

employees at duty posts outside the United States apply to covered employees who are working outside the United States at a permanent or temporary station or under travel orders. For the purpose of section 6103(b)(3), *United States* includes—

- (1) A State of the United States;
- (2) The District of Columbia;
- (3) Puerto Rico;
- (4) The U.S. Virgin Islands;
- (5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
- (6) American Samoa;
- (7) Guam;
- (8) Midway Atoll;
- (9) Wake Island;
- (10) Johnston Island; and
- (11) Palmyra.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN: 3206-A164

Federal Employees' Group Life Insurance Program: Life Insurance Improvements

AGENCY: Office of Personnel
Management.

ACTION: Interim rule with request for
comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Life Insurance Improvement Act, which was enacted October 30, 1998. This law made numerous changes to the Federal Employees' Group Life Insurance (FEGLI) Program. These changes include the elimination of maximums on Basic insurance and Option B, coverage of foster children under Option C, making the contractual incontestability provision statutory, providing for the direct payment of premiums for all employees and annuitants whose pay is too small for premium withholdings, allowing retiring employees to elect unreduced Option B and Option C coverage, establishing a three-year demonstration project for the portability of Option B, and increasing the coverage available under Option C.

DATES: Interim rules are effective January 27, 2000. Comments must be received on or before February 28, 2000.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of

Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3425, 1900 E Street, NW, Washington, DC; or FAX to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT:

Karen Leibach, (202) 606-0004.

SUPPLEMENTARY INFORMATION: On October 30, 1998, Public Law 105-311, 112 Stat. 2950, was signed into law. This law, the Federal Employees Life Insurance Improvement Act, changed many parts of the FEGLI Program. These regulations put the various new statutory provisions into place.

1. Elimination of Maximums

An employee's Basic Insurance Amount is his/her annual rate of basic pay, rounded to the next higher thousand, plus \$2,000. Each multiple of Option B coverage is equal to an employee's annual pay, rounded to the next higher thousand.

Before the enactment of Public Law 105-311, the law limited both Basic insurance and the multiples of Option B insurance to the annual rate of pay for Level II Executive Schedule positions, rounded up (plus \$2,000 for Basic). The maximum amount of Basic insurance was \$139,000, and the maximum amount of an Option B multiple was \$137,000.

The new law removed those maximums. These regulations also provide that Option A coverage, which increased for employees in this situation, will no longer exceed \$10,000.

This provision of the law became effective the first pay period beginning on or after October 30, 1998.

2. Coverage of Foster Children

Before the enactment of Public Law 105-311, foster children were not eligible for coverage under Option C. They became eligible as covered family members effective October 30, 1998.

For ease of administration, we have made the requirements for coverage of foster children under Option C the same as the requirements for coverage of foster children under the Federal Employees Health Benefits Program. Those requirements are that the child be unmarried and under the age of 22 (or if over 22, incapable of self-support because of a disabling condition that started before the 22nd birthday), that the child be living with the employee or annuitant in a regular parent-child relationship, that the employee/annuitant be the principal source of support for the child, and that the employee/annuitant expect to raise the child to adulthood. The employee/

annuitant must certify in writing that the child meets these requirements. Grandchildren can qualify as foster children only if they meet all the requirements.

3. Incontestability

This provision allows an erroneous enrollment to stand if it has been in effect for at least 2 years. There was already such a provision in the FEGLI contract, but it did not apply if the employee or annuitant was excluded from coverage by law or if the employee's position was excluded by regulation. The contractual provision also did not require that the individual have paid premiums for the erroneous coverage before incontestability could apply. The new statutory provision applies to all situations in which an administrative error allows an employee or annuitant to be insured when the law or regulations would otherwise prohibit the election. If the erroneous coverage and applicable premium withholdings have been in place for at least 2 years before the error is discovered, the coverage is allowed to stand.

This provision was effective for any findings of erroneous coverage made on or after October 30, 1998.

4. Direct Payment of Premiums

Before the enactment of Public Law 105-311, all employees and compensations and most annuitants whose pay/compensation/annuity was too small for premium withholdings had to terminate their FEGLI coverage. The only exception to this was FERS (Federal Employees' Retirement System) annuitants; these annuitants were allowed to make direct premium payments.

Public Law 105-311 extends the right to make direct payment of FEGLI premiums to anyone with insufficient pay, compensation, or annuity. These regulations provide that this applies when the "pay," after all other deductions, is insufficient on an ongoing basis, *i.e.*, when the situation is expected to continue for at least 6 months.

Insured individuals in this situation can choose either to terminate their FEGLI coverage or to make direct payments. Employees who choose to make direct payments must pay on a current basis; if they do not make the payments, the coverage cancels. Employees who choose to terminate are entitled to the 31-day extension of coverage and the right to convert. When the employee's pay again becomes sufficient for the premium withholdings, premiums will again be withheld from the employee's pay. Any

coverage that was terminated is automatically restored; coverage that was cancelled for nonpayment, however, will remain cancelled.

