

## **Chapter 400 – Agreements and Modifications**

### **Subchapter 01 – Agreements and Modifications**

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#### **40001.401 State Enabling Legislation**

There must be authority under State law for a State to enter into a Section 218 Agreement with the Commissioner of Social Security to extend coverage under the agreement, carry out the provisions of the agreement, and permit modifications to the agreement. Such authority is usually provided by specific enabling legislation. All States have enacted enabling legislation to enter into agreements.

The State enabling legislation must authorize all provisions contained in the State's Section 218 Agreement. It must provide for the election of optional exclusions or state these exclusions are not permitted. If optional exclusions are permitted, it must specify whether such exclusions may be exercised by individual coverage groups or whether such optional exclusions will mandatorily apply to all coverage groups included under the State's agreement.

At the State's request, SSA will assist the State in conforming the State's enabling legislation with the provisions of Federal law. Requests for assistance should be directed to the PSSO.

#### **40001.405 SSA-State Negotiation Process**

The official designated by the State or interstate instrumentality to handle the State's Section 218 Agreement negotiates with the PSSO on all matters related to the agreement. The designated official authorizes all modifications to the agreement and submits these to the PSSO.

#### **40001.410 Original Agreement**

##### **A. CONTENT**

The Section 218 Agreement is a legal document, which incorporates the provisions, definitions, and conditions for coverage under the agreement and as defined under Federal and State laws. It provides the authority for covering employees of the State and its political entities. It also provides the authority for adopting optional exclusions to the extent permitted by Federal and State laws. Provisions that apply on a statewide basis may be included in

the original agreement (or a later modification). The agreement includes a statement that the State will comply with SSA regulations for administering the agreement. It establishes the framework for the continuing relationship between the State and SSA.

If the State wishes to cover the services of individuals who are ineligible for membership in a retirement system only for the period in which they are ineligible, the agreement must so specify.

The agreement must specify the date on which it will be effective. In addition to specifying the effective date of the agreement, the agreement may provide different effective dates for different political subdivisions and coverage groups listed in the appendices.

## **B. APPENDIX**

The original agreement should have an appendix that identifies the political subdivisions or coverage groups being covered, and the extent of the coverage, i.e., effective date of coverage and optional exclusions. Where absolute coverage groups are included, the appendix shows whether all or only certain designated groups are included. At least one political subdivision or coverage group must be appended to an agreement.

## **C. PREPARING AN ORIGINAL AGREEMENT**

Since all States have entered into original agreements, the following applies to interstate instrumentalities. The interstate instrumentality should submit two original modifications with the pen and ink signature(s) of the designated official(s) to the PSSO. If the instrumentality wants more than one signed copy, it should provide the extra copies. One executed copy will be returned to the instrumentality. The other original copy is retained by the RO. (The interstate instrumentality may submit a draft of the original agreement to the PSSO for preliminary review.)

## **D. PSSO-RO REVIEW OF ORIGINAL AGREEMENT**

The PSSO reviews the agreement to confirm that the designated official has signature authority; the instrumentality is not already covered under Section 218, and there is supporting documentation concerning the legal status of the instrumentality. After review, the PSSO sends the agreement and documentation to the RO for legal clearance and execution. (PSSO should maintain a photocopy for the pending file.) The agreement is executed by the Regional Commissioner or the Deputy Regional Commissioner on behalf of the Commissioner of Social Security.

## **40001.415 Changing Provisions of Original Agreement**

### **A. NEED FOR CHANGES**

The State's agreement must reflect the Federal statutory requirements with respect to coverage. Legislative provisions enacted by Congress and implemented by the State may require amendments to the agreement to reflect changes in Federal and State laws.

### **B. MODIFYING THE ORIGINAL AGREEMENT**

Amendments to the original agreement are made by modifications to the agreement. If the modification is changing the original agreement, it should be introduced by the following language:

- “The Commissioner of Social Security and the State of \_\_\_\_\_, acting through its representative designated to administer its responsibilities under the agreement of (date original agreement executed), hereby accept the following amendments to said agreement.”
- The introductory paragraph should be followed by the revisions to be made in the agreement.

### **C. DEFINITION OF COVERAGE GROUP**

If a State or interstate instrumentality agreement does not include retirement system group coverage in the definition of a “coverage group,” an amendment to the original agreement is necessary before coverage can be extended to positions covered under a retirement system. The modification should state:

Paragraph (4) of Part A of said agreement (Definitions) is amended to read: The term “coverage group” means a coverage group as defined in Section 218(b)(5) of the Social Security Act, and for the purpose of Section 218(c) of the Social Security Act only, the term “coverage group” shall also mean a coverage group as defined in Section 218(d)(4) of the Social Security Act.

## **40001.420 Modifications to the Original Agreement**

### **A. Purpose of modifications**

Modifications amend the original agreement to:

- extend coverage to new groups of employees;
- identify new political subdivisions joining a public retirement system;
- correct errors in previous modifications (for Error Modifications, see SL 40001.450 and for Modifications to Correct Errors, see SL 40001.465);
- implement changes in Federal or State law; and

- exclude services or positions previously covered (under very limited circumstances).

## **B. Preparing modifications**

### **1. The State**

When preparing a modification:

- clearly state its purpose;
- use the sample language in the exhibits (for Agreement and Modification Exhibits, see SL 40001.490);
- request assistance from the PSSO or RO if special language is required;
- list all optional exclusions; and
- include all statewide optional exclusions, from the original agreement, in each modification.

