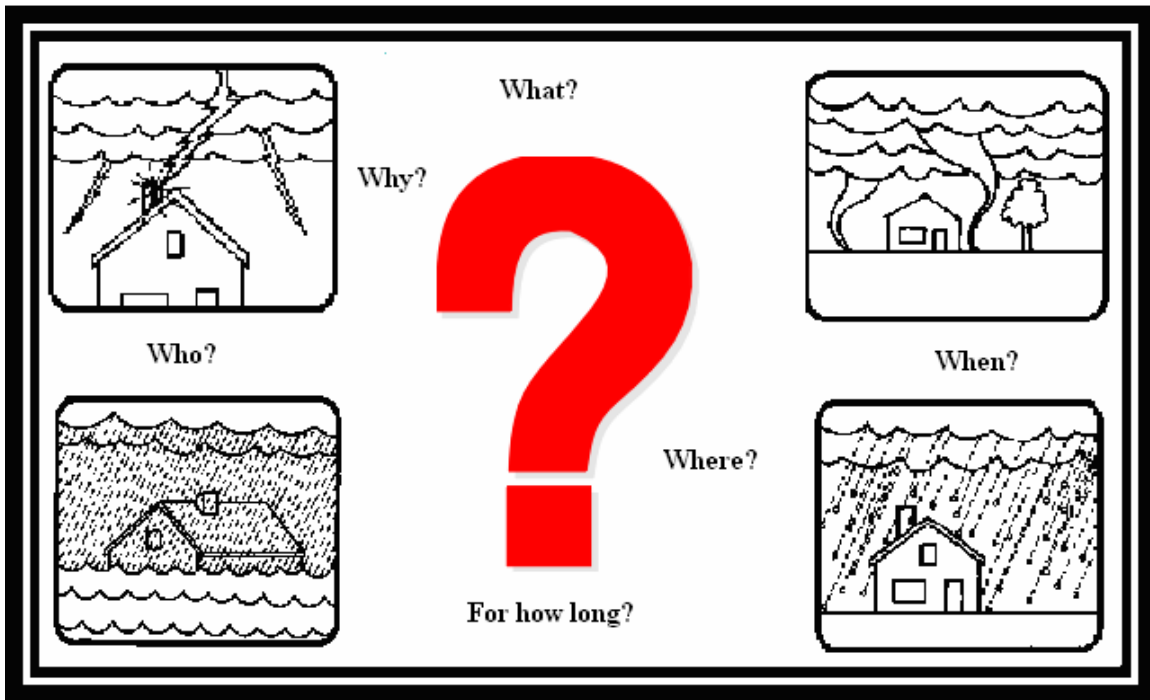


Temporary Emergency Worker Exclusion

SSA Resource Guide for Regional and Field Offices



The emergency worker exclusion from mandatory Social Security and Medicare coverage refers to services performed by an individual as an employee who, in performing a service on a temporary basis in emergencies such as fire, storm, snow, earthquake, flood, or other similar event is excluded from mandatory Social Security and Medicare coverage.



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Section 1: Purpose

The purpose of this Temporary Emergency Worker Exclusion Guide is to examine the emergency worker exclusion from a Social Security staff perspective. It provides general information on the laws and regulations that pertain to the emergency worker exclusion as well as details the possible situations in which an emergency worker may exist. The guide's background gives a brief account of the history and origin of the temporary emergency worker exclusion. Next, is a general information section. The general information section allows staff to quickly identify the requirements for qualifying for Federal Insurance Contributions Act (FICA) exclusion on the basis of temporary emergency employment. Following this are regulations describing the employee/employer relationship as well as how SSA defines an employee for purposes related to the potential temporary emergency worker. Also included in the guide are FAQs, an actual case study, and an appendix with sample forms and lists of names and contacts.

While accurate reporting responsibilities ultimately depend on State and local government employers, we can encourage proper application of the exclusion by providing accurate and detailed information as questions are directed our way by being familiar with the exclusion itself, the nature of the employment in which the employee was hired, and the period in which the emergency worker was employed.

Due to the uniqueness and complexity of the emergency worker exclusion and FICA withholding, the information found in this guide, along with all questions and answers, are provided for general information only. Every effort has been made to ensure that the material is complete and accurate at the time of publication; however, as you will notice, the following information does not account for every possible situation, but what is most commonly practiced by State and local governments. Therefore, the material cited here should not be considered as legal authority, but as a way for the user to respond to general inquiries.

Section 2: Background

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 withholding¹. 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. In general, the services are warranted because of the existence of an unforeseen event calling for immediate action by **EMERGENCY PERSONNEL**. Furthermore, because emergency situations arise infrequently and different workers may be involved each time, the

¹ S. Rep. No. 744, 90th Congress, 1st Session. (1967)

mandatory exclusions of their services are unlikely to have adverse effects on the Social Security protection of the workers who perform emergency services.

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 exclude “services performed by an individual as an employee serving on a temporary basis in the case of fire, storm, snow, earthquake, flood, or other similar emergency.”