Annuity holders and compensationers who elect to make direct premium payments will remain on direct pay, even if their "pay" increases enough to allow withholdings.

This provision became effective the first pay period beginning on or after October 30, 1998.

5. Election of Unreduced Options B and C at Retirement

Before the enactment of Public Law 105-311, Option B and C coverage began to reduce for annuitants when they reached age 65. Both coverages reduced by 2% per month until there was no coverage left. This reduction was automatic, and annuitants had no choice about it. Because their coverage was reducing, annuitants paid no premiums after age 65.

Public Law 105-311 allows annuitants to make an election at retirement as to whether they want their Option B and Option C coverage to reduce. (This also applies to persons becoming insured as compensationers.) If they choose No Reduction, they will continue to pay premiums appropriate to their age beyond age 65. OPM has set April 24, 1999, as the effective date for this provision. This applies to persons separating for retirement or becoming insured as compensationers on or after that date.

Under these regulations, retiring employees (and persons becoming insured as compensationers) will choose how many of the Option B multiples for which they are eligible and how many of the Option C multiples for which they are eligible they actually want to continue. They will also elect either Full Reduction or No Reduction for all of their multiples of each type of Optional coverage. Shortly before an individual's 65th birthday, he/she will receive a reminder notice, showing what coverage the annuitant/compensationers elected and what the premiums will be for coverage beyond age 65. The individual will then have an opportunity to change his/her election, including choosing to have some multiples reduce and others not reduce. For persons who are already over age 65 at the time of retirement or becoming insured as a compensationers, the reminder notice will be sent as soon as the retirement processing is complete.

Public Law 105-311 also allows for an election opportunity for those who are already retired or insured as compensationers and who still have Option B coverage on the effective date

(April 24, 1999). Those who are over age 65 and whose Option B coverage has already started reducing will elect whether to freeze their remaining Option B at the amount in force on the effective date. These annuitants/compensationers will not have an election opportunity for Option C.

6. Portability

Public Law 105-311 set up a 3-year demonstration project for the portability of Option B coverage which would otherwise terminate. This provision allows certain individuals to continue their group coverage at the group rate plus an administrative surcharge. Those eligible for portability of their Option B are separating employees and employees exceeding 12 months in nonpay status, who meet the same 5-year/1st opportunity requirement as employees who are retiring. Ported coverage reduces by 50% when the insured individual reaches age 70 and terminates when the individual reaches age 80.

These regulations put in place the requirements and procedures for portability. OPM has set April 24, 1999, as the effective date for this provision.

7. Increased Option C Coverage

Before the enactment of Public Law 105-311, Option C coverage was \$5,000 for a spouse and \$2,500 for each eligible child.

Public Law 105-311 increased the coverage available under Option C to up to 5 multiples of the previous amounts. OPM has set April 24, 1999, as the effective date for this provision.

New employees and employees newly eligible on or after the effective date can elect the higher amounts within 31 days of becoming eligible. Employees who have a life event on or after April 24, 1999, can elect the higher amounts within 60 days after the life event. Employees who had a life event between October 30, 1998, and April 23, 1999, were allowed to elect the increased coverage within 60 days of April 24, 1999; their increased coverage was effective April 24, 1999.

8. Open Season

Public Law 105-311 required OPM to conduct an open season no later than 180 days after the date of enactment, with coverage elected during the open season effective 365 days after the start of the open season.

OPM held an open enrollment period from April 24, 1999, through June 30, 1999. All eligible employees were able to elect or increase coverage. The effective date of open enrollment elections is the first pay period

beginning on or after April 23, 2000, which follows a pay period in which the employee was in pay and duty status for the required amount of time.

9. Study and Report

Public Law 105-311 also required OPM to conduct a study and submit a report to Congress on Federal employees' interest in other types of life insurance, specifically group universal life insurance, group variable universal life insurance, and additional voluntary accidental death and dismemberment insurance. OPM completed the study, which showed that there is some interest in these other life insurance products. OPM submitted its report to Congress May 4, 1999.

Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. This notice is being waived in order to implement legislation which has become effective.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect life insurance benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 870 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. Revise the authority citation for part 870 to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under section 599C of Public Law 101-513, 104 Stat. 2064, as amended; § 870.302(a)(3)(ii) also issued under sec. 153 of Public Law 104-134, 110 Stat. 1321; § 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Public Law 105-33, 111 Stat. 251 and section 7(e) of Public Law 105-274, 112 Stat. 2419.

2. In § 870.101, revise the definition of the first appearance of *Child* and add the definitions *Portability Office*, *Ported coverage*, and *Regular parent-child relationship* in alphabetical order to read as follows:

§ 870.101 Definitions.

* * * * *

Child, as used in the definition of *Family member* for Option C coverage, means a legitimate child, an adopted child, a stepchild or foster child who lives with the employee or former employee in a regular parent-child relationship, or a recognized natural child. It does not include a stillborn child or a grandchild (unless the grandchild meets all the requirements of a foster child). The child must be under age 22 or, if age 22 or over, must be incapable of self-support because of a mental or physical disability which existed before the child reached age 22.

