



United States
Office of Personnel Management
Retirement and Insurance Service

Benefits Administration Letter

Number: 98-201

Date: March 9, 1998

**Subject: Federal Employees' Group Life Insurance and Federal Employees Health Benefits:
Reissuing Important Information**

The Office of Personnel Management communicates with agencies regarding insurance matters by means of Benefits Administration Letters (BALs). (Before BALs the means of communication was the INSURANCE OFFICERS INFORMATION BULLETIN, or IOB). All BALs issued since the beginning of 1996 are available on our website at <http://www.opm.gov>.

We are taking this opportunity to reissue some older, but very important, information that needs to be readily available. This information relates to areas that we get a lot of questions about.

Included is information from the following BALs relating to the Federal Employees' Group Life Insurance (FEGLI) and Federal Employees Health Benefits (FEHB) Programs.

- BAL 95-221 (originally issued 10/10/95) - Assignment of FEGLI Coverage
- BAL 95-216 (originally issued 5/4/95) - Living Benefits
- BAL 95-212 (originally issued 3/22/95) - Viatical Settlement
- BAL 95-204 (originally issued 1/13/95) - Establishing Procedures for Processing Reconsideration Requests
- BAL 95-203 (originally issued 1/12/95) - The Incontestability Clause

We are also including information from IOB NO. 261 (originally issued 8/6/92) regarding the coverage of foster children, including grandchildren, under the FEHB Program.

In all cases, where parts of the information have changed since the original issuance, we have made the revisions to the attached text.

Abby L. Block, Chief
Insurance Policy
and Information Division

Attachments

**Civil Service
Retirement
System**

**Federal Employees
Group Life
Insurance**

**Federal Employees
Health Benefits
Program**

**Federal Employees
Retirement
System**

ORIGINALLY ISSUED AS BENEFITS ADMINISTRATION LETTER 95-203 ON JANUARY 12, 1995. (MODIFIED TO REFLECT UPDATED INFORMATION.)

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:

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|-----------|---|
| 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.

ORIGINALLY ISSUED AS BENEFITS ADMINISTRATION LETTER 95-204 ON JANUARY 13, 1995. (MODIFIED TO REFLECT UPDATED INFORMATION.)

SUBJECT: Federal Employees Health Benefits and Federal Employees' Group Life Insurance: Establishing Procedures for Processing Reconsideration Requests

Purpose

The purpose of this Benefits Administration Letter is to provide guidance to agencies in setting up the administrative review procedures for reconsideration of initial decisions about health benefit and life insurance enrollment issues.

This responsibility, formerly handled by the Office of Personnel Management, was delegated to agencies. Final regulations were published in the Federal Register on December 27, 1994.

What is Reconsideration?

Reconsideration consists of a review of an initial decision to determine whether the law and regulations were correctly applied to the case. It is the employee's final level of administrative review for enrollment and coverage decisions under the Federal Employees Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) Programs.

The law and regulations set forth the circumstances that allow enrollees to enroll or change enrollment in the FEHB Program and to cancel waivers of basic life insurance and change optional coverage under the Federal Employees' Group Life Insurance Program. The regulations also give the effective dates of enrollments and changes in enrollment.

Initial decisions

When an employing office receives an employee's SF 2809 (or when an employee otherwise requests a change in enrollment), it must decide whether or not to accept the employee's health benefits election. The events that allow employees to enroll or change enrollment, and the timeframes within which the changes may be made are set forth in 5 CFR 890.301. The effective date of the change is also based on FEHB regulations.

Similarly, when an employing office receives an employee's SF 2817 (or the employee otherwise requests a change in coverage), it must decide whether or not to accept the employee's change in life insurance coverage. By law, Basic life insurance coverage is automatic unless the employee waives it. Employees who have Basic life insurance coverage may elect or waive Optional coverage. The circumstances under which an employee's previous waiver of Basic or Optional life insurance may be cancelled and the effective dates of changes in coverage are set forth in 5 CFR part 870. Additional guidance is provided in the FEGLI Handbook for Personnel and Payroll Offices.

If the employing office decides that the employee is not eligible to make the change, it must give the employee a written explanation of the reason the change in enrollment or coverage was not allowed. The written decision must include the address of the office making reconsideration decisions, the timeframe for requesting reconsideration (30 days from the date of the written notice), and a statement that a copy of the written decision should be submitted with a request for reconsideration. This written explanation is considered the initial decision.

Deciding what office will make the reconsideration decision

The office that makes the reconsideration decisions must be at either a higher level or in a different office than the office that made the initial decision.

It is important that you notify the offices that make initial decisions of the identity of the office making reconsideration decisions because they must include that information when they give the initial decision.

Making decisions about retroactive corrections

In some cases, the law or regulations provide for retroactive effective dates. In these cases, there is no need for an employing office to decide whether a retroactive correction is appropriate.

Generally, however, changes are made prospectively. That is, when the agency decides an employee should have been allowed to enroll or change enrollment at some time in the past, it accepts an SF 2809 or SF 2817 from the employee making the change. Under FEHB regulations, the SF 2809 is normally effective the first day of the pay period beginning after the employing office receives the SF 2809. In the case of the SF 2817, the effective date depends on the election being made.

In certain cases, the employing office may consider an employee's request that the change be made retroactive to an earlier date, generally the date it would have been effective if he or she had been able to make a timely election.

Exception: If the administrative error was made before January 1, 1995, the employing agency does not have the authority to make a retroactive correction. Instead, the employee must request a retroactive correction from:

Office of Personnel Management
Retirement and Insurance Service
Office of Insurance Programs
P.O. Box 436
Washington D.C. 20044

Effective dates

1. Life insurance.
 - The FEGLI law provides that Basic life insurance coverage is automatic unless the employee waives it. Therefore, if an agency discovers that an employee should have been covered by Basic life insurance, but no withholdings were made, the correction must be made retroactively.
 - See section S4-7 of the FEGLI Handbook for instructions on adjusting premium errors.
 - See subchapter S2 of the FEGLI Handbook for additional information about effective dates of life insurance coverage and changes in coverage.
2. Health benefits. See § 890.301 of the FEHB regulations for information about effective dates of health benefits enrollments and changes in enrollment.

Some initial decisions cannot be overruled by reconsideration

Initial decisions that comply with the law and regulations cannot be overruled by reconsideration.

Example 1:

OFEGLI approves the medical evidence submitted by an employee who wants to cancel a waiver of Basic life insurance and/or Optional insurance. The

employee then elects Option C--Family insurance. The employing office denies the election of Option C and the employee requests reconsideration. The office making the reconsideration decision cannot overrule the employing office because OFEGLI approval of medical evidence does not allow an employee to elect Option C--Family insurance.

Example 2.

An employee has a child who dies within 60 days after birth. After the death of the child, the employee elects Option C--Family coverage based on the birth of the child. The employee requests that the election be made retroactive to the child's birth. Although the employee could elect Option C--Family coverage within 60 days after the birth of the child, the effective date of the election is the day the employing office receives the election. This initial decision to deny a retroactive effective date cannot be overruled by a reconsideration decision. (Employees may submit an election of Option C--Family insurance before an anticipated event that will add a family member to their household--such as marriage or birth--so that it will become effective when the event occurs.)

Example 3.

An employee who had waived Optional life insurance coverage separates from his or her position and is reemployed less than 180 days later. The employee elects Optional life insurance at the new agency. The employing office denies the election. This initial decision cannot be overruled by reconsideration because previous waivers remain in effect when an employee goes from one agency to another with a break in service of less than 180 days.

Example 4.

An employee lists parents who live with and are dependent on the employee as family members under his or her FEHB enrollment. The employing office denies coverage of the parents. This initial decision cannot be overruled by reconsideration because the FEHB law does not provide for coverage of an employee's parents as family members.

Although a correct initial decision cannot be overruled by a reconsideration decision, the employee has the right to request reconsideration so that the initial decision can be reviewed to determine whether it is correct.