If you exclude part-time positions or a class (classes) of part-time positions, include the definition of part-time position in the modification. If duplications of the name exist in the State for entities such as townships and school districts, add the county designation for precise identification.

After preparing the modification:

- Request a preliminary review from the Regional Office (RO) through the Parallel Social Security Office (PSSO) if the modification is complex or there is a question concerning the legality of any provision.
- Submit two original modifications with the pen-and-ink signature(s) of the authorized State official(s) to the PSSO. Provide extra copies if you want more than one signed copy.

### **2. The PSSO**

Review the modification to determine whether the:

- State official has signature authority;
- modification number is in sequential order;
- entity is not already covered under Section 218; or
- supporting documentation is appropriate.

After reviewing the modification:

- send the modification and documentation to the RO for technical review, legal clearance, and execution on behalf of the Commissioner of Social Security; and
- maintain a photocopy for the pending file.

## **C. Forwarding additional information with modification**

Provide additional information on a separate sheet or include in the modification itself. Additional information may be necessary in these instances:

- If the status of the entity is not apparent from the name, the State should include a reference to the statutory authority, which established its status. Each modification must provide the Internal Revenue Service (IRS) issued Federal Employer Identification Numbers (FEIN) for each entity.
- If a retirement system coverage group is included in a modification, the modification must have the certification of the governor or his designate.

#### **D. Minor corrections before executing the modification**

If minor corrections (i.e., misspellings, typos) are necessary before executing a modification, the RO must ask the State to provide written authority for the change. Written authority can be in the form of a letter, email, or fax, and must include the:

- name of the authorizing document,
- details of the change, and
- name, title, and contact information of the authorizing State official.

If the RO receives a phone call from the State requesting a minor correction, the RO may use an SSA-5002 (Report of Contact) form to document the request but must also ask the State to provide written authority to validate the correction. The RO must retain the State's written authority with the modification and annotate the correction in pen and ink on the modification:

- identifying the authorizing document,
- showing the name and title of the authorizing State official, and
- showing the name of the person making the change and the date of the change.

**EXAMPLE:** The state administrator mistyped the entity name on a pending modification as School District 12, when it should have been School District 13. The state administrator calls the RO Specialist to report the mistake and asks that he or she correct the typo. The RO Specialist should:

- ask the State Administrator to provide written authority (e.g., an email) requesting the correction;
- change "12" to "13," in pen and ink on the modification;
- add a parenthetical, "per 8/1/11 email from S. Smith, SSA"; and
- sign and date the entry and attach the email with the modification.

Major changes may require the State to rewrite the modification. If this is necessary, the RO copy of the initial modification establishes the date of its submittal.

#### **E. Notification of approval**

After executing the modification the RO must:

1. Send the State Administrator a notification of approval letter with an executed copy(s) of the modification and, if any, a copy of the State's authorization for any changes.
2. Send a photocopy of the notification approval letter and the executed modification to:

*PSSO (this copy replaces pending file copy)*

*Office of Income Security Programs  
Office of Earnings, Enumeration and Medicare Policy  
2-P-19, #213  
2400 Robert Ball Bldg.,  
6401 Security Boulevard  
Baltimore, MD 21235-6401*

- and

*Internal Revenue Service: Fax a copy of the modification packet to the Internal Revenue Service at 855-243-4014.*

3. Send a copy of Regional Chief Counsel Opinions substantiating approval to OEPIP.

**NOTE:** In lieu of mailed paper, the RO Specialist can email scanned copies to the OEPIP Specialist assigned to your region. The State and the RO should each maintain an original, signed modification as a permanent record.

#### **F. Effective date of coverage**

Show the effective date of coverage in the modification to extend coverage.

The **effective date** identifies when coverage begins. The **date of execution** is the date SSA signed the modification.

#### **G. Closing agreement for retroactive coverage beyond the statute of limitations period**

When submitting a Social Security or Medicare-only modification to SSA for approval, a state or local government entity can specify an effective date of the modification as early as “the last day of the sixth calendar year preceding the year” the modification is mailed or delivered to SSA ([Section 218 \(e\)\(1\) of the Social Security Act](#)).

However, the Internal Revenue Code (IRC) limits the statute period of assessment and collection of taxes to the 3-year period after the taxpayer files the tax return for a particular year. This IRS rule can come into conflict with SSA’s Section 218 effective date of retroactivity when a state or local government entity seeks a retroactive modification to a Section 218 agreement covering a 5-year period. Generally, the IRS bars the earliest 2 years for tax collection from assessment.

Thus, SSA can only process and approve any modification to a Section 218 Agreement requesting a period of coverage in excess of the 3 years beyond the statute period for FICA tax collection only if the taxpayer agrees to execute a closing agreement with the IRS.

### **1. Definition of a closing agreement**

A closing agreement is a written agreement between a taxpayer and the IRS, which conclusively settles:

- the tax liability of the taxpayer for a taxable year ending prior to the date of the agreement; or
- one or more issues affecting the taxpayer's tax liability.

Such an agreement is a determination conclusive on both the taxpayer and the IRS unless the taxpayer demonstrates fraud or misrepresentation as to a material fact. [I.R.C. §721](#).

### **2. Terms of the closing agreement**

SSA requires that a state or local government entity seeking a retroactive coverage modification for a period beyond the 3-year statute of limitations period enter into a closing agreement with IRS to ensure that the FICA taxes due for the entire period of retroactivity are paid. SSA MUST sign and execute the modification before the closing agreement process begins (this is a key point). If SSA does not sign and execute the modification, IRS will not pursue a closing agreement because there is no tax liability to collect on UNTIL SSA executes the modification.