* * * * *

Portability Office means the office OPM designates to manage ported coverage and to collect premiums for ported coverage.

Ported coverage means continued coverage that would otherwise have terminated.

* * * * *

Regular parent-child relationship means that the employee or former employee is exercising parental authority, responsibility, and control over the child by caring for, supporting, disciplining, and guiding the child, including making decisions about the child's education and medical care.

* * * * *

§ 870.104 [Redesignated as § 870.105]

3. Redesignate § 870.104 as § 870.105 and amend it by revising paragraph (a), and add a new § 870.104 to read as follows:

§ 870.104 Incontestability.

(a) If an individual erroneously becomes insured, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the individual has paid applicable premiums during that time. This applies to errors discovered on or after October 30, 1998.

(b) If an employee is erroneously allowed to continue insurance into retirement or compensation, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the annuitant or compensationner has paid applicable premiums during that time. This applies to such errors discovered on or after October 30, 1998.

(c) If an individual who is allowed to continue erroneous coverage because of incontestability does not want the coverage, he/she may cancel the coverage on a prospective basis. There is no refund of premiums.

§ 870.105 Initial decision and reconsideration.

(a) An individual may ask his/her agency or retirement system to reconsider its initial decision denying life insurance coverage, the opportunity to change coverage, the opportunity to assign insurance, or the opportunity to elect portability for Option B coverage.

* * * * *

4. Revise § 870.202(a)(1)(ii) to read as follows:

§ 870.202 Basic insurance amount (BIA).

(a)(1) * * *

(ii) \$10,000; whichever is higher, unless an employee has elected a Living Benefit under subpart K of this part. Effective for pay periods beginning on or after October 30, 1998, there is no maximum BIA.

* * * * *

5. Revise § 870.205(a), (b)(1), and (c) to read as follows:

§ 870.205 Amount of Optional insurance.

(a) Option A coverage is \$10,000. Effective for pay periods beginning on or after October 30, 1998, Option A cannot exceed this amount. Exception: This does not apply to annuitants who retired with a higher amount of Option A before the removal of the maximum on Basic insurance (the first pay period beginning on or after October 30, 1998).
(b)(1) Option B coverage comes in 1, 2, 3, 4, or 5 multiples of an employee's annual pay (after the pay has been rounded to the next higher thousand, if not already an even thousand). Effective for pay periods beginning on or after October 30, 1998, there is no maximum amount for each multiple.

* * * * *

(c) Effective April 24, 1999, Option C coverage comes in 1, 2, 3, 4, or 5 multiples of the following amounts: \$5,000 on the death of a spouse and \$2,500 on the death of an eligible child. Payments are made to the insured individual.

6. Revise § 870.301(b) and add a new § 870.303 to subpart C to read as follows:

Subpart C—Eligibility

§ 870.301 Eligibility for life insurance.

* * * * *

(b)(1) Optional insurance must be specifically elected; it is not automatic.

(2) An employee may elect one or more types of Optional insurance if:

(i) He/she has Basic insurance; and
(ii) He/she does not have a waiver of that type (or types) or Optional insurance still in effect.

* * * * *

§ 870.303 Eligibility of foster children under Option C.

(a) Effective October 30, 1998, foster children are eligible for coverage as family members under Option C.

(b) To qualify for coverage as a foster child, the child must meet the following requirements:

(1) The child must live with the insured employee, annuitant, or compensationner;

(2) The parent-child relationship (as defined in § 870.101) must be with the insured employee, annuitant, or compensationner, not the biological parent;

(3) The employee, annuitant, or compensationner must be the primary source of financial support for the child; and

(4) The employee, annuitant, or compensationner must expect to raise the child to adulthood.

(c) A child placed in an insured individual's home by a welfare or social service agency under an agreement by which the agency retains control of the child or pays for maintenance does not qualify as a foster child.

(d)(1) An insured individual wishing to cover a foster child must sign a certification stating that the child meets all the requirements and that he/she will notify the employing office or retirement system if the child marries, moves out of the home, or stops being financially dependent on the employee, annuitant, or compensationner.

(2) The employing office or retirement system must keep the signed certification in the insured individual's file, along with other life insurance forms.

(e) A foster child who moves out of the insured individual's home to live with a biological parent loses eligibility and cannot again be covered as a foster child unless:

(1) The biological parent dies;

(2) The biological parent is imprisoned;

(3) The biological parent becomes unable to care for the child due to a disability; or

(4) The employee, annuitant, or compensationner obtains a court order taking parental responsibility away from the biological parent.

7. Revise § 870.402(c) to read as follows:

§ 870.402 Withholdings for Optional insurance.

* * * * *

(c)(1) Subject to the provisions for reemployed annuitants in § 870.707, the full cost of Optional insurance must be withheld from the annuity of an annuitant and from the compensation of a compensationoner.

(2) The withholdings for Option A stop the month after the month in which an annuitant or compensationoner reaches age 65.