Incontestability clause

See BAL 95-203 for information about incontestability.

Agencies cannot make decisions about payment of claims

The reconsideration process applies only to enrollment issues. Agencies cannot make decisions about payment of claims.

Example 1.

An employee with Option C--Family has a stillborn child. The employee asks the agency to help him or her file a claim for the Option C--Family benefits. The employing office may explain that benefits are not payable for stillborn children. Nevertheless, if the employee persists, the agency must assist in the filing of the claim. It is the responsibility of the Office of Federal Employees' Group Life Insurance (OFEGLI) to deny the claim.

Example 2.

An employee complains to his or her employing office that his or her health plan has refused to pay a claim. The employing office advises the employee to follow the procedures set forth in the plan's brochure regarding disputed claims. There is no action the employing office itself can take to bring about the payment of the claim.

What is an equity and good conscience determination?

Under the FEHB and FEGLI regulations, OPM has retained its authority to make equity and good conscience determinations. This authority allows OPM to order a correction of an administrative error, but it is not a part of the administrative review process. The administrative review process ends with the agency's reconsideration.

OPM does not intend to use its authority to make equity and good conscience decisions simply to "second guess" agency reconsideration decisions. However, OPM, as administrator of the FEHB and FEGLI Programs, must have the ability to overrule an agency decision that is obviously in disregard of law and regulations and has serious adverse consequences for the employee.

The circumstances that would give rise to an order to correct an administrative error on the basis of equity and good conscience are rare. Normally, OPM will inform an employee who asks OPM to overrule an agency's reconsideration decision that the agency's decision is final.

Sample letters

Sample letters are attached as an aid to offices making reconsideration decisions. Agencies may tailor these letters to meet their specific needs.

Job Aid 1:

This sample letter may be used when an employee requests reconsideration, but does not send a written initial decision.

Job Aid 2:

This sample letter denies a reconsideration request from an employee whose election to change health benefits enrollment was not based on an event allowing change in enrollment.

Job Aid 3:

This sample letter denies a request to overrule a FEGLI decision concerning medical insurability.

Job Aid 1
Sample letter instructing employee
about obtaining an initial decision

(Name and address of employee)

Dear (employee's name):

This office does not make initial decisions concerning (health benefits/life insurance) enrollments for employees of (Department or Agency). That is the responsibility of your personnel office. You may request this office to reconsider your personnel office's written decision refusing your election (to enroll or change your health benefits enrollment) (to acquire or increase your life insurance coverage). Since your personnel office has not yet made its decision in writing, it is premature to request this office to issue its reconsideration decision. If your personnel office gives a negative written decision, you may request this office to reconsider it within 30 calendar days from the date of the decision. Please include a copy of the initial decision in your request for reconsideration.

We are forwarding your request to your personnel office at the address shown below so that they may make their initial decision. Your request has been forwarded to:

(name and address of personnel office
responsible for initial decision)

Sincerely,

**Job Aid 2:
Sample letter denying a request
to change health benefits enrollment
when there was no event allowing change**

(Name and address of employee)

Dear (employee's name):

This is in response to your letter requesting that this office reconsider your personnel office's initial decision to deny you an opportunity to change your enrollment under the Federal Employees Health Benefits (FEHB) Program. I am sorry, but I must also deny your request.

As you may know, opportunities to enroll or change enrollment in the FEHB Program are tied to the occurrence of certain events. The events that permit an employee to change enrollment and the time limits for submitting an election to change enrollments are listed in section 890.301 of title 5 of the Code of Federal Regulations, as well as on Standard Form 2809, Health Benefits Registration Form.

Every employee is allowed to change plans during open season and there are many other events that allow change as well. It is your responsibility to submit a timely election when a permissible event occurs. Since your request to change your enrollment was not received by your personnel office within the timeframe for any event allowing you to change, I must concur with your personnel office's initial decision.

This is your final administrative review concerning this matter. You have no further reconsideration rights.

Sincerely,

**Job Aid 3:
Sample letter denying a request
to overrule an OFEGLI decision
concerning medical insurability**

(Name and address of employee)

Dear (employee's name):

The Office of Federal Employees' Group Life Insurance (OFEGLI) determines whether an applicant's proof of insurability is acceptable based on medical underwriting standards. You **do** have the right to an administrative reconsideration made by this office of an initial decision made by your employing office concerning your enrollment in the FEGLI Program. However, you **do not** have the right to an administrative reconsideration of an **OFEGLI** decision to deny coverage based on medical reasons.

If you have further questions regarding the denial of your request, you or your physician may write to OFEGLI at 200 Park Avenue, New York, NY 10166-0188.

This is your final administrative review concerning this matter. You have no further reconsideration rights.

Sincerely,

ORIGINALLY ISSUED AS BENEFITS ADMINISTRATION LETTER 95-212 ON MARCH 22, 1995. (MODIFIED TO REFLECT UPDATED INFORMATION.)

SUBJECT: Federal Employees' Group Life Insurance Viatical Settlement

The purpose of this Benefits Administration Letter is to transmit information concerning viatical settlement.

This information is of interest to terminally ill employees and annuitants. The material also discusses the difference between assignment to a viatical settlement firm and Living Benefits, which become effective July 25, 1995.

The attached information was made available at the February 23, 1995, Interagency Advisory Group (IAG) meeting; however, not all agencies were able to attend that meeting.

Please pass the information on to all of your field installations, so that they may be able to counsel their terminally ill employees concerning viatical settlement.

Attachment

**VIATICAL SETTLEMENT
AND
THE FEDERAL EMPLOYEES'
GROUP LIFE INSURANCE
(FEGLI) PROGRAM**

What is viatical settlement?

Viatical settlement is the "sale" (or assignment) of someone's life insurance coverage to a third party, known as a viatical settlement firm (VSF), in exchange for cash. The percentage of the face value that the VSF will offer varies, somewhere in the range of 60 percent to 85 percent of the total face value of the insurance coverage. VSFs will generally accept assignment from individuals with defined life expectancies which vary with each VSF. If the insured assigns 100 percent of his/her insurance to a VSF, the VSF will receive the full life insurance death benefit upon the person's death.

The difference between what the person receives in cash from the VSF and the full face value of the insurance is the VSF's revenue. The purchase price paid for the policy is dependent primarily on the person's life expectancy and the current cost of funds. The VSF's costs include interest expenses on the money paid to the person, underwriting expenses, general operating expenses, etc. The VSF tries to cover these costs from the revenue earned on each transaction.

VSFs will pay a smaller percentage of the face value to a person with a longer remaining life expectancy. This accounts for the time value of money. For example, if someone has 24 months to live, they will receive a smaller percentage of the face value of their insurance than someone with only 6 months to live. This is because the firm will have longer to wait to receive the full face value of the person's insurance upon their death.

How does this help terminally ill Federal employees and annuitants¹?

Effective October 3, 1994, Public Law 103-336 amended the life insurance law to allow all employees and annuitants enrolled in the Federal Employees' Group Life Insurance (FEGLI) Program to assign their life insurance to another person(s), firm(s) or trust(s). Previously, the right to assign life insurance was limited to Federal judges. Today, terminally ill Federal employees and annuitants enrolled in the FEGLI Program can assign their insurance to a VSF in exchange for cash, if they so desire.

This can help terminally ill employees and annuitants by giving them an influx of cash (which otherwise would have been paid to their beneficiary(ies) only after their death). The employees and annuitants can use the money to finance needed medical care and otherwise

¹**For the purposes of these questions and answers, the term "annuitant" also refers to compensationers who are continuing their FEGLI coverage as compensationers while in receipt of compensation payments from the Department of Labor's Office of Workers' Compensation Programs.**

improve the quality of their final days of life.

How do viatical settlements differ from the new Living Benefits provisions of the FEGLI Program?