Section 3: General Information

To correctly determine whether a purported temporary emergency worker is eligible for FICA exemption, several key factors must be considered. (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 emergent in nature (Further explanation of “emergent” is discussed later).

As a requirement, the scale of the emergency situation must exceed the scope and capabilities of what the political subdivision can supply under normal staffing conditions. *In almost all cases the exclusion only applies to services rendered by employees hired to provide relief due to the sudden and potentially unexpected nature of the emergency situation. Correspondingly, to be subject to the emergency exclusion the employee must only perform work in connection with the existing emergency.*

This leads to the question: At what point does the emergency worker exclusion begin and at what point does it terminate? As a rule of thumb, most employees hired after the declaration stating an emergency exists, but before the termination of the emergency situation, will potentially be eligible for the exclusion. A declaration can be made formally or informally and the declaring authority is contingent on the size and scale of the disaster scenario (e.g., a mayor declaring a local emergency at the municipal level or a governor declaring a state of emergency for multiple counties). This period is most commonly referred to as the **“incident period.”** The incident period often coincides with the **response phase** of a disaster. If a person retains employment after the incident period has been closed, then that individual may forfeit future exclusion and FICA withholding and coverage will begin.

Employment by individuals hired during an emergency situation does not in itself guarantee the services are excluded, nor does the fact that services performed are of short duration. For instance, a school crossing guard who is employed to work a 60 day summer school shift which is concurrent to a devastating summer flood is not eligible for the exclusion. While the guard is employed by a public school district in a position that is temporary or short in duration and the period of employment corresponds with a local emergency, they are not providing emergency services and their employment did not originate in response to the flood; therefore, they are not temporary emergency workers eligible for exclusion.

The upcoming sections in this guide are designed to detail the most common practices as used by typical state and local governing bodies in the United States as they relate to the potential application of the temporary emergency worker exclusion. The information is based on the three possible levels of emergencies in which a temporary emergency worker may be employed. Emergencies can be declared as a local emergency, a state of emergency, or a federally declared emergency. Knowing how to recognize a potential exclusion and where to find the definitive answers to emergency exclusion questions will ensure accurate application.

Staff can also refer to the Code of Federal Regulations, the Social Security Act, the SSA Handbook, and the State and Local Government Handbook for more information on the emergency worker exclusion.

Section 4: Employee (Defined)

In order to correctly apply the exclusion to an employee, it is necessary to understand what is meant by “employee” for the purpose of the emergency worker exclusion. Information pertaining to employment for such stated purpose is thoroughly detailed in Section 210 and 218 of the Social Security Act. The Act defines an employee as anyone who has such a status under the usual common law rules. The term “employee” includes an officer of a State or political subdivision².

The decision as to whether an individual is an employee is based on the facts of the situation and the application of the law in that particular case³. Although staff shall use the common law rule for determining whether a worker is an employee and whether the government entity has the right to direct and control the worker as to the manner and means of the worker’s job performance⁴.

Any employee entering into employment for purpose of the temporary emergency worker exclusion must be excluded under **Services Covered**, as indicated in SEC. 218(c)(1). For the purposes of this title the term “employment” includes any service included under an agreement entered into under this section. The Act states, “The Commissioner of Social Security shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request⁵.”

For the purposes of this section—an agreement under this section shall be applicable to any one or more coverage groups designated by the State⁶. Furthermore, such agreement

² SEC.218(b)(3) of the Social Security Act

³ SEC. 210(j) of the Social Security Act

⁴ SSA POMS Sec. SL 60001.605

⁵ SEC. 218(a)(1) of the Social Security Act

⁶ SEC.218(c)(1) of the Social Security Act

shall exclude service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency⁷. In addition to developing an employee/employer relationship, staff should ask, is the position being occupied of emergency nature. Not all employees hired during an emergency episode are emergency employees. So who is eligible? While it would not be possible to account for all possible situations, there are; however, common examples. For instance, positions directly related to providing life saving or life protecting measures are probably emergency worker positions. Examples include emergency responders and possibly fire, medical, and protective services. Positions not commonly thought of as emergency-related positions may become emergent in nature, at least in times of disaster.

Consider the case of a city street crew. A person temporarily hired to work on the street crew may be an eligible employee if the position is related to emergency response. For instance, take the following two examples: Worker 1 is temporarily hired to clean roadside debris from the unincorporated parts of the county. Worker 2 is temporarily hired to aid in the removal of multiple downed trees that span across portions of city streets, thus inhibiting emergency response to victims. In this case, it is probable to conclude that worker 1 will not be eligible for FICA exclusion, yet worker 2 will.

To minimize confusion, it is necessary to clarify that in many, if not most cases, an individual hired to perform police or fire related duties will not be eligible for the temporary emergency worker exclusion. This is because police officers and firefighters are generally 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). However, this is not without exception-- Refer to the FAQs section for an example.

Section 5: The Stages of a Disaster Declaration

The law provides that the employee's employment must be in case of fire, storm, snow, earthquake, flood or similar emergency and that employment originating from the aforementioned emergencies must be on a temporary basis. Therefore, by having a thorough understanding of what constitutes a disaster and what the stages of declaring a situation as a disaster are, it is possible to accurately determine when the exclusion provision begins and ends.