(3) For an annuitant or compensationoner who elects Full Reduction for any Option B or Option C multiples, the withholdings for those multiples stop the month after the month in which he/she reaches age 65.

(4) For an annuitant or compensationoner who elects No Reduction for any Option B or Option C multiples, the withholdings for those multiples continue, as long as he/she remains insured.

* * * * *

8. Revise § 870.405 to read as follows:

§ 870.405 Direct premium payments.

(a) Since January 1, 1988, annuitants who retired under 5 U.S.C. chapter 84 (Federal Employees' Retirement System) have been able to make direct premium payments if their annuity became too small to cover the premiums. Effective the first pay period beginning on or after October 30, 1998, all employees, annuitants, and compensationoners whose pay, annuity, or compensation is insufficient to cover the withholdings can make direct premium payments.

(b)(1) For an individual to be eligible to make direct premium payments, the employing office or retirement system must determine that the pay, annuity, or compensation, after all other deductions, is expected to be insufficient on an ongoing basis, *i.e.*, for the next 6 months or more.

(2) This section does not apply to employees in nonpay status. Employees in nonpay status are governed by § 870.404(c).

(c)(1) When the employing office or retirement system determines that the pay, annuity, or compensation is insufficient, and will be insufficient on an ongoing basis, it must notify the insured individual (or the assignee, if the individual has assigned his/her insurance under subpart I of this part) in writing and inform him/her of the available choices.

(2) Within 31 days of receiving the notice (45 days for individuals living overseas), the insured individual (or assignee) must return the notice to the employing office or retirement system, choosing either to terminate some or all of the insurance or to make direct premium payments. An employee, annuitant, or compensationoner is

considered to receive a mailed notice 5 days after the date of the notice.

(3) If an individual does not return the notice within the required time frames, the employing office or retirement system will terminate the insurance.

(d)(1) Terminated coverage stops at the end of the last pay period for which premiums were withheld.

(2) An individual whose insurance terminates, either by choice or by failure to return the notice, gets the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(3)(i) When an employee's pay again becomes sufficient to allow premium withholdings, the employing office will automatically reinstate the terminated coverage.

(ii) An annuitant or compensationoner whose coverage terminates cannot have the coverage reinstated when the annuity or compensation becomes sufficient to cover withholdings.

(e)(1) Employing offices and retirement systems must establish a method for accepting premium payments for insured individuals who choose to pay directly.

(2) Individuals who are paying directly must send the required premium payment to the employing office or retirement system for every pay period during which coverage continues. The insured individual must make the payment after each pay period, according to the schedule established by the employing office or retirement system.

(3)(i) When an employee's pay again becomes sufficient to allow premium withholdings, he/she must stop making direct payments. The employing office will begin to withhold premiums automatically.

(ii) An annuitant or compensationoner who is making direct premium payments must continue to pay directly, even if the annuity or compensation becomes sufficient to allow withholdings.

(f) The employing office or retirement system must submit all direct premium payments, along with its regular life insurance premiums, to OPM according to procedures set by OPM.

(g)(1) If an individual on direct pay fails to make the required premium payment on time, the employing office or retirement system must notify the individual. The individual must make the payment within 15 days after receiving the notice (45 days if living overseas). An individual is considered to receive a mailed notice 5 days after the date of the notice.

(2) If an insured individual fails to make the overdue payment, his/her

insurance cancels. Cancellation is effective at the end of the last pay period for which payment was received.

(3) An individual whose insurance cancels for nonpayment does not get the 31-day extension of coverage or the right to convert provided in subpart F of this part.

(4) Coverage that cancels for nonpayment is not reinstated when the individual's pay, annuity, or compensation becomes sufficient to allow withholdings, except as provided by paragraph (g)(5) of this section.

(5) If, for reasons beyond his/her control, an insured individual is unable to pay within 15 days of receiving the past due notice (45 days if living overseas), he/she may request reinstatement of coverage by writing to the employing office or retirement system within 30 days from the date of cancellation. The individual must provide proof that he/she was prevented from paying within the time limit for reasons beyond his/her control. The employing office or retirement system will decide if the individual is eligible for reinstatement of coverage. If the employing office or retirement system approves the request, the coverage is reinstated back to the date of cancellation, and the individual must pay the back premiums.

9. Revise § 870.506(a) to read as follows:

§ 870.506 Optional insurance: cancelling a waiver.

(a) *When there is a change in family circumstances.* (1) An employee cannot cancel a waiver of Option A due to a change in family circumstances.

(2) An employee who has waived Option B coverage can elect it, and an employee who has fewer than 5 multiples of Option B can increase the number of multiples, upon his/her marriage or divorce, upon a spouse's death, or upon acquiring an eligible child. Exception: Acquiring a foster child does not qualify an employee to elect or increase Option B coverage.

(3) The number of multiples of Option B coverage that an employee can obtain or add (which cannot exceed a total of 5) is limited to the following:

(i) For marriage, the number of additional family members (spouse and eligible children) acquired with the marriage;

(ii) For acquisition of children, the number of eligible children acquired; and

(iii) For divorce or death of a spouse, the total number of eligible children of the employee.

