An EOLI policy is treated as "issued" on the later of the date of application for coverage OR the effective date of coverage OR formal issuance of the contract. That notice also clarified that the life insurance contract must be issued before one year from the date when the insured signed the consent form OR if earlier, termination of the employee's employment. A single consent may apply to more than one EOLI policy as long as the maximum face amount on the signed consent form does not exceed the total of all related EOLI policy face amounts. Employers also can comply with the notice and consent requirements electronically.[18]

Notice 2009-48 further describes a procedure employers may use to correct an "inadvertent failure" to satisfy the notice and consent requirements of 101(j)(4). The IRS will not challenge a failure to satisfy the notice and consent requirements that is inadvertent as long as the following conditions are met:

1. The policy owner made a good faith effort to meet the requirements such as by having a formal system for providing notice and obtaining consents from new employees
2. The failure to satisfy the requirements was inadvertent; and
3. The failure was discovered and corrected on or before the due date of the applicable policyholder's tax return for the year when the policy was issued.[19]

Potential tax trap

After obtaining this signed notice and consent, the death benefit will always be income tax free under 101(j) if the notice and consent rules were met before the policy was issued and if one of the following applied when the policy was issued:

- The insured was a director when the policy was issued.
- The insured was an employee who was considered highly compensated when the policy was issued, as defined in IRC Section 414(q).
- The insured was one of the highest paid 35 percent of all employees when the policy was issued.
- The insured was one of the five highest paid officers when the policy was issued.
- The insured owned more than 5 percent of the business when the policy was issued.
- The insured was a shareholder who owned more than 10 percent of the employer stock either actually or constructively when the policy was issued.
- The death benefit is paid to a member of the insured's family, to the insured's chosen beneficiary or to the insured's trust or estate.
- The death benefit must be used to purchase an interest in the business by the due date plus extensions of the tax return for the year when the death benefit was paid to the business as a beneficiary of the policy.[20, 21]

Overview of the EOLI rules continued

There is a potential tax trap for a "rank-and-file" employee who is not described in this list above. Even if the signed notice and consent was obtained before the policy was issued, for a "rank-and-file" employee not described in this list above, the death benefit is tax free only if the insured dies while employed or within 12 months after terminating or retiring from employment. If the rank-and-file employee dies 12 months and one day (or later) after leaving employment, the death benefit paid to the business is taxable even if the notice and consent forms were signed as required.[22]

Tax reporting requirements of 101(j)

An employer must report annually to the IRS all life insurance policies subject to these rules by completing Form 8925 (available on www.irs.gov) and attaching it to its federal income tax return. The information required for the annual reporting on Form 8925 includes:

1. The number of employees the employer had at the end of the tax year.
2. The number of those employees insured at the end of the tax year under the policy holder's employer-owned life insurance contracts issued after August 17, 2006.
3. The total amount of life insurance in force at the end of the tax year under those contracts.
4. Whether the employer has a valid signed consent form for all insured employees, and if all consents have not been obtained, the number of employees for whom such consent was not obtained.
5. The name, address, and taxpayer identification number of the employer and type of business the employer is engaged in.[23]

Recommended actions for EOLI cases

In any potential EOLI situation involving a Minnesota Life Insurance Company or Securian Life Insurance Company policy, there are two steps:

1. The employer must sign a copy of Minnesota Life's form F66015 or Securian Life's form FSL66015, "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. There is a sample "Employer-Owned Life Insurance Policy – Insured's Acknowledgement of Notice and Consent" 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.

Employer Notification Regarding the Potential Taxation of Death Benefits

Minnesota Life Insurance Company - a Securian Financial company
400 Robert Street North, St. Paul, MN 55101-2098

Please provide identifying information when this page is submitted after the application. (Needed for matching)

Proposed insured name	Policy number (If known)

You have applied for a life insurance policy or policies with Minnesota Life Insurance Company (Minnesota Life), or you are making face amount or ownership changes to an existing policy or policies with Minnesota Life. You have also indicated that the employer of the insured may have an interest in the policy. **This Notification is given to you in order to call to your attention a provision in the tax law which has a significant impact on certain life insurance policies involving employers.**

Internal Revenue Code (IRC) Section 101(j) became effective on August 18, 2006 and generally provides that death benefits paid in connection with certain life insurance contracts involving employers will be taxable unless certain notice and consent requirements are satisfied before the policy is issued or before a material change is made to the policy. IRC Section 101(j) and related guidance also require that employers submit annual tax reports to the IRS and maintain records evidencing their compliance.

It is the employer's responsibility to determine whether life insurance policies will be subject to these rules and to ensure compliance with the related requirements. This form only notifies you that you may have other obligations under IRC Section 101(j).