The FEGLI Living Benefits Act (Public Law 103-409) is effective July 25, 1995. Under this new provision of the FEGLI Program, Basic benefits paid before death will be available if the employee or annuitant has a life expectancy of 9 months or less. So, in advance of July 25, assignment of FEGLI coverage to a VSF may be a terminally ill person's only opportunity to receive cash in advance of death. Also, the FEGLI Living Benefits Act applies only to Basic life insurance. Assignment applies to Basic and Option A and Option B. Therefore, even after the FEGLI Living Benefits Act becomes effective, a VSF is the only source of cash in advance of death for Basic and Option A and Option B.

What is the difference between assigning benefits and designating a beneficiary?

Assigning benefits transfers ownership of the employee/annuitant's FEGLI coverage to the assignee(s). The insured no longer has control over his/her insurance coverage and can no longer designate beneficiaries. Assignment is irrevocable. Designating a beneficiary simply declares to whom payment of death benefits should be made. The insured retains ownership of the insurance and retains the right to change or cancel the designation at any time. A designation of beneficiary is revocable.

What if employees/annuitants complete a Designation of Beneficiary after they have assigned their insurance?

Upon a valid assignment of FEGLI insurance coverage, all Designations of Beneficiary completed by the insured, both before and after the effective date of the assignment, become void.

Can only part of an employee's or annuitant's FEGLI coverage be assigned -- for example, only Basic or only Option A?

No. Either all of it must be assigned or none of it. But it doesn't all have to be assigned to the same person or firm. Assignments must be made in percentages of the total insurance (e.g., 50 percent of the total to one person/firm, 25 percent to another and the remaining 25 percent to another; or 100 percent to one person/firm, etc.) All percentages must add up to 100 percent. Assignments cannot be made so that Basic is assigned to one person/firm, Option A to another, etc.

Therefore, terminally ill employees and annuitants **may** be able to negotiate with a VSF to accept assignment of only a percentage of the total of their Basic, Option A and Option B in exchange for cash, and assign the remaining percentage to someone else, perhaps a family member. Obviously, they will receive less cash from the VSF than if they assigned 100 percent to the firm. However, this does provide a mechanism to "retain" a death benefit for a survivor, if the VSF agrees to it.

It is also possible for the VSF to designate the employee/annuitant's estate or a family member as a beneficiary for a portion of the death benefit. However, the employee or annuitant must understand that designations of beneficiary can be revoked without knowledge or consent of

the designee. If the insurance is assigned to the firm, the firm (like any assignee) may designate whomever it chooses and may change this designation at any time. Depending on the circumstances, the employee or annuitant may wish to enter into a private agreement with the firm wherein the firm promises to keep the designation valid. However, any contractual arrangements are private negotiations between the employee/annuitant and the VSF and do not have any effect on the validity of a FEGLI Program designation.

What are the options after July 25, 1995?

After July 25, 1995, terminally ill employees and annuitants enrolled in the FEGLI Program who wish to receive a pre-death benefit will have a choice --

- They can assign their Basic and all Optional insurance (except Option C) to a VSF in exchange for approximately 60-85 percent of the face value of that coverage. NO death benefit would be payable to their survivors. The VSF would receive the entire death benefit (unless they negotiate to assign only a percentage of their coverage, as explained above).

OR

- They can elect FEGLI Living Benefits. Employees must choose either --
 - full Living Benefits (their full Basic benefit, discounted by an approximately 6 percent factor, which does not vary by life expectancy, to account for lost interest to the FEGLI Program; the Program will not charge a profit factor)

OR

- partial Living Benefits (a percentage of their Basic benefit, in a multiple of \$1,000, discounted as described above). They cannot elect the remaining portion of their Basic benefit as a Living Benefit later. They may only elect Living Benefits once. The remaining portion of their Basic benefit will become payable as a death benefit.

Annuitants who wish to elect Living Benefits must elect the full amount of their Basic benefit (discounted as described above). Annuitants are not eligible for partial Living Benefits.

If employees/annuitants elect Living Benefits, their Optional insurance, if any, is unaffected and is available for payment to their beneficiary(ies) upon their death.

Employees and annuitants may also elect Living Benefits and then assign the remainder of their insurance.

Why would an employee or annuitant want to choose viatical settlement after July 25, 1995?

After July 25, 1995, viatical settlement may be a good choice for terminally ill employees and annuitants with MORE than 9 months to live, or those who wish to receive cash based on the face value of their Basic AND Optional coverages. Remember, the FEGLI Living Benefits

provision will only apply to Basic, NOT the Optional coverages. Assignment applies to ALL of the employee/annuitant's coverage (except Option C, which cannot be assigned). Therefore, if terminally ill employees or annuitants are enrolled in Option A and/or Option B, they may be able to receive more money while they are living from a VSF than they would receive from the FEGLI Program by electing Living Benefits.

For example, suppose an employee/annuitant's Basic coverage is \$40,000 and he/she has three multiples of Option B (\$114,000). Suppose the VSF pays 60 percent of the face value of the Basic plus Option B. Sixty percent of the total (\$40,000 + \$114,000) is \$92,400. This is still greater than a full Living Benefit (approximately 95 percent of \$40,000, which is \$38,000).

What should a terminally ill employee or annuitant consider before making such a decision to receive money in advance of their death?

Terminally ill employees and annuitants should assess their financial needs to determine whether it makes sense to receive money against their life insurance coverage. Just because these cash benefits are available does not mean they are appropriate for each terminally ill employee or annuitant.

If terminally ill employees and annuitants wish to have access to cash benefits before July 25, 1995, then they should consider assigning their coverage to a VSF. Depending on their life expectancy, assignment to a VSF may be their only opportunity to obtain a pre-death benefit. Once they have made an assignment, they can never change or revoke it, even if their circumstances change. If they elect additional insurance or if their salary increases (applicable only to employees), the additional coverage is automatically covered by the existing assignment.

Assuming they do not wish to have access to cash benefits before July 25, 1995, they need to consider how large of a residual benefit, if any, they wish to leave for their survivors upon their death.

If they choose assignment, ALL of their insurance (except Option C) must be assigned (although, as stated previously, it does not all need to be assigned to the same person or firm -- the employee/annuitant may negotiate with the VSF to accept assignment of only a percentage of the life insurance so that the remaining percentage can be assigned to one or more survivors, or they may negotiate an agreement whereby the VSF agrees to complete a designation of beneficiary in favor of one or more survivors for part of the assigned death benefit).

If they choose FEGLI Living Benefits, they will still retain all of their Optional insurance, which will be payable to their designated beneficiary(ies) or other survivor.

Terminally ill employees (but not annuitants and compensationers) have the option of electing only a **portion** of their Basic benefit as a Living Benefit (a multiple of \$1,000). In this way, they can retain a residual death benefit payable to their beneficiaries/survivors. In addition, benefits will be payable upon their death for any Optional insurance they may have.

Terminally ill employees and annuitants also need to consider their projected life expectancy. VSFs will generally accept assignment from individuals with life expectancies of greater than 9

months. FEGLI Living Benefits will only be available to individuals with life expectancies of 9 months or less.

Are these benefits taxable?

No. Living Benefit payments and qualified payments from VSFs received after December 31, 1996, are not subject to Federal income tax. (See BAL 96-206.)

Who pays the premiums for the FEGLI coverage if it has been assigned to a VSF?

The FEGLI Program requires that employees and annuitants continue to pay FEGLI premiums through withholding from their paycheck or annuity, even after the employee or annuitant has assigned his/her insurance to a VSF or, for that matter, to anyone else. They cannot cancel the withholdings. Some VSFs will offer to assume payment of the premiums for the remainder of the employee's or annuitant's lifetime. However, there is no mechanism for the Federal Government to accept premiums directly from a VSF.

As an alternative, employees and annuitants may attempt to negotiate an agreement with the VSF that premium expenses payable for their remaining life expectancy be added to their settlement payment from the firm at the time of closing the transaction. This is a private negotiation between the employee/annuitant and the firm.