The entity agrees to:

- a waiver of the statute of limitations for assessment,
- an assessment in the amount of the tax to be paid, and
- make full payment.

### **3. Required language to add to a modification needing a closing agreement**

The State Social Security Administrator should insert the following language into a modification for retroactive coverage under a Section 218 Agreement, which requires a closing agreement. This language informs the entity that ratifying the modification is contingent upon their executing a closing agreement with the IRS. The IRS's closing agreement:

- informs the entity that this agreement is final and conclusive; and
- gives the Commissioner of the IRS the right to assess and collect the taxes identified, and that the entity waives all defenses with regard to the collection of the tax liability.

Required language:

(Name of Political Entity) \_\_\_\_\_ promises to pay, to the Department of the Treasury, contributions equal to the sum of the taxes, which would have been required from employers and employees under the Federal Insurance

Contribution Act (FICA) as of the effective date of coverage. (Name of Political Entity) \_\_\_\_\_ also promises to enter into a closing agreement with the Internal Revenue Service (IRS) to effectuate this modification, including the agreement to pay all FICA contributions for the entire period of coverage. This modification is contingent upon the execution of a closing agreement between (Name of Political Entity) \_\_\_\_\_ and the IRS.

For exhibits of closing agreement modifications, see SL 40001.490H.

#### **4. Closing agreement is mandatory**

To effectuate the modification, the affected entity must enter into a closing agreement with IRS, which includes the agreement to pay all FICA taxes due for the entire period of coverage. SSA will not approve the modification, unless the entity agrees that it will execute the closing agreement. IRS will not begin the closing agreement process UNTIL SSA signs and executes the modification.

For questions concerning the closing agreement process, contact the FSLG Closing Agreement Coordinator, Wanda Valentine, by email at: [wanda.valentine@irs.gov](mailto:wanda.valentine@irs.gov) or in writing at the following address:

*Internal Revenue Service  
SE:T:GE:FSL  
Attn: FSLG Closing Agreement Coordinator  
1111 Constitution Ave.  
Washington, D.C. 20224*

#### **5. Exhibit of Closing Agreement**

View the Closing Agreement on Final Determination of Tax Liability and Covering Specific Matters provided by IRS OGC in Agreement and Modification Exhibits.

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### **40001.425 Withdrawal of Modification**

After submitting a modification, the State may decide that it does not wish to proceed further with the modification. The State may withdraw the modification by written request at any time prior to its execution on behalf of the Commissioner of Social Security. If a modification is withdrawn, the RO will return all copies of the unexecuted modification to the State.

### **40001.430 SSA Disapproval of Modifications**

A modification must meet the requirements of Federal and State laws. If it does not, the State must either withdraw the modification or the modification

will be disapproved by the Commissioner and all copies will be returned to the State with an explanation for the disapproval.

#### **40001.435 Designated Date for Retroactivity Purposes**

A State or interstate instrumentality may designate a date to control for purposes of who is entitled to retroactive coverage (as distinguished from the effective date of retroactivity). The date designated cannot be earlier than the date the modification is mailed or otherwise delivered to SSA or later than the date the modification is executed by SSA..

The modification should include the following statement: “In accordance with Section 218(e)(2) of the Act the State of \_\_\_\_\_ designates the following date: \_\_\_\_\_ (month) (day) (year).”

If the State wishes to designate the same date for all coverage groups included in a modification, include the statement at the end of the modification. If different designated dates are desired, the statement should follow each coverage group listing.

A State or interstate instrumentality should designate a date to control retroactivity or advise specifically that it does not wish to do so. This information should be included in the body of the modification to eliminate questions in the future regarding the State's intent. It may also be included in the covering transmittal letter.

**NOTE:** Modifications that provide only prospective coverage should not contain a 218(e)(2) designated date.

#### **40001.440 Coverage for Previously Terminated Group**

The State may extend coverage to a coverage group previously covered and terminated prior to 1983. The modification should include a statement that the group's coverage had previously terminated, the effective date of termination, and the previously assigned 69 Employer Identification Number (69 EIN) and modification number.

A previously terminated coverage group is treated as if it had not previously been covered. Thus, positions which had originally been covered as part of a absolute coverage group and subsequently brought under a retirement system may now be covered only in accordance with the rules applicable to retirement system coverage groups.

A State may exercise whatever options are available (e.g., optional exclusions, coverage of ineligible, definition of part-time services, retroactive coverage, etc.) without regard to what the original modification applicable to the terminated coverage group had provided.

#### **40001.445    Modification to Cover Ineligibles**

If a State wishes to extend Social Security coverage to ineligibles of a retirement system, the State may cover them as part of the absolute coverage group or as part of the retirement system coverage group. The State must decide at the time of extending coverage to the ineligibles whether coverage will cease or continue if the ineligibles later become eligible for membership in the retirement system. This must be stated in the modification.

##### **A. COVERAGE FOR INELIGIBLES CONTINUES**

If the State decides to continue the coverage of ineligibles the following language should be used in the modification:

“It is further agreed that the services of an ineligible employee shall continue to be covered by said agreement if, after the effective date specified herein, he or she becomes eligible to be a member of the (Insert exact full name of retirement system).”

