SL 300: Coverage Under Section 218 Agreements

SL 30001: Coverage Under Section 218 Agreements

30001.301 Section 218 Agreements

CITATIONS: Social Security Act, Section 21820 CFR 404.1200

Most State and local government employees are covered for Social Security and Medicare through a Section 218 Agreement between the State and SSA. Under Section 218 of the Act, a State may ask the Commissioner of Social Security to enter into an agreement to extend Social Security and Medicare or Medicare only coverage to employees of the State and its political subdivisions.

30001.302 Glossary

- **Absolute coverage group** – a permanent grouping of employees, e.g. all the employees of a city or town. It is a coverage group for coverage purposes as well as for reporting purposes. When used for coverage purposes, the term also refers to groups of employees whose positions are not under a retirement system; such groups are also referred to as Section 218(b)(5) coverage groups.
- **Act** – Social Security Act
- **Coverage groups** – employee groupings by which employees are covered under a Section 218 Agreement.
- **Employee** – as defined in Sections 210(j) and 218(b)(3) of the Social Security Act. It includes a public officer of the State or political subdivision.
- **Governmental function** – traditional function of government, legislative, executive, judicial, e.g., the control and prevention of crime, promoting the general welfare, providing for public safety
- **HI** – Hospital Insurance (Medicare Part A)
- **Ineligibles** - individuals in positions covered by a public retirement system who are excluded from membership in the system because of age, number of hours worked or date of hiring
- **Interstate instrumentality** – independent legal entity organized by two or more States to carry out one or more governmental functions. For example, the New Jersey-New York Port Authority. For purposes of a

Section 218 Agreement, an interstate instrumentality has the status of a State.

- **Instrumentality** – governmental organizations created by the State or by political subdivisions with authority to act in a legally independent capacity to accomplish the specific purposes for which they were created.
- **Mandatory exclusions** – services that are excluded from Social Security and Medicare coverage under Sections 218 and 210 of the Act
- **Modification** – an amendment to an original Section 218 Agreement to extend coverage to additional groups of employees or to implement changes in Federal and State laws.
- **NCSSSA** – National Conference of State Social Security Administrators
- **Nonproprietary functions** – governmental function of a State or political subdivision, i.e., maintaining order
- **OASDHI** – Old-Age, Survivors, Disability and Hospital Insurance
- **Optional exclusions** – services the Act permits a State to include or exclude from coverage under a Section 218 Agreement
- **Optionals** - employees in positions covered by a retirement system who are eligible to join the retirement system but have not exercised their option to do so
- **Political subdivision** – a separate legal entity of a State that has governmental powers and functions. Ordinarily includes a county, city, school district and other similar governmental entities.
- **Proprietary function** – function of a governmental entity that is other than governmental in nature
- **PSSO** – Parallel Social Security Office. SSA field office responsible for day-to-day negotiations with the State on State and local coverage issues. Except for Maryland, Nevada, Oregon and South Dakota, the PSSO is located in the State's capitol.
- **Retirement system** – an annuity, pension, retirement, or similar fund or system established by a State or political subdivision for the purpose of paying retirement benefits to employees. For Section 218 purposes, whether a retirement system meets the minimum benefit requirements under the Internal Revenue Code is irrelevant.
- **Retirement system coverage group** – group of employees whose positions are covered under a retirement system by referendum under the provisions of Section 218(d).
- **Section 218 Agreement** – A written agreement between the State and SSA, pursuant to Section 218 of the Act, to provide Social Security and Medicare HI (Hospital Insurance) or Medicare-HI only coverage for State and local government employees.

- **State** – for Section 218 purposes, the term "State" includes the 50 States, Puerto Rico, the Virgin Island and interstate instrumentalities. It does not include the District of Columbia, Guam or American Samoa.
- **State Social Security Administrator** – principal State official designated to act for the State in administering and maintaining the State's Section 218 Agreement with the SSA.

30001.303 Basic Section 218 Concepts

- Coverage under a Section 218 Agreement is voluntary. The initiative for securing coverage under Section 218 is with the State.
- Coverage is obtained through a formal written agreement between the State and SSA.
- There must be authority under Federal and State law (State's enabling legislation) to enter into a Section 218 Agreement and to extent coverage under an agreement. Types and extent of coverage provided under an agreement must be consistent with Federal and State laws.
- Each State's original agreement incorporates the basic provisions, definitions and conditions for coverage under the agreement.
- Additional coverage is provided by modifications to the original agreement extended by the State and SSA. Each modification, like the original agreement, is a legal document.
- There must be authority under Federal and State laws (State enabling legislation) to enter into an agreement and to extend coverage under an agreement.
- Coverage is extended to groups of employees known as "coverage groups" – not on an individual basis.
- Generally, an agreement may be modified to increase the extent of coverage but not to reduce the amount of coverage.
- With certain exceptions, once coverage is provided, it continues and cannot be terminated.
- Employees covered under a Section 218 Agreement have the same coverage and benefit rights as employees mandatorily covered for Social Security and Medicare.
- Each State is required to designate an official(s) to act on the State's behalf in administering the State's Section 218 Agreement.
- SSA administers the Social Security and Medicare coverage provisions under Sections 218 and 210 of the Act.

30001.305 Interstate Instrumentalities

An interstate instrumentality is considered a State for Section 218 coverage purposes. An instrumentality must be legally authorized to enter into an agreement (an original agreement; no modification to an existing 218 agreement is involved. See SL 40001.490A.). This authority is generally conferred in the enabling acts of member States and in the statutes or other authority establishing the instrumentality. The creation of some interstate instrumentalities requires the consent of Congress.

An interstate instrumentality may extend coverage to absolute and retirement system coverage groups. All policies relating to coverage for States are equally applicable to instrumentalities. A State retirement system that covers employees of an interstate instrumentality is considered a retirement system established by the instrumentality. Interstate instrumentalities are authorized to use the Section 218(d)(4) majority vote referendum procedure and the Section 218(d)(6) and (7) divided vote referendum authority and procedure. The instrumentality must meet all required conditions for holding a referendum for its employees, and a designated official must certify the referendum. The designated official(s) may be delineated in the enabling act, statutes or other authorities, e.g., from the Board of Directors or the Chairman. All interstate instrumentalities are authorized to provide coverage for police officers and firefighters in positions covered under a retirement system.

Since there is no one specific state administrator to educate and notify the instrumentality's employees on the referendum procedures, nor to conduct or ensure the referendum proceeds correctly, a SSA PSSO or RO employee must assume these duties.

30001.310 Section 218 Coverage Groups

When a State enters into a Section 218 Agreement, employees are brought under the agreement in groups known as “coverage groups.” There are two types of employee groupings for coverage purposes:

- absolute coverage groups (Section 218(b)(5)), composed of positions not under a retirement system; and
- retirement system coverage groups (Section 218(d)), composed of positions under a retirement system.

The State decides which groups to cover and the effective date of coverage, subject to Federal and State laws.

30001.315 Absolute Coverage Group (Section 218(b)(5))

An absolute coverage group includes all positions not under the retirement system either:

- on September 1, 1954 or
- on the applicable date (Section 218(e)(2) of the Act) of the agreement or modification (see SL 30001.375B and SL 40001.435).

Under certain circumstances, ineligibles (persons in positions under a retirement system but personally disqualified from membership) may be covered as part of the absolute coverage group. See SL 30001.340 for a discussion of retirement system ineligibles.

The absolute coverage group does not include positions mandatorily or optionally excluded from coverage under a Section 218 agreement.

The State does not need the consent of the affected employees to establish an absolute coverage group.

Once an absolute coverage group obtains coverage by a Section 218 Agreement or modification, the absolute coverage positions remain covered even if they later are brought under a retirement system.

30001.316 Composition of an Absolute Coverage Group

The following employee groupings constitute an absolute coverage group:

- State employees performing services in connection with a nonproprietary (governmental) function;
- State employees performing services in connection with a single proprietary function;
- Employees of a political subdivision performing services in connection with the nonproprietary (governmental) function;
- Employees of a political subdivision performing services in connection with a single proprietary function;
- Civilian employees of a State's National Guard units;
- Individuals employed under an agreement between a State and the U.S. Department of Agriculture as agricultural products inspectors; and
- Non-certificated school district employees of specified States (applicable to actions taken before 1962)

A. POLITICAL SUBDIVISION

A political subdivision is a separate legal entity of a State that has governmental powers and functions. It also includes an instrumentality wholly owned by a State, or one or more political subdivisions of a State, or of a State and one or more of its political subdivisions. An instrumentality is organized to carry on some function of government for the State or political subdivision. It is an independent legal entity, with power to hire, supervise, and discharge its own employees, and generally to sue and be sued in its own name, to contract, to hold and convey real and personal property.

A "political subdivision" ordinarily includes counties, cities, townships, villages, schools, sanitation, utility, irrigation, drainage and flood-control districts, and similar governmental entities.

SSA is in accord with IRS Revenue Rulings 57-128 and 65-26. These rulings provide that the following factors, among others, are considered in determining the status of an organization:

- whether there are any private interests involved, or whether the States or political subdivisions involved have the powers and interests of an owner;
- whether control and supervision of the organization is vested in public authority or authorities;
- if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality and whether such authority exists; and
- the degree of financial autonomy and the source of its operating expenses.

Generally, SSA considers provisions of State law when determining whether an organization is a separate and distinct political subdivision for coverage purposes. While political subdivisions are generally identified in State law as bodies "corporate and politic," this is not universally true. Libraries and hospitals are illustrative of organizations whose status is often not apparent from either title or statute. They may be integral parts of a political subdivision such as a city or county, instrumentalities of a State or political subdivision and therefore separate political subdivisions, or they may be private nonprofit organizations.

B. POLITICAL SUBDIVISION UNDER SECTION 501(c)(3) OF IRC

Section 102 of P.L. 98-21 (1983 Social Security Amendments), changed provisions of the law concerning employment for organizations exempt from

income tax under Section 501(c)(3) of the Internal Revenue Code (IRC), including nonprofit charitable, religious and educational groups.

While the status of an entity should usually be clear, there may be instances where SSA may request a State Attorney General opinion concerning whether an entity constitutes a political subdivision under the laws of that State. In addition, it may be necessary to coordinate some issues with the Internal Revenue Service, with respect to FICA taxation.

Some private 501(c)(3) organizations have employees who are allowed to become members of some State or political subdivision retirement systems. The services performed by these private 501(c)(3) employees are covered on the same basis as that of other employees of private 501(c)(3) organizations. Such private 501(c)(3) employees are not considered State or political subdivision employees for Social Security coverage purposes.

NOTE: Many private nonprofit schools, colleges, hospitals, and libraries are 501(c)(3) organizations. Some 501(c)(3) organizations are also State or political subdivision entities, or integral parts of State or political subdivision entities. For Social Security coverage purposes, section 102 of P.L. 98-21 does not apply to these State or political subdivision entities. Therefore, if a State or political subdivision entity is the type described in section 501(c)(3), coverage can only be obtained (1) under the provisions of section 218 of the Social Security Act; or (2) in accordance with the mandatory Social Security coverage provision beginning July 2, 1991; or (3) under the mandatory Medicare-only coverage provision beginning April 1, 1986.

C. NONPROPRIETARY AND PROPRIETARY FUNCTIONS

A proprietary function is a business function. A State or political entity exercises a proprietary function when it engages in a business similar to one a private enterprise would engage in for profit. For example, the operation of parking garage by a city is a proprietary function.

Nonproprietary (governmental) functions of a State or political subdivision are the traditional functions of government, i.e., legislative, executive, and judicial, as well as the control and prevention of crime, regulation of the conduct of citizens for the general welfare, and providing for the public safety. For example, the operation of schools or institutions of higher learning by State or political subdivisions is a governmental function.

The distinction between a nonproprietary and a proprietary function is not always readily apparent. The provisions of State law govern in determining whether a function is governmental or proprietary. What may be a proprietary function under the laws of one State may not be classified as such in another.

D. CIVILIAN EMPLOYEES OF THE NATIONAL GUARD

Civilian employees of State national guard units employed under Title 32, U.S.C. Section 709 and paid by the Department of Defense were deemed State employees effective January 1, 1951. Many States provided coverage for the services of such individuals as a separate absolute coverage group. If the individuals were in positions under a retirement system, coverage was extended as a part of the retirement system coverage group which included other State employees in positions under the same retirement system.

Effective January 1, 1969, all national guard technicians are covered under the Civil Service Retirement System (CSRS) as a Federal employee (Public Law 90-486, National Guard Technicians Act of 1968). Social Security coverage for national guard technicians' services under a State's Agreement was terminated effective December 31, 1968.

E. AGRICULTURAL INSPECTORS

Effective January 1, 1955, individuals employed pursuant to an agreement entered into under Title 7, U.S. Code 1624 or Title 7, U.S. Code 499n between a State and the U.S. Department of Agriculture to perform services as inspectors of agricultural products may be deemed by the State to be State employees and a separate absolute coverage group. Agricultural inspectors whose positions are under a retirement system may be covered only as members of a retirement system coverage group.

30001.317 Providing Coverage for Absolute Coverage Groups

A. ABSOLUTE COVERAGE GROUPS

States can extend Social Security coverage to absolute coverage groups beginning January 1, 1951. Federal law allows a State to provide coverage for all the absolute coverage groups of an entity or to provide coverage for selected absolute coverage groups. Most States provide coverage for all absolute coverage groups of an entity, i.e., the governmental and all

proprietary functions. By this action, the State extends coverage to all present and future employees of the entity who are not in positions under a retirement system. When this practice is followed, the conditions of coverage for the employees in all of the functions of an entity must be uniform, i.e., the same effective date of coverage and the same optional exclusions must apply.

B. DESIGNATED COVERAGE GROUPS

A State may extend coverage to designated absolute coverage groups of the State or a political subdivision. It may provide coverage for the governmental function as a group and for each proprietary function as separate coverage groups. When coverage is extended to these designated groups, the State must specifically identify each group as a designated absolute coverage group and furnish the effective date of coverage and any optional exclusion for each group. Where a State has provided coverage to designated absolute coverage groups, the State may, by modifying its agreement, extend that coverage to any absolute coverage group in the State. If the State extends coverage to selected absolute coverage groups and subsequently decides to cover any of the remaining absolute coverage groups of the same entity, (e.g., newly created functions or preexisting non-covered functions), each remaining absolute coverage group must be included under the agreement as a separate coverage group.

It is possible for a State that provided coverage for designated coverage groups of an entity to later extend coverage to all its absolute coverage groups. In this way, the State provides automatic coverage for the non-covered current employees as well as for the future employees of the entity. To do this, the State is required to make the coverage uniform for all of the groups involved, i.e., coverage for all the groups must be made consistent with the broadest coverage of any of the groups. This "conversion" from the coverage of designated coverage groups to the coverage of all the absolute coverage groups is accomplished by an appropriate modification to the State's agreement.

30001.320 Retirement System Coverage Group (Section 218(d))

A retirement system coverage group consists of positions under a retirement system. Coverage can be extended to a retirement system coverage group only after a referendum has been held among the members of the retirement system.

The retirement system coverage group is not a permanent grouping. It exists only for referendum and coverage purposes and is not a separate group for

reporting purposes. Once coverage has been obtained, the retirement system coverage group becomes for reporting purposes part of one of the absolute coverage groups described in 20 CFR, Chapter III, §404.1205(b). Also see 20 CFR, Chapter III, §404.1206(b) and SL 30001.302.

A. DEFINITION OF RETIREMENT SYSTEM FOR SECTION 218 PURPOSES

For Section 218 purposes, a retirement system is a pension, annuity, retirement or similar fund or system established by a State or political subdivision. The plan is considered established by the entity if there is any payment of public funds toward the cost of the plan or the plan is established under the entity's authority. The system need not have been created by the legislature of the State or the political subdivision, nor does it have to be a plan under which the benefits are guaranteed by State constitution. A retirement system can include a group annuity policy purchased by a State or political subdivision from a private insurance company to provide retirement benefits for its employees. A retirement system is established if State law requires retirement system protection for employees on a mandatory basis. (This is true whether or not the employing entity has actually implemented the law.)

B. LEGISLATIVE AUTHORITY FOR RETIREMENT SYSTEM COVERAGE

The 1954 amendments authorized coverage for employees in positions under a retirement system effective January 1, 1955 and prescribed the mechanics for accomplishing such coverage. Congress included the following statement of policy in the Federal law (section 218(d)(2)):

> "It is hereby declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof."

Most State legislatures included a similar policy statement in the State enabling legislation.

NOTE: In general, coverage for positions under a retirement system was not possible until January 1, 1955. Special Federal legislation did permit retirement system coverage for employees in positions under the Wisconsin Retirement Fund, employees in positions under the Arizona Teacher Retirement System, and employees in certain Utah educational institutions.