Who pays the premiums for the FEGLI coverage if Living Benefits have been elected?

If full Living Benefits are elected (the only option available to annuitants), then premiums for Basic stop. If partial Living Benefits are elected (only available to employees), then premiums for Basic are prorated depending on the dollar value of the remaining Basic benefit. In both cases, premiums for Optional insurance remain unchanged.

How would a terminally ill employee or annuitant locate a VSF?

Support groups for victims of terminal illnesses such as cancer and AIDS generally can help locate such firms. In addition, financial planners, estate planners, social workers, and physicians specializing in terminal illnesses should be aware of these firms and may provide referrals.

What paperwork is involved in a viatical settlement?

Employees/annuitants first need to contact a VSF. They will need to sign a release (provided by the firm) that will allow their personnel office or retirement system to provide information on their FEGLI coverage to the VSF. Personnel office/retirement system staff cannot provide information directly to any VSF without a release from the employee or annuitant.

Once a written release signed by the employee or annuitant is received, personnel office/retirement system staff may provide the information requested by the VSF. VSFs cannot tell employees or annuitants how much they will pay until they know the details of the employee or annuitant's coverage. Therefore, it is important for personnel office/retirement system staff to provide this information in a timely manner.

Some sample data items that may be requested are:

GROUP POLICY NUMBER:

#17000-G WITH THE METROPOLITAN LIFE INSURANCE COMPANY

CERTIFICATE NUMBER:

THERE IS NO "CERTIFICATE NUMBER" FOR FEGLI INSURANCE. YOU CAN PROVIDE THE EMPLOYEE OR ANNUITANT'S SOCIAL SECURITY NUMBER IF THE SSN IS AN ITEM ON THE RELEASE FORM SIGNED BY THE EMPLOYEE OR ANNUITANT.

PROVIDE A COPY OF THE ENROLLEE'S GROUP CERTIFICATE:

THE EMPLOYEE'S OR ANNUITANT'S CERTIFICATE OF INSURANCE IS A COPY OF HIS/HER MOST RECENT SF 2817 ALONG WITH A COPY OF THE FEGLI BOOKLET

PROVIDE THE TOTAL DEATH BENEFIT:

THIS IS AN ESTIMATE OF THE EMPLOYEE OR ANNUITANT'S DEATH BENEFIT (AMOUNT OF THEIR BASIC COVERAGE PLUS ANY OPTIONAL COVERAGE). FOR ANNUITANTS, DETAILS ABOUT THE POST-65 REDUCTION SCHEDULE OF EACH OF THEIR COVERAGES (BASIC AND OPTION A AND OPTION B, IF APPLICABLE) SHOULD BE PROVIDED. A COPY OF THE FEGLI BOOKLET SHOULD ALSO BE PROVIDED, WITH THE DETAILS ABOUT THE EXTRA BENEFIT, IF APPLICABLE, HIGHLIGHTED.

IS THERE A WAITING PERIOD BEFORE THE ENROLLEE CAN ASSIGN HIS/HER INSURANCE?

THE EFFECTIVE DATE OF THE EMPLOYEE'S OR ANNUITANT'S COVERAGE CAN BE PROVIDED ALONG WITH AN EXPLANATION THAT ASSIGNMENT BECAME AVAILABLE TO ALL ENROLLEES ON OCTOBER 3, 1994, AND THAT ALL ENROLLEES ARE IMMEDIATELY ABLE TO ASSIGN THEIR COVERAGE WITH NO "WAITING PERIOD."

WHAT IS THE MONTHLY PREMIUM?

PROVIDE THE MONTHLY PREMIUM.

DOES THIS POLICY HAVE ACCELERATED BENEFITS?

YES, AS OF JULY 25, 1995.

IS PARTIAL ACCELERATION PERMITTED?

YES FOR EMPLOYEES, NO FOR ANNUITANTS. EMPLOYEES CAN ELECT TO ACCELERATE (THAT IS, ELECT FEGLI LIVING BENEFITS ON) ALL OR A PORTION OF THEIR BASIC LIFE INSURANCE. ANNUITANTS CAN ONLY ELECT FULL LIVING BENEFITS. HOWEVER, IF EMPLOYEES OR ANNUITANTS ASSIGN THEIR INSURANCE, THEY CANNOT ELECT ACCELERATED (LIVING) BENEFITS.

CAN THE FIRM PAY THE PREMIUMS?

NO. PREMIUMS MUST CONTINUE TO BE WITHHELD FROM THE EMPLOYEE'S SALARY OR THE ANNUITANT'S ANNUITY. EMPLOYEES AND ANNUITANTS CANNOT CANCEL THESE PREMIUMS. EMPLOYEES OR ANNUITANTS WHO ASSIGN THEIR INSURANCE TO A VSF MAY ATTEMPT TO NEGOTIATE WITH THE

VSF TO RECEIVE A LUMP SUM PAYMENT EQUAL TO THE TOTAL AMOUNT OF THE PREMIUMS THAT WILL BE WITHHELD FROM SALARY/ANNUITY DURING THE EMPLOYEE/ANNUITANT'S REMAINING LIFE. THIS IS A PRIVATE NEGOTIATION BETWEEN THE EMPLOYEE/ANNUITANT AND THE VSF.

ARE THERE ANY ASSIGNMENTS AGAINST THE POLICY?

VERIFY THAT THE EMPLOYEE OR ANNUITANT HAS NOT PREVIOUSLY ASSIGNED HIS/HER INSURANCE. THE EMPLOYEE OR ANNUITANT CAN ONLY ASSIGN HIS/HER INSURANCE ONCE AND IT IS IRREVOCABLE.

DOES THE POLICY INCLUDE A DISABILITY WAIVER?

NO.

CAN THIS POLICY BE CONVERTED IN CASE OF TERMINATION BY THE OWNER?

THE GROUP COVERAGE CANNOT BE CONVERTED BY THE INSURED OR THE ASSIGNEE WHEN IT IS CANCELLED VOLUNTARILY BY THE EMPLOYEE OR ANNUITANT, NOR, IF THE COVERAGE HAS BEEN ASSIGNED, BY THE ASSIGNEE.

ARE THERE OTHER EVENTS THAT WOULD TRIGGER CONVERSION BY THE FIRM?

YES. IF THE EMPLOYEE QUILTS EMPLOYMENT OR RETIRES AND THE POLICY HAS BEEN ASSIGNED, THE ASSIGNEE (IN THIS CASE, THE VSF) CAN CONVERT THE POLICY TO A PRIVATE ONE. ANNUITANTS HAD A CONVERSION PRIVILEGE WHEN THEY RETIRED -- THERE IS NO OTHER OPPORTUNITY TO CONVERT THEIR COVERAGE.

IS THERE A MINIMUM AMOUNT OF COVERAGE REQUIRED TO OBTAIN ASSIGNMENT?

NO.

DOES THE ABSOLUTE ASSIGNMENT GRANT RIGHTS TO THE ASSIGNEE TO CONVERT TO AN INDIVIDUAL POLICY?

YES, IF THE EMPLOYEE QUILTS EMPLOYMENT OR RETIRES. NO FOR AN ANNUITANT.

CAN AN IRREVOCABLE BENEFICIARY BE DESIGNATED?

NO. DESIGNATIONS ARE REVOCABLE. HOWEVER, ASSIGNMENTS ARE IRREVOCABLE. IF THE EMPLOYEE OR ANNUITANT ASSIGNS HIS/HER INSURANCE, ALL CURRENT DESIGNATIONS ARE VOID. THE ASSIGNEE AUTOMATICALLY BECOMES THE BENEFICIARY AND IS FREE TO DESIGNATE WHOMEVER HE/SHE CHOOSES. IF HE OR SHE DOESN'T DESIGNATE ANYONE, THEN THE ASSIGNEE IS THE BENEFICIARY.

