



***Retirement and Insurance Service  
Benefits Administration Letter***

Number: 99-214

Date: August 24, 1999

**Subject: Federal Employees' Group Life Insurance: Revised Incontestability Information**

**Background**

On January 12, 1995, we issued Benefits Administration Letter (BAL) 95-203 on incontestability, which is a clause in the Federal Employees' Group Life Insurance (FEGLI) contract. We reissued this information on March 9, 1998, as part of BAL 98-201.

Pub. L. 105-311, the Federal Employees Life Insurance Improvement Act, which was enacted October 30, 1998, made incontestability part of the law and made some changes to the provision. The statutory changes apply to any findings made on or after October 30, 1998.

**Purpose**

The purpose of this BAL is to provide agencies with the revised information on incontestability. You should no longer use the incontestability information in BALs 95-203 and 98-201.

**What is Incontestability?**

Incontestability is allowing erroneous coverage to remain in effect under certain conditions.

**What Are the Conditions that Allow Erroneous Coverage to Remain in Effect?**

There are two conditions: 1) the coverage must have been in effect for at least 2 years before the error is discovered, and 2) the employee (or annuitant or compensationner) must have paid the applicable premiums for the erroneous coverage while it was in effect.

Incontestability doesn't apply unless *both* conditions are met.

## **What Are Some Examples of When Incontestability WOULD Apply?**

- Example 1* Sharon returned to Federal service after a break of 120 days. Before she left, she had Basic and Option C. When she returned to service, she elected Basic, Option B, and Option C. Although an employee cannot elect more coverage unless the break in service is at least 180 days, her agency erroneously accepted the election. If at least 2 years go by before anyone discovers the error, and if the agency withholds the premiums for the erroneous coverage during that time, Sharon can keep the Option B coverage.
- Example 2* Carlos had Basic insurance. He got married and elected 5 multiples of Option B and 5 multiples of Option C. Although his marriage only entitled him to elect 1 multiple of Option B, his agency erroneously accepted the election. If at least 2 years go by before anyone discovers the error, and if the agency withholds the premiums for the erroneous coverage during that time, Carlos can keep the 4 extra multiples of Option B coverage.
- Example 3* As a new employee, Natalie elects Basic insurance and 1 multiple of Option B. Her agency erroneously codes her SF 50 as H0 (Basic, Option A, and 1 multiple of Option B). If at least 2 years go by before anyone discovers the error, and if the agency withholds the premiums for the erroneous coverage during that time, Natalie can keep the Option A coverage.
- Example 4* Jason was hired as a temporary employee. As such, he was not eligible for FEGLI coverage. His agency erroneously allowed him to elect FEGLI coverage. If at least 2 years go by before anyone discovers the error, and if the agency withholds the premiums for the erroneous coverage during that time, Jason can keep the FEGLI coverage.
- Example 5* Mary had Basic and Option C for 15 years. During the 1999 open enrollment period, she elected 5 multiples of Option B and 5 multiples of Option C. Mary retires 12/31/01. Her retirement system erroneously allows her to continue her Option B coverage into retirement, although she doesn't meet the 5-year/all opportunity requirement. If at least 2 years go by before anyone discovers the error, and if the retirement system withholds the premiums for the erroneous coverage during that time, Mary can keep the Option B coverage.
- Example 6* Tyrone is a part-time employee. The full-time salary for his position is \$47,500; Tyrone works half-time and earns \$23,750. His agency erroneously gives him Basic insurance based on the full-time salary, and withholds premiums based on that amount. If at least 2 years go by before anyone discovers the error, and if premiums based on the incorrect amount continue to be withheld during that time, Tyrone can keep the erroneous

amount of insurance.

NOTE: Once the error is discovered, the agency cannot compound the error by continuing to increase the amount of insurance due to salary increases. Salary increases would have no effect on the amount of insurance, unless Tyrone moved to a full-time position, or unless his part-time salary eventually “caught up” with the erroneous insurance amount.

*Example 7*

Simon had Basic insurance. During the 1999 open enrollment period, he elected Option A and 2 multiples of Option B. Instead of making his new coverage effective in April of 2000, his agency erroneously made it effective in April of 1999 and began to withhold the premiums for the new coverage. Simon retires in May of 2004, and the agency discovers the error in effective date. Since the error was made more than 2 years before, and Simon paid the premiums for that extra year of coverage, the erroneous effective date is allowed to stand. Simon would therefore meet the 5-year requirement for continuing the coverage into retirement.