There was also another method by which some State and local subdivisions obtained Social Security coverage for their retirement system employees prior to 1955. In the early 1950's, shortly after the enactment of Section 218 and

prior to the enactment of the 1954 amendments, various State and local government entities were interested in obtaining Social Security coverage for employees covered by existing retirement systems despite the provisions of 218(d) which did not permit such coverage. SSA was soon faced with proposals for liquidating retirement systems in order to circumvent Section 218(d) and then make Social Security coverage possible for those employees formerly under the liquidated systems.

The matter was presented to the Commissioner of Social Security, and in January 1951 the Commissioner established the Administration's policy that if a State or political subdivision had fully liquidated its retirement system and provision had been legally made for the settlement of previously accrued rights by means of refund of contributions, purchase of annuities, or statutory segregation of accumulated equities then SSA would consider the State or political subdivision to no longer have a retirement system. The former retirement system employees would then be eligible for Social Security coverage as an absolute coverage group via a Section 218 Agreement.

Once Social Security coverage had been obtained, the State or political subdivision could then establish a new retirement system as a supplement to Social Security without any effect on the Social Security coverage already afforded by the Section 218 Agreement. The process was approved by the Comptroller General of the United States in Opinion B-107602 dated January 23, 1952.

A number of State and local political subdivisions (most notably the Commonwealth of Virginia, the State of Oregon via Modification 20, and the State of Wyoming via Modification 4) liquidated their public employee retirement systems, obtained Social Security coverage for their former retirement system employees, and subsequently established a new retirement system for the employees to supplement the Social Security coverage.

C. WHEN POSITIONS ARE CONSIDERED UNDER A RETIREMENT SYSTEM

Whether a position is under a retirement system is not determined by whether the incumbent is a member of the system, personally ineligible to join the system or whether he has or had an option to join the retirement system. A position is under a retirement system if any individual who occupies the position may become a member of the retirement system by virtue of his occupancy of the position. See SL 30001.380 for newly created or reclassified positions.

Example: A hospital, formerly operated by the State as an integral part of the State government, is now operated by a hospital authority, an instrumentality established for this purpose and legally separate from the

State government. The State Employees Retirement System (SERS) covers only positions of State employees. Employees, formerly employed by the State who became employees of the hospital authority on the date of its establishment are allowed to retain membership in SERS. Newly hired employees may not become members.

It is possible for any position to be occupied by a former State employee who retained membership in SERS. All employees of the hospital authority therefore occupy positions under SERS even though the employees themselves may not be members of SERS (either newly hired employees or existing employees who did not elect to retain SERS membership).

30001.321 What a Retirement System Is for Majority Vote Referendum Purposes

When the 1954 Amendments authorized the coverage of employees in positions under a retirement system, it prescribed the mechanics for accomplishing this coverage. The amendments required that the employees be given an opportunity to vote to determine whether their services should be covered. The Federal law gives the State great flexibility in deciding what shall be the retirement system for referendum and coverage purposes and ultimately what shall be the retirement system coverage group.

A. STATE OPTIONS

If a retirement system covers the positions of employees of the State and positions of employees of one or more political subdivisions, or the employees of more than one political subdivision, the State has the following choices as to what may constitute the retirement system for referendum purposes:

- the entire system;
- employees of the State;
- employees of each political subdivision;
- employees of the State and employees of any one or more political subdivisions;
- employees of any combination of political subdivisions;
- employees of each institution of higher learning, which includes junior colleges and teachers' colleges. Institutions of higher learning which are not political subdivisions and which do not in themselves comprise the entire retirement system, cannot be combined for purposes of the

referendum. If a State elects to hold a separate referendum for any such institution, a separate referendum must be held for each. Institutions of higher learning that are separate political subdivisions may be combined with other political subdivisions and/or with the State.

- the employees of a hospital which is an integral part of a political subdivision or of two or more political subdivisions or the employees of two or more hospitals each of which is an integral part of the same political subdivision. The term "hospital" is used in the ordinary sense and refers to any institution organized and operated for the reception and medical or surgical care of the sick, injured, aged and infirm. If there are two or more hospitals that are integral parts of the same political subdivision(s), a separate referendum may be held for each or, in contrast to institutions of higher learning, the hospitals may be combined for a referendum
- A retirement system that covers the positions of employees of a single political subdivision can only be further divided to treat employees of each institution of higher learning or employees of hospitals as separate retirement systems for referendum purposes. A retirement system which covers only the positions of employees of a State can be further subdivided to treat employees of each institution of higher learning as separate retirement systems; it cannot be subdivided to provide coverage for employees of different departments of the State.

NOTE: The State has additional options for police and firefighter positions under a retirement system. See SL 30001.345.

B. SEPARATE RETIREMENT SYSTEMS REQUIRED

Each class of position(s) under a retirement system, which are optionally excluded from the retirement system coverage group or which were optionally excluded from an absolute coverage group and subsequently came under a retirement system, constitutes a separate retirement system for referendum purposes. If the optional exclusion taken was "all classes" of the position involved, then "all classes" of the position constitute the retirement system for referendum purposes.

Example: All classes of part-time positions under a retirement system were excluded from coverage under the Section 218 Agreement. If later the State decides to cover these positions under its agreement, all classes of part-time positions under the retirement system would constitute a deemed separate retirement system for referendum purposes.

Different retirement systems cannot be combined for the purpose of conducting a referendum. For example, a State retirement system and a

political subdivision retirement system (that is not a part of the State system), or, two different State systems, cannot be combined for the purpose of conducting a referendum for coverage under Section 218 of the Act.

30001.322 Providing Coverage for Majority Vote Retirement System

The State must have authority under State law and the State Section 218 Agreement to extend coverage to employees in positions under a retirement system. The State must determine what will constitute the retirement system for purposes of the referendum.

30001.323 Majority Vote Referendum Process (Section 218(d)(4))

All States are authorized under Section 218(d)(3) of the Act to conduct majority vote referenda for coverage. If a majority of the eligible members of the retirement system (not a majority of those voting, unless all those voting are actually all of the eligible members of the retirement system) vote in favor of coverage, the State may then submit a modification to its agreement to extend coverage to that group.

A. Referendum conditions

While the referendum itself is a State matter, Federal law requires certain minimum conditions be met. It requires the Governor or an official designated by him/her to certify these conditions have been met. The Governor's delegation of his/her certification responsibility may be general or specific, continuing or limited. The Governor (or designate) must certify the:

- vote was held by secret written ballot; (Federal law does not prescribe the ballot format or the voting mechanics.);
- opportunity to vote was given and limited to the eligible employees;
- employees were given not less than 90 days notice of the vote (Federal law does not prescribe the form of notice.);
- vote was supervised by the Governor or by a named designate of the Governor; and.
- a majority of the eligible employees of the retirement system voted for coverage.

B. Certification form requirements

One certification is required for each referendum held in a retirement system, e.g., if one referendum was held by a retirement system covering a number of political subdivisions, only one certification should be submitted. If a State held separate referenda for the employees of any one or more political

subdivisions, institutions of higher learning or hospitals as separate retirement systems, a certification is required for each referendum held. (A combined certification for each referendum may be shown on one form.) The certification should identify the precise retirement system covered by the certification.

C. Employees eligible to vote

To be eligible to vote in a referendum an employee must be:

- a member of the retirement system at the time the referendum is held, and
- in a position under the retirement system, i.e., be in an employment relationship (as distinguished from actually performing services) both at the time the notice of the referendum is given and at the time the referendum is held.

Generally, an employee is a member of a retirement system if the employee's personal relationship to the system qualifies the employee for benefits under the system or for additional benefits if the employee is already qualified. An employee does not lose eligibility to vote when absent from work because of illness, summer vacation or leave of absence (e.g., teachers on summer vacation, members of the National Guard or reservists of the U.S. military and naval services who are called up for active duty) if the employment relationship continues.

D. Employees not eligible to vote

Employees who are not eligible to vote are those:

- who are already covered under the agreement, e.g., a member of an absolute coverage group whose position is now being brought under a retirement system;
- who are not members of the retirement system;
- who are excluded from coverage by the mandatory or optional exclusions;
- who are members of the retirement system but are not State or local government employees, e.g., cooperative extension agents of the Department of Agriculture, are not eligible for coverage under an agreement; and
- who are hired after the date the 90-day notice is given and before the date the referendum is held.

E. Majority of eligible employees

Social Security coverage may be extended to employees in positions covered by a retirement system only if a majority of the eligible employees vote in favor of such coverage. A majority of all of the eligible employees under the system, rather than a majority of the eligible employees voting, must favor coverage.

F. Referendum time limitations

There are two time limitations that apply to a referendum:

- the agreement or modification to extend coverage must be executed within 2 years of the date of the referendum; and
- another referendum cannot be held among the employees of the same retirement system group for at least 1 year after an unfavorable referendum. This prohibition does not apply where the first referendum was null and void.

The 1-year time limitation between referendums in section 218(d)(3) of the Act applies only to a referendum for the same type of coverage for the same retirement system group. This is based on the premise that the 1-year rule under that provision was designed to prevent immediate or repetitive referendums for the same type of voluntary coverage for the same retirement system group.

Example: A retirement system group held an unsuccessful referendum for Social Security coverage on September 1, 2003. That same retirement system can hold a referendum for Medicare HI-only coverage on January 3, 2004.

30001.324 Composition of Majority Vote Retirement System

The retirement system coverage group includes the following classes of employees.

A. CURRENT EMPLOYEES

All employees not previously covered who are in positions under the retirement system on the date of execution of the modification or the date designated to control who will have retroactive coverage under that modification (the "applicable" date in accordance with Section 218(e)(2) of the Act). This includes all current members, regardless of how they voted in the referendum, the ineligibles and optionals. Services or positions mandatorily or optionally excluded from coverage are not part of the retirement system and, therefore, are not included in the retirement system coverage group.

B. FUTURE EMPLOYEES

All employees in positions brought under the retirement system in the future. The “retirement system” means the grouping that constituted the retirement system for the referendum. It means the actual or entire retirement system

only if the entire system was voted as a single retirement system in a referendum.

1. Retirement System Deemed a Single Retirement System

If a retirement system for referendum purposes retained its identity as a single retirement system, all employees whose positions are brought under the retirement system after the agreement is made applicable to that system are covered. Coverage is automatic as of the date the positions are brought under the system and only an identification modification should be submitted by the State to SSA.

Example: A State conducted a referendum for a State retirement system, which covered State and political subdivisions employees, as a single retirement system. After a favorable referendum, coverage was extended to the retirement system coverage group composed of all employees in positions covered by the system. Subsequently, a new political subdivision was created and joined the retirement system. Since the retirement system retained its identity as a single retirement system, the employees of the new entity are members of the retirement system coverage group, and automatically covered under the agreement. It is also possible to have automatic coverage for a deemed retirement system if the modification clearly indicates that the deemed system will include future participants.

2. Retirement System Deemed Separate Retirement Systems

If a retirement system is divided into separate deemed retirement systems for referendum purposes, the coverage status of a new member in the retirement system depends on the composition of the deemed systems. If the deemed retirement system is fixed in its composition, i.e., as to the precise entities it includes, additional newly created political entities may be covered only upon compliance with the referendum procedures.

Example: Cities A, B and C, which participate in the State retirement system, were deemed separate retirement systems for referendum purposes. After coverage was extended to these cities, City D joined the retirement system. Employees of City D may be covered only after a favorable referendum is held.

C. OTHER EMPLOYEES

This includes all employees who are in positions that were excluded from coverage because they were under a retirement system when coverage was extended to their absolute coverage group, but whose positions were subsequently removed from the system. The employees in these positions are part of the retirement system coverage group. Employees whose positions were removed from coverage under the retirement system by action taken by a State or political subdivision before September 1, 1954, could be covered as an absolute coverage group.

30001.330 Divided Vote Referendum Authority (Section 218(d)(6))

Section 218(d)(6)(c) of the Act authorized 23 States and all interstate instrumentalities to divide a retirement system established by the State, a political subdivision thereof, or the interstate instrumentality based on whether the employees in positions under that system desire Social Security coverage. The States authorized and the dates of enactment of amendments that permitted this coverage are as follows:

Alaska (7-20-65)
California (8-30-57)
Connecticut (8-30-57)
Florida (8-1-56)
Georgia (8-1-56)
Hawaii (8-1-56)
Illinois (1-2-68)
Kentucky (3-2-04)
Louisiana (3-2-04)
Massachusetts (8-27-58)
Minnesota (8-30-57)
Nevada (7-23-64)
New Jersey (12-20-77)
New Mexico (6-30-61)
New York (8-1-56)
North Dakota (8-1-56)
Pennsylvania (8-1-56)
Rhode Island (8-30-57)
Tennessee (8-1-56)

Texas (9-13-60)
Vermont (8-27-58)
Washington (8-1-56)
Wisconsin (8-1-56)

These States and interstate instrumentalities may cover employees in retirement system positions on a majority-vote basis, if they prefer. A few States have never exercised the option of dividing a retirement system.

30001.331 What a Retirement System Is for Divided Vote Referendum Purposes

Any retirement system established by one of the named States, a political subdivision of any such State, or an interstate instrumentality may be divided into two parts (two deemed retirement systems) for referendum and coverage purposes. In addition to the choices as to what may constitute a retirement system set out in SL 30001.321, these States have the following choices as to what may constitute a retirement system for referendum purposes:

- the positions of all members of the system who elect coverage (and all new members of the system); and
- the positions of all other employees under the system.

30001.332 Providing Coverage for Divided Vote Retirement System

The State must have authority under State law and the State's Section 218 Agreement to extend coverage to employees in positions under a retirement system on a divided vote basis. The State must determine what will constitute the retirement system for purposes of the referendum. This retirement system is then divided into two parts, each of which is a retirement system:

- one part or system includes the positions of members of the system who elect coverage.
- the other part or system includes the positions of members who do not elect coverage.

For retirement systems covered after 1959, an individual in a position under a retirement system who is not a member but is eligible to be a member, is deemed to be a member of such system for referendum purposes.

30001.333 Divided Vote Referendum Process (Section 218(d)(7))

A. REFERENDUM CONDITIONS

A State authorized to use the divided retirement system to extend coverage may use either of two voting procedures. Most States prefer to use the one-step procedure voting all eligible members and dividing the system into two parts on the basis of the member's choice. The State may also subdivide the retirement system into two parts or systems based on the members' choice, and then conduct a majority vote referendum among the employees who chose coverage.

The vote is a State matter, but certain minimum conditions must be met for a divided retirement system coverage group, in accordance with Section 218(d)(7) of the Act. The Governor (or an official designated by the Governor) must certify that the:

- vote was held by written ballot (Federal law does not prescribe the ballot format or the voting mechanics.);
- opportunity to vote was given to all individuals who were members when the vote was held;
- employees who are members on the date of notice were given not less than 90 days notice;
- vote was supervised by the Governor or a named designate;
- retirement system was divided into two parts, one composed of the members who voted for coverage and the other composed of the remaining members who did not elect 218 coverage.

B. CERTIFICATION FORM REQUIREMENTS

The form requirements described in SL 30001.323 are applicable.

C. EMPLOYEES ELIGIBLE TO VOTE

An employee must occupy a position under the retirement system, i.e., be in a current employment relationship (as distinguished from actually performing services), and be a member of the retirement system at the time the system is divided. Under certain conditions individuals hired between the date of

division and the date of execution of the modification covering the divided system may be given a choice regarding coverage.

If the retirement system was covered after December 31, 1959, a member includes an optional, i.e., an individual who has an option to join the retirement system, but has not done so.

D. EMPLOYEES NOT ELIGIBLE TO VOTE

Employees who are already covered under the agreement or who are mandatorily or optionally excluded from coverage are not eligible to vote.

E. REFERENDUM TIME LIMITATIONS

The agreement or modification to extend coverage to the retirement system group must be executed within 2 years of the referendum. The 1-year time limitation for holding a new referendum after an unfavorable one also applies. The 1-year time limitation between referendums, applies only to a referendum for the same type of coverage for the same retirement system. This is based on the premise that the 1-year rule under that provision was designed to prevent immediate or repetitive referendums for the same type of voluntary coverage for the same retirement system.