YOU WILL ALSO LIKELY BE ASKED FOR ASSIGNMENT AND DESIGNATION OF BENEFICIARY FORMS. YOU SHOULD PROVIDE A BLANK COPY OF EACH FORM TO THE FIRM.

If the employee or annuitant chooses to make an assignment, he/she will need to complete an

RI 76-10 assignment form and indicate the name of the VSF in the space provided for the assignee. The employee should sign the form, have his/her signature witnessed in writing by two people, and return the form to his/her employing office or retirement system. The assignment is effective on the day that a properly completed form is received in the employing office, for employees, or the retirement system, for annuitants.

Other information concerning assignment is contained on the form.

The chart on the following page summarizes the differences between Living Benefits and Assignment.

| | Viatical Settlement Agreement | FEGLI Living Benefit |
|---|--|---|
| Earliest Date Available | October 3, 1994 (for all enrollees) | July 25, 1995 |
| Life Expectancy Requirement | Varies by VSF | 9 months or less |
| Insurance Involved | 100% of Basic, Option A and Option B (if held) (100% must be assigned, although not necessarily all to the same person/firm) | 100% of Basic (employees and annuitants) Part of Basic (employees only -- must be a multiple of \$1,000) |
| Percentage Of Face Value Paid to Employee/Annuitant | 60 to 85 percent The percentage varies, and is negotiated with the Viatical Settlement Firm (VSF) | 94 percent (approximately) |
| Source Of Payment | VSF to whom benefits are assigned (sold) | FEGLI Program |
| Residual Life Insurance Benefit | None, unless the VSF agrees to accept only a percentage of the assignment or to designate a portion to a survivor | Option A and Option B, if held. Remaining Basic for employees who elect partial Living Benefits |
| Payment of Premiums | Employee or annuitant continues to pay full premiums and cannot cancel the premiums. VSF may agree to reimburse the employee/annuitant directly for premiums paid | Premium payments for Basic end for annuitant and employees who elect a full Living Benefit. For employees who elect partial Living Benefits, premiums are prorated depending on the amount of Basic remaining. |

ORIGINALLY ISSUED AS BENEFITS ADMINISTRATION LETTER 95-216 ON MAY 4, 1995. (MODIFIED TO REFLECT UPDATED INFORMATION.)

SUBJECT: Federal Employees' Group Life Insurance: Living Benefits

GENERAL INFORMATION

What Are Living Benefits?

Living Benefits, also known as accelerated benefits in the private sector, are life insurance benefits paid to an individual while he/she is still living, rather than paid to a beneficiary or survivor upon the insured individual's death. This benefit was added to the Federal Employees' Group Life Insurance (FEGLI) Program by Public Law 103-409, the FEGLI Living Benefits Act.

When Do Living Benefits Go into Effect?

Living Benefits under the FEGLI Program become effective on July 25, 1995.

How Is This Different from Assigning FEGLI Coverage to a Viatical Settlement Company?

Living Benefits payments come from the Life Insurance Fund (part of the U.S. Treasury). Viatical settlement companies are private sector businesses not connected with the Federal Government.

The amount of insurance available and the requirements for receiving a Living Benefits payment are set forth in Federal law. Viatical settlement companies set their own requirements and payment amounts.

SPECIFIC INFORMATION

Who Can Elect Living Benefits?

Any employee, annuitant, or compensation covered under the FEGLI Program, who has been diagnosed as terminally ill with a life expectancy of nine months or less, may elect a Living Benefit.

How Much

Only Basic insurance is available for Living Benefits.

Insurance Can an Employee Elect?

Optional insurance cannot be paid as a Living Benefit.

An employee may elect either a full Living Benefit, i.e., all of his/her Basic benefits, or a partial Living Benefit (expressed as a multiple of \$1,000). (Annuitants and compensationers can elect only a full Living Benefit.)

How Many Times Can an Employee Elect Living Benefits?

An employee can elect Living Benefits only once.

If an employee elects a full Living Benefit, he/she has no more Basic insurance. A subsequent increase in salary does **not** give the employee entitlement to additional Basic insurance.

If an employee elects a partial Living Benefit, he/she cannot later elect another Living Benefit from the remaining Basic insurance. In addition, the amount of the remaining Basic insurance will not change, even if there is a subsequent change in salary.

Also, a Living Benefit payment cannot be retracted. If the certifying doctor's medical prognosis is wrong, and the employee lives longer than the expected nine months, the employee would **not** have to repay the Living Benefit.

PROCEDURES

How Does an Employee Apply for Living Benefits?

1) An employee who wishes to apply for Living Benefits must contact the Office of Federal Employees' Group Life Insurance (OFEGLI) at 1-800-633-4542; OFEGLI will begin accepting calls after July 10, 1995. OFEGLI will send the individual an application form (FE-8, Claim for Living Benefits).

Please note that agencies will **not** be sent a supply of FE-8 forms and will not be able to give them to employees.

2) OFEGLI will also send a calculation sheet, so employees will be able to determine the amount of Basic insurance available to them. This will take into account the age multiplication factor for employees under age 45. (It will also take into account the post-65 reduction for annuitants age 65 and over.) The benefits available will be reduced by an amount representing interest lost to the Life Insurance Fund because of the early payment of benefits.

3) The employee completes Part A of the form, and his/her doctor completes Part B. The employee then sends the form back to OFEGLI.

4a) If OFEGLI approves the Living Benefit, OFEGLI will send the employee a check, along with an Explanation of Benefits (EOB). When the employee cashes or deposits the check, the Living Benefits election is complete. OFEGLI will then send an EOB to both the agency personnel office and the agency payroll office.

4b) If OFEGLI does not approve the Living Benefit, OFEGLI will notify both the individual and the employing office. There are no appeal rights; however, the individual may furnish additional medical evidence to support the claim or may reapply if future circumstances warrant.

What Does the Agency Have to Do?

When OFEGLI receives an employee's application for Living Benefits, it will send or fax the agency an FE-8A, Agency Certification for FEGLI Living Benefits. The agency must certify whether the employee is enrolled in Basic insurance, whether the employee has assigned his/her insurance, and the amount of the employee's current annual basic pay.

The FE-8A must have dual certification, i.e., it must be certified by both a personnel official and a payroll official. Make sure that the addresses of the personnel and payroll offices are complete, since OFEGLI will use these addresses to send the agency a copy of the EOB.

It is critical that this certification be completed and returned to OFEGLI promptly. You should fax the completed certification to OFEGLI on 212-578-4491, and then mail the original to OFEGLI.

Post-election BIA

If an employee elects a partial Living Benefit, OFEGLI will notify the agency of the amount of the employee's remaining Basic Insurance Amount (BIA) on the EOB. **This post-election BIA never changes**, even if the employee's salary changes. The age factor used in computing benefits payable upon the death of an employee with a post-election BIA also will not change.

The post-election BIA also does not change if the employee subsequently retires and is eligible to continue

insurance as an annuitant. He/she will **not** have a choice of post-65 reductions. Unless he/she elects to terminate coverage, the full post-election BIA will remain in effect, and withholdings will be at the no-reduction level. He/she will **not** be eligible to change the no-reduction to a 75% reduction at a later date.

An employee who elects a partial Living Benefit retains Accidental Death and Dismemberment (AD&D) benefits on Basic insurance in the same amount as the post-election BIA.

(An employee who elects a full Living Benefit loses AD&D on Basic insurance, since there is no Basic insurance left.)

**Changes in
Withholdings and
Contributions**

If an employee elects a full Living Benefit, withholdings and contributions for Basic insurance stop. If an employee elects a partial Living Benefit, withholdings and contributions for Basic insurance are based on the post-election BIA.

Changes in withholdings and contributions are effective at the end of the pay period in which the Living Benefit election is effective, i.e., the end of the pay period in which the payment is cashed or deposited. (OFGLI will notify you of the date the payment is cashed or deposited.)

**What Goes on
the SF 50?**

When the agency receives notification of a Living Benefits election - i.e., the EOB - the personnel office must produce an SF 50. There will be no changes to the codes used in box 27 on this form. The code for FEGLI will remain the same as it was before the Living Benefits election.

