



*Executive Deferred Compensation
for Tax Exempt Entities*



Pre-September 18, 2003 Split-Dollar Arrangements (SDAs)

- Not covered by the 2003 split-dollar regulations.

- Covered by Notice 2002-8:
 - Value of life insurance protection
 - Optional conversion to “loan” treatment
 - Continued use of “economic benefit” approach:
 - ✓ IRS will not assert that there has been a taxable termination as long as the economic benefit continues to be recognized.
 - ✓ The taxation of the participant’s equity at the time of termination of the SDA (“roll-out”) is not specifically addressed, but the implication is that it is taxable at that time.
 - ✓ “No inference” language.

- IRS position – Notwithstanding the “no-inference” language of Notice 2002-8, a participant’s equity in a SDA represents deferred compensation taxable at “roll-out.”



Section 409A

- ❑ Final Regulations and Notice 2007-34 issued April 2007.

- ❑ Exceptions to Section 409A:
 - SDAs providing only death benefits
 - SDAs structured as loan arrangements (unless loans waived, cancelled or forgiven)

- ❑ SDAs Subject to Section 409A:
 - Those that include an element of deferred compensation that is not grandfathered (e.g., premiums paid on or after January 1, 2005 that create participant equity accessible at “roll-out.”)

- ❑ SDAs Grandfathered Under Section 409A:
 - Premiums paid, earned, and vested prior to January 1, 2005, and related earnings.
 - Premiums paid after January 1, 2005, and related earnings, if the right to such premium payments was earned and vested prior to that date.



Section 409A Riddle

- There are valid arguments that a participant's equity in a pre- September 18, 2003 SDA is not taxable at "roll-out."
- However, if the IRS' position ultimately prevails, the participant's equity at "roll-out" would represent deferred compensation subject to Section 409A.
- If the plan is not amended for compliance with Section 409A, the participants will be exposed to back taxes, interest, and penalties.



Compliance With Section 409A

- ❑ In general, to comply with Section 409A:
 - Deferred compensation must be payable at set times or events.
 - Payment cannot be in the discretion, directly or indirectly, of the employee/participant.

- ❑ Plan amendments to consider for Section 409A compliance:
 - Restriction of the timing of the roll-out to a specified date or permissible event,
 - Elimination of any provision that allows participant discretion to terminate the SDA, and
 - Elimination of automatic termination provisions (such as for non-payment of the participant's premium contributions).

- ❑ Modifications for compliance with Section 409A are not “material modifications” under the final split-dollar regulations if certain requirements are met.



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The hypothetical illustrations show how the performance of underlying accounts could potentially affect a policy's cash values and death benefits. It may not be used to predict or project investment results.



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