

**Split Dollar under the Final 409A Regulations**  
**07/10/2007**

**IRS Notice 2007-34 was issued in conjunction with the 409A Regulations in order to provide guidance regarding the application of 409A to split dollar plans. The following provides a brief overview of the Notice.**

**I. Non Equity Pure Death Benefit Split Dollar**

Exempt from 409A.

**II. Equity arrangements**

**Step 1**

*With an “Equity Arrangement” (i.e., a Split Dollar Plan where the employee has some current control or future right to cash value), one must first determine the extent to which the arrangement is grandfathered under 409A. All Split Dollar Plans initiated 1/1/2005 and after are not grandfathered under 409A and must be examined under the criteria below. Split Dollar plans initiated prior to 1/1/2005, one must determine the portion of the policy that is grandfathered for 409A (whether Endorsement with employee equity or Collateral Assignment). The “non-grandfathered” portion must be examined under the criteria below. See Appendix A for how to calculate “Grandfathered Amounts” for pre 2005 Split Dollar.*

- An Economic Benefit Regime (i.e., Split Dollar arrangement with non grandfathered employee owned cash value) will be subject to 409A for an amount equal to the amount of Cash Value belonging to the employee This amount is a deferred compensation arrangement..
- A Loan Regime Split dollar will NOT be subject to 409A unless the loan amount could be cancelled or waived.

## **APPENDIX A- CALCULATING 409A GRANDFATHER AMOUNTS**

### **(A) 409A Grandfathered Amounts**

Under the general 409A rules, amounts deferred prior to 1/1/2005 are not subject to 409A if the amounts were “earned and vested” prior to that date, and the plan covering such deferrals was not “materially modified subsequent to 10/03/2004. For a Split Dollar Plan initiated prior to 1/1/2005, one must determine the portion of the policy that is grandfathered and not grandfathered for 409A purposes. The Notice provides a safe harbor test for determining the grandfathered amount. The 409A grandfathering-amount is the greater of (1) and (2):

- (1) The portion of the Cash Value (CV) earned and vested as of 12/31/2004.
- (2) The Policy CV on any valuation date x (grandfathered premiums actually paid) / (all premiums actually paid).

Grandfathered premiums can include a portion of the premiums paid after 12/31/2004 (i.e., a portion of the premium that is supporting 12/31/2004 vested CV)

The balance of the CV is subject to 409A.

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