30001.334 Composition of Divided Vote Retirement System

After the referendum, the retirement system composed of those members who chose coverage may be included under the agreement as a retirement system coverage group. Because the retirement system consists only of those members who chose coverage, it includes:

- all employees who voted for coverage and who are members (actual and after December 31, 1959, deemed members) on the date of execution of the modification or the date designated to control who will be covered retroactively, in accordance with section 218(e)(2) of the Act;
- all employees who become members of the retirement system in the future. This includes individuals who were ineligible to become members of the retirement system (see SL 30001.340) but who later acquire membership by a change in the qualifying factors and who have not already been covered for Social Security; and

- all members of the retirement system group who initially declined coverage, who subsequently join the covered group pursuant to the second chance procedure. See SL 30001.335.

In order to determine whether services are covered or can be covered, determine what constitutes the retirement system, whether the positions in question are under that system, and the status of the individuals in those positions.

A. INELIGIBLES

Ineligibles, other than ineligible police officers and firefighters, can be covered as part of, or as an addition to, the retirement system coverage group if the State takes appropriate action. See SL 30001.340 for discussion of ineligibles.

B. OPTIONALS

For purposes of coverage under the desire for coverage procedures, an optional is an individual who had an option to join the retirement system on August 1, 1956, or if later, the date he/she first occupied a position under the system. With respect to an interstate instrumentality, an optional is an individual who had an option to join the retirement system on August 30, 1957, or if later, the first day he/she occupied a position under the system.

- Optionals are by Federal law deemed to be members of the retirement system where coverage is extended after December 31, 1959. These individuals have the same status for coverage purposes as actual members, i.e., they get an individual choice for coverage in the referendum. New optionals are covered as new members. An optional who voted against coverage will not be automatically covered if he later becomes a member of the retirement system.
- Where the retirement system coverage group was covered under the agreement prior to January 1, 1960, and did not include the optionals, the State could have given them an opportunity for coverage under the transfer procedures prior to January 1, 1970. (For a short period prior to January 1, 1960, the State had a choice as to whether to treat the optionals as members when extending coverage.)

C. MEMBERS WHO ELECT COVERAGE

Members who elect coverage are part of the deemed retirement system composed of positions of members who voted “yes” for coverage. They remain covered as long as they continue to be members of the retirement system or as long as they continue to occupy any position which is part of the retirement system coverage group. They cannot elect individually to terminate their coverage. See SL 30001.380, Continuation of Coverage Rules.

Example: Employees occupying part-time positions were included as part of the retirement system coverage group. Later, legislation was enacted to remove these positions from the retirement system. In a divided retirement system the incumbents under the continuation of coverage policy would remain under Social Security but any new employees occupying part-time positions would not, since they could not be members of the retirement system.

D. MEMBERS WHO DO NOT ELECT COVERAGE

These individuals are members of a separate retirement system which is composed primarily of the positions of those members who did not elect coverage. They can be covered if they elect to transfer to the covered group or after a favorable majority referendum is held among the members of their retirement system.

E. MEMBERS DENIED A CHOICE

If at the time of the division of a retirement system, a member, through error on the part of the State or political subdivision, is denied or is not given the opportunity to vote, the State must give the employee an opportunity to vote.

In addition, if an employee can conclusively establish that his/her election was based on erroneous information furnished by the State, the employee may request that his/her election be rescinded.

F. NEW MEMBERS

Generally, an individual who becomes an employee and a member of the retirement system after coverage is extended to the retirement system coverage group is a "new" member. A member of the retirement system who leaves his/her employment before coverage is extended to the retirement system coverage group is a "new" member on his/her return to employment.

The employee is then compulsorily covered as a part of the retirement system coverage group.

1. Break in Service of Member Who Did Not Elect Coverage

Whether a member who has a break in service after coverage was extended to the retirement system coverage group is considered a new member upon return to employment is a State matter. The State's decision depends upon the provisions of the particular retirement system involved and on State law. If the State considers an individual to be a new member of the retirement system upon return to employment, the employee is compulsorily covered. If the State considers an individual to have retained membership in the retirement system during a break in service, the employee is not considered a new member upon return to employment and retains his/her "no" vote--provided the entire retirement system to which the employee belongs was covered as a single retirement system coverage group. If the retirement system was divided into deemed systems, an individual who returns to work for the same deemed system after a break in service retains his/her "no" vote if the employee is not considered a new member of the deemed system under State law. This is a change of position effective July 15, 1976. However, an individual who returns to work for a different deemed system is compulsorily covered as a new member even though the employee previously voted against coverage.

The State's decision on whether an individual is considered a new member under State law must be applied consistently to all individuals similarly situated.

Example 1: A referendum was held among all the eligible members of the Municipal Employees Retirement System (MERS), a statewide system covering all municipal employees. A was an employee of City X and voted against Social Security coverage. After the coverage was extended to the retirement system coverage group, A terminated his employment with City X and entered private employment. Under the rules of MERS, A retained his membership in MERS. Two years later he was reemployed by City X. The State holds that he is not a new member of MERS. A is not a new member for purposes of coverage. He retains his initial choice of "No" coverage.

Example 2: A referendum was held among all the eligible members of MERS, a statewide system covering all municipal employees. A was an employee of City X and voted against coverage. After coverage was extended to the retirement system coverage group, A terminated his employment with City X and entered private employment. A withdrew his contributions from

the retirement system. Two years later he is reemployed by City X. The State holds that he is a new member of MERS. A is a new member for purposes of coverage and is mandatorily covered.

Example 3: MERS is a statewide system that covers all municipal employees. For coverage purposes, the State deemed a separate retirement system to exist with respect to each political subdivision participating in the retirement system. Cities X, Y, and Z held referenda and coverage was provided for the retirement system coverage groups. A was an employee of City X and voted against coverage. After coverage was extended he left the employ of the City for private employment. He retained his membership in MERS. Two years later he returned to employment with City X. The State holds that he is not a new member of the deemed retirement system. A is not a new member for purposes of coverage and retains his "no" vote. If, however, he was a new member of the deemed system, he would have been covered compulsorily even though he had previously voted against coverage.

Example 4: MERS is a statewide system that covers all municipal employees. For coverage purposes, the State deemed a separate retirement system to exist with respect to each political subdivision participating in the retirement system. Cities X, Y, and Z held referenda and coverage was provided for the retirement system coverage groups. A was an employee of City X and voted against coverage. After coverage was extended he left the employ of the city for private employment. He retained his membership in MERS. Two years later he returned to employment with City Y. He is mandatorily covered as a new member, since he did not return to work as a member of the same deemed retirement system in which he had voted against coverage.

2. Change in Employment

If the retirement system which was divided was not the entire system, a member of a deemed retirement system who transfers to another deemed system is a "new" member and is compulsorily covered. However, if the transfer resulted from action taken by the political subdivision on or after September 13, 1960, and the two deemed systems are part of the same basic system, the member is not considered a new member and may carry his "no" vote with him. (This provision applies also in California to transfers prior to September 13, 1960.) If the transfer was to a newly created political subdivision (e.g., two school districts consolidated to form a new district) which is not automatically covered as part of a deemed retirement system, a referendum must be held to obtain coverage.

If a member of a deemed retirement system transfers to a position under a retirement system which has not been covered, a referendum must be held before he/she can be covered.

G. EMPLOYEES HIRED AFTER RETIREMENT SYSTEM DIVIDED BUT BEFORE EXECUTION OF MODIFICATION

Employees who become members of the retirement system after the division date and before the execution of the modification which extends coverage to the deemed retirement system coverage group may be given a coverage choice at the discretion of the State. These persons are not mandatorily covered under Federal law, nor is it contrary to Federal law to allow these members a choice up to the date of execution of the modification, provided all employees similarly situated are given the same opportunity.

30001.335 Additional Opportunities for "No" Vote to Elect Coverage

There are two ways members of a retirement system who voted "no" in a divided vote referendum can later obtain coverage.

A. SECOND CHANCE PROCEDURE

If State law permits, the State can offer members (including an optional-deemed member covered after December 31, 1969) of the "no" group a second chance to transfer to the "yes" group. Individual members who then want coverage must file a written request with the State. Members who voted "yes" for coverage and were covered under the agreement cannot transfer to the "no" group.

If the State elects to extend such an opportunity, the State must make it available to all similarly situated individuals. Under these procedures, an individual must file his written request for Social Security coverage with the State prior to the execution of the modification providing such coverage. Coverage can be extended under these procedures only to those members in an employment relationship on the date of execution of the modification (or the date designated in the modification to control who will be retroactively covered under the modification, i.e., the section 218(e)(2) date).

Under the second chance procedure, the State may specify a time period during which employees who initially voted "no" can request coverage. The closing date set by the State for exercising a choice must be prior to the execution of the second chance modification. The effective date of coverage and the exclusions applicable to the divided retirement system coverage group will also apply to members covered under the second chance procedure.

The second chance modification must be mailed or delivered within 2 years after the execution of the agreement or modification which initially extended coverage to the retirement system coverage group. (After this 2-year period, a majority vote referendum must be conducted.) If the modification is mailed by the State, the postmark will establish the date of mailing. If the State official-or an authorized individual personally deliver the modification to the Social Security office, this date will be the delivery date.

B. MAJORITY VOTE REFERENDUM

If a retirement system is covered under the divided vote referendum process, this retirement system cannot be further divided for referendum and coverage purposes. Therefore, members of the divided retirement system who voted "no" for coverage may be covered under the agreement if:

- a majority referendum is held among the "no" vote members of this same deemed system;
- a majority vote for coverage; and
- the same unit, e.g., single political subdivision, is used for referendum purposes.

If the referendum is favorable, all members (other than those the State may choose to optionally exclude) who originally voted "no," ineligibles and the optionals are covered. (Only actual members of the deemed retirement system coverage group are permitted to vote in the majority referendum.) If a majority favor coverage, this is deemed a separate retirement system coverage group; and, therefore, the State may elect any effective date allowed under Federal and State laws.

30001.336 Referendums for Deployed Military Personnel

Circumstances exist when the conventional conditions of administering a majority vote and a divided vote referendum do not apply. Therefore, special provisions have been made for eligible employees of a retirement system who

are called to duty for military purposes, thus ensuring them an equal opportunity to participate in the referendum process.

A. DEPLOYED MILITARY PERSONNEL

1. General

If a member of the military who has been called to duty is maintaining an employee/employer relationship with a non-military employer at the time the notice of referendum is given and at the time the referendum is held, then, despite their absence, they will be given the opportunity to vote.

Due to the unique circumstances experienced by military personnel who are called to duty, especially during times of war or other similar conflict, exceptions regarding military personnel who are called to duty and the 90 day advance notice of referendum will be made. Military personnel called to duty prior to the day the state administrator, or the individual delegated the authority to issue advance notice mails, delivers, posts, or by whatever means issues the 90 day advance notice of referendum **will be allowed an additional 60 days** to receive the notice before the referendum can be held. The 60 day extension will be in excess of the original 90 day advance notice of referendum and will apply to all eligible members of the retirement system. While conditions which are outside of the deployed employee's control make it necessary to provide the additional 60 day extension, insuring equal opportunity for participation by all stakeholders, it would not be to the benefit of non-military eligible employees to delay the referendum for a period of time greater than 60 additional days.

Federal law requires that certain minimum conditions be met when conducting a referendum. Section 218(d)(3) lists the Federal requirements for a majority vote referendum while Section 218(d)(7) lists the Federal requirements for a divided vote referendum. All other responsibilities impacting referenda are given to the State. However, it is suggested that the advance notification be accompanied with language that informs all eligible members the reasons why the 90 day advance notification is extended an additional 60 days. Also, a ballot should be included with the advance notice of referendum. This will reduce the likelihood of having additional delays once the voting process begins. The ballot should be returned no later than the cessation of the 60 day extension. Any ballot received after the 60 day extension will be accepted, provided the votes of all other eligible employees of the retirement system have not been tallied. State Administrators or the official delegated authority to conduct referenda are encouraged to retain or document correspondence with the retirement system and/or the employers when inquiring whether any eligible members have been called to duty.

2. Employees Eligible to Vote

Employees absent from work due to being called to duty by the U.S. military will retain the right to vote in both divided vote referendums and majority vote referendums as long as an employee/employer relationship continues to exist. For the purpose of determining whether an employment relationship exists (**for the purpose of identifying participants for a referendum**), refer to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA is a federal law that gives members and former members of the U.S. armed forces the right to go back to a civilian job they held before military service. USERRA also assures service members called to duty the same rights and privileges that they would otherwise be entitled to if they were on leave of absence or furlough.

USERRA, § 4316 Rights, benefits, and obligations of persons absent from employment for service in a uniformed service states that a person who is absent from a position of employment by reason of service in the uniformed services shall be— deemed to be on furlough or leave of absence while performing such service; and entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service. § 4316 (3), a person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed; and (4) such person may be required to pay the employee cost, if any, of any funded benefit continued. USERRA further states that a person who knowingly provides written notice of intent not to return to a position of employment after service, is not entitled to the above mentioned rights.

To be qualified under USERRA protection a person must meet five tests. However, for the purpose of participating in a referendum for employees called to active duty it is only necessary that a person meet the first three tests. The last two tests imply the person is no longer deployed. The 60 day exception only applies to eligible employees who are on active duty at the time the notice is sent and at the time the referendum is held.

- **Job**. Must have left the job for the purpose of performing service in the uniformed services. 38 U.S.C. 4312(a).
- **Notice.** Must have given prior oral or written notice to the civilian employer. 38 U.S.C. 4312(a)(1) Prior notice is not required if it is

precluded by military necessity or otherwise impossible or unreasonable. 38 U.S.C. 4312(b).

- **Duration.** Cumulative period or periods of service in the uniformed services, relating to that particular civilian employer, must not have exceeded the five-year limit. All involuntary service and some voluntary service are exempted from the five-year limit. 38 U.S.C. 4312(c).
- **Character of service**. Must have been released from the period of service, without having been "dropped from the rolls" or having received a punitive or other-than-honorable discharge. 38 U.S.C. 4304.
- **Prompt return to work**. Must have reported back to work in a timely manner, or have submitted a timely application for reemployment. 38 U.S.C. 4312(e)(1).

3. How to Include Called to Duty Military Personnel in a Referendum

It is suggested that referendum material be mailed to the last known address. This would most likely be the address that the employer has in their file. Additionally, if the military address is known, a notice of referendum should also be mailed to the military address. According to the Military Postal Service Agency priority mail will take 10 to 15 days while surface/air mail will normally take about 24 days.

The Department of Defense has also issued guidelines for addressing mail to military and civilian personnel deployed overseas: Use the service members full name; include the unit and APO/FPO (Air/Army Post Office or Fleet Post Office) address with the nine digit zip code; and include a return address. For packages, print on one side only.

Examples:

SSGT Kevin Taylor
Unit 2050 Box 4190
APO AP 96278-2050

SGT Robert Smith
PSC 802 Box 74
APO AE 09499-0074

Seaman Joseph Doe
USCGC Hamilton
FPO AP 96667-3931

State administrators are encouraged to associate detailed contact information with the notice of the referendum. This would include the respective state administrators' address, telephone number, and e-mail address if available. Also, it is advised that copies of all correspondence sent to deployed military be retained by the state administrators. If states delegate the referendum process to local entities, they should be included. This will insure accurate accounting of the 90 + 60 day advance notice period.

4. Scenarios

Consider the following **scenarios** pertaining to employees called to duty for military purposes who maintained an employee/employer relationship under USERRA to determine how to handle your situation:

- If the 90 day advance notice of the referendum (Federal law does not prescribe the form of notice) is issued on January 1st and it is determined prior to 12:00 A.M. January 1st that an eligible member(s) of the coverage group is deployed and has maintained under USERRA intent to return to employment then the 90 day notice will be extended from March 31st to May 30th for all participants. Therefore, the referendum may be held any time on or after May 31st. Federal law allows states to conduct voting for purposes of holding a referendum by whatever means they prescribe as long as the conditions within 218(d)(3) and 218(d)(7) are met.

- Employees who are called to duty for military purposes are often unaware of the amount of time that they will be detailed. In many instances their departure could be days, weeks, months, or years. If the 90 day advance notice is sent at any point during the absence of any eligible employee of the retirement system due to being called to duty then the additional 60 days must be given to all eligible employees. The extension can not be retracted once issued. In certain infrequent situations reservist or guard members may be activated to participate in short duration events not related to the event of war or other national emergency, in which case it is left to the State's discretion whether they choose to activate the 60 day extension.

- **Divided vote referendum**

Called to duty employees who failed to respond to the notice of a *divided vote* referendum will be given the opportunity to vote upon their return to employment, if an employee/employer relationship was maintained under USERRA. This applies to any divided vote referendum in which the outcome by the other eligible members was either "yes" or "no" to coverage. Called to duty employees will be given a second chance procedure to obtain coverage,

indicated in SL 30001.335, as in the case of a present member who votes "NO" in a divided vote referendum. Under these procedures, the individual must file written request for Social Security coverage with the State prior to the execution of the modification providing such coverage. Coverage can be extended under the procedure described in SL 30001.335(A) to these employees on the date designated in the modification to control who will be retroactively covered under the modification, i.e., the Section 218 (e)(2) date.