In the "Remarks" section, you should state:

Elected full Living Benefits on _____.
Basic coverage now equals zero.

or

Elected partial Living Benefits on _____.
Post-election BIA is _____.
Must elect "No reduction" at retirement.

In addition, you should state in the "Remarks" section

what Optional insurance (if any) the employee has, including the number of multiples of Option B, if applicable.

MISCELLANEOUS

Optional Insurance

A Living Benefit election has no effect on an individual's Optional insurance. All Optional insurance will remain in place, and withholdings for Optional insurance will continue unchanged.

Designations of Beneficiary

A Living Benefit election has no effect on an individual's designation of beneficiary. Option A benefits, Option B benefits, and any remaining Basic benefit for employees who have elected a partial Living Benefit will be paid to an individual's designated beneficiary or, in the absence of a designation, according to the statutory order of precedence.

If, however, an individual who has specifically designated Basic insurance to a beneficiary elects a full Living Benefit, that beneficiary will not receive any money as a Basic benefit upon the individual's death. If this individual elects a partial Living Benefit, the beneficiary will receive only the remaining Basic benefit. We therefore recommend that an insured individual electing a Living Benefit review his/her designation of beneficiary.

Assignment

If an individual has assigned his/her insurance, he/she cannot elect a Living Benefit; nor can the assignee elect a Living Benefit. However, if an individual elects a Living Benefit, he/she can subsequently assign any remaining insurance (Basic or Optional).

ORIGINALLY ISSUED AS BENEFITS ADMINISTRATION LETTER 95-221 ON OCTOBER 10, 1995. (MODIFIED TO REFLECT UPDATED INFORMATION.)

SUBJECT: Assignment of FEGLI Coverage

I. OVERVIEW

A. Purpose This letter announces a change in the Federal Employees' Group Life Insurance (FEGLI) law that allows Federal employees, annuitants, and compensationers to assign ownership of their life insurance coverage.

B. Background Section 4 of Public Law 103-336 allows Federal employees, annuitants, and compensationers to make an irrevocable assignment of the ownership of their life insurance coverage. Regulations clarify that the right to assign ownership of life insurance coverage applies only to Basic insurance, Option A--Standard, and Option B--Additional FEGLI coverages. The law was enacted on October 3, 1994. Previously, only Federal judges could assign FEGLI coverage.

II. WHAT IS AN ASSIGNMENT?

A. Description An assignment is an irrevocable transfer of ownership of the employee's FEGLI coverage (except dismemberment insurance and Option C--Family) to another individual, corporation, or trustee. The employee continues to be the insured person.

B. Effects of assignment An assignment is irrevocable. After making an assignment, the employee, as long as he or she is continuously insured in the FEGLI Program, cannot cancel the assignment. Further, any designation of beneficiary on file at the time of the assignment is immediately void.

C. Assignment is voluntary

The law is permissive, not mandatory. Thus, employing offices may not force an insured employee to make an assignment.

D. Rights of the employee after making an assignment

After making an assignment, it is the employee's right to:

- Continue Option C--Family coverage (if previously elected).
- Elect more insurance (for example, during an open enrollment period, by furnishing proof of insurability or upon marriage, divorce, birth of a child, etc.).

NOTE: All of the new insurance (except Option C--Family) is automatically subject to the existing assignment.

- Elect a reduction schedule for Basic insurance that is less than the standard 75 percent reduction at the time of retirement. However, if the retiring employee elects a lesser reduction (no reduction or 50 percent reduction), he or she may not later cancel the election.

After making the assignment, the employee may not:

- Cancel or reduce the insurance.
 - Designate a beneficiary.
 - Convert the insurance to a private policy when it terminates.
 - Elect a Living Benefit.
-

E. Rights of the assignee

The assignee has the right to:

- Cancel the insurance coverage.
- Cancel a retired employee's election of a lesser reduction (50 percent or no reduction) of Basic insurance
- Designate and change beneficiaries.
- Convert to a private policy when the coverage

terminates (but not when the assignee voluntarily cancels it).

- Reassign the insurance.

The assignee may not:

- Increase the amount of insurance during an open season or as a result of any other event.
 - Elect a Living Benefit.
 - Make the original election of a reduction schedule for Basic insurance when the employee retires.
-

F. Assignment to more than one individual

An assignment may be made to more than one person, corporation, or trustee. If the assignment of the insurance is to two or more persons, the employee must specify percentage shares of the entire amount of insurance, rather than dollar amounts or types of insurance, to go to each assignee. The percentages must total 100 percent. The employing office must reject a form if the percentages do not total 100 percent.

Each assignee should designate his or her own beneficiaries for his or her share of the insurance. However, all assignees must agree to most other actions taken with the coverage, such as cancellation.

G. Restrictions related to assignments

An employee who has previously elected a Living Benefit may assign the balance of his or her insurance. However, an employee who has assigned his or her insurance may not elect a Living Benefit; nor may the assignee elect a Living Benefit.

III. BENEFITS OF AN ASSIGNMENT

A. General

Employees may find assignments useful in a number of circumstances, such as described below.

B. To comply with a court order

Employees may use assignments to comply with a court order for divorce that requires an employee to name a former spouse as the beneficiary of his or her FEGLI proceeds. Under the FEGLI law, designations of

beneficiary may be changed by the employee at any time; whereas, an assignment is irrevocable. However, an agency cannot force an employee to make an assignment, even if a court order requires him or her to do so. It is not the agency's responsibility to enforce a court order.

C. For inheritance tax purposes

Employees may use assignments for inheritance tax purposes. An absolute assignment of an insured person's interest in a group life insurance policy, made at least 3 years before his or her death, generally removes the insurance proceeds from the insured person's estate. Current Federal estate tax law allows an unlimited marital deduction for that portion of the gross estate passed to a surviving spouse. Thus, there is no apparent immediate tax advantage to assigning ownership of a life insurance policy to a spouse. However, since State tax laws vary and tax savings under Federal or State law can be considerable if insurance proceeds are not subject to estate taxes, it is important to consult with a competent estate tax advisor.

NOTE 1: It is possible that assignment to a trust may not exclude FEGLI benefits from the employee's estate. It is also possible that, if the assignee dies first, the employee could reacquire ownership of the life insurance coverage through designation of beneficiary or inheritance. The assignment form, RI 76-10, cautions the employee to consult a tax attorney if he or she wants to make an assignment to a trust or wants to avoid inheriting ownership of the FEGLI coverage upon the death of the assignee.

NOTE 2: The employing office assumes no responsibility or obligation with respect to the validity, sufficiency, or the consequences of an assignment under the Internal Revenue Code. A determination as to whether the FEGLI proceeds are included in the employee's gross estate must ultimately be made by the Internal Revenue Service at the time of the employee's death.

D. To obtain cash before death

Employees may use assignments to obtain cash before death from a viatical settlement firm. Viatical settlement is the sale (or assignment) of someone's life insurance in exchange for cash. Generally, viatical settlement firms accept assignment of life insurance from terminally ill patients with defined life expectancies that vary among firms, but are usually less stringent than the requirements

for Living Benefits.

NOTE: The FEGLI Living Benefits Act became effective on July 25, 1995. Under this Act, Basic life insurance can be paid as a Living Benefit to an employee, annuitant, or compensationner who has 9 months or less to live. However, viatical settlement may still be a good choice for terminally ill employees who have more than 9 months to live, or those who wish to receive cash based on the face value of their Basic insurance, Option A--Standard, and Option B--Additional coverages. The FEGLI Living Benefits apply only to Basic insurance, not the Optional coverages.

E. To pay off debts

Employees may use assignments to pay off debts. Agencies cannot refuse to accept an assignment made to satisfy indebtedness. However, agencies should remind employees that an assignment is irrevocable and cannot be canceled when the debt is paid. The assignment form, RI 76-10, contains a warning to this effect.