Federal laws and regulations including the Robert T. Stafford Act, the Emergency Assistance Act, Emergency Planning and Community Right to Know Act, National Flood Insurance Reform Act, the Homeland Security Act of 2002, and other Federal incentives have all served as an aggressive catalyst to the creation of formal State and local emergency management agencies. It is the creation of these agencies that allow emergencies and disasters to be easily and readily managed from one level to the next. The disaster declaration process can be activated by many different mechanisms. The three primary mechanisms are the President, for federally declared disasters; the

⁷ SEC. 218(c)(6)(E) of the Social Security Act

Governor, for the state of emergency; and the mayor or council for local emergencies. While the preceding authority can bypass his or her subordinate, the subordinate can not engage resources from agencies higher than those they are representative of. For example, when advance warning of an impending situation is possible, the Department of Homeland Security (DHS) may deploy resources to a State of Emergency prior to a request.

But first, let us examine the process from a local perspective and then progress to a federally declared emergency. Immediately after a disaster, local jurisdictions respond using available resources. They must also notify state response elements that their services may be needed and to standby. If the circumstance escalates to the point that the local jurisdiction can not provide ample response elements, then a request for State assistance is made--This decision can be made as an assessment. The State will review the situation, mobilize resources, and inform the DHS Regional Office of actions taken. The Governor declares a State of emergency, activates the State emergency operations plan, and requests a Presidential disaster declaration. The State and DHS jointly conduct a Preliminary Damage Assessment to validate the State's request and determine the kind of Federal assistance needed.

The subsequent sections will more closely detail the varying levels of disaster or emergency declarations. Each section will begin with general information regarding the scale of the emergency. Precluding general information will be the conditions for a proclamation, the responsible governing body, required action, duration/termination, and then SSA action. By sequencing the events of a disaster in the previously mentioned manner the reader should be able to easily recognize a disaster, know whom to contact, what to look or ask for, and if the exclusion applies—when and for how long.

Section 6: Local Government Emergency

A local Emergency is generally characterized by an event which threatens the life or property in a single municipality. A formal declaration citing the emergency may or may not be made, as the situation is able to be managed by locally-provided services and resources. However, additional staff or a temporary increase in response workers may be necessary. There is often no set duration for response to a local disaster.

The term 'local government' means- a county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

Conditions for a Proclamation: A condition of disaster or peril to life or property within a city and/or county; usually caused by fire, flood, storm, drought, epidemic, disease,

energy shortage, or other condition, by reason of their magnitude are likely to exceed the control of services or facilities of that political subdivision.

Responsible Governing Body: A local emergency is declared by the governing body of a county and/or a city. Such bodies may include, but are not limited to a mayor, the city council, or any other official (usually the city manager, fire chief, or emergency manager) designated by ordinance adopted by such a governing body.

Required Action: The designated governing body should submit a local proclamation including the following information: Date of incident occurrence and the type of incident. Any other information is provided at the discretion of the governing body. (See Appendix 1 for a sample Resolution Proclaiming Existence of a Local Emergency).

Duration/Termination: The governing body shall terminate the state of local emergency at the earliest possible date as warranted by the conditions. On average, a local emergency may remain active for a period not to exceed seven days, unless conditions warrant an extension. This timeframe is subject to the by-laws of the affected municipality. If an extension is proclaimed the governing body should review such local emergency on a weekly basis until the emergency is terminated. (See Appendix 2 for a sample Resolution Proclaiming Termination of a Local Emergency).

SSA Action: Determining who meets the emergency worker exclusion at the local level can be a daunting task due to the numerous municipalities across the country, and their varying types of executive structure. As indicated above, the mayor, council, or designated official is responsible for declaring an emergency. It is the responsibility of a municipality to remain in emergency status only as long as necessary; furthermore, it must re-examine the emergency proclamation with each council meeting, most commonly scheduled on a weekly or bi-weekly basis. Under these circumstances, SSA can, in most cases, determine whether or not a person meets the exclusion by contacting the municipality, requesting the minutes to the council meetings during the time frame that the exclusion has been applied, and reviewing them for a definitive start and stop to the emergency. Meeting minutes are just one potential source of information. Not all cities document council meetings with minutes, but those that do should make them accessible under public records.

In some, but not all, cases the impacted municipality may have an official resolution proclaiming the existence of a local emergency. Such a proclamation will be followed by a resolution proclaiming termination of the local emergency. Social Security staff can find definitive disaster information in these reports. (See Appendix 1 and 2 for samples).

By Federal and State mandate, all municipalities are required to have an acting emergency management coordinator or an equivalent by another name in order to be eligible for Federal and State assistance. This position is often a delegated duty of another position, commonly a position that by nature of is emergency response, i.e., fire chief or police chief. The emergency management coordinator respective to the

employee in which the temporary emergency worker exclusion is in question is the contact person for all information needed by SSA staff to determine the incident period.

