

Chapter 150 - Resource Guides and Informational Tools

Subchapter 05 - Resource Materials

15005.010 Temporary Emergency Worker Exclusion: Resource Guide

This new POMS SL 15005.010 contains the Temporary Emergency Worker Exclusion: Resource Guide. The purpose of the guide is to examine the temporary emergency worker exclusion from FICA tax withholding by providing general information on the laws and regulations that pertain to the exclusion as well as detailing the possible situations in which a temporary emergency worker may exist. The information found in this guide does not account for every possible situation, but what is most commonly practiced by State and local governments. Therefore, all information along with all questions and answers are provided for general information only.

The temporary emergency worker exclusion states that effective January 1, 1968 services warranted because of the existence of an unforeseen event that call for immediate action by emergency personnel are excluded from FICA tax withholding. Such emergencies can be, but are not necessarily limited to fire, storm, snow, earthquake, flood, or other similar event.

Temporary Emergency Worker Exclusion: Resource Guide

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15005.020 Desk Guide to Modifications and Dissolutions

This section contains general reminders based on common errors in submitting modifications and dissolutions. It is not a substitute for existing legal authorities. This section does not cover all situations that may arise.

A. Preview of Contents

[Tips for modifications](#)

[Tips for error modifications](#)

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B. Tips for modifications

1. The relevant law

The legal basis for voluntary agreements for coverage of State and local employees is Section 218 of the Social Security Act, codified at [42 U.S.C. § 418](#) . The corresponding federal regulations for Section 218 agreements are [20 C.F.R. §§ 404.1200-404.1299](#) . For policy guidance on the agreements, refer to the State and local Coverage Handbook (SLCH) in SL 10001.000. A reference for Social Security and Medicare coverage and Federal Insurance Contributions Act (FICA) tax withholding issues is [IRS Publication 963](#) , **The Federal-State Reference Guide**.

2. Agreement and Modification Exhibits

Check the example language in the Agreement and Modification Exhibits, SL 40001.490.

3. Status of the entity

Is the entity a political subdivision? For definitions see [42 U.S.C. § 418\(b\)\(2\)](#) ; [20 C.F.R. § 404.1202](#) . For information on political subdivisions, see SL 30001.316A). The State should include a reference to the statutory authority that established its status. For information on minor corrections before executing a modification, see SL 40001.420D. The State can provide this information on a separate sheet or include within the modification.

4. Employer Identification Number (EIN)

Be sure the modification includes the [Employer Identification Number \(EIN\)](#) for the entity seeking coverage.

5. Termination of a prior coverage agreement

Before 1983, we allowed the termination of coverage agreements; we no longer allow termination of a coverage agreement.

If a modification concerns an entity that previously had a coverage agreement that was later terminated, you must include the following information per SL 40001.440:

- A statement that the group's coverage previously terminated
- Effective date of the termination
- Previously assigned EIN
- Modification number of the agreement that was terminated

6. Effective date of coverage [218(e)(1) date]

The effective date of coverage may not be earlier than the last day of the sixth calendar year preceding the year in which the State mails or delivers by other means the modification to the Social Security Administration (SSA).

For example, if the mailing or delivery date was December 26, 2007, the effective date of coverage for this modification cannot be earlier than the last

day of the sixth calendar year preceding 2007, which would be December 31, 2001. For additional information on effective date of coverage, see [20 C.F.R. § 404.1215\(d\)](#) and SL 30001.375.

7. Date for entitlement to the retroactive coverage [218(e)(2) date]

This designated date cannot be earlier than the date the State mails or otherwise delivers the modification to SSA. See [20 C.F.R. § 404.1215\(b\)](#) Controlling date for retroactive coverage; SL 30001.375 Effective Dates of Coverage. If the modification seeks prospective coverage, use the date of the error to determine retroactive coverage.

8. Optional exclusions

Check for optional exclusions contained in the modification that are permitted by federal and state laws, see SL 30001.357 Optional Exclusions. Make sure the descriptions of the optional exclusions conform to federal law. If the State excludes part-time positions, the definition of part-time positions should be included in the modification, see SL 40001.420B.1. The State.

9. Certificate of referendum requirement for Retirement System Coverage Groups

a. Referendum for each retirement system

Make sure every modification involving a retirement-system coverage group includes a certification of referendum that shows each retirement system involved voted separately.

See also

- [20 C.F.R. §§ 404.1206-404.1207](#) Coverage groups;
- SL 30001.320 through SL 30001.334 Retirement system coverage groups
- SL 40001.420C Forwarding additional information with modification

b. Certification of referendum for majority vote versus divided vote

The certification of referendum should reference 218(d)(3) for a regular majority vote retirement system and include particular language. Where a retirement system, for referendum purposes, retains its identity as a single retirement system and covers all employees whose positions the State brought under the retirement system, do not need another referendum. For Composition of Majority Vote Retirement System, see SL 30001.324. The referendum should reference 218(d)(7) for a divided vote retirement system and include particular language. For example language for the certifications of referendum for majority vote and divided vote, see exhibits 8 and 11 in SL 40001.490.

c. Two-year deadline

The State has two years from the date of a favorable referendum to enter into a modification extending coverage to the retirement-system coverage group. For example, if the State holds a referendum in September 2007, then SSA must sign and execute the modification by September 2009. For referendum time limitations, see SL 30001.333E.

d. One-year waiting period

If there has been an unfavorable referendum, the State cannot hold another referendum for this particular group seeking coverage until at least one year after that unfavorable referendum. For referendum time limitations, see SL 30001.333E.

e. Identification Modifications do not need a referendum.