IV. HOW TO MAKE AN ASSIGNMENT

A. Assignment form

Assignments are made on OPM Form RI 76-10, Assignment of Federal Employees' Group Life Insurance. Agency headquarters have already ordered supplies of these forms through OPM's rider system. Employing offices may obtain supplies of the form from their agency headquarters.

The January 1995 edition is the only edition that may be used.

B. Effective date of an assignment

An assignment is effective on the date the properly completed, signed, and witnessed assignment form is received by the employing office.

C. All insurance must be assigned

If an employee has more than one type of coverage-- Basic insurance plus Option A--Standard, Option B-- Additional, and Option C--Family, for example--he or she must assign all of the insurance except Option C--Family. An employee may not assign only a portion of the coverage, but may assign the life insurance coverage to more than one person.

An employee may not name contingent assignees in the event the primary assignee predeceases him or her.

V. WITHHOLDING AND CONTRIBUTIONS

- A. Payment of premiums after assignment** After making an assignment, the employee must continue to pay the premiums. The assignee may not pay the premiums (except in certain circumstances when a FERS retiree's annuity is too low to make the withholding.)
-
- B. Withholdings and contributions** After an assignment, insurance premiums continue to be withheld from salary, annuity, or compensation, as applicable.
-

VI. DESIGNATION OF BENEFICIARY

- A. Employee's designations** An assignment automatically cancels the employee's prior designations of beneficiary. However, the agency must continue to retain the cancelled designations in the OPF. Once an assignment is effective, an employee no longer has the right to designate a beneficiary.
-
- B. Assignee's designations** Each assignee may, as part of the assignment process, designate a beneficiary or beneficiaries to receive insurance proceeds upon the death of the employee and may subsequently change the beneficiaries. If there is no designation, the assignee is the beneficiary.
-
- C. Surviving beneficiary** A surviving beneficiary receives the designated amount of assigned insurance upon the death of the employee. Assignees may designate themselves the primary beneficiaries and name some other person(s) as contingent beneficiaries in the event that the assignee dies before the employee.
- Assigned insurance is paid to an assignee's estate if the assignee predeceases the employee and--
- The assignee did not designate a beneficiary; or
 - The assignee's designated beneficiary dies before the

employee.

VII. EMPLOYING OFFICE RESPONSIBILITIES

A. General

Employing offices are responsible for advising employees of the availability of, and uses for, an assignment of FEGLI coverage.

Making decisions or recommendations for the employee is not the employing office's responsibility and should be avoided. Further, the employing office has no responsibility or obligation with respect to the consequences of an assignment.

B. Policing assignments

An employee who assigns his or her FEGLI coverage may not make a subsequent assignment or designation of beneficiary unless the assignee reassigns the insurance back to the employee. Therefore, when an employing office receives an assignment or designation of beneficiary from an employee, it must ensure that the employee has not already assigned his or her life insurance to someone else.

The employing office may accomplish this by reviewing the Official Personnel Folder (OPF) for every employee who submits a designation or an assignment or by keeping a log of all employees who make assignments.

If the employing office decides to keep a log of employees who make assignments, it must check the log each time an employee designates a beneficiary or makes an assignment to ensure that the employee has not previously assigned his or her life insurance to someone else. In addition, when an agency reemploys a former Federal employee after a break in service of less than 31 days the employing office must check the employee's OPF to determine whether there is an assignment. If so, the employee's name must be added to the agency's log.

To assist the employing office, we have revised Standard Form 2823, Designation of Beneficiary, to add a new section asking the designator to check whether he or she is completing the form as the employee or an assignee. Nevertheless, the employing office must verify in each case whether there is a previous assignment by checking the employee's OPF or its log of employees who have

made an assignment.

If the employing office finds that the employee has previously assigned his or her life insurance to someone else, the employing office must return the form to the employee, explaining that he or she has previously made an assignment and that only the assignee may reassign the insurance or designate a beneficiary.

C. Viatical settlement firms

When employees want to assign their life insurance to a viatical settlement firm, the firm will ask the employing office to provide information about their FEGLI coverage. The employing office must have a release, signed by the employee, before providing the information. See BAL 95-212 for detailed information about viatical settlements.

The employing office must file copies of the release and the information disclosed to the viatical settlement firm in the employee's OPF.

D. Consulting tax attorneys

Employing offices should always advise employees to consult a tax attorney when they are considering assigning their life insurance. This is particularly important if the employee wants to make an assignment to a trust or wants to avoid inheriting the FEGLI coverage upon the death of the assignee. The attorney has specific information about tax laws and IRS regulations to make a determination about the tax effect of an assignment. The employee should also consider obtaining a ruling from the IRS.

E. Notifying the assignee

When an assignment is made, the employing office must notify the assignee that the employee has assigned ownership of his or her life insurance to the assignee and provide a copy of the FEGLI Booklet, RI 76-21, which explains the FEGLI Program, and a blank designation form (SF 2823). The notice must include the types of insurance the employee assigned (Basic, Option A--Standard, Option B--Additional) including the number of multiples of pay under Option B--Additional. The notice must also give the percentage of the total insurance that the assignee now owns. (The percentage is 100 percent unless there are multiple assignees.) A sample notice is attached.

F. When insurance

At the time the insurance terminates, other than by

terminates

voluntary cancellation, the employing office must send SF 2819, Notice of Conversion Privilege, to the assignees to inform them of their conversion rights. Employing offices must also complete Standard Form 2821, Agency Certification of Insurance Status, and give it to the assignee, together with a copy of the assignment form (RI 76-10) by which the employee had transferred ownership of the life insurance coverage to the assignees. See section S5-3 of the FEGLI Handbook for Personnel and Payroll Offices for additional information about SF 2819 and SF 2821. If there are multiple assignees, do not complete multiple SF 2821's. Instead, complete only one SF 2821 and make photocopies for the additional assignees.

G. When an employee dies

Upon the death of the employee, the employing office must send Form FE 6, Claim for Death Benefits, to each assignee at the last known address. See Subchapter S10 of the FEGLI Handbook for Personnel and Payroll Offices for additional information about procedures required at an employee's death.

H. When an employee leaves the agency

When the employee leaves the agency by separation, retirement, transfer to another agency, or for any other reason, (when the Nature of Action Code begins with a 3) cite on the separation Standard Form 50 Remark B69: Employee has assigned ownership of life insurance coverage. Assignment terminates 31 days after the separation date unless employee is entitled to continued coverage or resumes coverage before that date.

I. Unacceptable assignments

An insured person's assignment is unacceptable if--

- The insured person previously assigned his or her life insurance coverage.
- The assignment form has not been properly witnessed.
- The assignment form contains erasures or alterations.
- In the case of an assignment to two or more persons, the shares are not expressed in percentages (dollar amounts are not acceptable).

If the assignment is unacceptable, write VOID across the

front of the form and return it to the insured person with an explanation of why the assignment is unacceptable.

VII. ASSIGNEE'S RESPONSIBILITIES

A. Current address

Each assignee is responsible for keeping the employee's personnel office aware of his or her current address. Employing offices must attach the assignee's change of address notice to the assignment form in the employee's OPF.

B. Designation of beneficiary

We recommend that all assignees complete a designation of beneficiary, even though they want to be the beneficiary, in order to designate a contingent beneficiary. The contingent beneficiary is the person who would receive payment if the assignee dies before the employee.

If they do not designate a contingent beneficiary, the life insurance is payable to the deceased assignee's estate. There may be problems in reopening the assignee's estate after the employee dies to determine who is entitled to the insurance payment. By naming a contingent beneficiary, the assignee can simplify payment of the life insurance.

IX. RETIREES AND COMPENSATIONERS

A. Transferring assignments

When an employee retires or becomes a compensationner under circumstances that would allow continued FEGLI coverage, the assignment continues in force if the assignee does not choose to convert the insurance. The assignment form must be transferred to OPM with the rest of the FEGLI documents. See Subchapters S6 and S7 of the FEGLI Handbook for Personnel and Payroll Offices for procedures for transferring the life insurance to OPM when an employee retires or becomes insured as a compensationner.