- **Majority vote referendum**

If a *majority vote* referendum for Social Security and (HI) Medicare coverage is held in the absence of a called to duty employee and the outcome was "NO," a new referendum held among the employees of the same retirement system can be conducted immediately upon the one year anniversary of the unfavorable referendum, thus limiting the amount of time that deployed members who have returned must wait. A group that held an unsuccessful referendum for full coverage can hold a Medicare only Referendum immediately upon the return of all deployed employees, if they choose to do so. The 1-year time limitation between referendums in section 218(d)(3) of the Act applies only to a referendum for the same type of coverage for the same retirement system.

If a *majority vote* referendum is held in the absence of a called to duty employee and the outcome was "YES," the stated individual will automatically be covered under the agreement upon his/her return to employment. No subsequent referendums will be held. The ramifications of terminating coverage to a retirement system group would be a detriment to its members and to the employer.

30001.340 Retirement System Ineligibles

A. DEFINITION OF RETIREMENT SYSTEM INELIGIBLE

An ineligible is an employee who performs services in a position under a retirement system but who is personally ineligible for membership in that system because of a personal disqualification, e.g., age, length of service, number of hours worked, or date of hiring. (Another employee who has no such personal disqualification from membership who occupies the same position would be eligible for membership in that retirement system.)

For purposes of extending coverage, the individual must meet the definition of ineligible at a critical time point. These are:

- Employee must be an ineligible on September 1, 1954, or, if later, the date the agreement is made applicable to the employee's coverage group or the date the employee first occupied the position under the retirement system. Therefore, an employee who had an option to join the retirement system on September 1, 1954, or if later, the date the employee first occupied the position, would not be considered an ineligible, even though such option expired before a referendum is held.
- For divided vote retirement systems, an employee is an ineligible for coverage purposes if the employee is ineligible for retirement system membership as of August 1, 1956, or, if later, the date the employee first occupied his/her position.
- An employee of an interstate instrumentality is an ineligible if the employee has such status as of August 30, 1957, or, if later, the date the employee first occupied his/her position.

B. PROVIDING COVERAGE FOR INELIGIBLES

Ineligibles do not in themselves constitute a separate coverage group. They may be covered with other employees in one of three ways:

- As a part of, or as an addition to, an absolute coverage group;
- As a part of a retirement system group which covers all positions under the retirement system (majority-vote referendum); and
- As part of, or as an addition to, a divided vote retirement system coverage group composed primarily of those members of a retirement system who chose coverage.

The State must specify in the modification whether coverage of ineligibles will continue or terminate if they later become eligible for membership in the retirement system and it is not covered under a Section 218 Agreement. This choice may be made as a part of the basic agreement for all ineligibles or selectively with respect to each coverage group at the time the ineligibles are covered. Such coverage cannot be terminated if the retirement system has been covered under a Section 218 Agreement or if the ineligible would be a member of a divided retirement system coverage group composed of members of the "yes" group.

C. COVERING INELIGIBLES WITH THE ABSOLUTE COVERAGE GROUP

Ineligibles, other than ineligibles in police officer and firefighter positions, who are not already covered may be covered as a part of, or as an addition to,

their absolute coverage group. If the absolute coverage group is now being included under the agreement, the ineligibles can be included as a part of the coverage group. The same effective date of coverage and the same optional exclusions apply to all the employees in the coverage group including the ineligibles.

If the absolute coverage group is already covered, the ineligibles may be covered (by a modification) as an addition to that coverage group. The optional exclusions already taken for the coverage group apply also to the ineligibles. The State may select the same effective date of coverage as was provided for the absolute coverage group or it may choose a different effective date of coverage for the ineligibles. The effective date must be consistent with Federal and State laws. The effective date of coverage for the ineligibles cannot be earlier than the effective date of coverage for the other employees in the absolute coverage group.

D. COVERING INELIGIBLES WITH MAJORITY VOTE RETIREMENT SYSTEM GROUP

Ineligibles who are not already covered are automatically covered when a retirement system coverage group made up of all employees in positions under the retirement system is brought under the agreement. Thus, ineligibles who are not covered with an absolute coverage group are covered if a retirement system coverage group which includes all positions under the retirement system is brought under the agreement through a majority-vote referendum and their services or positions are not optionally excluded from the retirement system coverage group.

E. COVERING INELIGIBLES OF A DIVIDED RETIREMENT SYSTEM WHO VOTE FOR COVERAGE

A State may provide coverage for ineligibles of a retirement system either as additional services to a retirement system coverage group already included under the agreement or may provide the coverage at the time coverage is first provided for the retirement system coverage group. These ineligibles do not have the right of individual choice. If the ineligibles are included as a part of or an addition to the retirement system coverage group, all the ineligibles are mandatorily covered.

Note: This provision does not apply to police officers or firefighters who are in positions under a retirement system but who are ineligible to become members.

1. Covering Ineligibles under a Covered Retirement System

If the State wishes to include the services of ineligibles as additional services to the retirement system coverage group included under the agreement, any optional exclusion exercised for the retirement system coverage group will also be applicable to the ineligibles. Coverage may be effective retroactively to any date authorized under Federal law (Section 218(e)(1)) and State law. However, the effective date provided may not be earlier than that established for the retirement system coverage group.

2. Covering Ineligibles under Retirement System Now Being Covered

If the State wishes to cover the services of ineligibles where a retirement system coverage group composed of positions of members desiring coverage is initially being included under the agreement, the State may include the positions of ineligibles as part of this coverage group. The same optional exclusions and the same effective date are applicable.

3. Modification Language

A modification including the services of ineligibles under this procedure would ordinarily provide the continuation of coverage in the event the ineligible becomes eligible to be a member of the retirement system. (A State may have already made this election on a statewide basis or may now do so.) The coverage of an ineligible brought under the agreement pursuant to this provision will not terminate when he/she becomes eligible if (1) he becomes a new member of the retirement system or (2) he becomes an optional and optionals are already included as part of the retirement system coverage group.

30001.345 Police Officers and Firefighters

A. DEFINITION OF POLICE OFFICER OR FIREFIGHTER POSITION

A police officer or firefighter position for Section 218 coverage purposes is any position classified as such in State statutes and court decisions. Generally, these positions exist in the regularly organized police and fire departments of incorporated municipalities, towns, and cities. In most States, an employee in a police position is a member of a police force which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms police officer and firefighter do not include services in positions which, although connected with police officer and firefighter functions, are not police or firefighter positions.

Notwithstanding the general rules stated above, State statutes and court decisions are not controlling of whether a position meets the Social Security definition of "police officer." To determine whether a position meets the Social Security definition of "police officer," it may be necessary to review police force positions on an individual case-by-case basis. For Section 218 coverage purposes, one must consider the extent that the duties of the position correspond with the above-stated characteristics of the police force. If a preponderance of the position's duties falls within one or more of the three characteristics of maintaining order, preventing and detecting crime, and enforcing laws, Social Security would consider that position to be one that would constitute a "police officer" position.

In some jurisdictions, positions such as game warden, forester, forest patroller, crime investigator supervisor, police department stenographer, sheriff, and highway patroller have been held not to be "police" positions.

NOTE: Police officers and firefighters are not considered emergency workers under the Social Security and Medicare exception for emergency workers defined in Internal Revenue Code Section 3121(b)(7)(F)(iii). The emergency worker exclusion applies only to services of an employee was hired because of an unforeseen emergency to do work in connection with that emergency on a temporary basis (e.g., individual hired to battle a major forest fire or to provide emergency assistance in other similar disasters. Also, volunteer firefighters who are on call and work regularly but intermittently do not qualify for the emergency exclusion.

B. PROVIDING COVERAGE FOR POLICE OFFICERS AND FIREFIGHTERS

There are two ways to cover services performed in police and firefighter positions:

- as part of an absolute coverage group; or
- as a part of a retirement system coverage group.

Such system may cover positions of police officers only, or firefighters only, or both, and other positions.

NOTE: Social Security regulations 20 CFR 404.1206 provides that if a State law requires a State or political entity to have a retirement system, it is

considered established even though no action has been taken to establish the system. Therefore, regardless of whether an entity actually established a retirement system in accordance with State law, the police officer and firefighter positions are considered covered by a retirement system.

C. COVERAGE OF POLICE OFFICER AND FIREFIGHTER POSITIONS NOT UNDER A RETIREMENT SYSTEM

If police officer and/or firefighter positions were not covered by a retirement system at the time an entity obtained Social Security coverage under the State's Section 218 Agreement for all positions not covered by a retirement system, the police officer and firefighter positions are covered. Coverage obtained under a Section 218 Agreement continues even if these positions later come under a retirement system. However, see SL 30001.345D.

D. POLICE OFFICER OR FIREFIGHTER POSITIONS REMOVED FROM A RETIREMENT SYSTEM

1. Police Officers

Prior to Public Law 103-296, in the States not listed below in section E., police officer positions could be removed from a retirement system at any time before their absolute coverage group was included in the agreement and covered with the absolute coverage group. In the States listed below, police officer positions under a retirement system could be covered under the State's Section 218 Agreement only through the referendum procedures, including coverage for Medicare.

After the listed States provided coverage for police officer positions under a retirement system through the referendum procedure, they could no longer dissolve a police retirement system or remove police positions from a retirement system and provide coverage for police as part of the absolute coverage group.

2. Firefighters

Beginning January 2, 1968, all States may cover firefighter positions which are under a retirement system through referendum procedures and no State may dissolve a retirement system or remove firefighter positions from a retirement system and provide coverage for firefighters as part of the absolute coverage group.

Prior to January 2, 1968, States not listed in section E. below (and prior to the amendment dates shown for the States), firefighter positions could be removed from coverage under a retirement system at any time before their absolute coverage group was included in the agreement and covered with the absolute coverage group.

3. Ineligibles

Employees in police officer or firefighter positions who are ineligibles of the retirement system cannot be covered as a part of, or as an addition to, the absolute coverage group. However, see SL 30001.370 for a special Federal legislation authorizing Oklahoma to cover certain ineligibles in police positions.

E. COVERAGE OF POLICE OFFICER AND FIREFIGHTER POSITIONS UNDER A RETIREMENT SYSTEM

1. Current Law

Effective for modifications filed after August 15, 1994, all States may provide coverage for police officer and firefighter positions under a retirement system by use of the majority vote referendum procedure. The retirement system coverage group consists of all current and future employees in positions under the retirement system in which the referendum was held, including ineligibles.

In addition, those States and all interstate instrumentalities authorized under Section 218(d)(6)(C) of the Act, may also use the divided vote procedure. If the divided vote procedure is used, the retirement system coverage group consists of all members who chose coverage and future members except that "ineligibles" may not be covered as a part of such a group.

As with other retirement system employees, there must be authority to provide coverage under State law and the Federal-State agreement. The second step is to decide what will be the retirement system for referendum and coverage purposes. In addition to the choices of what shall constitute a retirement system under the majority vote and divided vote procedures, the State has additional choices for covering police officers and firefighters. It may deem:

- the police positions only to be the retirement system;
- the firefighter positions only to be the retirement system; or
- the positions of police officers and firefighters to be the retirement system.

2. Coverage Rules Prior to Public Law 103-296 (Named States)

Prior to August 16, 1994, only the 23 States listed in Section 218(l) of the Act were authorized to provide coverage for police officer and firefighter positions under a retirement system. The following States were authorized as of the date shown:

- Alabama (8/30/57)
- California (9/16/59)
- Florida (8/1/56)
- Georgia (8/30/57)

- Hawaii (8/30/57)
- Idaho (10/30/72)
- Kansas (9/16/59)
- Maine (10/24/62)
- Maryland (8/30/57)
- Mississippi (12/20/77)
- Montana (12/31/74)
- New York (8/30/57)
- North Carolina (8/1/56)
- North Dakota (9/16/59)
- Oregon (8/1/56)
- Puerto Rico (1/2/68)
- South Carolina (8/1/56)
- South Dakota (8/1/56)
- Tennessee (8/30/57)
- Texas (7/2/64)
- Vermont (9/16/59)
- Virginia (9/13/60)
- Washington (8/28/58)
- Interstate Instrumentalities (8/28/58)

California, Florida, Georgia, Hawaii, New York, North Dakota, Tennessee, Texas, Vermont, Washington and all interstate instrumentalities could also use the divided vote retirement system procedures.

3. Firefighter Positions Under a Retirement System – All States Prior to 1994

Beginning January 2, 1968, States not listed in 2. above were authorized to extend coverage to employees in firefighter positions under a retirement system provided the Governor (or a State official designated by the Governor) certified to SSA that extending Social Security coverage would improve the overall benefit protection of these employees. The firefighter positions had to be treated as a separate retirement system for purposes of the referendum and coverage.

A majority vote referendum had to be held. The divided vote referendum procedure could not be used. The modification had to be accompanied by a certification of the referendum results with the certification of the Governor (or delegate) that this action would improve the overall benefit protection of the group. This provision was obviated by Public Law 103-296, which permits all States to cover firefighter positions under a retirement system under the same conditions as police positions

30001.350 Positions Covered By More Than One Retirement System (Section 218(d)(8))

A. GENERAL

Generally, a position is under more than one retirement system if an employee in the position can become a member of more than one retirement system. Sometimes a position is under more than one retirement system and the employee occupying the position either is a member, or has the option to become a member, of more than one retirement system. These systems are often supplemental as to their benefits but are composed of the same membership. There are also situations where the employee's position is under a retirement system but because of personal ineligibility for membership in that system the employee is given membership in another system. If a retirement system is established as a basic system for a group of employees, e.g., teachers, with provision for covering ineligibles under a separate retirement system, only the ineligibles are in positions under more than one retirement system.

Prior to the 1958 Social Security Amendments, the State had to take action with respect to each retirement system to provide coverage for employees under that retirement system.

If the position of an employee who becomes covered as part of a retirement system coverage group later comes under another retirement system, the coverage of the employee continues with the original group.

B. SERVICES COVERED AFTER 1958

The 1958 amendments authorized States to extend coverage to services performed after 1958 by employees in positions simultaneously under more than one retirement system (and at the State's option, for prior periods). An employee who is in a position under more than one retirement system is covered under the State's agreement when the employee's retirement system coverage group is brought under the agreement unless the employee:

- is not a member of the retirement system being covered, and
- is a member of the non-covered retirement system.

Member for this purpose means an actual member of the retirement system. It does not include an optional who is deemed to be a member of the retirement system.

This provision applies as of the applicable date of coverage (the Section 218(e)(2) date) in the agreement/modification for the retirement system coverage group, or the date that a position under a non-covered retirement sytem is brought under a covered retirement system, whichever is later. It applies only to individuals whose positions are under a retirement system on the pertinent date. Employees hired after the applicable date are not excluded from coverage under Section 218(d)(8) of the Act solely by virtue of membership in a non-covered retirement system.

Example 1: Employees of City X may join either the Public Employees' Retirement System (PERS) or the City Employees' Retirement System (CERS). Thus, all employees of City X occupy positions under both systems. After a favorable referendum was conducted, a modification was executed on September 6, 1983 to provide Social Security coverage for all employees of City X in positions under CERS with no optional exclusions.

Employee A, who was employed by City X on the applicable date of the modification, in this case September 6, 1983, was a member of PERS on that date. Services performed in positions under PERS are not covered under the State's agreement. Thus, A's services are not covered under the State's agreement with the CERS coverage group because A was not a member of that system on September 6, 1983, and was a member of PERS, on that date.

Employee B was hired by City X on October 3, 1983, and then joined PERS. Employee B's services for City X are covered under the State's agreement because he/she was not a member of PERS on September 6, 1983, the applicable date.

Example 2: All State employees occupy positions under the State Employees' Retirement System (SERS), which was included under the State agreement on a majority vote basis by a modification executed in 1956. On November 1, 1983, the State takes over the county hospital, a separate political subdivision, and the employees become State employees. Before that date, employees of the hospital were members of the County Employees' Retirement (CERS), a non-covered retirement system. Individuals employed by the hospital on 11/1/83 had the option to continue their membership in CERS or join SERS.

Employee A elected to continue membership in CERS. Employee B elected to join SERS. Employee A is excluded from coverage because on 11/1/83, the date his position first came under SERS, he was not a member of the covered system and was a member of CERS. Employee B is covered because he became a member of SERS, a covered retirement system.