Section 7: State Declared Emergency

A state emergency, or state of emergency, is any disastrous event which threatens the life of citizens in multiple cities, counties, regions, and/or overwhelms a local jurisdiction's ability to respond, or affects a state owned property or interest. Such an emergency can only be declared by the Governor or his/her designee. The State has the authority to supplement local resources with State faculties. The response effort is the responsibility of the Governor's division of Emergency Management. The duration of the response is determined by the State authority and the Governor's Division of Emergency Management.

Conditions for a Proclamation: A condition of disaster or peril to life or property within a state; usually caused by fire, flood, storm, drought, epidemic, disease, energy loss, or other condition, by reason of their magnitude are likely to exceed the control of services or facilities of that local government.

Responsible Governing Body: A state of emergency is declared by the Governor. If the Governor is unavailable then authority is delegated to the Director of Emergency Services/ Management.

Required Action: A Governor may proclaim a state of emergency when it is evident that local authority is inadequate to cope with the emergency. The Governor's state of emergency proclamation should include: a copy of the local proclamation, an initial damage assessment, and the name of the designated person to conduct correspondence. A proclamation will provide certain immunities and privileges for state and local authorities responding to the emergency. The state proclamation authorizes the governor to expend emergency funds and use state resources (e.g., State agencies, National Guard, California Conservation Corps, etc.). (See Appendix 4 for a sample Resolution Requesting Governor to Proclaim a State of Emergency).

Duration/Termination: State statute or State government code most often indicates that a state of emergency may continue for no more than the absolute minimum necessary days unless renewed by the Governor; typically through joint resolution with the state legislator. The governor shall issue a proclamation or executive order ending the state of emergency.

For example: Texas State Government Code Section 433.003 cites the following in regards to the duration of state of emergency. SEC. 433.003; (a) except as provided by Subsection (b), a directive expires 72 hours after the time of proclamation of the state of emergency for which it was issued. (b) The governor by proclamation may terminate or set a shorter period for a directive. The governor may proclaim successive states of emergency, each not exceeding 72 hours, as necessary to protect health, life, and property in the affected area, and may extend a directive from one state of emergency to the next.

SSA Action: Emergency situations that escalate to the state level are characterized by more formal proceedings than those seen in local emergencies. Social Security staff encountering employees who allege to be temporary emergency workers have fewer, but more reliable, sources to turn to for answers. For instance, all states have what is commonly referred to as a state emergency management agency. Any incident in which one or more counties or municipalities request disaster assistance may be proclaimed to be an emergency by the governor. The gubernatorial proclamation activates the Natural Disaster Assistance Act (NDAA), which provides financial assistance for the repair and restoration of public property, for local costs accrued during response, and for certain unforeseen and indirect costs. From a Social Security perspective, it is crucial to contact the state emergency management agency of the state in which the employee alleges employment. The respective agency will be able to confirm whether a State of emergency was proclaimed, whether the NDAA was activated, and which counties were declared. Additionally, many State emergency management agencies have begun archiving emergency information on their web pages. (Refer to Appendix 3 for a list of links to all State Emergency Management Agencies).

Employees hired solely to respond to a disaster in an impacted community during the period stated in the proclamation, with employment ending upon or before official announcement of termination, will usually qualify for the temporary emergency worker exclusion.

Section 8: Federally Declared Emergency/Disaster:

A major emergency is any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. More severely, a disaster is any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby⁸. Only the President of the United States can declare a Federal emergency. Either situation, a disaster or a major emergency, may lend cause to employees filing for the temporary emergency worker exclusion. The duration of response for a Federal declaration is determined by the President

Conditions for a Proclamation: A condition or instance, by determination of the President, requiring Federal assistance to supplement the capabilities of State and local

⁸ As Amended, US Code: Title 42, §5121, et seq.

efforts. The condition is of such severity that effective response is beyond the impacted State.

Responsible Governing Body: When a situation meets or exceeds the definition of a major disaster a federal emergency/disaster is then declared. The President has sole authority to declare and terminate a federal emergency.

Required Action: All requests for a declaration by the President for federal assistance in the case of a major emergency or disaster must be made by the Governor of the impacted State. The request must include confirmation of appropriate action and implementation of the state emergency plan, a list of federal resources that have been deployed, the type of resources currently being used; and the type of federal assistance required. Then, based on the Governor's request, the President may declare under the Robert T. Stafford Act the existence of a major disaster or emergency⁹.

Duration/Termination: For the most complete look at federally declared disasters and respective information, refer to <http://www.fema.gov/library/drcys.shtm>. FEMA's site lists all current and archived Federal Disaster Declarations or Disaster Federal Register Notices (DFRN). The notices contain information pertaining to the effective date of the disaster, the impacted areas, and a FEMA contact person.

SSA Action: Social Security Staff should consult DFRNs for effective and effective closed dates. Refer to Appendix 5 for a Disaster Federal Register Notice (DFRN). Appendix 6 is the amended version of the preceding DFRN closing out the incident period. However, in all cases it is ultimately necessary for Social Security staff to contact the employing municipality for final confirmation of employment, determination of the terms or conditions of the employment, and the time span in which the employment took place.