B. Assignments by retirees and compensationners

Retirees and compensationners may assign their life insurance under the same conditions as employees. OPM serves as the employing office for retirees in all retirement systems for Federal employees and for compensationners whose life insurance has been transferred to OPM. (For compensationners, the employing agency continues to

maintain the life insurance coverage through the first 12 months the employee is on compensation. The employing agency then transfers the coverage to OPM if the employee is eligible to continue it as a compensationner.)

C. Conversion versus continuation

When there are multiple assignees, some assignees may prefer to let their share continue when the insured employee becomes a retiree or compensationner. Others may prefer to convert to a private policy. Information about conversion is given in section X of this letter.

For continued coverage, the amount of each type of continued insurance is determined by the total percentage of the shares of the assignees who choose continued coverage. For example, if two assignees, each having a 25 percent share in the ownership of the total insurance amount consisting of Basic insurance and Option A--Standard, choose to continue coverage while the other assignees choose to convert, 50 percent of the value of the Basic insurance and 50 percent of the value of the Option A--Standard continues. Although the assignees own a share of the total value of the insurance, it is necessary to distinguish between the types of insurance in order to apply premiums and reduction factors during retirement.

X. CONVERSION

A. Termination

Insurance terminates when the assignee cancels the coverage, when the employee separates from service, and when other terminating events occur. See FEGLI Handbook subchapter S5 for a full explanation of when coverage terminates.

B. Conversion

When an employee's insurance terminates other than by voluntary cancellation, an assignee has the right to convert all or a portion of the life insurance to an individual policy on the employee.

If the insurance is assigned to more than one assignee, each assignee has the right to convert all or part of his or her share of the insurance. Any assignee who does not convert loses all interest in the insurance unless the insured person is entitled to continue coverage as a retiree or compensationner (see section IX).

- C. Conversion when there are multiple assignees** When multiple assignees have been named and they wish to convert the assigned insurance to individual policies on the employee, the maximum amount of insurance each assignee may convert is the dollar amount of the assignee's share of the total insurance. If the amount is not a multiple of \$1,000, it is rounded up to the next thousand dollar amount.
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- D. Rates for converted life insurance** Rates for converted life insurance are based on the employee's attained age and class of risk at the time the conversion policy is issued.
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XI. TERMINATION OF ASSIGNMENT

- A. Termination of assignment** An assignment terminates 31 days after the life insurance terminates, unless the insured person is reemployed during the 31-day period in a position in which the insurance resumes. That date coincides with the expiration of the 31-day temporary extension of coverage and the cancellation of designations of beneficiary. Once terminated, the assignment does not resume if the person is later reemployed in a position in which he or she again has FEGLI coverage. Instead, the employee must make a new assignment if he or she wants someone else to have ownership of the life insurance.
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- B. When assignee cancels life insurance** When an assignee cancels the life insurance, there is no 31-day temporary extension of coverage. The assignment terminates permanently at the same time the life insurance terminates.
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Sample letter for notifying assignees of the assignment

Jane Doe
123 Main Street
Anytown, US 00000-0000

Dear Ms. Doe:

This is to notify you that *(name of employee)* has assigned *(percent)* of ownership of his/her coverage in the Federal Employees' Group Life Insurance (FEGLI) Program to you. *(Name of employee)* has Basic insurance plus (Option A--Standard and Option B--Additional at *(times)* his/her annual pay.) The enclosed booklet explains the features of the different types of insurance.

You are the beneficiary of the life insurance coverage, and you will be entitled to the benefits upon the death of *(name of employee)*. However, we urge you to designate a contingent beneficiary to receive the benefits in the event that you die before *(name of employee)*. To do this, complete the attached Designation of Beneficiary form and return it to *(name and address of employing office)*. To designate a contingent beneficiary, name yourself as primary beneficiary and another person to receive benefits in case you die before the insured person. See example 3 on the form.

It is important that you tell us when your address changes, so that we can notify you if events occur that affect the life insurance coverage that has been assigned to you. When you write us to tell us about a change of address, be sure to include the name and social security number of the insured employee.

Sincerely,

ORIGINALLY ISSUED AS INSURANCE OFFICERS INFORMATION BULLETIN NO. 261 ON AUGUST 6, 1992. (MODIFIED TO REFLECT UPDATED INFORMATION.)

It has come to our attention that Federal agencies and carriers in the Federal Employees Health Benefits (FEHB) Program are treating the FEHB coverage of foster children (including grandchildren) inconsistently. Consequently, we have recently reviewed our policy with regard to health benefits coverage for foster children, in general, and foster children who are also grandchildren, in particular.

In accordance with law and regulation, a grandchild may be covered under an employee's FEHB enrollment if the child meets the definition of a foster child. That is, he or she must be financially dependent on the employee, must be living with the employee in a regular parent-child relationship, and the employee must expect to raise the child to adulthood.

We have determined that the parent-child relationship requirement, whether or not a natural parent lives in the home, is satisfied if there is evidence that the child lives with and is financially dependent on the employee. Therefore, a court order for custody is not required if the natural parent lives in the home with the employee. The employee must provide evidence that the child is being claimed as a dependent (for example, on the employee's tax return or for other purposes as specified in Subchapter S11-2 of The FEHB Handbook for Personnel and Payroll Offices) and must also provide a written statement that he or she expects to raise the child to adulthood. (We have attached a pattern statement which may be reproduced and used by agencies for this purpose. Agencies must file the original statement in the employee's Official Personnel Folder and give a copy to the employee.)

The natural parent living in the home may be the employee's natural child, adopted child, stepchild, or foster child; so long as he or she qualifies as a family member under the employee's FEHB family enrollment. However, because a former spouse's family enrollment can cover only the former spouse and any unmarried dependent natural or adopted children of both the former spouse and the employee, former employee or annuitant, a former spouse's foster child may not be covered under his or her family enrollment.

The date that the child becomes an eligible family member is prospective and is deemed to be the first day of the pay period in which the employing office receives all properly completed documents necessary to establish eligibility of the child as a foster child. Nevertheless, for newborns whose birth is covered under the employee's FEHB plan as a birth expense of the natural mother, the effective date may be, at the employee's discretion, the first day of the pay period in which the child is born.

Coverage will continue until the foster child/grandchild marries, reaches age 22, becomes capable of self-support if previously deemed otherwise, or is no longer living with or financially dependent on the employee. If the child later leaves the employee's home to live with a natural parent, the child may not again be covered as a foster child of the employee unless the natural parent subsequently becomes unable to care for the child (for example, through death, incapacitation, or incarceration, but not solely for reason of unemployment); or the employee obtains a court order for custody that takes parental responsibility from the natural parent and gives it to the employee.

In clarifying our foster child policy with an agency, we were asked about effective dates and notice requirements. Coverage for children determined to be foster children under the guidance contained in this Bulletin is prospective only. There is no requirement that agencies attempt to notify employees whose grandchildren may have been denied FEHB coverage because of the absence of a court order conveying foster child status in the past.

Attachment

STATEMENT OF FOSTER CHILD STATUS

This is to certify that I have been informed of the following requirements for coverage of a foster child in the Federal Employees Health Benefits Program:

- The child must be unmarried
- The child must live with the employee in a regular parent-child relationship
- The employee must contribute regular and substantial support for the child
- The employee must intend to raise the child into adulthood

I have provided my employing agency proof of my regular and substantial support for (*Name of Child*). The child is unmarried and lives with me in a regular parent-child relationship. To the best of my knowledge and belief, I intend to raise (*Name of child*) into adulthood.

I will immediately notify both my employing office and health benefits carrier if the child marries, moves out of my home, or ceases to be financially dependent on me.

(Signature of employee) (Date)

(Social Security Number)