##### **B. COVERAGE FOR INELIGIBLES CEASES**

If the State decides coverage of ineligibles will cease if they later become eligible for membership in the retirement system, the following language should be used in the modification:

“It is further agreed that the services of any ineligible employee referred to in this modification shall not be covered by this agreement on or after the date he or she becomes eligible to be a member of the (insert exact full name of retirement system) but only if prior to such date the services performed by employees in positions covered by the retirement system in which the employee is ineligible for membership are not covered by this agreement.”

If the State chooses to cease the coverage of services of ineligibles when they become eligible for membership in the retirement system, the State may do so on a statewide basis in the basic agreement.

#### **40001.450    Error Modifications**

##### **A. CLERICAL OR TYPOGRAPHICAL ERRORS**

A clerical or typographical error made in the preparation of a modification which does not affect the coverage, e.g., School District No. 12 incorrectly

typed as School District No. 13, may be corrected by a statement over the signature of the State official.

## **B. MODIFICATION ERRORS**

If an error relates to the extent of the coverage or the effective date of coverage, an error modification is necessary. The error modification must clearly explain the nature of the error and request its correction. The State must provide evidence which establishes an error actually occurred. An example of acceptable evidence is a copy of the intrastate agreement of coverage between the State and the political entity. If this is not available, other evidence may include minutes of meetings or statements by appropriate officials stating the intent at the time Social Security coverage was requested. In addition, reporting practices must have been consistent with intent.

Generally, an error in an agreement or modification which can be corrected by a subsequent modification results from a situation where all individuals or agencies concerned took every action they believed necessary to effectuate the coverage desired, but through a clerical error, or some similar reason, failed to accomplish the objective.

Corrections are not limited to errors made by the State agency itself as an error on the part of a political entity may also be corrected.

### **40001.455 Error Modification to Delete Political Entities Which Did Not Exist or Have Employees**

A political entity which was listed in an agreement or modification, but was not in existence at the time of execution, or on the designated date, or did not have any employees to whom the agreement could be made applicable, should be removed from the agreement. A modification is required for this purpose. A modification to correct such an error should be accompanied by evidence which establishes the error.

A political entity which had no employees at the time it was included in the agreement, but may have employees in the foreseeable future should not be removed from the agreement.

### **40001.460 Error Modification to Delete Nongovernmental Entity**

If a nongovernmental entity was erroneously listed as a political subdivision in an agreement or modification, a modification must be submitted to delete the entity involved. The modification should be accompanied by evidence to establish the error. This should include a reference to the statutory or other

authority under which the entity was created and any other evidence establishing its status; for example a ruling from the Railroad Retirement Board that the entity is covered under the Railroad Retirement Act.

## **40001.465 Modifications to Correct Errors**

### **A. General**

A State or political subdivision may have made reports and payments for Social Security coverage of its employees to the Internal Revenue Service, under the Federal Insurance Contributions Act, in the mistaken belief that such action provided coverage for the employees.

### **B. Erroneous Reports Without Coverage**

An error occurs when a state or local government entity mistakenly believes that an employee's position is subject to FICA and begins withholding and reporting wages. Reporting may be erroneous for Section 218 purposes even if, at the time of the error, the employee is eligible to receive provisional coverage under the Section 210 mandatory rules. The nature of the error depends on the entity's belief and intent, which may be inferred from the circumstances.

To correct erroneous reporting, the State may provide coverage through an error modification or a regular Section 218(e)(3) modification. If the error involves a retirement system position, the State must comply with the referendum procedures before executing an error modification or a Section 218(e)(3) modification. If the position was not under a retirement system at the time the error was made, the coverage group would be covered as an absolute coverage group under Section 218(b)(5) of the Act and a referendum would not be necessary.

### **C. Error Modification**

An error modification provides coverage as of the date the error first occurred. The effective date is the first day of the first period (quarter or year) for which the erroneous reports were filed, but no earlier than the date the entity came into existence. Use of an error modification sometimes results in a substantial contribution liability for the State or political subdivision. This occurs when the error exists over a long period, and there were employees of the entity who were not reported to IRS. For this reason, a modification that utilizes the provision of Section 218(e)(3) of the Act is sometimes preferable to using the error modification.

The error modification should list the entity, show the services covered, optional exclusions, the FEIN under which the erroneous reports were filed, and provide for coverage to begin on the first day of the period for which

reports were first erroneously made to IRS. If the date of the erroneous posting is unknown, the State should ask SSA to verify the date by obtaining an Employer Query Report (ERQY) or, if that is not available, obtain a Detailed Earnings Report (DEQY) for the individual who has been employed the longest. This should be done before submitting the modification. The information provided by these documents is used as evidence of the error.

In order to execute the error modification, SSA must establish that the entity is a political subdivision and that erroneous reports were filed with IRS. Therefore, unless this has already been established, the modification should include a reference to the statutory authority under which the organization was created or provide other evidence establishing its status.

**NOTE:** Some 501(c)(3) entities made payments to IRS due to erroneous notification by IRS that coverage is mandatory under the provisions of the 1983 Amendments. If the entity decides it wants to preserve the coverage, an error modification is appropriate.

#### **D. Section 218(e)(3) Modification To Correct Error**

##### **1. Section 218(e)(3) Situations**

There may be situations where a State or political subdivision has erroneously made payments for Social Security coverage to IRS for some current and former employees, but there are other current or former employees for which the employer did not report or make payments for Social Security coverage. The problem then arises as to which type of modification would best be suited to provide retroactive Social Security coverage for current and former employees without causing substantial hardship for the employer and the affected employees.