Section 9: Summary:

The mandatory exclusion for emergency services, such as those rendered during fire, storm, snow, earthquake, flood, or other similar emergency is contingent upon several factors. There must be an employee-employer relationship as defined in Section 210 of the Act. The employment must not be permanent and the underlying reason for the service must be for a purpose which is of limited duration. Furthermore, the employment must be "in case of" an emergency situation and the services rendered must be emergent in nature. "In case of" indicates that it is the emergency, and or distress caused by the emergency, which must directly cause the need of the services being performed. This further implies the primary purpose of the employment must be to assist in an emergency situation.

Consider looking at the temporary emergency worker exclusion from this perspective. Proper application of the exclusion is not necessarily contingent solely upon knowing that service performed by an individual on a temporary basis in case of fire,

⁹ US Code: Title 42, Ch. 68, Subchapter IV, § 5170, Sec. 401. Released 2003-07-24

storm, snow, earthquake, flood, or other similar emergency is excluded from FICA taxes, but in knowing the nature of the employment, when application of the exclusion should begin and end, and to whom it applies. By examining the timeline of a disaster or emergency scenario and becoming familiar with those who are responsible for the disaster declaration process at the local, State, and Federal level, Social Security staff will be able to readily turn to the authority that has documented evidence that a governmentally declared disaster exists or existed and the nature of the position in which the services were performed.

As an important reminder, regardless of whether services performed are a result of a disaster, application of the exclusion must be determined on a case by case basis. The information documented in this guide should serve only as a preliminary resource on the use of the emergency worker exclusion to mandatory coverage.

Attachments

Case Study

On June 11, 2003 SSA's Office of General Counsel (OGC) issued an opinion regarding the use of the emergency worker exclusion to mandatory coverage/FICA withholding in the case of employees hired in the aftermath of the September 1999 Hurricane Floyd. OGC referenced a United States Department of Labor April 14, 1997 memo, saying that states are also responsible for determining under provisions of State law whether hired workers are employees serving on a temporary basis in case of an emergency. Conversely, the State and Local Coverage Handbook indicates that Federal law governs the question of "what are emergency services," suggesting that federal law is of utmost importance. In response to seemingly contradictory statute OGC indicates though federal law could override State determination, it is important to at least consider.

Although it was determined by OGC that the severe flooding in the aftermath of Hurricane Floyd qualified as an emergency, it is a paramount inquiry as to whether employees hired at such time were serving on a temporary basis. Determinations must be made on a case by case basis, by looking at the individual facts and circumstances of each situation. Why was the worker hired? When? For what duration was he or she hired? In order to answer these questions it, like previously stated, is important to look at the nature of the emergency and the lifespan of the emergency.

SSA has taken the position that as long as employees are hired on a temporary basis and specifically for work in dealing with the emergency, they are excluded from coverage regardless of the duration of the services. Instructive to this position was the April 14, 1997 Department of Labor memorandum dealing with similar statute regarding an exclusion for emergency services pertaining to recipients of unemployment compensation. An excerpt from the Department of Labor Memorandum states the following:

Since disaster-related services may be performed after the need for immediate action has passed, they are not necessarily performed "in case...of emergency." For example, services performed removing hurricane debris to gain access to a hospital or performed "in case of...emergency" when there is an immediate need to obtain access to the hospital. However, when the removal of hurricane debris from the roadside does not require immediate action, services are not performed "in case...of emergency" and may not be excluded from coverage on that basis.

This statement emphasizes that temporary services must also be emergent services. By emergent, it is meant that a sense of immediacy exists. An example of this distinction can be seen when the *State* Employment Security Commission made a determination on whether an employee's emergency service wages should be counted as income for unemployment insurance benefits. The ruling states:

The claimant's job duties...were routine in nature, and did not include (and the claimant in fact did not perform) any work that was of an urgent nature, necessary to save life or property. The services performed by the claimant did not require her to rescue anyone from immediate physical harm or danger. None of the services performed by the claimant during her employment by the State involved safety or hazard problems requiring immediate action on her part to protect individuals or the public at large¹⁰.

Based on the subsequent guidance OGC formulated the following opinions. OGC stated that while it is difficult to put an exact date on when an emergency situation ends, it seems reasonable to assume that, in the case of a hurricane, when flood waters recede and there is no immediate danger to life or property, the emergency is over. This does not mean that cleanup and full recovery has been consummated. FEMA stated that flooding from Hurricane Floyd occurred from September 15, 1999 through November 2, 1999. Further research disclosed that the U.S. Conference of Mayors reported that flood waters had receded as of October 22, 1999. Therefore, OGC opines it is reasonable to conclude that services performed by any temporary employees hired from September 1999 through November 1999 should likely be excluded from mandatory coverage. It also seems equally reasonable to conclude that services performed in the cases of an emergency, after November or December 1999, should not be excluded from mandatory coverage.