**What Are Some Examples of When Incontestability WOULD NOT Apply?**

*Example 8*

As a new employee, Tony elects Basic, 2 multiples of Option B, and 1 multiple of Option C. His agency erroneously codes his SF 50 as I1 (Basic, 1 multiple of Option B, and 1 multiple of Option C), and withholds premiums based on the erroneous code. After 3 years, they discover the error and notify Tony. Tony doesn't want to pay 3 years worth of back premiums for the 2<sup>nd</sup> multiple of Option B.

There is no erroneous coverage here. There is only an error in withholding. Tony correctly elected 2 multiples of Option B, but the agency only withheld premiums for 1. ***You cannot use incontestability to allow an employee (or annuitant or compensation) to avoid paying premiums.*** The nonpayment of premiums is an overpayment of pay. As with any overpayment, agencies have the authority to waive collection of the amount due. However, agencies must send us the total amount of the premium due, whether or not they collect it from the employee.

*Example 9*

Maria returned to Federal service after a break of 2 years. Before she left she had Basic, Option A, and 2 multiples of Option B. When she returned to Federal service, she did not submit an SF 2817. Her agency erroneously gave her only Basic insurance and withheld the premiums only for Basic insurance. Two years later they discover the error and inform Maria that she should have gotten back the same insurance she had when she left Government. Maria doesn't want to pay the premiums for this coverage.

Since Maria didn't submit an SF 2817 electing a different amount of coverage, Maria automatically got back the coverage she had before. As in

Example 7 above, the failure to withhold premiums is an overpayment of pay. The agency must send us the back premiums as soon as it discovers the error and then decide whether to collect the overpayment from Maria or whether to waive collection of the overpayment.

*Example 10*

As a new employee Charlene waived all FEGLI coverage. Two years later she has a physical, which OFEGLI (the Office of Federal Employees' Group Life Insurance) approves. She submits an SF 2817 electing Basic, 3 multiples of Option B, and 5 multiples of Option C. Although an employee cannot elect Option C based on a physical exam, her agency erroneously accepts her election and starts withholding the premiums. Eighteen months later Charlene's husband dies. She files a claim, which OFEGLI denies. Charlene feels that since the agency accepted her election and she paid the premiums, she is entitled to coverage.

Since the erroneous Option C coverage was not in effect 2 years before the error was discovered, incontestability does not apply. The agency must void the Option C coverage and refund the Option C premiums.

### **What Happens If the Employee Doesn't Want the Erroneous Coverage?**

If the employee (or annuitant or compensationner) doesn't want the erroneous coverage, he/she may cancel it. However, the cancellation is prospective. There is no refund of premiums.

### **Applying Incontestability**

When you discover an error in which an employee received coverage that he/she was not entitled to, you must check to see if the incontestability provision would apply in that case. Ask the following questions:

- Has the erroneous coverage been in effect for at least 2 years?
- Has the employee been paying premiums for the erroneous coverage during that time?

If the answer to both questions is "yes," then incontestability applies.

### **Documenting the File**

Once you have determined that incontestability applies, you must prepare a note to the file explaining the details of the error, the date it occurred, and the date it was discovered; verifying that premiums have been paid; and stating that the enrollment is now valid due to incontestability. If there is an applicable SF 2817 in the file, you must attach the notice to the permanent file copy of the SF 2817. When an employee for whom you have used incontestability retires, you must send the notice to the retirement system, along with all other life insurance forms.

Whenever you prepare an SF 2821 for an employee for whom you have used incontestability, you must note in the Remarks section that incontestability was used to allow an erroneous enrollment to stand.

### **Note Regarding Annuitants**

If a retirement system erroneously allows an annuitant to continue Basic insurance into retirement, the annuitant can keep the coverage if at least 2 years go by before the error is discovered and if the annuitant pays the applicable premiums during that time. If at the time of retirement, the individual did not make a post-65 reduction election, he/she will automatically get 75% Reduction. There is no opportunity to make a retroactive election for 50% Reduction or No Reduction.



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