An error modification could be used in these situations, but it would involve also covering and making Social Security coverage payments for both current and former employees of the governmental entity who had not previously been reported for Social Security coverage. Making those additional Social Security payments for as far back as the date the error began could result in a substantial Social Security contribution liability for the governmental entity.

If a standard modification is used in these situations, retroactive coverage would only be available to those current employees who are members of the coverage group and in an employment relationship with the governmental employer on the designated controlling date of the modification (SL 30001.375B-C). But the former employees whose earnings had been

erroneously reported for Social Security would lose all Social Security coverage earned during the period still open to correction by the statute of limitations. This could mean a reduction in Social Security benefits for those former employees or, worse, loss of Social Security insured status and benefits.

Then there is the third, and perhaps a more amenable, alternative: a Section 218(e)(3) modification. This is a regular modification that deems former employees for whom Social Security contributions were erroneously paid to be part of the coverage group (in effect, deeming them to be included with the “current employee” group) on the date designated to control the granting of retroactive Social Security coverage (see SL 30001.375B-C), provided the following conditions are met:

- payments were made to IRS, and
- no refund has been received.

## **2. The Purpose of a Section 218(e)(3) Modification**

A Section 218(e)(3) modification basically protects the Social Security coverage for those former employees who were erroneously reported and for whom Social Security contributions were paid for the period open to correction under the statute of limitations.

P.L. 90-248 to the 1967 Social Security Amendments added Section 218(f)(3) – much later to become Section 218(e)(3) – to the Social Security Act. The provision permits a State, under a regular modification, to provide the retroactive coverage given to current employees to also be given to those former employees whose earnings were erroneously reported for Social Security coverage. Retroactive coverage would not apply to those former employees for whom a refund of Social Security contributions had been made or to those former employees for whom no Social Security contributions had been paid at all.

When submitting a Section 218(e)(3) modification to preserve the coverage of former employees who were reported, the State must designate the date the agreement is made applicable to the coverage group (SL 30001.375B) and specify that former employees who were reported are deemed to be a part of the coverage group on that date, thereby giving those former employees whatever retroactive coverage is provided current employees.

### 3. Section 218(e)(3) Language to be Included in Modification

Depending upon whether Social Security coverage is being extended as a part of the absolute coverage group or as part of the retirement system coverage group, coverage of the erroneously reported former employees can be accomplished by including language similar to the following in the text of the modification:

- Absolute Coverage Group

Included in the additional coverage group(s) (as defined in Section 218(b)(5) of the Act), are the services performed by individuals formerly employed by (name of entity) for whom contributions were timely paid to the Secretary of the Treasury and for which no refund has been made. (Name of entity) previously reported the contributions of these individuals in error using Employer Identification Number \_\_\_\_\_.

- Retirement System Coverage Group

Included in the additional coverage group (as defined in Section 218(d)(4) of the Act), are the services performed by individuals as employees of (name of entity) and as members of the (name of the retirement system) for whom contributions were timely paid to the Secretary of the Treasury and for which no refund has been made. (Name of entity) previously reported the contributions of these individuals in error using Employer Identification Number \_\_\_\_\_.

### 4. Choosing an Effective Date for a Section 218(e)(3) Modification

Although any effective date consistent with Federal and State law may be used, it is desirable that the effective date include at least one period barred to refund under the IRS time limits. The statute of limitations period that is open to correction is three years, three months and 15 days after the end of the calendar year in which the wages were paid (see Section 205(c)(1)(B) of the Act or POMS RS 02201.001). By statute, SSA is barred from deleting an individual's earnings for a specific year beyond this point. If the modification effective date (SL 30001.375A1) is retroactive into at least one period barred to correction, this validates the coverage that is given within the statute of limitations period. SSA will retain the earnings for the barred period because earnings from any barred period cannot be deleted, even if the entity does not want coverage and no modification is executed.

By selecting an effective date within the first period barred to correction:

- The erroneously reported earnings of former and current employees would be protected;
- Those current employees from whom Social Security contributions were not withheld would be liable only for Social Security contributions on

wages paid for periods open to correction under the statute of limitations and would get Social Security credit from those periods forward;

- All future employees would be covered for Social Security;
- All former employees who were not reported would not be covered.

#### 5. When a Section 218(e)(3) Modification Cannot be Used

There are situations where a Section 218(e)(3) modification cannot be used:

- State law limits retroactivity to current years; or
- The State chooses to use the divided vote procedure to cover the retirement system (because former employees could not vote and would not be protected).

#### 6. Error Modification Versus 218(e)(3) Modification Comparison Chart

<b>Error Modification</b>	<b>218(e)(3) Modification</b>
1. Effective date – Date erroneous reporting began.	1. Effective date – First period barred to refund under IRS statutes for which a refund has not been made.
2. Covered employees – All previous and current employees who are part of the coverage group.	2. Covered employees – All previous and current employees who were reported are deemed to be part of the coverage group on the effective date. Those current employees of the coverage group who were not reported or paid Social Security contributions are covered. There is no coverage for former employees who were not reported or paid Social Security contributions.
3. No additional wage reports are needed for any barred period if the State certifies in writing that reports are correct.	3. No additional wage reports are needed for the one barred period if the State certifies in writing that the report for that period is correct.
4. Statement required that refund from IRS was not made for any periods open to correction.	4. Statement required that refund from IRS was not made for any periods open to correction, unless the statement is included in the body of the modification.
5. The State should ask SSA to verify the period of erroneous reporting by obtaining an Employer Query Report (ERQY) or, if not available, obtain a Detailed Earnings Report (DEQY) for	5. The State should ask SSA to verify the erroneous reporting in the first period barred to correction by obtaining an Employer Query Report (ERQY) or, if not available, obtain a Detailed Earnings