Signatures

By signing below, you acknowledge that you have been notified of and understand the following:

1. If IRC Section 101(j) applies, policy death benefits may be income taxable unless you have satisfied the conditions of IRC Section 101(j) and related guidance;

2. You have obtained or will obtain from independent tax and legal advisors whatever advice you deem necessary or appropriate concerning the taxation of your policy;

3. Minnesota Life and its producers are not authorized to provide tax or legal advice to you. You cannot rely on the information in this notice for the purpose of avoiding tax penalties; and

4. You have the authority to act on behalf of the entity for which you are signing.

Employer name		
Authorized signature **X**	Title	Date

Employer Notification Regarding the Potential Taxation of Death Benefits

Securian Life Insurance Company

400 Robert Street North, St. Paul, MN 55101-2098

Please provide identifying information when this page is submitted after the application. (Needed for matching)

Proposed insured name	Policy number (If known)

You have applied for a life insurance policy or policies with Securian Life Insurance Company (Securian Life), or you are making face amount or ownership changes to an existing policy or policies with Securian Life. You have also indicated that the employer of the insured may have an interest in the policy. **This Notification is given to you in order to call to your attention a provision in the tax law which has a significant impact on certain life insurance policies involving employers.**

Internal Revenue Code (IRC) Section 101(j) became effective on August 18, 2006 and generally provides that death benefits paid in connection with certain life insurance contracts involving employers will be taxable unless certain notice and consent requirements are satisfied before the policy is issued or before a material change is made to the policy. IRC Section 101(j) and related guidance also require that employers submit annual tax reports to the IRS and maintain records evidencing their compliance.

It is the employer's responsibility to determine whether life insurance policies will be subject to these rules and to ensure compliance with the related requirements. This form only notifies you that you may have other obligations under IRC Section 101(j).

Signatures

By signing below, you acknowledge that you have been notified of and understand the following:

1. If IRC Section 101(j) applies, policy death benefits may be income taxable unless you have satisfied the conditions of IRC Section 101(j) and related guidance;

2. You have obtained or will obtain from independent tax and legal advisors whatever advice you deem necessary or appropriate concerning the taxation of your policy;

3. Securian Life and its producers are not authorized to provide tax or legal advice to you. You cannot rely on the information in this notice for the purpose of avoiding tax penalties; and

4. You have the authority to act on behalf of the entity for which you are signing.

Employer name		
Authorized signature **X**	Title	Date

Securian Financial is the marketing name for Securian Life Insurance Company. Insurance products are issued by Securian Life Insurance Company, a New York authorized insurer.

FSL-66015 Rev 5-2020

Employer Owned Life Insurance Policy
Insured's Acknowledgment of Disclosure and Consent

Minnesota Life Insurance Company - a Securian Financial company
Life New Business • 400 Robert Street North • St. Paul, Minnesota 55101-2098

Employee/Proposed Insured - Information (please print)

Name			Date of birth
Address	City	State	Zip code
Telephone number			

Employer Information

Legal name			
Address	City	State	Zip code
Telephone number			

I, the employee/proposed insured, acknowledge disclosure and consent that:

- The employer intends to insure my life.
- I authorize and allow the employer to purchase such life insurance on my life.
- The maximum face amount for which I will be insured is: $_____________
- The employer will be the beneficiary of all or part of the life insurance policy proceeds.
- Such life insurance coverage may continue after my employment with employer has terminated.
- I have received this written Acknowledgment of Disclosure and Consent form from the employer.

Signature of employee/proposed insured	Date
X	

Employer - please review the following:

- This form must be executed and signed before the policy is issued.
- The execution of this form must involve an appropriate insured under IRC Section 101(j).
- Copies of this Acknowledgment of Disclosure and Consent form are retained by the Employer.
- For survivor life insurance policies, a separate form must be completed and retained for each of the proposed insureds.
- This form and information is not intended as tax, legal or accounting advice. It is provided only as a convenience. Taxpayers should consult with their own legal counsel for guidance in order to determine IRC Section 101(j) requirements and whether a specific planning strategy is suitable for any particular individual.

1. IRC §101(a)(1).
2. PPA §863.
3. IRC §101(j)(4).
4. IRC §6039I; IRS Notice 2009-48.
5. IRC §101(a)(2).
6. PPA §863(d).
7. IRC §§101 (j)(3)(A), 101(j)(5)(A), 414(q).
8. PPA §863(d).
9. IRS Notice 2009-48.
10. Id.
11. IRC §101(j)(3)(B)(ii).
12. IRC §§101(j)(3)(B)(ii)(I), 267(b), 707(b)(1).
13. IRC §267(b), 707(b)(1).
14. IRC §§101(j)(3)(B)(ii)(II), 52(a), 52(b).
15. IRS Notice 2009-48.
16. Id.
17. IRC §101(j)(4).
18. IRS Notice 2009-48.
19. Id.
20. IRC §§101(j)(2)(A), 101(j)(2)(B), 414(q), 105(h)(5).
21. IRS Notice 2009-48.
22. IRC §§101(j)(2(A), 101(j)(2)(B).
23. IRC §6039I; Treas. Reg. §1.6039I-IT.

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

Life insurance products contain charges, such as Cost of Insurance Charge, Cash Extra Charge, and Additional Agreements Charge (which we refer to as mortality charges), and Premium Charge, Monthly Policy Charge, Policy Issue Charge, Transaction Charge, Index Segment Charge, and Surrender Charge (which we refer to as expense charges). These charges may increase over time, and these policies may contain restrictions, such as surrender periods. Policyholders could lose money in these products.

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.

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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 insurance company and does not do insurance business in the state of 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.

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SECURE

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