(4)(i) An employee who has waived Option C coverage can elect it, and an

employee who has fewer than 5 multiples of Option C can increase the number of multiples, upon his/her marriage or upon acquiring an eligible child. An employee can also elect Option C coverage upon divorce or death of a spouse, if the employee has any eligible children.

(ii) An employee electing or increasing Option C coverage may elect any number of multiples, as long as the total number of multiples does not exceed 5.

(5)(i) Except as stated in paragraph (a)(5)(iii) of this section, the employee must file an election under paragraph (a)(2) or (a)(4) of this section with the employing office, in a manner designated by OPM, along with proof of the event, no later than 60 days following the date of the event that permits the election; the employee may instead file the election before the event and provide proof no later than 60 days following the event.

(ii) This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event or if the individual separates from covered service prior to the end of the 60-day time limit. This extension cannot exceed the 31-day time limit for electing insurance following employment in a covered position or, for an election under paragraph (a)(4) of this section, the 31-day period following the 1st day on which the individual becomes eligible to cancel a waiver of Basic insurance.

(iii) An employee making an election under paragraph (a)(4)(i) of this section because of acquiring an eligible foster child must file the election with the employing office no later than 60 days after completing the required certification.

(iv) Employees who had a change in family circumstances between October 30, 1998, and April 23, 1999, had until June 23, 1999, to make an election under this section.

(6)(i) The effective date of Option B insurance elected under paragraph (a)(1) of this section is the 1st day the employee actually enters on duty in pay status on or after the day the employing office receives the election.

(ii) The effective date of Option C coverage elected because of marriage, divorce, death of a spouse, or acquiring an eligible child other than a foster child is the day the employing office receives the election, or the date of the event, whichever is later. Exception: Coverage elected under paragraph (a)(5)(iv) of this section was effective April 24, 1999.

(iii) The effective date of Option C coverage elected because of acquiring a

foster child is the date the employing office receives the election or the date the employee completes the certification, whichever is later.

10. Add new paragraph (e) to § 870.601 to read as follows:

§ 870.601 Termination of Basic insurance.

* * * * *

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405 of this part, Basic insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of Basic insurance.

11. In § 870.602 revise paragraphs (a), (c), and (e) to read as follows:

§ 870.602 Termination of Optional insurance.

(a)(1) The Optional insurance of an insured employee stops when his/her Basic insurance stops, subject to the same 31-day extension of coverage.

(2) An employee who meets the requirements for portability, as provided in subpart L of this part, may elect portability for his/her Option B coverage, instead of having it terminate.

* * * * *

(c)(1) If an insured employee is not eligible to continue Optional coverage as an annuitant or compensationer as provided by § 870.701, the Optional insurance stops on the date that his/her Basic insurance is continued or reinstated under the provisions of § 870.701, subject to a 31-day extension of coverage.

(2) A compensationer who meets the requirements for portability, as provided in subpart L of this part, may elect portability for his/her Option B coverage, instead of having it terminate.

* * * * *

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405 of this part, Optional insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of the Optional insurance. If an individual has more than one type of Optional insurance and his/her pay, annuity, or compensation is sufficient to cover some but not all of the insurance, the multiples of Option C terminate first, followed by Option A, and then the multiples of Option B.

§ 870.703 [Removed]

§ 870.702 [Redesignated as § 870.703]

12. Remove § 870.703, redesignate § 870.702 as § 870.703, and add a new § 870.702 to read as follows:

§ 870.702 Amount of Basic insurance.

(a) The amount of Basic insurance an annuitant or compensationer can continue is the BIA on the date insurance would otherwise have stopped because of the individual's separation from service or completion of 12 months in nonpay status. The amount of Basic insurance in force is the BIA minus any reductions applicable under § 870.703(a).

(b)(1) For the purpose of paying benefits upon the death of an insured individual under age 45 who is retired or receiving compensation, the BIA will be multiplied by the appropriate age factor shown in § 870.202(c) of this part. Exceptions:

(i) If the insured individual retired or became insured as a compensationer before October 10, 1980, or

(ii) If the insured individual elected a partial Living Benefit as an employee under subpart K of this part.

(2)(i) For an annuitant or compensationer who elected a partial Living Benefit as an employee, the amount of Basic insurance he/she can continue is the post-election BIA, as shown in § 870.203(a)(2) of this part.

(ii) For the purpose of paying benefits upon the death of an insured annuitant or compensationer under age 45 who elected a partial Living Benefit as an employee, the BIA will be multiplied by the age factor in effect on the date OFEGLI received the completed Living Benefit application.

13. Redesignate §§ 870.704, 870.705, and 870.706 as §§ 870.706, 870.707, and 870.708 respectively, and add new §§ 870.704 and 870.705 to read as follows:

§ 870.704 Amount of Option A.

(a) The amount of Option A coverage an annuitant or compensationer can continue is \$10,000.