¹⁰ *State Employment Security Commission (ESC) Tax Opinion No. 2992*

FAQs regarding Emergency Workers and FICA Withholding:

Are police and firefighters eligible for the emergency worker exclusion?

Police officers and firefighters are generally not considered emergency workers under the mandatory exclusion from Social Security and Medicare coverage. The exclusion applies only to services of an employee who was hired because of an unforeseen emergency to do work in connection with that emergency on a temporary basis (e.g., an individual hired to battle a major forest fire or to provide emergency assistance in other similar disasters such as volcano eruption, severe ice storm, earthquake and flood).

Are volunteer or on-call firefighters eligible for the emergency worker

exclusion? When a firefighter receives compensation, that compensation is wages and is subject to FICA taxes, unless an exclusion applies. It does not matter whether the workers are called “volunteers.” Any worker who receives compensation for services performed subject to the will and control of an employer is a common-law employee. If the worker is a common-law employee, the amounts paid, whether in cash or some other form (e.g., property tax credit), are subject to withholding.

Firefighters who are on call and work regularly but intermittently do not qualify for the emergency exclusion under Section 218(c)(6) of the Act, even if their work involves situations that may be considered emergencies. This exclusion applies only to services of an employee who was hired because of an unforeseen emergency to do work in connection with that emergency on a temporary basis (e.g., an individual hired to battle a major forest fire or to provide emergency assistance in other similar disasters such as volcano eruption, severe ice storm, earthquake and flood).

A township has a small number of regularly employed fire fighters. To assist these firefighters, certain residents of the township have volunteered their services in cases of emergency. The township alerts these residents to emergencies by sounding a siren. The township keeps a record of the residents who respond to the emergency calls and periodically pays each such resident a nominal amount for each emergency for which the resident performed services. Are the payments made to the residents by the township subject to the Medicare tax? No. The services are considered to be performed by an employee of a state or political subdivision on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency and thus are not subject to the Medicare tax. See Section 3121(u)(2)(B)(ii) (III) of the IR Code.

Appendix:

Appendix 1:

Sample Resolution Proclaiming Existence of a Local Emergency

WHEREAS, Ordinance No. _____ of the City of _____ empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when said city is affected or likely to be affected by a public calamity and the City Council is not in session; and

WHEREAS, the Director of Emergency Services _____ of the City of _____ does hereby find;

That conditions of extreme peril to the safety of persons and property have arisen within said city, caused

by _____; and _____;
(fire, flood, storm, epidemic, riot, earthquake, drought, energy shortage, or other causes)

That the City Council of the City of _____ is not in session (and cannot immediately be called into session);

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency now exists throughout said city; and

IT IS FURTHER PROCLAIMED AND ORDERED that during the existence of said local emergency the powers, functions, and duties of the emergency organization of this city shall be those prescribed by state law, by ordinances, and resolutions of this city, and by the City of _____ SEMS Multihazard Functional Plan, as approved by the City Council on _____, 19____.

Dated: _____

By: _____
Director of Emergency Services
City of _____

Appendix 2:

Sample Resolution Proclaiming Termination of Local Emergency

WHEREAS, a local emergency existed in the City of _____ in accordance with the resolution thereof by the City Council on the _____ day of _____, 19____, or

Director of Emergency Services _____ on the _____ day of _____, 19_____, and its ratification by the City Council on the _____ day of _____, 19____,

as a result of conditions of extreme peril to the safety of persons and property caused by _____; and
(fire, flood, storm, epidemic, riot, earthquake, drought, energy shortage, or other causes)

WHEREAS, the situation resulting from said conditions of extreme peril is now deemed to be within the control of the normal protective services, personnel, equipment, and facilities of and within said City of _____;

NOW, THEREFORE, the City Council of the City of _____, State of _____, does hereby proclaim the termination of said local emergency.

Dated: _____

Appendix 3:

State Emergency Management Agencies:

Alabama Alabama Emergency Management Agency 5898 County Road 41 P.O. Drawer 2160 Clanton, Alabama 35046-2160 (205) 280-2200 Web Site - http://www.ema.alabama.gov/	Alaska Division of Emergency Services P.O. Box 5750 Fort Richardson, Alaska 99505-5750 (907) 428-7000 Web Site - http://www.ak-prepared.com
Arizona Arizona Division of Emergency Management (602) 244-0504 (800) 411-2336 Web Site - http://www.dem.state.az.us/	Arkansas Office of Emergency Services P.O. Box 758 Conway, Arkansas 72033 (501) 730-9750 Web Site - http://www.adem.state.ar.us/
California Governor's Office of Emergency Services State of California 2800 Meadowview Rd. Sacramento, California 95832 (916) 262-1800 Southern California Contact (562) 795-2900 Web Site - http://www.oes.ca.gov	Colorado Colorado Office of Emergency Management 9195 E. Mineral Ave Ste 200 Centennial, Colorado 80112 (720) 852-6600 Web Site - http://www.dola.state.co.us/oem/oemindex.htm
Connecticut Office of Emergency Management Department of Public Safety 360 Broad Street Hartford, Connecticut 06105 (860) 566-3180/4343 Web Site - http://www.ct.gov/oem/site/default.asp	Delaware Delaware Emergency Management Agency State Emergency Operations Center 165 Brick Store Landing Road Smyrna, Delaware 19977 (302) 659-3362 Web Site - http://www.state.de.us/dema/default.shtml
District of Columbia Office of Emergency Preparedness 2000 14th Street, N.W. Eighth Floor Washington, D.C. 20009 (202) 727-6161 Web Site - http://dcema.dc.gov/main.shtm	Florida Division of Emergency Management 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100 (850) 413-9900 Web Site - http://www.floridadisaster.org/
Georgia Georgia Emergency Management Agency P.O. Box 18055 Atlanta, Georgia 30316-0055 (404) 635-7001 Web Site - http://www.state.ga.us/GEMA/	Hawaii Department of Defense 3949 Diamond Head Road Honolulu, Hawaii 96816-4495 (808) 734-2161 Web Site - http://www.scd.state.hi.us/
Idaho Bureau of Homeland Security 4040 Guard St., Ste 600 Boise, Idaho 83705-5004 (208) 334-3460 Web Site - http://www2.state.id.us/bds/index.htm	Illinois Illinois Emergency Management Agency 110 East Adams Street Springfield, Illinois 62701-9963 (217) 782-2700 Web Site - http://www.state.il.us/iema
Indiana State Emergency Management Agency Indiana Government Center South, Room E208 302 W. Washington Street Indianapolis, Indiana 46204-2760 (317) 232-3980 Web Site - http://www.state.in.us/sema/index.html	Iowa State Emergency Management Division Hoover State Office Building 1305 E. Walnut, Level A, Room 29 Des Moines, Iowa 50319 (515) 281-3231 Web Site - http://www.iowahomelandsecurity.org/
Kansas Division of Emergency Preparedness 2800 S.W. Topeka Blvd. Topeka, Kansas 66611-1287 (785) 274-1409	Kentucky Kentucky Division of Emergency Management (502) 607-7682 Web Site - http://kyem.dma.ky.gov/

Web Site - http://www.accesskansas.org/kdem	
Louisiana Louisiana Office of Emergency Preparedness (225) 925-7500 (225) 925-7345 Web Site - http://www.lope.state.la.us/	Maine Maine Emergency Management Agency 72 State House Station Office Augusta, Maine 04333 (207) 624-4400 Web Site - http://www.state.me.us/mema/memahome.htm
Maryland Maryland Emergency Management Agency 5401 Rue Saint Lo Dr Reisterstown, Maryland 21136 (877) MEMA-USA Web Site - http://www.mema.state.md.us	Massachusetts Massachusetts Emergency Management Agency P.O. Box 1496 400 Worcester Road Framingham, Massachusetts 01701 (508) 820-2000 Web Site - http://www.mass.gov
Michigan Michigan State Police Emergency Management Division 714 S. Harrison E. Lansing, 48823 (517) 332-2521 Web Site - http://www.michigan.gov/msp/0,1607,7-123-1593_3507---,00.html	Minnesota Division of Emergency Management 444 Cedar St. Ste. 223 St. Paul, Minnesota 55101 (651) 296-2233 Web Site - http://www.hsem.state.mn.us/
Mississippi Emergency Management Agency P.O. Box 4501 Fondren Station Jackson, Mississippi 39216-4501 (601) 352-9100 Web Site - http://www.msema.org/index.htm	Missouri Department of Public Safety State Emergency Management Agency 2302 Militia Drive Jefferson City, Missouri 65102-0749 (573) 751-9571 Web Site - http://www.sema.state.mo.us/semepage.htm
Montana Disaster & Emergency Services Division Department of Military Affairs P.O. Box 4789 Helena, Montana 59604-4789 (406) 444-6911 Web Site - http://www.state.mt.us/dma/des/default.asp	Nebraska Nebraska Emergency Management Agency National Guard Center 1300 Military Road Lincoln, Nebraska 68508-1090 (402) 471-7430 Web Site - http://www.nebema.org/
Nevada Division of Emergency Management 2525 South Carson Street Carson City, Nevada 89711 (702) 687-4240 Web Site - http://www.dem.state.nv.us	New Hampshire Division of Emergency Services 107 Pleasant Street Concord, New Hampshire 03301-3809 (603) 271-2231 Web Site - http://www.nhoem.state.nh.us
New Jersey Office of Emergency Management New Jersey State Police P.O. Box 7068 West Trenton, New Jersey 08628 (609) 882-2000 Web Site - http://www.state.nj.us/lps/njsp/ems/ems.html	New Mexico Office of Emergency Management Department of Public Safety (505) 476-9655 Web Site - http://www.dps.nm.org/emergency/index.htm
New York New York State Emergency Management Office 1220 Washington Ave Ste 101 Bldg 22 Albany, New York 12226 (518) 457-2200 Web Site - http://www.nysemo.state.ny.us	North Carolina Division of Emergency Management (919) 733-3867 Web Site - http://www.ncem.org
North Dakota North Dakota Division of Emergency Management P.O. Box 5511 Bismarck, North Dakota 58506 (701) 328-8100 Web Site - http://www.state.nd.us/dem/	Ohio Ohio Emergency Management Agency 2855 West Dublin-Granville Road Columbus, Ohio 43235-2206 (614) 889-7150 Web Site - http://www.state.oh.us/odps/division/ema/
Oklahoma Oklahoma Office of Emergency Management	Oregon Emergency Management PO Box 14370

