of the allowability of any costs under the carrier’s contract, nor will it relieve the car-
rier of any responsibility for performing the contract.

(b) Records and Inspection. The carrier must in all Large Provider Agreements the
requirement that the provider will retain and make available to the Government all
records relating to the agreement that sup-
port the annual statement of operations and enrollee records—Retain for 6 years after the
agreement term ends.

(c) Audit and Records—Negotiation. The pro-
visions of FAR 52.215–2, “Audit and
Records—Negotiation,” when required, or
FEHBAR 1652.246–70, “FEHB Inspection”
apply to all experience-rated Carriers’ Large
Provider Agreements. The Carrier will insert
the clauses at FAR 52.215–2, when applicable,
or FEHBAR 1652.246–70 in all Large Provider
Agreements. In FAR 52.215–2 the carrier will substitute:

1. The term “Large Provider” for the term
“Contractor” throughout the clause, and

2. The term “Large Provider Agreement”
for the term “Subcontracts” in paragraph (g)
of FAR 52.215–2. The term “Contracting offi-
cer” will mean the FEHB Program Con-
tracting officer at OPM. The carrier will be
responsible for ensuring the Large Provider
agreement term ends.

Prohibited Agreements. No provider
agreement made under this contract will
provide for payment on a cost-plus-a-per-
centage-of-cost basis.

(e) The carrier will insert this clause,
1652.204–74, in all Large Provider Agreemen-
t. rates with a rating methodology and struc-
ture inconsistent with that used to develop
rates for similarly sized subscriber groups
(see FEHBAR 1602.170–13) as certified in the
Certificate of Accurate Cost or Pricing Data
for Community Rated Carriers; or (4) the
Carrier submitted or, or kept in its files in
support of the FEHBP rate, data or informa-
tion of any description that were not com-
plete, accurate, and current—then, the rate
shall be reduced in the amount by which the
price was increased because of the defective
data or information.

(h)(1) If the Contracting Officer determines
under paragraph (a) of this clause that a
price or cost reduction should be made, the
Carrier agrees not to raise the following
matters as a defense:

1. If any rate established in connection
with this contract was increased because (1)
the Carrier submitted, or kept in its files in
support of the FEHBP rate, cost or pricing
data that were not complete, accurate, or
current as certified in the Certificate of Ac-
curate Cost or Pricing Data (FEHBAR
1615.406–2); (2) the Carrier submitted, or kept
in its files in support of the FEHBP rate,
cost or pricing data that were not accurate
as represented in the rate proposal docu-
ments; (3) the Carrier developed FEHBP
dates with a rating methodology and struc-
ture inconsistent with that used to develop
rates for similarly sized subscriber groups
(see FEHBAR 1602.170–13) as certified in the
Certificate of Accurate Cost or Pricing Data
for Community Rated Carriers; or (4) the
Carrier submitted or, or kept in its files in
support of the FEHBP rate, data or informa-
tion of any description that were not com-
plete, accurate, and current—then, the rate
shall be reduced in the amount by which the
price was increased because of the defective
data or information.
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even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used; and,

(2) A penalty equal to the amount of overpayment, if the Carrier's submitted cost or pricing data which was incomplete, inaccurate, or noncurrent.

(End of clause)

[62 FR 47576, Sept. 10, 1997, as amended at 64 FR 36273, July 6, 1999; 65 FR 36387, June 8, 2000; 70 FR 31383, June 1, 2005]


As prescribed in 1615.470–1, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

INVESTMENT INCOME (JAN 1998)

(a) The Carrier shall invest and reinvest all FEHB funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier shall seek to maximize investment income with prudent consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHB funds shall be credited to the Special Reserve on behalf of the FEHB.

(c) When the Contracting Officer concludes that the Carrier failed to comply with paragraph (a) or (b) of this clause, the Carrier shall credit the Special Reserve with investment income that would have been earned, at the rate(s) specified in paragraph (f) of this clause, had it not been for the Carrier's noncompliance. "Failed to comply with paragraph (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failure to credit any income due the contract or failure to place excess funds in income producing investments and accounts. Other amounts owed the Special Reserve, in income producing investments and accounts.

(d) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(e) Investment income lost as a result of failure to credit income due the contract or failure to place excess funds in income producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All lost investment income payable shall bear simple interest at the quarterly rate determined by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

(g) The Carrier shall incorporate this clause into agreements with underwriters of the Carrier’s FEHB plan and shall substitute "underwriter" or other appropriate reference for the term “Carrier.”

(End of clause)

[55 FR 27416, July 2, 1990, as amended at 62 FR 47576, Sept. 10, 1997; 70 FR 31383, June 1, 2005]

1652.216–70 Accounting and price adjustment.

As prescribed in section 1616.7001, the following clause shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

ACCOUNTING AND PRICE ADJUSTMENT (JAN 2003)

(a) Annual Accounting Statement. The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) Adjustment. (1) This contract is community rated as defined in FEHBA 1902.170–2.