<b>Error Modification</b>	<b>218(e)(3) Modification</b>
the individual who has been employed the longest.	Report (DEQY) for those employees whose payments for Social Security coverage were reported in the first period barred to correction.
<b>6.</b> Modification must show reference to appropriate section of the Social Security Act for the type of coverage wanted – “218(b)(5)” for absolute coverage, 218(d)(4)” for majority vote retirement system coverage, or “218(d)(6)” for divided vote retirement system coverage.	<b>6.</b> Modification must show reference to appropriate section of the Social Security Act for the type of coverage wanted – “218(b)(5)” for absolute coverage or “218(d)(4)” for majority vote retirement system coverage. Divided vote retirement system referendum is not permitted with a 218(e)(3) modification.
<b>7.</b> Any optional exclusions the State chooses should be shown in the modification	<b>7.</b> Same
<b>8.</b> Reference to statutory authority creating entity should be shown in the modification.	<b>8.</b> Same
<b>9.</b> FEIN used for erroneous reports to IRS should be included in the modification.	<b>9.</b> Same
<b>10.</b> Retirement system coverage can be obtained through either a majority vote referendum or, in those states where permitted, a divided vote referendum.	<b>10.</b> Retirement system coverage can only be obtained through a majority vote referendum.

#### **40001.470 Political Entity Erroneously Included in More Than One Modification**

If a State extends the same coverage to the same political subdivision in more than one modification, the error must be corrected. The State should forward a written request to the PSSO for the deletion of the reference to the political subdivision in the later modification. A new modification is not required to correct the error.

#### **40001.475 Changes in Entity Name**

If the name of an entity covered under a State’s Section 218 Agreement is changed, the State should send a written notice of the name change to the RO. The notice should include:

- prior name of the entity;
- modification number that covers the entity;

- entity's new name;
- legal documentation for the name change; and
- a statement concerning whether there has been a change in the entity's composition.

If only a name change occurred and the entity's composition remains the same or the entity merely annexes or gives up territory and its legal status is not changed, a written notice of the name change with legal documentation for the name change is sufficient.

However, if the name change reflects the dissolution of the old entity and the creation of a new entity, a new modification may be required to cover employees of the new entity. In these situations, the RO will request a legal review of the name change from the Regional Chief Counsel's office. The State Administrator may be asked to contact the State Attorney General's office for an opinion on the legal status of the entity under State law.

RO will update its files and send a copy of the accepted notice of name change to the PSSO, the IRS, and the state administrator. The RO will attach the notice of name change to the modification that covered the "old name" entity. The RO will contact the State official if additional information is necessary.

## **40001.477 Reporting New Government Components**

### **A. PURPOSE OF REPORTING NEW GOVERNMENT COMPONENTS**

To insure accurate SSA and IRS Section 218 coverage records, a State should notify SSA and IRS of the existence of a new component that is an integral part of a political subdivision. The component is usually created by an existing political subdivision, such as a city or county, which has previously covered its employees under a Section 218 Agreement. Unlike other integral parts in the political subdivision, this component has its own payroll, bookkeeping, tax reporting system, EIN, etc. There is no need for a new modification, but still, SSA and IRS should know that the new component is covered under the political subdivision's existing modification.

For example, a city has executed a Section 218 Agreement that covers all services performed by city employees for Social Security purposes. The city subsequently creates a recreation board to oversee the city's recreational facilities. However, the recreation board is not considered a separate political subdivision under state statute, but constitutes a department of the city. The recreation board has a separate payroll system from the city, applies for and receives an EIN, withholds the appropriate employment taxes and reports such taxes and wages to the SSA and IRS.

## **B. NEW GOVERNMENT COMPONENT NOTIFICATION PROCESS**

New government component reporting must be done by following the new government component notification process:

1. The political subdivision should inform the State Administrator of the new component's name, address, the modification that covers the component, the component's EIN and the effective date of coverage. In addition, the political subdivision must submit evidence of the establishment of the component (See SL 40001.477C). If this evidence is not provided, then the State must obtain it.
2. The State completes and sends the Notification of a New Government Component form (See SL 40001.490F, Exhibit 24), with ink signatures, in duplicate along with the establishing evidence to the PSSO. If the State wants more than one signed copy, it must provide the extra copies.
3. After reviewing the evidentiary documentation and verifying the information shown on the Notification of a New Government Component form, the PSSO forwards the material to the regional office for technical and legal review and clearance.
4. When the regional office completes its review of the notification and accompanying legal documentation, it either notifies the State that the legal documentation is acceptable or asks for additional information.
5. Once approved, a copy of the notification form is sent to the PSSO and to IRS, per existing State and Local Coverage Handbook procedures for notifying IRS (See SL 40001.420E).

## **C. EVIDENCE OF THE ESTABLISHMENT OF A NEW GOVERNMENT COMPONENT**

The State must submit evidence legally sufficient to substantiate the establishment of a new government component which is an integral part of the political subdivision. The evidence may be in the form of a copy of the legal authority under which the new government component was established. This could be a copy of a city ordinance or a copy of the order of an authorized official which effectuated the establishment of the new government component. Where legislative authority is involved, either a reference to it or a copy of the legislation should be provided along with proof that this authority has been exercised. The documentation provided must show that the new government component is an integral part of the existing political subdivision.