C. SERVICES COVERED PRIOR TO 1959

A State may modify its agreement to apply the Section 218(d)(8) provision to coverage extended before 1959. If a State does not modify its agreement, a member of a retirement system cannot be covered until all the bars to his coverage are removed. The following describe how coverage can be obtained in certain conditions:

1. Member of More Than One System

An employee who is a member of two or more retirement systems applicable to a single position can be covered only if all the retirement systems are included under the State agreement and provide coverage for his/her position. Coverage is effective as of the latest coverage effective date provided for the retirement system coverage groups involved.

2. Member of One System, Optional With Another System

Coverage of services of an employee who is a member of one system and who has an option to join another retirement system is subject to the same rules as an employee who is a member of more than one retirement system.

3. Member of One System, Ineligible for Membership in Another

If an employee is, with respect to the same position, a member of one system and ineligible for membership in another, the employee's services can be covered if a favorable referendum is held for each retirement system; or a favorable referendum is held for the retirement system of which the employee is a member and the ineligibles of the system of which the employee is not a member are covered as part of, or as an addition to, the absolute coverage group which includes the employee's position. Coverage is effective as of the latest effective date of coverage provided for the coverage groups involved.

D. TWO POSITIONS INVOLVED

If an employee occupies two positions, each of which is under a different retirement system, each position may be covered separately, if the State takes appropriate action, without regard to the coverage of the other position.

30001.355 Mandatory and Optional Exclusions

Certain services are mandatorily excluded from Section 218 coverage. Some services, however, are optional exclusions under Section 218 and, therefore, may be covered under a Section 218 Agreement.

When an absolute or retirement system coverage group is covered under an agreement, the services of all employees who are members of the coverage group are covered unless they are mandatorily or optionally excluded from coverage under the State's agreement.

30001.356 Mandatory Exclusions

The following services are mandatorily excluded from Section 218 coverage:

- Services performed by individuals hired to be relieved from unemployment. (This does not include many programs financed from Federal funds where the primary purpose is to give the employee work experience or training.)
- Services performed in a hospital, home or other institution by a patient or inmate thereof as an employee of a state or local government employer;
- Services performed by an employee on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency;
- Transportation services covered under Section 210(k) of the Act (see SL 30001.365);
- Services that would be excluded if performed for a private employer because the work is not defined as employment under Section 210(a) of the Act (e.g., non-resident aliens with F-1, J-1, M-1, and Q-1 visas - (See RS 01901.740)).

Mandatory exclusions apply to **voluntary** Social Security coverage situations (coverage via a Section 218 Agreement) and should **not** be confused with the

different set of exclusions that applies to mandatory Social Security and mandatory Medicare situations.

A. INDIVIDUALS HIRED TO BE RELIEVED FROM UNEMPLOYMENT

Generally, services performed by employees in work relief programs (other than the supervisory or administrative employees for projects) are excluded. The intent of the program establishes whether the program is designed to relieve individuals from unemployment. This is usually determined from the statutes or other authorities that established the program.

Example 1: Services of welfare recipients performed in return for assistance payments are excluded from coverage because the primary intent of such work-relief programs is to provide assistance to needy individuals and their families.

Example 2: Services performed by individuals under a work-training or work-study program which is designed to provide work experience and training to increase the employability of the individual are not excluded because the primary intent of the programs is not to relieve from unemployment.

B. SERVICES PERFORMED IN A HOSPITAL, HOME OR OTHER INSTITUTION

A patient is an individual undergoing treatment or receiving care in an institution. An "inmate" is an individual who lives in the institution either because he was committed or chose to enter voluntarily. Mental hospitals, homes for alcoholics, veterans' homes, and correctional institutions are examples of institutions involved in this exclusion.

Services performed outside the institution for the same unit of government which operates it are considered performed "in the institution." Further, services performed as part of the rehabilitative and therapeutic program of the institution are not covered if performed in the institution by a patient or an inmate thereof. However, where services are performed by individuals who are not patients in the institution but who are participating in the institution's rehabilitation program on a permanent basis, such individuals generally would be employees with respect to those activities and not qualify for this exclusion from coverage. (See Social Security Ruling 77-5.)

Generally, services performed by prison inmates of State or political subdivision prisons, or any instrumentality thereof, are also excluded from coverage under this mandatory exclusion. Such services are excluded whether performed within the prison or outside prison confines.

Services performed by prison inmates in the employ of the private sector may be covered if an employment relationship exists and the conditions of coverage for the services performed for that entity are met. An employer/employee relationship exists when the entity for which the inmate performs services has the right to control and direct the inmate worker regarding the desired result of the work done and the details and means by which the work is accomplished. This includes the ability of the employer to select, dismiss, and control the worker inmate.

C. EMERGENCY SERVICES

Before January 1, 1968, emergency services were an optional exclusion. Beginning January 1, 1968, services by an individual hired as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, volcanic, or other similar emergency are excluded. In general, services performed because of an unforeseen event calling for immediate action are held to be emergency services. This exclusion applies to services of an employee who is hired because of the emergency to do work in connection with that emergency. The fact that employment is of short duration does not in itself establish that an emergency existed.

An individual who remains in a continuous employment relationship for the purpose of performing services whenever an emergency arose is not performing an emergency service.

State national guard members called to serve on a temporary basis as State employees in connection with one of the emergency situations described above are mandatorily excluded from coverage. If the State national guard is called out by the Governor to perform services in connection with riots, strikes or civil disorders, such services are mandatorily excluded from coverage.

The exclusion applies only to service on a temporary basis. Individuals who are in a continuing employment relationship for the purpose of working whenever an emergency arises are not performing emergency services on a temporary basis, e.g., firefighters.

D. COVERED TRANSPORTATION SERVICES

Transportation services mandatorily covered for Social Security under Section 210(k) of the Act are excluded from coverage under a Section 218 Agreement.

30001.357 Optional Exclusions

When a State elects to extend Section 218 coverage to a coverage group, it has the option of excluding or covering certain services and positions. The State may take these optional exclusions for absolute and retirement system coverage groups. It may exercise these exclusions on a statewide basis or selectively by coverage groups. Optional exclusions not taken when the coverage group is brought under the agreement are covered.

If the exclusion is a position exclusion (elective, part-time, fee-basis), it may be taken for a class or classes of the positions. A class of positions is a group of positions which have common characteristics. Positions in a single organizational unit of the coverage group do not constitute a class of positions. For example, while all of the part-time clerical employees of a county could be excluded under the part-time position exclusion, the exclusion could not be taken for part-time employees of the Office of the County Clerk, which is an organizational unit of the county.

The optional exclusions include:

- Agricultural labor, but only those services that would be excluded if performed for a private employer;
- Elective positions;
- Election workers and election officials whose pay in a calendar year is less than the amount mandated by law, unless Section 218 agreement covers election workers;
- Positions compensated solely by fees that are subject to SECA (Self-Employment Contributions Act), unless Section 218 Agreement covers these services;
- Part-time positions;
- Students enrolled and regularly attending classes at the school, college or university where they are working.

The optional exclusions can be taken by the State in any combination for each separate coverage group. Any services a State excludes can be included later if permitted by Federal and State law and the State's Agreement. Generally, if the services are covered under a Section 218 Agreement, it cannot later be

removed from coverage except for services performed by election officials and election workers and solely fee-based positions.

NOTE: Beginning July 2, 1991, services optionally excluded from coverage under a Section 218 Agreement may be mandatorily covered unless the employee is a member of a public retirement system or the services are excluded from mandatory coverage.

A. Agricultural Services

When a State extends coverage to a group, it has the option of excluding agricultural labor that would be excluded if performed in private employment. A State, which initially excludes agricultural labor, may later modify its agreement to cover it. However, if agricultural labor is not excluded initially, it cannot be excluded later. If a State has not taken the agricultural exclusion, then all remuneration for agricultural labor is covered.

B. Elective Positions

A State may exclude the services in any or all classes of elective positions. Elective positions are those filled by an election. The election may be by a legislative body, a board or committee, or by the qualified electorate of a jurisdiction. The method of selection must constitute an election under State law. It may be by open voting by the electorate at large or by a chosen body from a list of candidates. Generally, elective positions fall into three classes: executive, legislative, and judicial. There may be other elective positions with common characteristics that would also constitute a separate class, e.g., elective executive positions filled by vote of statewide electors, elected executive positions filled by vote of electors of a specific circuit, elected positions of members of boards and commissions.

A mayor, member of a legislature, county commissioner, State or local judge, justice of the peace, county or city attorney, marshal, sheriff, constable, or a registrar of deeds is a public official. Other examples are tax collectors, tax assessors, road commissioners, members of boards and commissions, such as school boards, utility districts, zoning boards, and boards of health.

C. Election Officials and Election Workers

Prior to the 1967 Social Security Amendments, there was no specific provision for the exclusion of election officials and election workers. The exclusion was possible by excluding election officials/workers as a class of part-time positions.

Effective January 1, 1968, the Act was amended to allow each State to modify its agreement to exclude the services of election officials/workers whose pay in a calendar quarter was less than $50. For years 1978 through 1994, the threshold amount was $100 a calendar year. The threshold amount was $1,000 for years 1995-1999. The election worker threshold amount for

calendar years 2000 and 2001 was $1,100; for the calendar years 2002 through 2005, the election worker threshold amount was $1,200; for calendar years 2006 through 2007, the election worker threshold amount was $1,300; for calendar year 2008, the threshold amount was $1,400; and for calendar years 2009 through 2012, the threshold amount was $1,500. For calendar years 2013 through 2015, the threshold amount was $1,600. Beginning January 1, 2016 and going forward, the election official/worker threshold amount increases to $1,700 a calendar year.

Many States have excluded election workers paid less the threshold amount mandated by law. Therefore, Social Security and Medicare taxes do not apply until the election worker is paid the threshold amount or more. Some State agreements specify a lower threshold amount for election workers, e.g., $50 a calendar quarter or $100 a calendar year. In these States, the Social Security and Medicare tax applies when the amount specified in the State's agreement is met. States may modify the State's agreement to exclude the services of election workers paid less than the threshold amount mandated by law. Such modifications are effective in the calendar year the modification is mailed or delivered to SSA.

If the State's agreement does not have an election worker exclusion or the entity has a Section 218 Agreement that does not exclude election workers, Social Security and Medicare taxes apply from the first dollar paid. If the entity is not covered under a Section 218 Agreement, the rules for mandatory Social Security and Medicare apply. To find the coverage status of election workers for each State, click the Election Worker Coverage Chart (http://www.ssa.gov/slge/election_workers_chart.htm).

D. Fee-Based Public Officials

A fee-based public official is one who receives and retains remuneration directly from the public, e.g., justice of the peace, local registrar of vital statistics. An individual who receives payment for services from government funds in the form of a wage or salary is not a fee-based public official, even if the compensation is called a fee.

The fee-based public official provisions do not apply to notary publics. A notary public is not a public official even though he/she performs a public function and receives a fee for services performed. The services of a notary public are not covered for Social Security purposes.

REFERENCE: Social Security Ruling 92-4p

1. Fee-Basis Exclusion – Position Compensated Solely by Fees

Services in positions compensated solely by fees are excluded from coverage under Section 218 Agreements (unless the state specifically included these services) and are covered as self-employment and subject to SECA.

Beginning 1968, services performed in positions compensated solely by fees are excluded from coverage under Section 218 Agreements unless the State specifically covers these services. If a State covered these positions before 1968, it may modify its agreement to exclude these positions prospectively. The exclusion is effective the first day of the year following the year in which the modification is mailed or delivered by other means to SSA. If a State covered and later excluded these positions, the State cannot again cover these positions.

2. Fee-Basis Exclusion – Position Compensated by Salary and Fees

Generally, a position compensated by a salary and fees is considered a fee-basis position if the fees are the principal source of compensation, unless a state law provides that a position for which any salary is paid is not a fee-basis position. A State may exclude services from Social Security and Medicare coverage under Section 218 Agreements in positions compensated by both salary and fees. If the exclusion is taken, none of the compensation received, including the salary, is covered wages under the State's 218 Agreement. In this case, the salary payment, while excluded under the Agreement, would be subject to mandatory Social Security if the official is not a member a public retirement system.

E. Part-Time Positions

A part-time position is one in which the number of work hours normally required by the position in a week or pay period is less than the normal time requirements for the majority of positions in the employing entity. The part-time position exclusion is based on the normal time requirements of the position and not the time spent by an employee in the position.

If a position is established as a full-time position but the employee works part-time in this position, the exclusion does not apply. Conversely, if a position is established as a part-time position and the employee works full time in this position, the services of the employee are excluded even though the employee works full-time. However, if the work required for a position originally classified as part-time increases to the extent the normal time requirements of the position no longer meet the adopted definition of part-time, the position would no longer constitute a part-time position.

If the part-time position exclusion is taken, the State should define the part time position in the modification if one has not been previously established. A definition may apply on a statewide basis or different definitions may be given for different coverage groups. Some acceptable definitions of part-time positions are:

- any position which normally requires less than 20 hours of work each week;
- any position which does not normally require over 50 hours of service per month in any calendar year; and

- services performed by an employee in a position that does not normally require actual performance of duty for at least 600 hours each year.

CAVEAT: The definition of a part-time position for mandatory Social Security may be different from the definition of a part-time position under a Section 218 Agreement.

EXAMPLE: A city extended Section 218 coverage to its employees and excluded part-time positions. A part-time position was defined in the agreement as any position that requires 15 hours or less of service per week. The city must apply the Section 218 definition of part-time positions to determine which positions are excluded from coverage under the agreement.

Whether seasonal or temporary positions, which require full-time services for a period of short duration, are part-time positions depends on the definition of part-time established for the coverage group. Such a position might be a part-time position if, for example, the definition of part-time is based on an established number of hours per year.

To determine whether an elective or public office, which requires that an individual be on duty or available at all times is part-time, the normal time requirements for actual performance of services would govern.

The part-time exclusion for a coverage group may be limited to any class or classes of positions, such as elective or legislative. The amount of compensation may not be used to define part-time, but may be used to define a class of part-time positions. Examples of acceptable classes of part-time positions are:

- all part-time positions the compensation for which is less than $50 per calendar quarter;
- all services in part-time legislative elective positions;
- all services performed in part-time positions by employees working on a retainer basis.

If the definition of part-time or class of part-time contains multiple conditions, all of the conditions must be met for the exclusion to apply.

NOTE: The 1972 Social Security Amendments allowed States until January 1, 1974 to exclude services performed in part-time positions where this exclusion was not taken initially. Where this was done, States cannot again cover these positions unless Congress enacts legislation to do so.

F. Student Services

Students are excluded from Social Security and Medicare coverage if the student is performing services in the employ of a school, college or university where the student is enrolled and regularly attending classes.

Most States have excluded students from coverage under the State's Section 218 Agreement. Some States, however, elected to provide coverage for

student services in certain schools. Student services covered under a Section 218 Agreement cannot be excluded unless Federal legislation authorizes it.

The student exclusion applies only during periods of regular school attendance, whether during the regular academic year or in summer session. The exclusion does not apply to work done during summer vacation if the student is not attending a summer session. Services performed by students during the holidays (e.g., Christmas break), weekends, seasonal breaks and between semesters falling within the academic year when classes are not scheduled are excluded.

NOTE: The 1972 Amendments allowed States until January 1, 1974 to exclude student services where this exclusion was not taken initially. Then, Public Law 105-277, Section 2023, enacted October 21, 1998, provided a 3-month period for States, who had not taken advantage of the 1972 legislative provision to modify their Section 218 Agreements to exclude student services. The exclusion was effective July 1, 2000. States that exercised this option cannot again cover these services unless Congress enacts legislation to do so.

30001.358 Temporary Emergency Worker Exclusion

The Senate Finance Committee, in a report based on the Social Security Amendments of 1967, stated that effective January 1, 1968 services performed by an individual temporarily hired to serve as an employee on the basis that a condition of emergency exists are mandatorily excluded from FICA tax withholding. Such emergencies can be, but are not necessarily limited to, fire, storm, snow, earthquake, flood, volcanic, or other similar condition of significant disaster or peril to life or property.

Eligibility for FICA exemption under the temporary emergency worker exclusion is contingent upon several key factors: (1) There must be an employee-employer relationship; (2) the employment relationship must be established on a temporary basis, and (3) employment must be in case of fire, storm, snow earthquake, flood, or similar emergency. In addition to the nature of the employment being based on an emergency, the position itself must be of an emergency nature (i.e., life saving or life protecting services).

The temporary emergency worker exclusion is referenced in Sections 210(a)(7)(F) and 218(c)(6)(E) of the Social Security Act and Section 3121(b)(7)(F)(iii) of the Internal Revenue Code. For additional information on the background, purpose, and application of the exclusion refer to the Temporary Emergency Worker Exclusion Resource Guide. The guide can be found in Section SL 15005.010.

