

Office of Personnel Management
Retirement and Insurance Group



1920



1954



1959



1986

Benefits Administration Letter

Number: 95-203

Date: January 12, 1995

**SUBJECT Federal Employees' Group Life Insurance:
The Incontestability Clause**

The purpose of this Letter is to inform agencies of a clause in the Federal Employees' Group Life Insurance (FEGLI) contract concerning erroneous enrollments.

Employees insured under the FEGLI Program are entitled to the protection of the Incontestability Clause of the FEGLI contract. This clause says that an enrollment made in error cannot be challenged more than two years after the error occurred. (This applies to life insurance enrollments only, not to enrollments in the Federal Employees Health Benefits (FEHB) Program.)

In practical terms, this means that an agency error permitting enrollment for Basic, Option A, Option B, or Option C coverage (or permitting additional multiples of Option B coverage) should be allowed to stand, if the coverage remained in force for two years or more during the employee's lifetime and the error was not detected and corrected within two years after the date the election was made.

This clause may not be used to allow enrollments for employees who are excluded from coverage by law or whose type of appointment is excluded by regulation (e.g., intermittent employees or temporary employees).

This clause applies only to errors that occur during employment. Retirement systems (e.g., CSRS or FERS) cannot use the Incontestability Clause to correct errors that occur after retirement.

The existence of this clause does not permit agencies to become less diligent in their administration of the FEGLI Program. Erroneous enrollments must still be avoided whenever possible. Agency personnel are encouraged to perform desk audits of their employees' personnel files to uncover FEGLI enrollment errors. Those that occurred more than two years ago should be examined to see whether the Incontestability Clause applies. Those that occurred less than two years ago must be corrected in the usual

manner, giving the affected employees the right to reconsideration.

Here are some examples of when the Incontestability Clause may be used:

- Example 1 An employee who had previously waived coverage transfers from one agency to another without a break in service and is allowed to elect insurance at the new agency. This is an agency error. However, if more than two years passes before anyone discovers the error, the erroneous election must be allowed to stand.
- Example 2 An employee is allowed to elect Option B without a qualifying event (e.g., marriage, divorce, etc.) and without providing the results of a physical (SF 2822). This is an agency error. However, if more than two years passes before anyone discovers the error, the erroneous election must be allowed to stand.
- Example 3 An employee submits acceptable results of a physical. He/she then submits an SF 2817 electing Basic, Option A, and Option C. If the agency accepts the SF 2817, this is an agency error. Acceptable results of a physical do not permit election of Option C. However, if more than two years passes before anyone discovers the error, the erroneous election must be allowed to stand.
- Example 4 An employee transfers from one agency to another without a break in service. He/she has Basic, Option A, and Option C at his/her former agency. This is SF 50 equivalent code F. However, at the new agency the SF 50 is coded with J. This is Basic, Option A, Option B (one multiple), and Option C. Therefore, through a coding error, the employee was erroneously enrolled in Option B. However, if more than two years passes before anyone discovers the error, the erroneous election must be allowed to stand.
- Example 5 An employee elected Basic during the 1993 open enrollment period. His/her enrollment was made effective immediately (rather than waiting until

he/she met the pay and duty status requirements of the open enrollment period). This is an agency error. However, if more than two years passes before anyone discovers the error, the erroneous election must be allowed to stand.

Payment or nonpayment of premiums is not the final determining factor in using this clause. Each case must be examined on its own merits.

Applying the Clause

Once you discover an error, you must examine the circumstances of the error to determine whether the Incontestability Clause applies. You should ask yourself the following questions concerning the error:

- ! Did the error occur more than two years ago?
- ! Did the error occur while the person was employed (rather than after he/she retired)?
- ! Is the employee otherwise eligible to enroll in the Program (i.e., not excluded by law or type of appointment)?
- ! Does the error involve more than simply an erroneous withholding?

Once you have determined that the clause does apply, you should prepare a note to the file explaining the details of the error, the date it occurred, the date it was discovered, and the fact that the enrollment is now valid due to the Incontestability Clause. If there is an applicable SF 2817 in the file, the note should be attached to the permanent file copy of the SF 2817. Upon the employee's retirement, the note should be forwarded along with the SF 2817 to the retirement system. If there is no applicable SF 2817 (e.g., an SF 50 coding error occurred), you must still provide an explanatory note to the file which must be forwarded to the retirement system upon the employee's retirement.

You must also provide a note in the Remarks section of the SF 2821 prepared for retiring employees that explains that the Incontestability Clause was used to ratify an erroneous enrollment.

Premiums

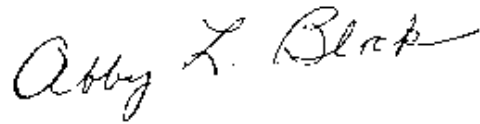
Premiums are due for any erroneous coverage allowed to stand. If premium deductions have been made, they are not refundable. If premium deductions have not been made, or if you have already refunded premiums and it is subsequently

determined that the coverage should be allowed to stand, premium deductions should be made or recovered. As with any underdeduction of premium, agencies may waive collection from

the employee but must submit the total amount due for the coverage for deposit in the Fund.

Retiring Employees

Enrollments that are allowed to stand due to the Incontestability Clause become valid enrollments. If a retiring employee was enrolled in the FEGLI Program for at least the five years immediately prior to retirement (or from the first opportunity to enroll), even if the enrollment was in error but then was allowed to stand, he/she is still entitled to carry the enrollment into retirement. The five-year rule must still be met, however. The Incontestability Clause cannot be used to waive the five-year rule.



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