(b) An annuitant's or compensationer's Option A coverage reduces by 2 percent of the original amount each month up to a maximum reduction of 75 percent. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the date of the insured's 65th birthday, whichever is later.

§ 870.705 Amount and election of Option B and Option C.

(a) The number of multiples of Option B and Option C coverage an annuitant or compensationner can continue is the highest number of multiples in force during the applicable period of service required to continue Option B and Option C.

(b)(1)(i) At the time an employee retires or becomes insured as a compensationner, he/she must elect the number of allowable multiples he/she wishes to continue during retirement or while receiving compensation.

(ii) An employee who elects to continue fewer multiples than the number for which he/she is eligible is considered to have cancelled the multiples that are not continued.

(iii) Employees separating for retirement and employees becoming insured as compensationners on or after April 24, 1999, must also elect either Full Reduction or No Reduction for all of the multiples being continued.

(iv) An employee who does not make a reduction election is considered to have chosen Full Reduction.

(2)(i) Prior to reaching age 65, an annuitant or compensationner can change from No Reduction to Full Reduction at any time. Exception: If the individual has assigned his/her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage.

(ii) Prior to reaching age 65, an annuitant or compensationner can change from Full Reduction to No Reduction at any time.

(3)(i) After reaching age 65, an annuitant or compensationner can change from No Reduction to Full Reduction at any time. Exception: If the individual has assigned his/her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage. If an individual age 65 or over changes to Full Reduction, the amount of insurance in force is computed as if he/she had elected Full Reduction initially. There is no refund of premiums.

(ii) Except as provided in paragraph (b)(4) of this section, after reaching age 65, an annuitant or compensationner cannot change from Full Reduction to No Reduction.

(4)(i) Shortly before an annuitant or compensationner's 65 birthday, the retirement system will send a reminder about the election he/she made and will offer the individual a chance to change the election. At that time, the annuitant or compensationner can choose to have

some multiples of Option B and Option C reduce and some not reduce.

(ii) If the individual is already 65 or older at the time of retirement or becoming insured as a compensationner, the retirement system will send the reminder and give the opportunity to change the election as soon as the retirement processing or compensation transfer is complete.

(iii) If the individual assigned his/her insurance as provided in subpart I of this part, and if the employee elected No Reduction for Option B coverage at the time of retirement or becoming insured as a compensationner, the retirement system will send the reminder notice for Option B coverage to the assignee.

(iv) An annuitant or compensationner who wishes to change his/her reduction election must return the notice by the end of the month following the month in which the individual turns 65, or if already over age 65, by the end of the 4th month after the date of the letter. An annuitant or compensationner who does not return the election notice will keep his/her initial election.

(c)(1) For each multiple of Option B and/or Option C for which an individual elects Full Reduction, the coverage reduces by 2 percent of the original amount each month. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the insured's 65th birthday, whichever is later. At 12:00 noon on the day before the 50th reduction, the insurance stops, with no extension of coverage or conversion right.

(2) For each multiple of Option B and/or Option C for which an individual elects No Reduction, the coverage in force does not reduce. After age 65 the annuitant or compensationner continues to pay premiums appropriate to his/her age.

(d)(1) Employees who were already retired or insured as compensationners on April 24, 1999, and who had Option B, were given an opportunity to make an election for Option B.

(i) Annuitants and compensationners who were under age 65 were notified of the option to elect No Reduction. The retirement system will send these individuals an actual election notice before their 65th birthday, as provided in paragraph (b)(4) of this section.

(ii) Annuitants and compensationners who were age 65 or older, and who still had some Option B coverage remaining, were given the opportunity to stop further reductions. These individuals had until October 24, 1999, to make the No Reduction election. The amount of Option B coverage retained was the

amount in effect on April 24, 1999. Those annuitants and compensationners who elected No Reduction were required to pay premiums retroactive to April 24, 1999.

(2) Employees who were already retired or insured as compensationners on April 24, 1999, could not elect No Reduction for Option C.

14. Add § 870.801(d)(3)(v) to read as follows:

§ 870.801 Order of precedence and payment of benefits.

* * * * *

(d) * * *

(3) * * *

(v) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

* * * * *

15. Revise § 870.802(b) and (g)(1) to read as follows:

§ 870.802 Designation of beneficiary.

* * * * *

(b) A designation of beneficiary must be in writing, signed by the insured individual, and witnessed and signed by 2 people. The appropriate office must receive the designation before the death of the insured.

(1) For employees, the appropriate office is the employing office.

(2) For annuitants and compensationners, the appropriate office is OPM.

(3) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

* * * * *

(g)(1) A designation of beneficiary is automatically cancelled 31 days after the individual stops being insured. Exception: If the individual elects portability for Option B, a valid designation remains in effect.

* * * * *

16. Revise § 870.902 to read as follows:

§ 870.902 Making an assignment.

(a) To assign insurance, an insured individual must complete an approved assignment form. Only the insured individual can make an assignment; no one can assign on behalf of an insured individual.

(b) The individual must submit the completed and signed form to the appropriate office indicating the intent to irrevocably assign all ownership of the insurance. The form must also be witnessed and signed by 2 people.