P.O. Box 53365 Oklahoma City, Oklahoma 73152 (405) 521-2481 Web Site - http://www.odcem.state.ok.us	Salem, Oregon 97309 (503) 378-2911 Web Site - http://egov.oregon.gov/OOHS/OEM/
Pennsylvania Pennsylvania Emergency Management 2605 Interstate Dr Harrisburg, Pennsylvania 17110 (717) 651-2007 Web Site - http://www.pema.state.pa.us/	Rhode Island Rhode Island Emergency Management Agency 645 New London Rd Cranston, Rhode Island 02920 (401) 946-9996 Web Site - http://www.state.ri.us/riema/riemaaa.html
South Carolina Emergency Management Division 2779 Fish Hatchery Rd W. Columbia, South Carolina 29172 (803) 737-8500 Web Site - http://www.scemd.org/	South Dakota Office of Emergency Management 118 W. Capitol Ave Pierre, South Dakota 57501 (605) 773-3231 Web Site - http://www.state.sd.us/dps/sddem/home.htm
Tennessee Tennessee Emergency Management Agency 3041 Sidco Drive Nashville, Tennessee 37204 (615) 741-9303 Web Site - http://www.tnema.org	Texas Division of Emergency Management 5805 n. Lamar Austin, Texas 78752 (512) 424-2138 Web Site - http://www.soc.state.tx.us
Utah Division of Emergency Services (801) 538-3738 Web Site - http://cem.utah.gov	Vermont Vermont Emergency Management 103 South Main Street Waterbury, Vermont 05671 (800) 347-0488 Web Site - http://www.dps.state.vt.us/vem/
Virginia Department of Emergency Management 10501 Trade Court Richmond, Virginia 23236 (804) 897-6510 Web Site - http://www.vdes.state.va.us/	Washington Division of Emergency Management Bldg 20: M/S TA20 Camp Murray, Washington 98430 (800) 562-6108 Web Site - http://emd.wa.gov/
West Virginia West Virginia Division of Emergency Mgmt 1900 Kanawha Blvd E. Bldg 1 Rm. EB-80 Charleston, West Virginia 25305 (304) 348-5380 Web Site - http://www.state.wv.us/wvoes/	Wisconsin Emergency Management 2400 Wright Street Madison, Wisconsin 53707 (608) 242-3232 Web Site - http://emergencymanagement.wi.gov/
Wyoming Wyoming Homeland Security 122 W 25 th St Cheyenne, Wyoming 82002 (307) 777-4663 Web Site - http://wyohomelandsecurity.state.wy.us/	

* The addresses and phone numbers listed above are subject to change at any time.

Appendix 4:

Sample Resolution Requesting Governor to Proclaim a State of Emergency

WHEREAS, on _____, 19____, the City Council of the City of ____ found that due to _____;
(fire, flood, storm, epidemic, riot, earthquake, drought, energy shortage, or other causes)
a condition of extreme peril to life and property did exist within said city; and

WHEREAS, in accordance with state law the City Council proclaimed an emergency did exist throughout said City; and

WHEREAS, it has now been found that local resources are unable to cope with the effects of said emergency;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED AND ORDERED that a copy of this resolution be forwarded to the Governor of California with the request that he proclaim the City of _____ to be in a state of emergency; and

IT IS FURTHER ORDERED that a copy of this resolution be forwarded to the State Director of the Office of Emergency Services; and

IT IS FURTHER RESOLVED that _____, (Title)_____,
is thereby designated as the authorized representative for public assistance and _____, (Title)_____, is hereby designated as the
authorized representative for individual assistance of the City of _____ for the purpose of receipt, processing, and coordination of all inquiries and requirements necessary to obtain available state and federal assistance.

Dated : _____

CITY COUNCIL

ATTEST: _____

City of _____

Appendix 5:

Example Disaster Federal Register Notice (DFRN)

Federal Register Notice

Billing Code 6718-02P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1492-DR]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA-1492-DR), dated September 19, 2003, and related determinations.

EFFECTIVE DATE: September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Maryland, resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal Assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later requested and warranted, Federal funding under that program will also be limited to 75 percent of total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared major disaster:

Individual Assistance, including direct Federal assistance, is authorized for the independent City of Baltimore, and the counties of Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester.

Debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program for the independent City of Baltimore, and the counties of Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester.

/s/

Example of an Amended (DFRN) Closing the Incident Period of a Major Disaster

Billing Code 6718-02P

Federal Emergency Management Agency

Maryland; Amendment No. 2 to Notice of a Major Disaster Declaration

ACTION: Notice.

EFFECTIVE DATE: September 29, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

/s/