30001.360 Covering Services Optionally Excluded

A. ABSOLUTE COVERAGE GROUP

Services in positions optionally excluded from an absolute coverage group can generally be covered later by a modification to the agreement. The modification will add the services or positions to the absolute coverage group. The State may choose any effective date for the coverage consistent with Federal and State laws. If the excluded positions come under a retirement system before they are covered under the agreement, the positions are then retirement system positions for purposes of extending coverage.

B. RETIREMENT SYSTEM COVERAGE GROUP

Services or positions optionally excluded from a retirement system coverage group can also generally be covered. However, a regular referendum must be held for the excluded group and a majority of the members of the retirement system must vote in favor of coverage. A separate referendum must be held among the members of each excluded class (or classes) of excluded positions or services. Each class or class(es) of positions excluded must be deemed a separate retirement system.

C. SERVICES COVERED AND LATER EXCLUDED

Solely fee-basis positions, part-time positions and student services which were covered and subsequently excluded, cannot be covered again under a Section 218 Agreement. See next section.

D. EXCLUDING SERVICES PREVIOUSLY COVERED

Once services of employees are covered they cannot later be optionally excluded, except for the following:

- positions compensated solely by fees; and
- election officials and election workers paid less than the threshold amount mandated by law.

30001.365 Public Transportation Services

A. BACKGROUND

Covered transportation service refers to work for public transportation systems which is compulsorily covered under Section 210(k) of the Act and mandatorily excluded from coverage under a Section 218 Agreement. The 1950 Social Security Amendments, which provided coverage for employees of State and local governments, included special coverage rules under Section 210(k) for employees of public transportation systems acquired from private ownership and operated by these entities. These rules, which are still in effect, provide mandatory Social Security coverage for work for public transportation systems under certain conditions. Whether the services are covered under Section 210(k) or may be covered under a Section 218 Agreement depends on the date the system was acquired by the State or local government and whether the services are covered by a general retirement system.

Section 218(c)(6)(C) of the Act mandatorily excludes from coverage under a Section 218 Agreement transportation services covered under Section 210(k). However, transportation services also may be excluded from coverage under Section 210(a)(9) of the Act and Section 3231 of the Internal Revenue Code, as amended, if services are performed by a railroad employee as determined by the Railroad Retirement Board (RRB) for purposes of the Railroad Retirement Act, or by IRS for purposes of the Railroad Retirement Tax Act provisions of the Internal Revenue Code. Therefore, before a coverage determination is made, it must first be ascertained if the RRB or IRS has made any prior related determinations.

B. SECTION 210(k) OF THE SOCIAL SECURITY ACT

Section 210(k) of the Act sets forth two factors that determine if service performed in the employee of a State or political subdivision in connection with its operation of a public transportation system is covered transportation. Those factors are:

- the transportation system was not operated by the State or political subdivision thereof prior to 1951; and
- at the time of its first acquisition after 1950, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

C. DEFINITION OF TERMS

1. General retirement system

Any pension, annuity, retirement or similar fund or system established by a State or political subdivision for employees of the State, political subdivision, or both. The term does not include a fund or system which covers only services performed in connection with the operation of the transportation system. For this purpose, a general retirement system is guaranteed by the State if the State constitution contains a provision which states specifically that State and local retirement systems cannot diminish or impair their benefits.

Where the transportation system is operated by an entity created specifically for that purpose, a retirement system which covers only employees of that entity is not a general retirement system. Similarly, a continuation of the private employer's pension plan by the State or local government is not a general retirement system.

2. Acquisition from private ownership

A transportation system is considered acquired by a State or by a political subdivision from private ownership if prior to the acquisition work for the system was covered for Social Security and some of its employees became employees of the State or political subdivision at the time of the acquisition. If a political subdivision acquires a transportation system from another political subdivision whose employees are covered under a Section 218 Agreement, the system is considered acquired from private ownership.

3. Services in connection with the operation of a transportation system

This includes work that is essential to or closely connected with the operation of the system. It is not limited to work done in connection with the actual physical operation. If the transportation system is operated by a transit authority or similar entity created exclusively for the purpose of acquiring and operating transportation systems, all services performed by the entity's employees are in connection with its operation. If the system is operated by an entity not created for this specific purpose, whether the services are in connection with its operation depends on whether the sum total of the

individual's activities, as distinguished from any one activity or function, pertains to the conduct of the system. Factors to be considered are the functions of the employee, the funds from which he/she is paid, the type of official, agency or department which directs the employee's activities, and the activities of the agency or department. No factor is controlling; it is the nature of the total services and their relation to the operation of the transportation system that is significant.

D. TRANSPORTATION SYSTEM ACQUIRED BEFORE 1937

Services performed after 1950 for a State or political subdivision in connection with the operation of a transportation system which was acquired in its entirety by the State or political subdivision from private ownership before 1937 are not covered transportation service. Employees can be covered only pursuant to a Section 218 Agreement.

E. TRANSPORTATION SYSTEM ACQUIRED AFTER 1950

If a State or political subdivision did not own a transportation system before 1951 and took over a private system after 1950, all employees are compulsorily covered unless at the time of acquisition the State or political subdivision has a general retirement system that covers substantially all work connected with the operation of the system.

F. TRANSPORTATION SYSTEM ACQUIRED AFTER 1936 AND BEFORE 1951

If the transportation service was acquired from private ownership in whole or in part after 1936 and before 1951, or was operated at least in part by the State (or political subdivision) on December 31, 1950, with no general retirement system, all employees are compulsorily covered after 1950.

G. TRANSPORTATION SYSTEM ACQUIRED BEFORE 1951 AND AFTER 1951

If the transportation system was acquired from private ownership in part before 1951 and in part after 1951 and there was no general retirement system on the date of acquisition, the services are covered transportation service. Coverage is compulsory effective on the first day of the third quarter after the quarter of acquisition only for those individuals employed before the acquisition.

30001.370 Special State Provisions

There are a number of special provisions in Federal law that relate to individual States. Some of these provisions validate legislation; others establish special procedures.

A. Coverage of nonprofessional school employee positions under the provisions of Section 104(f)

Section 104(f) of the Social Security Amendments of 1956 authorized Florida, Hawaii, Minnesota, Nevada, New Mexico, Oklahoma, Pennsylvania, Texas, and Washington to extend Social Security coverage to nonprofessional school employees in positions under a retirement system without a referendum, and as a separate absolute coverage group. This provision did not preclude these States from covering the services of these employees as members of a retirement system coverage group through the referendum procedures. Originally, Section 104(f) of the Social Security Amendments of 1956 permitted coverage in this manner provided that any modification to include such individuals was entered into prior to July 1, 1957, but that date was subsequently extended through December 31, 1961 by Public Law 86-284, sec.1 (enacted on September 16, 1959).

1. Nonprofessional school employee positions

Nonprofessional school employees are those employees of public school districts in the specified States who were not in positions which State law required a valid State teacher's or administrator's certificate as a prerequisite for payment for their services. (The teachers' or administrators' certificates referred to are those required by State law or regulations.)

Examples of nonprofessional employee positions may include:

- janitor
- bus driver
- cafeteria worker
- school nurse
- payroll supervisor
- counselor
- educational aide, etc.

unless State law specified that a teacher's or administrator's certificate was required for the position in question.

Some of the specified States used the Section 104(f) special provision to cover the nonprofessional school employees. After 1961, Social Security coverage of such employees was obtainable only through the referendum procedures.

Although nonprofessional positions were already covered under a retirement system, Social Security extended coverage to these positions under Section 104(f), as separate absolute coverage groups. Absolute coverage policy and procedures apply to these positions, even when considering school district positions created after the applicable date of a school district's nonprofessional modification. (For the definition of "applicable date" and how it is applied to modifications executed after August 28, 1958, see SL 30001.375B). For modifications executed before August 29, 1958, the applicable date is the date the Social Security Administration executed the modification. If the modification establishes a future effective date for Social Security coverage, the effective date then becomes the applicable date. The Section 104(f) provision also extends coverage to those school district employees in nonprofessional positions who were either not eligible to join the retirement system (retirement system ineligibles) or were given the option to join the retirement system and chose not to join (retirement system optionals).

References

- SL 30001.315 – Absolute Coverage Group (Section 218(b)(5))
- SL 30001.316 – Composition of an Absolute Coverage Group
- SL 30001.317 – Providing Coverage for Absolute Coverage Group

2. Determining status of employee positions in existence on the applicable date of the Section 104(f) nonprofessional modification

When determining which school district employee positions a Social Security nonprofessional modification covers, consult the State's teacher and administrator certification requirements in effect on the applicable date of the modification, if obtainable. If those requirements were based on State statutes in effect at that time, the pertinent State statutes may be available in the State law libraries.

In some situations, the teacher or administrator certification requirements in effect on the applicable date of a particular nonprofessional school employee modification may no longer be available or may have changed, making it

difficult to determine which nonprofessional school employee positions would be covered for Social Security under that modification.

When making such determinations, consider the following:

- Use official State certification requirements and not those certification requirements adopted only at the school district level; the language of Section 104(f) of the Social Security Amendments of 1956, as well as the resulting modifications, specifies that we refer to State law to determine if the position requires a certificate;
- If State certification requirements for a certain school district position subsequently changed, we base nonprofessional coverage status on the certification requirements in effect on the applicable date of the nonprofessional modification;
- Use documentation in existence at the time of the applicable date of the nonprofessional modification, and if such documentation is not available, use documentation as close as possible to the modification's applicable date;
- If State law does not use the term "administrator's certificate," look at the duties of the position. Superintendent or principal positions would be considered "administrators" under Section 104(f) of the Social Security Amendments of 1956 and the resulting modifications if State law requires certification that is equivalent to an "administrator's certificate";
- Do not confuse the requirement for a license or certificate to occupy a job position with the requirement for a teacher's or administrator's certificate;
- Refer to the requirement for certification by job position, not whether the employee happens to have a certificate. (For example, an ROTC instructor position does not require a teacher's certificate, but the employee occupying the position has one. We still consider the ROTC position a nonprofessional position, and the employee should be covered for Social Security.)

See Details

SL 30001.375B – Definition of "applicable date"

3. Determining the status of employee positions created after the applicable date of the Section 104(f) nonprofessional modification

When considering the nonprofessional status of a position created by a school district after the applicable date of the school district's nonprofessional modification, refer to the State certification requirements that were in effect for that position on the applicable date of the school district's nonprofessional coverage modification.

In some cases, there may have been intervening changes to the State teacher's or administrator's certification requirements between the applicable

date of the school district's nonprofessional coverage modification and the time the school district subsequently created the position. Regardless of its current State certification status, you must review the position in question within the context of what the State certification requirements were for the position on the applicable date of the school district's nonprofessional coverage modification.

The basic rule is: a position is covered for Social Security pursuant to the nonprofessional coverage modification, unless the position required a State teacher's or administrator's certificate at the time of the modification or is substantially similar to a position that required a State teacher's or administrator's certificate at the time of the modification.

State certification requirements in effect as of applicable date of modification

If there were existing State teacher's or administrator's certification requirements for the school district position as of the applicable date of the school district's nonprofessional modification, then consider the position a professional position and not covered for Social Security.

Position created after the applicable date of modification, but before establishment of state certification requirements

If the school district created a position after the applicable date of the nonprofessional coverage modification, but before the State established any teacher's or administrator's certification requirements for that position, then consider the position a nonprofessional position and covered for Social Security.

State certification requirements established after applicable date of modification but preceding school district's creation of the position

There may be situations where the order of events concerning a school district position may follow this pattern:

- the school district's non-professional coverage modification is executed; followed later by,
- the State instituting certification requirements for a specific school district position; followed by,
- the school district subsequently establishing the aforementioned position in its system.

In situations of this kind, the Social Security program staffs and General Counsel must review the established job duties of the school district position in effect at the time of its creation by the school district.

This review must treat the position as if it existed on the applicable date of the nonprofessional coverage modification (and before establishment of State certification requirements), and determine whether on the applicable date the position's duties would have placed it in the category of a professional or nonprofessional position.

When making nonprofessional determinations for school district positions created after the applicable date of the Section 104(f) nonprofessional coverage modification also consider the following:

- Use official State certification requirements and not those certification requirements adopted only at the school district level; the language of Section 104(f) of the Social Security Amendments of 1956, as well as the resulting modifications, specifies that we refer to State law to determine if the position requires a certificate;
- Use documentation that existed at the time of the applicable date of the nonprofessional modification, and if such documentation is not available, use documentation as close as possible to the modification's applicable date;
- The job description of a particular school district position should be the one in effect at the time of the job's creation by the school district, and if a job description from that time is unavailable, obtain one that is as close as possible to the time of the job's creation;
- If State law does not use the term "administrator's certificate," look at the duties of the position. Consider superintendent or principal positions as "administrators" under Section 104(f) of the Social Security Amendments of 1956, and the resulting modifications if State law requires certification that is equivalent to an "administrator's certificate";
- Do not confuse the requirement for a license or certificate to occupy a job position with the requirement for a teacher's or administrator's certificate;
- Refer to the requirement for certification by job position, not whether the employee happens to have a certificate. (For example, an ROTC instructor position does not require a teacher's certificate, but the employee occupying the position has one. We still consider the ROTC position a nonprofessional position, and the employee should be covered for Social Security.)

See Details

SL 30001.375 – Effective Dates of Coverage

B. Retirement systems compensated from Title III Federal funds

The following States have additional options for determining what is a retirement system for referendum and coverage purposes for employees in positions covered by a retirement system; compensated in whole, or in part from Federal funds under title III of the Act (grants to States for unemployment compensation administration).

- Florida
- Georgia
- Hawaii

- Minnesota
- North Dakota
- Pennsylvania, and
- Washington.

These States have additional choices for determining what is a retirement system for referendum and coverage purposes for the following positions:

- State employees compensated in whole or in part from title III funds may be deemed to be a separate retirement system.
- All employees of the State under the same retirement system in the department of the State having title III employees may be deemed to be a separate retirement system.
- State employee positions (other than the title III employees) in the department of the State that are under the same retirement system may be deemed to be a separate retirement system.

Obtain coverage through the same procedures as for other retirement system coverage groups. A retirement system established under this section may be further divided pursuant to Section 218(d)(6)(C) of the Act.

C. Alaska

Certain school districts erroneously included in the Alaska agreement as political subdivisions were deemed to be political subdivisions from the effective date of coverage for each through December 31, 1965, and reporting for the employees were validated for periods prior to 1966.

D. Arizona

Services of employees in positions under the Arizona Teachers' Retirement System were covered under the State's agreement effective January 1, 1953.

E. Arkansas

Certain agencies erroneously covered under the State's agreement as political subdivisions were deemed to be political subdivisions from the effective date of coverage established for each through December 31, 1962. This validated the coverage extended to this period.

F. California

Under the 1960 Social Security Amendments, California modified its agreement to cover services of employees in certain hospital positions, who on or after January 1, 1957, and on or before December 31, 1959, were employed by the State or any political subdivision; whose positions on September 1, 1954, were covered by a retirement system but removed from retirement system coverage before 1960; and who had been reported in error without coverage. Coverage continues after 1959.

Under the 1965 Amendments, California modified its agreement to provide coverage after 1961, for employees of the hospital in similar positions first employed after December 31, 1959, as well as for all such services performed before that date, where reporting was made without coverage.

G. Connecticut

Under Public Law 99-272, enacted April 7, 1986, Connecticut received authorization to extend coverage to services of members of the Division of the State Police within the Connecticut Department of Public Safety, hired on or after May 8, 1984, and who are members of the Tier II plan of the Connecticut State Employees Retirement System. Coverage under the State's agreement could be extended without a referendum. This provision was effective for services performed after April 7, 1986, the date of enactment of P.L. 99-272.

H. Illinois

As authorized by the 1977 Social Security Amendments, Illinois modified its agreement to cover positions of certain police officers and firefighters in positions under the Illinois Municipal Retirement Fund and validated the wages erroneously reported in the past for such individuals.

I. Iowa

- Effective January 1, 1966, as authorized, Iowa modified its agreement to exclude previously covered student services for wages paid in any calendar year if less than $50.
- Certain Iowa Police and Firefighters – Public Law 100-203, enacted December 22, 1987, provided that Iowa's Section 218 agreement could be modified at any time before January 1, 1989, to cover services in police officer or firefighters positions that required coverage by a retirement system, according to Section 410.1 of the Iowa Code, as in effect on July 1,

1953, if Iowa paid Social Security taxes to the Secretary of the Treasury before December 22, 1987 , based on wages paid on or before December 31, 1986. A referendum for such coverage was not required. Iowa was not a State listed in Section 218(l) of the Act.