(1) For employees, the appropriate office is the employing office.

(2) For annuitants and compensationers, the appropriate office is OPM.

(3) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

17. Revise § 870.907(c) to read as follows:

§ 870.907 Termination and conversion.

* * * * *

(c) An assignment terminates 31 days after the insurance terminates, unless the insured individual is reemployed in or returns to a position in which he/she is entitled to coverage under this part within 31 days after the insurance terminates. Exception: If an employee elects portability for Option B coverage, an assignment remains in effect. If the individual returns to Federal service, Basic insurance and any Option A insurance acquired through returning to service is subject to the existing assignment.

18. A new subpart L is added to read as follows:

Subpart L—PORTABILITY

- 870.1201 Portability permitted.
- 870.1202 Eligibility.
- 870.1203 Amount of insurance.
- 870.1204 Cost of insurance.
- 870.1205 Electing portability for Option B.
- 870.1206 Termination and cancellation of ported coverage.
- 870.1207 Designations, assignments, and court orders.
- 870.1208 Return to active service.

Subpart L—Portability

§ 870.1201 Portability permitted.

(a) Effective April 24, 1999, until April 24, 2002, eligible employees may elect portability for Option B coverage that would otherwise terminate.

(b) An individual cannot elect portability for Basic insurance, Option A, or Option C.

§ 870.1202 Eligibility.

(a) An employee is eligible to elect portability for Option B if:

(1) His/her coverage is terminating due to separation or completion of 12 months in nonpay status; and

(2) He/she has had Option B for the 5 years of service immediately before the date the coverage would otherwise terminate, or for the full period(s) of service during which he/she was eligible to have Option B, if less than 5 years.

(b) If the employee has assigned his/her coverage as provided in subpart I of this part, it is the assignee who has the right to elect portability.

§ 870.1203 Amount of insurance.

(a) An employee can elect portability for up to the highest number of Option B multiples that meet the requirements of § 870.1202(a)(2).

(b)(1) An individual with ported coverage can reduce the number of multiples at any time. Exception: If the individual assigned his/her coverage as provided in subpart I of this part, only the assignee has the right to reduce the number of multiples.

(2) An individual with ported coverage cannot increase the number of multiples.

(c) Salary changes have no effect on the amount of Option B coverage in force for an individual with ported coverage.

(d) The amount of ported coverage in force reduces by 50 percent at the beginning of the 2nd calendar month after the individual reaches age 70 or, if the individual is 70 or older at the time he/she elects portability, the 2nd month after the effective date of the ported coverage.

§ 870.1204 Cost of insurance.

(a)(1) The cost of ported coverage is the cost shown in § 870.402(e).

(2) In addition to the premium payments for Option B, individuals with ported coverage must pay a monthly administrative fee, in an amount set by OPM.

(b) The Portability Office will establish a schedule for the premium payments. An individual with ported coverage must make payment to the Portability Office on a timely basis.

§ 870.1205 Electing portability for Option B.

(a) The employing agency must notify the employee/assignee(s) of the loss of coverage and the right to elect portability for Option B either before or immediately after the event causing the loss of coverage.

(b)(1) The employee/assignee(s) must submit the request to elect portability to the employing office and to the Portability Office within 60 days following the date of the terminating event (74 days if living overseas). A mailed notification or request is considered to be received 5 days after the date of the notification/request.

(2) An employee/assignee who fails to request portability within the required time frame is considered to have refused coverage.

(3) Ported coverage is effective the day after coverage as an employee ends.

§ 870.1206 Termination and cancellation of ported coverage.

(a)(1) Ported coverage stops April 24, 2002, subject to the 31-day extension of

coverage and right to convert, as provided in subpart F of this part.

(2) Ported coverage stops at the beginning of the 2nd calendar month after the individual reaches age 80 or, if the individual is age 80 or older at the time he/she elects portability, the 2nd month after the effective date, subject to the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(b)(1) An individual with ported coverage can cancel coverage at any time. Exception: If the individual assigned his/her coverage as provided in subpart I of this part, only the assignee can cancel coverage.

(2) If an individual with ported coverage does not make a premium payment on time, the Portability Office will send him/her a notice stating that coverage will continue only if the individual makes payment within 15 days after receiving the notice (45 days if living overseas). If the individual does not make payment within this time frame, Option B coverage cancels.

(3) An individual whose ported coverage cancels, whether voluntarily or for nonpayment, does not get the 31-day extension of coverage or the right to convert.

§ 870.1207 Designations, assignments, and court orders.

(a)(1) If an employee has a valid designation of beneficiary on file at the time he/she elects portability, that designation remains in effect.

(2) An individual with ported coverage who wishes to file a designation of beneficiary must submit the form to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any designation of beneficiary remains in effect.

(b)(1) If an employee assigns his/her coverage before electing portability for Option B, that assignment remains in effect.

(2) If an individual with ported coverage wishes to make an assignment, he/she must submit the form to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any assignment of coverage remains in effect. Basic insurance and any Option A coverage acquired through the return to service are subject to the existing assignment.