We provide a sample identification modification in Exhibit 6 of SL 40001.490. These are used to identify political subdivisions that join a retirement system after the State has extended coverage to all employees of participating retirement systems. As stated in section SL 15005.020B.8., where a retirement system for purposes of the referendum retains its identity as a single retirement system, all employees whose positions are brought under the retirement system after the agreement was made applicable to that retirement system are covered without the need for another referendum. For Composition of a Majority Vote Retirement System, see SL 30001.324

10. Check for name discrepancies and misspellings

- Discrepancies between the name associated with the assigned EIN and the name listed in the modification;
- Misspellings in the name listed in the modification, the accompanying certificate of referendum, or on any Resolution provided;
- Discrepancies between the name listed in the modification, the name in the certificate of referendum, and the name on any Resolution provided.

A pen-and-ink change is permissible to correct clerical errors such as minor name discrepancies where the errors do not affect coverage. For minor corrections to a modification, see SL 40001.420D.

11. Required signatures

Did the authorized State official sign the modification?

If no, does the State want to add that official’s name to the proper list of authorized officials?

If yes, the State should send a written request with the information.

If no, return the modification for a proper signature. Check to see if the State requires more than one signature.

12. Modification copies

The State should submit two original modifications with pen-and-ink signatures of the authorized State official(s). For information on the State, see SL 40001.420B.1.

13. Coverage history

The regional office should provide information to the Regional Office of the General Counsel with the relevant coverage history for the entity. For coverage of previously terminate group, see SL 40001.440.

This information may include:

- A statement regarding entity's termination history;
- The effective date of termination;
- The previously assigned 69 EIN and modification number that was terminated.

C. Tips for error modifications

1. **Effective date**—The first day of the first period (quarter or year) for which the entity first filed erroneous wage reports. For modification of an agreement to correct errors, see [20 C.F.R. § 404.1216\(b\)](#) ; modifications to correct errors see SL 40001.465.
2. **Employer Query Report (ERQY)** evidencing wage reports—Use to confirm the stated effective date of when Social Security first reported and processed wages.
3. **Detailed Earnings Report (DEQY)**—Use to confirm when erroneous payments began in situations for employees covered by a 218 agreement and for employees that were not part of the 218-coverage agreement.
4. **No IRS refund**—The State will provide verification that a refund has not been issued for the erroneous payments.
5. **Certificate of Referendum**—Include if the modification involves a retirement system group.
6. **Exhibit 20 SL 40001.490**—provides sample language for error modifications to extend coverage to an entity that erroneously paid for Social Security without a section 218 agreement.

D. Tips for processing modifications that require a closing agreement

1. Closing agreement

A closing agreement is a voluntary agreement between the IRS and a political entity where the entity agrees to pay FICA taxes for retroactive coverage beyond the IRS three-year statute of limitations period. The entity can request coverage up to five full years.

2. Example of a closing agreement process

- A political entity seeks to enter into a retroactive coverage modification that requires a closing agreement.
- The state administrator adds the required closing agreement language to the modification before the entity signs it. For an example of a closing agreement modification, see SL 40001.490H.
- The state administrator submits the modification and other documents to SSA for review and approval, see SL 40001.420G.3.
- If SSA approves the modification, the regional office (RO) specialist should contact the IRS Closing Agreement Coordinator, via email, to begin the closing agreement process, see SL 40001.420G.4.
- The RO Specialist should request, in writing, a copy of the approved closing agreement from the IRS Closing Agreement Coordinator and forward a copy to the Office of Income Security Programs (OISP). For OISP's email and mailing address, see SL 40001.420E.2.

E. Dissolutions and evidence required

1. Dissolution in general

Dissolution means that the entity no longer legally exists. The evidence requirements are in SL 40001.485. Because it no longer legally exists, the coverage agreement is no longer valid as to this entity. The State must show that the entity dissolved and provide evidence of such dissolution.

2. The notification of legal dissolution

The notification must include:

- the name of the dissolved political subdivision,
- the EIN assigned to this entity,
- the relevant modification agreements that extended coverage to this entity,
- the date of dissolution, and
- the legal basis for dissolution.

For an example of a notification of legal dissolution, see Exhibit 21 SL 40001.490. Each entity needs a separate notice of dissolution unless the dissolution is related (for instance, where schools A and B consolidated to form school C, the State needs to submit only one notice for the dissolution of both A and B).

3. Primary evidence of dissolution

- a. Primary State evidence of the dissolution is preferred.
- b. If the dissolution occurred as the result of a legal authority, the State must submit a copy of the legal authority under which the dissolution occurred. For examples:
 - a copy of a city ordinance;

- a copy of an authorized official's order which effectuated the dissolution; or
 - a copy of the results of an election authorizing the dissolution.
- c. If a legislative body authorized the dissolution, the State must submit proof that it carried out the legislative authorization, such as a reference to the legislative authorization or a copy of the legislation.
- d. If the legislative authorization did not itself dissolve the entity, the State must submit a copy of the administrative or other order that dissolved the entity. If the official of the State or political subdivision, with whom the State files orders of dissolution, executed a statement of the fact of dissolution, the statement is acceptable as evidence of dissolution.

4. Secondary evidence of dissolution

For entities that ceased to exist many years ago through annexation, consolidation, or dissolution, and did not properly notify the State, the following secondary evidence may serve as a basis for dissolution:

- The entity's governing board's meeting minutes authorizing dissolution along with a published article or other evidence confirming dissolution; or
- A combination of documents of significant probity which enable the current official of the State or political subdivision with whom orders of dissolution are filed to make a determination as to whether or not the entity is legally dissolved.