A modification under this provision had to cover all affected services performed in police officer or firefighter positions on or after January 1, 1987, or all services performed in police officer or firefighter positions, affected by this provision, before January 1, 1987. Coverage of services performed before January 1, 1987, was permitted if no refund of the Social Security taxes had been obtained, or if the refund had been obtained, Iowa repaid the refund to the Secretary of Treasury within 90 days after the date of the modification to validate the coverage was agreed to by Iowa and SSA.

J. Louisiana

The 1972 Social Security Amendments authorized Louisiana to terminate the coverage of all employees in positions under the Registrars of Voters Employees' Retirement System (RVERS) effective December 31, 1975. Louisiana may not extend coverage again under the State's Section 218 agreement to employees in positions under RVERS.

K. Maine

Maine was authorized, after August 28, 1958, and before July 1, 1967, to divide any retirement system covering positions of teachers and other employees into two deemed retirement systems, for the purpose of holding a referendum and extending coverage; one composed of positions of teachers and the other composed of employees other than teachers. The term "teacher" defined in the law means any teacher, principal, supervisor, school nurse, school dietitian, school secretary or superintendent employed in any public school, including teachers in unorganized territory. Consider teacher assistants who perform teaching duties on a professional basis, as teachers for purposes of this special provision.

L. Massachusetts

Massachusetts was authorized to modify its agreement and terminate the coverage of the employees of the Massachusetts Turnpike Authority effective July 1, 1968.

M. Mississippi

Mississippi teachers were deemed to be State employees and have the same coverage as State employees for services performed after February 28, 1951, and before October 1, 1959. This provision validated the coverage of teachers employed by the school district, but reported erroneously as State employees.

N. Nebraska

- Nebraska was authorized to modify its agreement to exclude on a statewide basis, effective September 14, 1960, services performed by justices of the peace or constables in positions compensated on a fee basis for coverage groups already included under its agreement. The State may again provide coverage under its agreement for these services either on a statewide coverage group basis or on an entity-by-entity coverage group basis at some later date.
- Although Section 35 of the 1943 Nebraska State Statutes mandated all "cities of the first class" (5,000 to 40,000 population) to have a retirement system for their firefighters, a number of the cities of the first class did not abide by the statute. When those cities obtained Social Security coverage under Nebraska's Section 218 agreement, they mistakenly considered their firefighters to be absolute coverage positions because the firefighters were not members of a retirement system. The cities erroneously reported their firefighters for Social Security coverage. The 1967 Social Security Amendments validated Social Security coverage for services performed by the affected firefighters before January 2, 1968.

O. New Mexico

The 1972 Amendments authorized New Mexico to modify its agreement to provide Social Security coverage, as a separate absolute coverage group, for the services of employees of a hospital that is an integral part of a political subdivision not covered under the State's Section 218 agreement. Obtaining Social Security coverage for hospital employees as a separate absolute coverage group can only occur if the hospital withdrew prior to 1966 from a retirement system previously applicable to the employees of the hospital.

P. North Dakota

North Dakota was authorized to modify its Section 218 agreement to exclude from Social Security coverage student services performed in any calendar quarter for which wages paid were less than $50. The authorization applied to coverage groups already covered under the State's Section 218 Agreement. This provision was not used. However, the State later modified its agreement, as authorized by the 1972 Amendments, to exclude all student services on a statewide basis effective March 31, 1974.

Q. Oklahoma

- Remuneration received by engineering aides of soil and water conservation districts in Oklahoma for services performed during the period January 1, 1951, through June 30, 1962, but reported by the State as remuneration received for services performed as State employees, is deemed to have been paid for services performed by these aides, as State employees, thereby validating the coverage. Such services performed after June 30, 1962, for employees of the soil and water conservation districts are covered if the employing entity is covered.
- Before 1962, Oklahoma was authorized to modify its agreement to validate certain erroneous reports made by some political subdivisions for ineligibles in police positions covering the services as part of the absolute coverage groups of the entities involved. It applied only to those employees in police positions under a retirement system in effect on September 16, 1959, who were ineligibles on that date, or on the last day they performed such services, if earlier, and only if the State had paid contributions before January 1, 1959, with respect to any of their services. This provision did not extend coverage to services of ineligibles hired after September 16, 1959. This provision validated reporting for certain ineligibles employed by the City of Tulsa.

R. Utah

Utah received authorization to modify its agreement to provide that employees performing services for each of the following constitute a separate coverage group:

- Weber Junior College,
- Carbon Junior College,
- Dixie Junior College,
- Central Utah Vocational School,
- Salt Lake Area Vocational School,

- Center for the Adult Blind,
- Union High School (Roosevelt, Utah),
- Utah High School Activities Association,
- State Industrial School,
- State Training School,
- State Board of Education, and
- Utah School Employees Retirement Board.

Coverage was effective January 1, 1951. The 1983 Amendments provide that a name change in any of these groups will not affect coverage.

S. West Virginia

West Virginia was authorized to modify its agreement to cover certain police and firefighters employed by a class III or IV municipal corporation in positions under a retirement system. These modifications validated wages erroneously reported in the past for such individuals.

T. Wisconsin

Federal law deems all employees in positions covered by the Wisconsin Retirement Fund who are also members of the Fund on or after January 1, 1951, as a separate coverage group. The services of employees in such positions were covered under the State's agreement effective January 1, 1951, or the date the positions were brought under the Fund, if later. This coverage group includes police in positions under the Fund, but does not include firefighters. The Wisconsin Retirement Fund includes any successor system. In the event the Wisconsin Retirement Fund changes its name or expands its coverage, the employee's coverage will continue on the same basis as the current Wisconsin Retirement Fund coverage.

30001.375 Effective Dates of Coverage

The effective date of coverage is the date specified by the State in the agreement or modification for coverage to begin. A different effective date may be specified for each coverage group listed in the agreement or modification.

When additional services are covered, the effective date of coverage cannot be earlier than the date specified for the coverage group to which they are being added. The effective date of coverage for employees choosing coverage under the "second chance procedure" must be the same date as the retirement system coverage group.

An earlier effective date can be established for a coverage group already covered under an agreement. The extent of the additional retroactivity is governed by the provisions of Federal and State laws. For example, a modification mailed to SSA in 2004 to provide an earlier effective date for a coverage group already included under the State's agreement can be effective no earlier than January 1, 1999. The effective date of coverage may not be changed to a later date, except to correct an error.

A. DATE OF RETROACTIVE COVERAGE

1. Beginning April 7, 1986

Beginning April 7, 1986, the effective date of coverage is based on the date the agreement or modification is mailed or delivered by other means to SSA. (Public Law 99-272). (Before this date, it was based on the date the modification was executed.)

Section 218(e)(1) of the Act provides that the effective date may not be earlier than the last day of the sixth calendar year preceding the year in which the agreement or modification is mailed or delivered by other means to SSA.

This ensures a timely effective date for modifications, without regard to the time gap between the time the modification was received by SSA and the time that it was executed by SSA. Before April 7, 1986, one year of retroactive coverage could be lost if a modification was mailed by a State to SSA in one year, but was not executed by SSA until the following year. This often happened where the modification was mailed to SSA in November or December.

2. January 1, 1961 through April 6, 1986

The effective date could be as early as the first day of the fifth calendar year before the year the modification was executed by SSA.

Example: A modification was mailed to SSA in late November 1983 and received by SSA in December 1983. The modification was executed by SSA in January 1984. Under the law in effect during January 1, 1961 through April 6, 1986, retroactive coverage was limited to January 1, 1979.

3. Agreements Executed Before 1961

- Executed before 1954: retroactive coverage possible to 1/1/1951
- Executed during 1954: retroactive coverage possible to 1/1/1954
- Executed during 1955, 1956 or 1956: retroactive coverage possible to 1/1/1955
- Executed during 1958, 1959 or 1960: retroactive coverage possible to January 1956

Modifications for coverage of absolute coverage groups of civilian employees of State national guard units could be retroactive to January 1, 1951, if executed prior to January 1, 1956. After 1955, the rules above apply.

Coverage of individuals ineligible for membership in a retirement system and coverage of the coverage group of agricultural inspectors could not begin earlier than January 1, 1955.

Coverage of individuals in positions removed from coverage under a retirement system by action started prior to September 1, 1954, could not begin earlier than January 1, 1955, and the modification had to be executed prior to 1958.

Coverage of services in positions under a retirement system could not begin before 1955. After 1954 the rules above are applicable.

B. DATE CONTROLS WHO IS ENTITLED TO RETROACTIIVE COVERAGE

Section 218(e)(2) of the Act provides that a State may designate in agreements and modifications executed after August 28, 1958, a date to control for purposes of who is entitled to retroactive coverage (as distinguished from the effective date of retroactivity). The date designated by the State cannot be earlier than the date the agreement or modification is mailed or otherwise delivered to SSA. If no date is designated, the date the agreement or modification is executed by SSA controls.

For error modifications, the date of the error is the date that controls who is entitled to retroactive coverage. If the error involves erroneous reporting to IRS, the effective date of coverage is the first day of the first period for which the erroneous reports were made to IRS, if State law permits.

C. EMPLOYEES COVERED FOR THE RETROACTIVE PERIOD

1. Current Employees

Only employees who are members of the coverage group and in an employment relationship with the entity being covered on the date which controls retroactive coverage are covered for any retroactive period of coverage. Such an employee would be covered as follows:

- Absolute coverage group – Employee obtains coverage for that part of the retroactive period in which the employee worked and received wages.
- Retirement system coverage group (majority or divided vote) – Employee obtains coverage for that part of the retroactive period in which the employee worked and received wages in a position under the system.
- Ineligibles – Employee obtains coverage for that part of the retroactive period in which the employee worked and received wages in a position under the retirement system not earlier than the date of employee's first ineligibility.

2. Employment Relationship Terminated

If an employment relationship was terminated by death, retirement, or otherwise, during the interval between the effective date of coverage and the date which controls who is covered for the retroactive period, there is no coverage for the retroactive period. However, see SL 30001.375 D. for preserving retroactive coverage under section 218 for former employees where reports were erroneously made to IRS or to SSA without coverage under a section 218 agreement.

3. Employees Terminated and Rehired

Services performed by an individual whose employment relationship was terminated before the date which controls who is covered for the retroactive period, but who was rehired before that date is covered retroactively. Services

of an individual whose employment relationship terminated prior to that date but who was rehired after that date would not be covered retroactively; coverage would be prospective from the date of the rehiring.

4. Change of Employers

If an employee changed employers during the retroactive period but the employee occupies a position in the same retirement system coverage group on the date that controls retroactive coverage, the employee is covered for the retroactive period. This is true even though there is a break in the continuity of the employee's employment provided the employee is in an employment relationship on the controlling date.

D. RETROACTIVITY FOR FORMER EMPLOYEES (SECTION 218(e)(3))

Ordinarily only those individuals who are in an employment relationship on the date designated in a modification, or if none is designated, the date of execution of the modification, can be covered for this retroactive period. Where employees who were part of the coverage group were erroneously reported to IRS or SSA, coverage for their services may be preserved although they are not currently in an employment relationship.

Under certain conditions, the State may use an error modification which provides coverage as of the date on which the error occurred. Another way to preserve coverage for former employees is to include those employees who had been part of the coverage group, and whose earnings were erroneously reported as a part of the coverage group, provided no tax refund has been obtained. The State may, by deeming former employees to be part of the coverage group on the date designated to control retroactivity, give them whatever retroactive coverage is provided current employees.

E. DEEMING A RETIREMENT SYSTEM TO EXIST FOR EFFECTIVE DATE PURPOSES

Generally, there can be only one effective date of coverage for a coverage group. However, if a retirement system covers the positions of employees of the State and one or more political subdivisions or the employees of two or more political subdivisions, the State may if the retirement system is not divided into deemed retirement systems:

- Choose a single coverage effective date for all members of the coverage group; or
- Choose a different coverage effective date for any one of any combination of the political subdivisions; or
- Choose a different coverage effective date for the State or for the State and any one or more of the political subdivisions.

These choices are available for agreements and modifications entered into on or after September 13, 1960.

When there are different coverage effective dates, an employee will receive retroactive coverage only for his services with the entity which employs him on the date that controls retroactivity and then only to the extent retroactive coverage is provided for the employees of that entity. The State may, however, provide additional retroactive coverage for employees who work at different times for more than one of the employers included in the coverage group.

This provision applies only to effective dates. In other respects there is no change in the retirement system coverage group. One referendum must be held for the entire system. Coverage is extended to all employees in positions under the system. The optional exclusions taken and the date designated to control retroactive coverage are applicable to the entire coverage group. Employees whose positions are brought under the retirement system after the agreement is made applicable to the retirement system coverage group are automatically covered.

F. ADDITIONAL RETROACTIVITY BY TACKING

1. General

It is possible for a State to provide an employee with additional retroactive coverage by "tacking" onto the employee's coverage, services the employee performed in the retroactive period for entities which are not a part of the employee's coverage group. Tacking requires the State to agree in writing to treat all employees similarly situated in the same way.

Tacking is permitted only if the services to be tacked are for entities covered under the agreement or for entities whose coverage was terminated because of dissolution. If a divided vote retirement system is involved, the employee

has a choice as to whether he/she wants his/her services tacked. This is the only situation where the individual may exercise a choice in tacking.

2. Tacking Procedure and Agreement

The State tacking agreement must be in writing. The following tacking agreement example may be adapted to fit specific tacking situations.

State of _____ Tacking Agreement

It is hereby agreed that any employee whose services were covered during a retroactive period by Modification No. ____ shall receive credit for any employment which would have been covered had he/she not changed employers, provided he/she was in an employment relationship with an employer listed in Modification No. _____ on _____ (the date designated pursuant to Section 218(e)(2) of the Act in Modification No. _____).

_____

(Signature of Authorized State Official and Date)

3. Modification and Reporting Information

List the current entity to which coverage is to be tacked in the modification providing coverage. If the services to be tacked are for an entity which was covered before its dissolution or consolidation, the wages for the retroactive period should be reported under the name and EIN of the entity which actually paid the wages.

The State should attach to the modification a list showing the name and address of the entity no longer in existence, and the period during which the dissolved entity had employees now employed by the current entity.

30001.380 Continuation of Coverage Rules

Once coverage is provided for State and local government employees, it generally continues unless an event occurs which results in a termination of the coverage. One such event could be a change in employer.

Example: School teacher is covered as an employee of school district A, a covered entity. He subsequently resigns to accept a position with school district B, a non-covered entity. His coverage for Social Security ceases as of the date he resigns from school district A.

A. CONTINUATION OF COVERAGE – ABSOLUTE COVERAGE GROUP

If services performed in a position are covered as part of an absolute coverage group, coverage continues if the position subsequently comes under a retirement system. This includes police and firefighter positions which, after coverage is obtained with an absolute coverage group, come under a retirement system.

1. Newly Created or Reclassified Positions

Positions created or reclassified after the absolute coverage group was brought under the agreement are covered as a part of the group if they would have been a part of it had they existed when the group was covered. For example, an individual in a new or reclassified position is not covered with the absolute coverage group if the position would have been under a non-covered retirement system if the position had been in existence on the date the agreement was made applicable (Section 218(e)(2)) to the absolute coverage group.

If, however, it were necessary to expand the scope of coverage under the retirement system by legislation, or a change in by-laws, charter, etc., in order to bring the new job under it, services in the new position would be covered under the agreement as a part of the absolute coverage group.

2. Ineligibles

The State specifies at the time coverage is provided for ineligibles whether coverage will continue or terminate if an ineligible later becomes eligible for membership in a retirement system.

B. CONTINUATION OF COVERAGE – MAJORITY VOTE RETIREMENT SYSTEM

Services in all positions under a retirement system, including positions brought under the system in the future, are compulsorily covered under the State's agreement (except for excluded positions and services), if the system is the entire system (i.e., one referendum was conducted to cover the entire system), rather than deemed separate retirement systems for coverage purposes. Coverage will continue even though the positions are later removed from under the retirement system, the system is abolished, or the positions are placed under an additional retirement system.

1. Police Officers and Firefighters

If there were no police officer or firefighter positions in existence at the time the referendum was held but such positions are later created and placed under the retirement system, employees in such positions are not compulsorily covered. Coverage must be provided through the referendum procedures under the provisions of Section 218(l) of the Act. Likewise, positions which are reclassified as police officer or firefighter positions cease to be covered under the State's agreement until such time as the State may elect to cover them as provided by Section 218(l) of the Act.