(c)(1) If the employing office received a valid court order on or after July 22, 1998, that court order remains valid for the ported coverage.

(2) Anyone wishing to submit a court order relating to an individual with ported coverage must submit it to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any valid court order on file remains in effect.

(d) When an individual submits a request to elect portability for Option B coverage, the employing office must send the originals of all designations, assignments, and court orders on file to the Portability Office.

§ 870.1208 Return to active service.

(a)(1) When an individual with ported coverage returns to Federal service, the agency must notify the Portability Office.

(2) The Portability Office must terminate the ported coverage and send the originals of all designations, assignments, and court orders to the new employing office.

(b) The employee will get back the number of multiples of Option B he/she had before the terminating event. Exceptions:

(1) A person who cancels a multiple or multiples of Option B coverage after electing portability will get back only the number of multiples remaining.

(2) A person whose ported coverage cancels for nonpayment of premiums will not get back any Option B coverage automatically.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 245

RIN 0584-AB35

Direct Certification of Eligibility for Free and Reduced Price Meals and Free Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the determination of eligibility for free and reduced price school meals under the National School Lunch Program and School Breakfast Program or free milk in schools participating in the Special Milk Program. The rule codifies procedures that allow school food authorities and State agencies to certify children eligible for free meals or free milk based on information obtained directly from the appropriate State or local agency administering the Food Stamp Program, the Food Distribution Program on Indian Reservations or the Temporary Assistance for Needy Families Program

(previously the Aid to Families with Dependent Children Program). This rule affects State agencies and participating school food authorities and households. These amendments respond to certain provisions in the Child Nutrition and WIC Reauthorization Act of 1989, comments received on the proposed rule published on May 28, 1991 (56 FR 24033), and provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. These amendments are intended to reduce administrative paperwork burdens, simplify the certification process for free and reduced price benefits, and facilitate the feeding of needy children.

EFFECTIVE DATE: These provisions are effective January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or phone (703) 305-2620.

SUPPLEMENTARY INFORMATION:

What Is the Background of This Rule?

Section 323 of Public Law (Pub. L.) 99-500 (Oct. 18, 1986) added section 9(b)(6) to the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.) (NSLA) to make children from food stamp households and children from Aid to Families with Dependent Children (AFDC) assistance units in States where the standard of eligibility for the assistance did not exceed 130 percent of the Federal poverty level automatically eligible for free meals or free milk. In keeping with this provision, households have been permitted to list their food stamp or AFDC case number on the free and reduced price application for school meals or milk in lieu of providing detailed household size and income information and a social security number for the adult household member signing the application. The statute also specified that proof of participation in the Food Stamp Program or the AFDC Program would be sufficient to verify eligibility. The regulations implementing these provisions are currently found at 7 CFR 245.5, 7 CFR 245.6 and 7 CFR 245.6a.

Subsequently, section 202(b)(1) of the Child Nutrition and WIC Reauthorization Act of 1989, Pub. L. 101-147, enacted on November 10, 1989, amended section 9(b)(2)(C) of the NSLA to allow school food authorities to certify children eligible for free or reduced price lunches or breakfasts, without further application, by directly communicating with the appropriate

State or local agency to obtain documentation that the children are members of either a household receiving food stamps or an assistance unit receiving AFDC. This certification process is commonly referred to as "direct certification." That provision also specified that school food authorities that obtain such information shall use the information *only* for the purpose of determining eligibility for participation in programs under the NSLA and the Child Nutrition Act (42 U.S.C. 1771 et seq.) (CNA).

Additionally, a statement adopted by key members of the House and Senate indicated their intent that school food authorities should provide parents the opportunity to decide whether or not they want their children to receive free meals by notifying parents that their children are eligible for free meal benefits and asking them to inform the school if they do not want their children to receive free meals. (135 Cong. Rec. H 6866 (Oct. 10, 1989) and S 14027 (Oct. 24, 1989)). The legislative history further indicated that school officials are to assume consent if they do not hear from the household within a certain number of days as specified by the Secretary.

On May 28, 1991, we published a proposed rule at 56 FR 24033 to amend 7 CFR part 245 to include direct certification. Moreover, we proposed to extend the direct certification provisions to include certification for free milk under the Special Milk Program operated in schools to maintain consistency between the school meal programs and the Special Milk Program in schools. Other institutions participating in the Special Milk Program are not authorized to use direct certification, because the statute limited direct certification to school food authorities. Further, although the law provided that the food stamp information or information provided under the AFDC Program may be used to determine eligibility for free or reduced price meals, under the proposed rule and this final rule, we deleted the references to reduced price meals because children who are members of food stamp households or members of households certified eligible for AFDC are automatically eligible only for free meal benefits under section 9(b)(6) of the NSLA.

We received fifty comments on the proposed rule during the 60-day public comment period. The majority viewed direct certification as a burden reduction measure and as a means to reach greater numbers of children. Please note that the May 28, 1991, rule also proposed to make the agreement