

permitted in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii) of this chapter).

(C) *Current access.* For purposes of this paragraph (d)(3), a non-owner has current access to that portion of the policy cash value that is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors.

(D) *Valuation date—(1) General rules.* For purposes of paragraph (d)(3)(ii)(A) of this section, the policy cash value is determined on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, the policy cash value is determined on the day that the arrangement terminates.

(2) *Artifice or device.* Notwithstanding paragraph (d)(3)(ii)(D)(1) of this section, if any artifice or device is used to understate the amount of policy cash value to which the non-owner has current access on the valuation date in paragraph (d)(3)(ii)(D)(1) of this section, then, for purposes of paragraph (d)(3)(ii)(A) of this section, the date on which the amount of policy cash value is determined is the date on which the amount of policy cash value is greatest during that taxable year.

(E) *Policy cash value.* For purposes of this paragraph (d)(3), policy cash value is determined without regard to surrender charges or other similar charges or reductions.

(F) *Special rule for certain taxes.* For purposes of employment tax (as defined in paragraph (c)(5) of this section), and sections 6654 and 6655 (relating to the failure to pay estimated income tax), that portion of the policy cash value (as determined under paragraph (d)(3)(ii)(A)(2) of this section) that is treated as provided by the owner to the non-owner under paragraph (d)(1) of this section shall be treated as so provided on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, such portion of the policy cash value shall be treated as so provided on the day that the arrangement terminates.

(G) *Examples.* The following examples illustrate the rules of this paragraph (d)(3)(ii). Except as otherwise provided, both examples assume the following facts: employer (R) is the owner (as defined in paragraph (c)(1) of this section) and employee (E) is the non-owner (as defined in paragraph (c)(2) of this section) of a life insurance contract that is part of an equity split-

dollar life insurance arrangement that is subject to the provisions of paragraphs (d) through (g) of this section; the contract is a life insurance contract as defined in section 7702 and not a modified endowment contract as defined in section 7702A; R does not withdraw or obtain a loan of any portion of the policy cash value and does not surrender any portion of the life insurance contract; the compensation paid to E is reasonable; E is not provided any economic benefits described in paragraph (d)(3)(ii)(A)(3) of this section; E does not make any premium payments; E's taxable year is the calendar year; and E reports on E's Federal income tax return for each year that the equity split-dollar life insurance arrangement is in effect the amount of income required to be reported under paragraph (d) of this section. The examples are as follows:

Example 1. (i) Facts. In year 1, R and E enter into the equity split-dollar life insurance arrangement. Under the arrangement R pays all of the premiums on the life insurance contract until the termination of the arrangement or E's death. The arrangement also provides that upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums paid or the policy cash value of the contract and E is entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R upon termination of the arrangement or E's death. To fund the arrangement, R purchases a life insurance contract with constant death benefit protection equal to \$1,500,000. As of December 31 of year 1, the policy cash value equals \$55,000 and R has paid \$60,000 of premiums on the life insurance contract. As of December 31 of year 2, the policy cash value equals \$140,000 and R has paid aggregate premiums of \$120,000 on the life insurance contract. As of December 31 of year 3, the policy cash value equals \$240,000 and R has paid \$180,000 of premiums on the life insurance contract.

(ii) *Analysis.* Under the terms of the equity split-dollar life insurance arrangement, E has the right for year 1 and all subsequent years to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(1) and (2) of this section provided to E under the arrangement.

(iii) *Results for year 1.* For year 1, E is provided, under paragraph (d)(3)(ii)(A)(2) of

this section, \$0 of policy cash value (excess of \$55,000 policy cash value determined as of December 31 of year 1 over \$55,000 payable to R). For year 1, E is also provided, under paragraph (d)(3)(ii)(A)(1) of this section, current life insurance protection of \$1,445,000 (\$1,500,000 minus \$55,000 payable to R). Thus, E includes in gross income for year 1 the cost of \$1,445,000 of current life insurance protection.

(iv) *Results for year 2.* For year 2, E is provided, under paragraph (d)(3)(ii)(A)(2) of this section, \$20,000 of policy cash value (\$140,000 policy cash value determined as of December 31 of year 2 minus \$120,000 payable to R). For year 2, E is also provided, under paragraph (d)(3)(ii)(A)(1) of this section, current life insurance protection of \$1,360,000 (\$1,500,000 minus the sum of \$120,000 payable to R and the aggregate of \$20,000 of policy cash value that E actually includes in income on E's year 1 and year 2 income tax returns). Thus, E includes in gross income for year 2 the sum of \$20,000 of policy cash value and the cost of \$1,360,000 of current life insurance protection.

(v) *Results for year 3.* For year 3, E is provided, under paragraph (d)(3)(ii)(A)(2) of this section, \$40,000 of policy cash value (\$240,000 policy cash value determined as of December 31 of year 3 minus the sum of \$180,000 payable to R and \$20,000 of aggregate policy cash value that E actually includes in gross income on E's year 1 and year 2 federal income tax returns). For year 3, E is also provided, under paragraph (d)(3)(ii)(A)(1) of this section, current life insurance protection of \$1,260,000 (\$1,500,000 minus the sum of \$180,000 payable to R and \$60,000 of aggregate policy cash value that E actually includes in gross income on E's year 1, year 2, and year 3 federal income tax returns). Thus, E includes in gross income for year 3 the sum of \$40,000 of policy cash value and the cost of \$1,260,000 of current life insurance protection.

Example 2. (i) Facts. The facts are the same as in *Example 1* except that E cannot directly or indirectly access any portion of the policy cash value, but the terms of the equity split-dollar life insurance arrangement or applicable state law provide that the policy cash value in excess of the amount payable to R upon termination of the arrangement or E's death is inaccessible to R's general creditors.

(ii) *Analysis.* Under the terms of the equity split-dollar life insurance arrangement or applicable state law, the portion of the policy cash value exceeding the amount payable to R is inaccessible to R's general creditors. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(1) and (2) of this section provided to E under the arrangement.