## **40001.480 Termination of Section 218 Agreements**

Prior to April 20, 1983 a State's coverage agreement under Section 218(g) of the Social Security Act could be terminated for State and local entities. These fell into three basic categories:

- Section 218(g) (1) voluntary terminations
- Section 218 (g)(2) involuntary terminations by the Secretary for failure to comply with the agreement
- Section 218 (g)(2) terminations when an entity dissolved (legally went out of existence). These were called PARTIAL TERMINATIONS, but since April 20,1983, they have been referred to as DISSOLUTIONS.

Effective April 20, 1983, Section 218(f) of the Act was amended to provide that no coverage agreement may be terminated, either in its entirety or with respect to any coverage group. This amendment prohibited the termination of Social Security coverage in effect on April 20, 1983, without regard to whether a notice of termination was in effect on that date, and also applies to any agreement or modification which would become effective after that date. Any terminations, which were not in effect prior to April 20, 1983, are legally prohibited. This applies not only to voluntary terminations, but also to involuntary terminations for failure to comply with the agreement.

In addition, the 1983 amendments allow States and interstate instrumentalities to modify their agreements to cover groups whose coverage was previously terminated. Once having again obtained coverage, coverage may not be terminated.

## **40001.485 Legally Dissolved Entities**

Although the 1983 Social Security Amendments prohibited the termination of Social Security coverage, there are still instances where an entity may be legally dissolved. When a political subdivision or absolute coverage group is legally dissolved, the State must submit to SSA a notice of legal dissolution to delete the dissolved entity from the State's agreement.

### **A. DISSOLVED ENTITY VS INACTIVE ENTITY**

A "dissolved" entity is an entity that has been legally dissolved and 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 RO. 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.

## **B. REPORTING A LEGALLY DISSOLVED POLITICAL ENTITY**

If an entity has been legally dissolved or is no longer in existence, the State should take prompt action to notify SSA of the dissolution. The State should send the PSSO a notice of legal dissolution and provide legal documentation with the notice of legal dissolution.

The PSSO will verify the information shown in the notice of dissolution (e.g., is the entity listed in the modification number shown in the notice) and forward the notice of dissolution to the RO for technical and legal clearance. RO will:

- notify the State that the legal documentation is acceptable or ask for additional information; and
- send a copy of the notice of dissolution to the PSSO and IRS.

## **C. EVIDENCE OF LEGAL DISSOLUTION**

The State must submit evidence which is legally sufficient to establish the fact of dissolution. The evidence must establish that the entity is not merely inactive or dormant, but that it no longer exists.

### **1. Primary Evidence of Dissolution**

- a. If the dissolution occurred as the result of a legal authority, evidence of the dissolution may be in the form of a copy of the legal authority under which the dissolution occurred. This may include:
  - a copy of a city ordinance, or
  - a copy of the order of an authorized official which effectuated the dissolution, or
  - a copy of the results of an election which authorized the dissolution.

Only one document in this situation is needed to establish dissolution.

- b. Where the dissolution resulted from the authorization of a legislative body (e.g., State Legislature, County Council, City Council, etc.), acceptable evidence would be proof that the legislative authorization had been carried out with either:

- a reference (e.g., law review, Bar journal, legal periodical, legislative history journal, legal or legislative website, etc.) to the legislative authorization, or
- a copy of the legislation

If the legislative authorization did not by itself dissolve the entity, a copy of the administrative or other order is required.

- c. A statement of the fact of dissolution executed by the official of the State or political subdivision with whom orders of dissolution are filed is acceptable as evidence of dissolution.

Obtaining the various primary evidentiary documents mentioned in **a.** through **c.** above is usually possible if the dissolution occurred recently and the records are maintained by an existing governmental entity.

## **2. Secondary Evidence of Dissolution**

Some entities which went totally out of existence many years ago either through annexation, consolidation, or dissolution failed to properly notify the State or SSA. In most cases, the entities just stopped paying Social Security taxes, not realizing that formal notification to the State and dissolution documentation for SSA were required so that the entities could be removed from the State's Section 218 Agreement. Usually, the required primary evidentiary records and documentation have long since been lost or destroyed, which makes obtaining proper dissolution evidence extremely difficult or impossible.

Where primary evidence of dissolution is unobtainable, other evidence is required to serve as a basis for a determination. Examples of other evidence include:

- meeting minutes of the entity's governing board (e.g., school board, fire district or precinct board, water district board, public service commission, etc.) authorizing dissolution, in tandem with a published article or other evidence confirming dissolution;
- a combination of documents of significant probity which enable the current official of the State or political subdivision with whom orders of dissolution are filed to make a determination as to whether or not the entity is legally dissolved.

Examples of acceptable documents submitted in combination for the current State or local government official's dissolution determination are:

- a signed statement or certified letter from an authorized State or local government official or school district superintendent declaring that the entity no longer exists;
- meeting minutes of the entity’s governing board authorizing the entity’s dissolution;
- an SSA earnings report query (ERQY) showing that the entity stopped reporting W-2’s in the year of the alleged dissolution;
- information about the entity’s dissolution obtained from a State or local government’s website;
- a signed statement from the Public Service Commission that a water district is no longer on its database.

#### **D. ERRONEOUS DISSOLUTION OF POLITICAL ENTITY**

If the dissolution action is erroneous because an entity was not legally dissolved or in fact nonexistent, the State should request a reconsideration of the dissolution action. The State should provide supporting evidence with the request. SSA will provide the State a copy of the reconsidered determination with the supporting evidence.