2. Newly Created or Reclassified Positions

A newly created or reclassified position under the retirement system is covered as a part of the coverage group if the position would have been a part of the group had the position been in existence at the time the retirement system coverage group was covered. If the retirement system is abolished, newly created or reclassified positions or positions in a newly created political subdivision cannot be covered as a part of the retirement system coverage group.

C. CONTINUATION OF COVERAGE – DIVIDED VOTE RETIREMENT SYSTEM

The continuation of coverage rules for the majority vote retirement system apply except only new members of the system are automatically covered. In addition, a position which is occupied by a member who chooses coverage ceases to be covered if it becomes occupied by a member of the "No" group. Thus, where a member of the retirement system in the "No" group transfers to a position formerly occupied by a member of the "Yes" group, he carries his "No" vote with him. Similarly, if a member of the "Yes" group transfers to a position formerly occupied by a member of the "No" group, his coverage continues.

If the retirement system is later abolished or positions are removed from coverage under it, the "Yes" group continues to be covered but new employees occupying positions which were formerly under the system would not be covered because they would not be new members of the system.

D. APPLYING THE CONTINUING EMPLOYMENT EXCEPTION AND CONTINUATION OF COVERAGE PROVISIONS—MEDICARE ONLY DIVIDED REFERENDUM SCENARIOS

The proper application of the continuing employment exception and the continuation of coverage rules can cause some confusion when dealing with the Medicare (HI-only) divided referendum vote of a State employee who transfers between agencies and entities within the State government system. The same holds true for the divided Medicare (HI-only) referendum vote of a political subdivision employee who transfers between agencies and entities of the same political subdivision.

In order to correctly determine whether a State or local government employee carries his/her referendum vote when transferring between jobs, it is important to delineate a few factors and determine what role they play. The principal factors to consider are:

(1) Was the individual a bona fide employee and performing regular and substantial services for the State or political subdivision employer before 04/01/86?

(2) Was the transfer from one State employer to another State employer of the same State made without termination of the overall employment relationship with the State? For an individual who transferred from a political subdivision employer to another employer of the same political subdivision, was the transfer made without termination of the overall employment relationship with the political subdivision?

(3) Continuing employment exception, which exempts the individual from the mandatory Medicare provisions (SL 50001.520)

(4) Continuation of coverage (SL 30001.380)

The scenarios below deal with employees who voted in Medicare-only referendums. As far as employment for the original government employer is

concerned, the individuals discussed in the scenarios will be considered employees who were hired and performing substantial services for the employer before 04/01/86. So, it will be presumed that in each of the scenarios below the answer to Factor 1 is "Yes."

Scenario 1: Dawn Smith was an employee of a State agency (not an institution of higher learning) who voted for Medicare coverage in the referendum. She later transferred to a job in another State agency (not an institution of higher learning) but under the same retirement system as her former position. Does Ms. Smith carry her Medicare referendum vote?

In this case, since Factor 1 is fulfilled, one should then determine if the continuing employment exception (Factor 3) applies. According to the tenets of the continuing employment exception, an employee qualifies for the continuing employment exception when (a) transferring from one State employer to another employer of the same State **and** (b) the transfer did not result in the termination of the overall employment relationship with the State. Whether such a transfer between agencies of the same State causes a termination of the overall employment relationship must be determined by the State.

Scenario 1, as presented, does fulfill (a); but it is unclear whether it would fulfill (b).

If the transfer did terminate the overall employment relationship with the State, then the continuing employment relationship exemption would not apply, and Ms. Smith would be considered a "new hire" as far as the current State employer is concerned and would fall under the mandatory Medicare provisions.

If the transfer did not terminate the overall employment relationship with the State, then (b) would be fulfilled and the continuation of employment exception to mandatory Medicare would apply. In other words, Ms. Smith would not fall under the mandatory Medicare provisions.

If the employee has fulfilled the requirements for the continuing employment exception, then we look at the continuation of coverage aspects.

In Scenario 1, both former and current State agency employers are under the same retirement system, and since neither is an institution of higher

learning, the retirement system employees of both agencies would also have received Medicare coverage via the same referendum (or same deemed retirement system) – see SL 30001.321. Thus, Ms. Smith would then carry her vote into the new position.

Scenario 2: Peter Bennett was an employee of a State agency who voted for Medicare coverage in the referendum. He later transferred to a job in another State agency but under a different retirement system from that of his former position. Does Mr. Bennett carry his Medicare referendum vote?

Since Factor 1 is fulfilled, one should then determine if the continuing employment exception (Factor 3) applies. According to the tenets of the continuing employment exception, an employee qualifies for the continuing employment exception when (a) transferring from one State employer to another employer of the same State **and** (b) the transfer did not result in the termination of the overall employment relationship with the State. Whether such a transfer between agencies of the same State causes a termination of the overall employment relationship must be determined by the State.

Scenario 2, as presented, does fulfill (a); but it is unclear whether it would fulfill (b).

If the transfer did terminate the overall employment relationship with the State, then the continuing employment relationship exemption would not apply, and Mr. Bennett would be considered a "new hire" as far as the current State employer is concerned and would fall under the mandatory Medicare provisions.

If the transfer did not terminate the overall employment relationship with the State, then (b) would be fulfilled and the continuation of employment exception to mandatory Medicare would apply. In other words, Mr. Bennett would not fall under the mandatory Medicare provisions.

If the employee has fulfilled the requirements for the continuing employment exception, then we look at the continuation of coverage aspects.

Although both former and current employers are government agencies of the same State, each agency has a different retirement system providing coverage for their respective employees. With his transfer to the current employer, Mr. Bennett is now under the jurisdiction and rules of the

retirement system of the current employer; thus, his Medicare referendum vote in the retirement system of the former employer would not carry over to the new position. If Mr. Bennett meets the continuing employment exception, he would not have Medicare coverage unless the current employer's retirement system is covered for Social Security by a Section 218 agreement or has provided Medicare-only coverage for pre-April 1, 1986 hires through a Medicare-only referendum.

Scenario 3: Linda Taylor was a retirement system covered employee of a State Institution of Higher Learning (State University) who voted for Medicare coverage in the referendum. The State University was covered for Medicare as a "deemed retirement system group" separate from the rest of the State government positions. Subsequently, Ms. Taylor moved to a non-State University position with a State Agency that was covered by the same retirement system. Employees in both positions are State employees. Since the State University was originally covered as a "deemed retirement system group" separate from the rest of the positions of the same retirement system, does the Ms. Taylor carry her vote?

Since Factor 1 is fulfilled, one needs to determine whether the continuing employment exception (Factor 3) applies. According to the tenets of the continuing employment exception, an employee qualifies for the continuing employment exception when (a) transferring from one State employer to another employer of the same State **and** (b) the transfer did not result in the termination of the overall employment relationship with the State. Whether such a transfer between agencies of the same State causes a termination of the overall employment relationship must be determined by the State.

Scenario 3, as presented, does fulfill (a); but it is unclear whether it would fulfill (b).

If the transfer did terminate the overall employment relationship, then the continuing employment relationship exemption would not apply, and Ms. Taylor would be considered a "new hire" as far as the current State employer is concerned and would fall under the mandatory Medicare provisions.

If the transfer did not terminate the overall employment relationship with the State, then (b) would be fulfilled and the continuation of employment exception to mandatory Medicare would apply. In other words, Ms. Taylor would not fall under the mandatory Medicare provisions.

If the employee has fulfilled the requirements for the continuing employment exception, then we look at the continuation of coverage aspects.

In Scenario 3, both former State University and current State Agency employers are under the same retirement system, but in this situation the State Institution of Higher Learning (State University) obtained Medicare coverage as a "deemed retirement system group" separate from the rest of the State government agencies covered by the same retirement system – Medicare coverage was obtained for the State University via a separate Medicare referendum from the rest of the State government – as permitted in SL 30001.321 and SL 30001.331.

At this point, one would need to refer to SL 30001.334F 2 (Change in Employment), which states:

If the retirement system which was divided was not the entire system, a member of a deemed retirement system who transfers to another deemed system is a "new" member and is compulsorily covered…If a member of a deemed retirement system transfers to a position under a retirement system which has not been covered, a referendum must be held before he/she can be covered.

As the result of a coverage referendum (either divided or favorable majority), "new" members of the retirement system are compulsorily covered. In a divided referendum situation, a transferee whose former position was in another deemed retirement system would be treated as a "new" member of the retirement system in their current position with the State and placed in the "yes" group (provided a coverage referendum has been held) regardless of how he/she had voted in their previous position with the State. If the retirement system of the current employer has not yet obtained Medicare coverage for pre-April 1, 1986 hires, then the transferee would no longer have Medicare coverage.

Since it has been established that the retirement system positions at the State University were covered for Medicare as a "deemed retirement system" separate from the retirement system positions in the rest of the State government, Ms. Taylor would not carry her vote when transferring from a retirement system position at the State University to a retirement system position at another State government agency. In her current position with the State Agency, Ms. Taylor would either be given Medicare coverage if there

has been a favorable majority or divided vote Medicare referendum for pre-April 1, 1986 hires of the State Agency retirement system; or she would lose Medicare coverage if the State Agency retirement system does not have Medicare coverage for pre-April 1, 1986 hires.

Scenario 4: Same as Scenario 3, both current and former employers are entities within the same State government, except each entity is covered by a different retirement system. Jeffrey Merrill was a retirement system covered employee of a State Institution of Higher Learning (State University) who voted for Medicare coverage in the referendum. The State University was covered for Medicare as a "deemed retirement system group" separate from the rest of the State government positions. Subsequently, Mr. Merrill moved to a non-State University position with a State Agency that was covered by a different retirement system. Employees in both positions are State employees. Does the Mr. Merrill carry his vote?

Scenario 4 actually resembles Scenario 2. As in Scenario 2, we first must consider whether the continuing employment exception applies. According to the tenets of the continuing employment exception, an employee qualifies for the continuing employment exception when (a) transferring from one State employer to another employer of the same State **and** (b) the transfer did not result in the termination of the overall employment relationship with the State. Whether such a transfer between agencies of the same State causes a termination of the overall employment relationship must be determined by the State.

Scenario 4, as presented, does fulfill (a); but it is unclear whether it would fulfill (b).

If the transfer did terminate the overall employment relationship, then the continuing employment relationship exemption would not apply, and Mr. Merrill would be considered a "new hire" as far as the current State employer is concerned and would fall under the mandatory Medicare provisions.

If the transfer did not terminate the overall employment relationship with the State, then (b) would be fulfilled and the continuation of employment exception to mandatory Medicare would apply. In other words, Mr. Merrill would not fall under the mandatory Medicare provisions.

If the employee has fulfilled the requirements for the continuing employment exception, then we look at the continuation of coverage aspects.

Although both the former employer (the State University) and the current employer (State Agency) are government agencies of the same State, each agency has a different retirement system providing coverage for their respective employees. With his transfer to the current employer, Mr. Merrill is now under the jurisdiction and rules of the retirement system of the current employer; thus, his Medicare referendum vote in the retirement system of the former employer would not carry over to the new position. If Mr. Merrill meets the continuing employment exception, he would not have Medicare coverage unless the current employer's retirement system is covered for Social Security by a Section 218 agreement or has provided Medicare-only coverage for pre-April 1, 1986 hires through a Medicare-only referendum.

Scenario 5: An employee of the State moves to a political subdivision or vice versa; both former and current positions are covered by the same retirement system. Does the employee carry his/her vote?

In Scenario 5, one must first consider whether the continuing employment exception applies. One requirement of the continuing employment exception is that the employment relationship with the government employer has not terminated after 03/31/86 (P.L. 99-272, Section 13205). Scenario 5 presents the employee moving from State government employment to a political subdivision government position or vice versa. To move from State government employment to political subdivision employment (or vice versa) requires the termination of the employment relationship with the former employer, despite the fact that both the former and current job positions are covered by the same retirement system. The continuing employment exception would not be met; the employee would be considered a "new hire;" and, thus, mandatory Medicare would apply in the new position (SL 50001.520).

Scenario 6: An employee of the State moves to a political subdivision or vice versa; the former and current positions are covered by different retirement systems. Does the employee carry his/her vote?

No, the employee would not carry his/her vote. As in Scenario 5, the employment relationship with the government employer terminated after 03/31/86. SL 50001.520 expressly states that an employee who transfers from

a State employer to a political subdivision employer (or vice versa) becomes a "new hire" of the governmental entity he/she is now working for. The continuing employment exception would not be met, and the employee would either be mandatorily covered for Medicare or compulsorily covered if the retirement system under which he/she now works has Social Security coverage based on a Section 218 agreement.

30001.385 Termination of Coverage

Before enactment on April 20, 1983 of Public law 98-21, the1983 Social Security Amendments, a State's agreement could be terminated either in whole or for one or more absolute coverage groups. The termination could be initiated by either the State or the Secretary of Health and Human Services. Once an agreement was terminated for a coverage group, coverage could not be provided again for that group.

A. TERMINATION BY THE STATE

The State could terminate the agreement in whole or in part by giving at least 2 years advance notice in writing to SSA. The coverage must have been in effect at least 5 years before SSA receipt of the notice. This meant 5 years actual coverage from the effective date of the first coverage and not 5 years from the date of execution of the modification which provided the coverage. The 2-year period ran from the date the notice was mailed or delivered to SSA and not the date of receipt.

The termination could have applied to any absolute coverage group. For example, coverage for a proprietary function coverage group could have been terminated without terminating coverage for the governmental function coverage group. This could have been done even though the coverage groups were not separately identified when the coverage was provided. A retirement system coverage group was not a coverage group for termination purposes.

B. TERMINATION BY THE SECRETARY

The Secretary could have terminated an agreement in whole or in part if the State failed to comply or was no longer legally able to comply with the agreement. The State must have been given reasonable notice and opportunity for a hearing. The termination action must have been taken within 2 years of the notice of the intent to terminate unless the State was again in compliance with the terms of the agreement. Termination by the

Secretary was generally limited to cases in which an entity had ceased to exist.

C. TERMINATION ON AND AFTER APRIL 20, 1983

The 1983 Social Security Amendments amended former Section 218(g) of the Act to provide that no coverage agreement may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983. The amendment applies to any agreement in effect on April 20, 1983, without regard to whether a notice of termination was in effect on that date, and to any agreement or modification thereof which became effective after that date. Any agreements not terminated before April 20, 1983, could not be terminated. This applies not only to voluntary terminations, but also to involuntary terminations for failure to comply with the agreement, including partial terminations in cases where an entity has been legally dissolved. States and interstate instrumentalities are permitted to cover groups whose coverage was previously terminated.

30001.390 Entity No Longer in Existence or Inactivated

A dissolved entity is an entity that has been legally dissolved and no longer exists. If an entity has been legally dissolved or is no longer in existence, the State should send a notice to the PSSO with evidence of the dissolution. This material is reviewed by the Regional Attorney. If the evidence establishes that the entity has ceased to exist or was legally dissolved, SSA records are annotated to that effect. The RO notifies the State in writing that SSA agrees the entity no longer exists.

An “inactive” entity is an entity that no longer has any employees and has not been legally dissolved. When an entity becomes inactive or re-activated, the State should send a letter to the SSA Regional Office. The letter should include the name of the entity, the entity’s EIN, the modification number the entity is covered under, and the effective date of the entity’s inactivation or the effective date of the entity’s reactivation.

30001.395 Medicare HI-Only Coverage for Pre-1986 Hires

All States can execute a Section 218 Agreement with SSA to provide Medicare Hospital Insurance (HI) only coverage for employees who have been

in continuous employment with the same employer since before April 1, 1986, and are members of a public retirement system. Employees who were hired prior to April 1, 1986, and who are not currently paying into Medicare, may not make Medicare contributions if the employee is not covered for Medicare under a Section 218 Agreement.

A. PUBLIC LAW 99-272 (SECTION 13205)

All States may obtain, through a Section 218 Agreement with SSA, Medicare HI coverage for State and local government employees who were hired before April 1, 1986 and are not mandatorily covered for Medicare. Medicare HI-only coverage under a Section 218 Agreement cannot begin before April 1, 1986.

B. REFERENDUM RULES

The same referendum and modification rules for Social Security and Medicare coverage under Section 218 apply to voluntary Medicare HI-only coverage. For example, if the State is authorized to conduct a divided vote retirement system referendum, the State may use the divided vote procedure to provide Medicare HI-only coverage. If a State or local government employee is mandatorily covered for Medicare when a referendum is conducted for Section 218(n) Medicare HI-only for other employees of the same employing entity, the employee is not eligible to vote in the referendum.

The mandatory exclusions from Medicare coverage also apply to Medicare HI coverage under a Section 218 Agreement. The State may elect Section 218 optional exclusions.

NOTE: Medicare HI-only coverage under a Section 218 Agreement is extended to the employee and not the position.