### **40001.490 Agreement and Modification Exhibits**

The following exhibits are those most commonly used by the States. States should follow the suggested formats and language as closely as possible. Some exhibits include an explanation concerning its use. The State should contact the Parallel Social Security Office or the Regional Office for assistance with complex or unusual coverage scenarios.

#### **A. Original agreement**

- Exhibit 1: Original agreement for interstate instrumentality

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Graphic: G-SL\_40001.490A

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#### **B. Absolute coverage group**

- Exhibit 2: Modification to extend coverage to Section 218(b)(5) coverage

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Graphic: G-SL\_40001.490B-1

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- Exhibit 3: Modification to extend Section 218(b)(5) coverage to individuals ineligible for membership in retirement system

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Graphic: G-SL\_40001.490B-2

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### **C. Absolute and retirement system group coverage**

- Exhibit 4: Modification to extend coverage to absolute coverage group and retirement system group of the same entity

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Graphic: G-SL\_40001.490C

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### **D. Retirement system coverage group for majority vote**

- Exhibit 5: Modification for Section 218(d)(4) retirement system coverage

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Graphic: G-SL\_40001.490D-1

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- Exhibit 6: Modification to identify an additional political entity joining a retirement system when one referendum held for entire retirement system

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Graphic: G-SL\_40001.490D-2

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- Exhibit 7: Modification to identify additional political entity joining a retirement system when separate referenda held in separate retirement systems

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Graphic: G-SL\_40001.490D-3

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- Exhibit 8: Certification of regular referendum under Section 218(d)(3)

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Graphic: G-SL\_40001.490D-4

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### **E. Retirement system coverage group for divided vote**

- Exhibit 9: Modification for Section 218(d)(6) retirement system coverage

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Graphic: G-SL\_40001.490E-1

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- Exhibit 10: Modification for Section 218(d)(6) retirement system coverage for individuals ineligible for membership

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Graphic: G-SL\_40001.490E-2

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- Exhibit 11: Certification of Divided Vote Referendum (Section 218(d)(7))

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Graphic: G-SL\_40001.490E-3

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- Exhibit 12: Combined Certification of Divided Vote Referendum (Section 218(d)(7))

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Graphic: G-SL\_40001.490E-4

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- Exhibit 13: Modification to extend coverage for members of a divided retirement system who did not initially elect coverage (Second Chance) (Section 218(d)(7))

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Graphic: G-SL\_40001.490E-5

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## **F. Special modifications and notifications**

- Exhibit 14 : Modification to extend coverage to police officer and firefighter positions covered under a retirement system

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Graphic: G-SL\_40001.490F-1

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- Exhibit 15: Modification to change effective date of coverage

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Graphic: G-SL\_40001.490F-2

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- Exhibit 16: Modification to cover services previously excluded

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Graphic: G-SL\_40001.490F-3

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- Exhibit 17: Modification to cover positions under a retirement system optionally excluded

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Graphic: G-SL\_40001.490F-4

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- Exhibit 18: Modification to exclude election workers on statewide basis

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Graphic: G-SL\_40001.490F-5

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- Exhibit 19: Modification to correct error in the effective date

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Graphic: G-SL\_40001.490F-6

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- Exhibit 20a: Error Modification (Absolute Coverage Group)

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Graphic: G-SL\_40001.490F-7-1

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- Exhibit 20b: Error Modification (Majority Vote Retirement System Group)

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Graphic: G-SL\_40001.490F-7-2

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- Exhibit 20c: Error Modification (Divided Vote Retirement System Group)

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Graphic: G-SL\_40001.490F-7-3

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- Exhibit 21: Notification of an Entity Legally Dissolved

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Graphic: G-SL\_40001.490F-8

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- Exhibit 22: SSA reply to Notification of Legal Dissolution

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Graphic: G-SL\_40001.490F-9

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- Exhibit 23: Modification to extend coverage to an entity where coverage was previously terminated

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Graphic: G-SL\_40001.490F-10

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- Exhibit 24: Notification of a new government component to be included under Modification No. \_\_\_\_\_

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Graphic: G-SL\_40001.490F-11

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### **G. Medicare modifications**

- Exhibit 25: Modification to extend Medicare HI-only coverage (Majority Vote)

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Graphic: G-SL\_40001.490G-1

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- Exhibit 26: Modification to extend Medicare HI-only coverage (Divided Vote)

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Graphic: G-SL\_40001.490G-2

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### **H. Closing agreement modifications**

- Exhibit 27: Modification for retroactive Section 218 (b)(5) coverage requiring a closing agreement. (Absolute Coverage Group)

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Graphic: G-SL\_40001.490H-1

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- Exhibit 28: Modification for retroactive Section 218 (d)(4) retirement system coverage requiring a closing agreement (Majority Vote)

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Graphic: G-SL\_40001.490H-2

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- Exhibit 29: Modification for retroactive Section 218 (d)(6) retirement system coverage requiring a closing agreement (Divided Vote)

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Graphic: G-SL\_40001.490H-3

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- Exhibit 29: Modification for retroactive Section 218 (d)(6) retirement system coverage requiring a closing agreement (Divided Vote)

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Graphic: G-SL\_40001.490H-3

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### **I. Miscellaneous Modification Situations**

Exhibit 30: Amending Section 218 Agreement Language to Permit Coverage for Police Officer and Firefighter Positions under Retirement Systems

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Graphic: G-SL\_40001.490I-1

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