



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR ALL FEDERAL, STATE AND LOCAL GOVERNMENTS
(FSLG) MANAGERS

FROM: Sunita Lough, Director (*Sunita Lough*)
Federal, State and Local Governments Division

SUBJECT: Contacting SSA Regional Offices for Section 218 Coverage
Inquiries

This procedural memorandum provides guidance and contact procedures for FSLG Specialists to use when coordinating with Social Security Administration (SSA) on Section 218 Agreement coverage issues arising in FSLG examinations. This memorandum provides additional coordination contacts as outlined in section 6 of the Memorandum of Understanding (MOU) between SSA and IRS (Attachment 3) regarding resolution of Social Security coverage issues.

The MOU between SSA and IRS provides that SSA is the arbiter of coverage issues relating to Section 218 Agreements. Most importantly, under the authority of Section 218 and 210 of the Social Security Act, SSA is responsible for determining the Social Security coverage status of state and local government employees covered under a state's Section 218 Agreement and Modifications thereof, and the mandatory coverage provisions under Section 210 of the Social Security Act, for Social Security and Medicare benefit purposes. Therefore, the legal authority of interpretation of Section 218 Agreements and subsequent Modifications is the sole responsibility of SSA.

Prior to contacting SSA for the interpretation of a Section 218 Agreement regarding coverage issues, the Specialist must first analyze the facts in each case to determine if the worker meets the definition of "employee" under section 3401(c) of the Internal Revenue Code and section 31.3401(c) -1 of the Regulations. If it is determined that the worker is an "employee," as described above, the Specialist should proceed to answer the following questions for each position in question:

1. What is the effective date of the state's Section 218 Agreement?

2. What is the effective date of all subsequent Modifications?
3. Is the position in question included in the Section 218 Agreement and/or Modification?
4. Is the position or service optionally excluded from coverage (i.e., do Federal or state laws allow the position or service to be excluded from coverage)?
5. Is the individual worker excluded from mandatory Medicare because of membership in a public retirement system?
6. Was the position in question created subsequent to the effective date of the Section 218 Agreement, including all Modifications? (See SSA reference SL 30001.380 Continuation of Coverage Rules.)

FSLG Policy - Agreed Cases

Many Specialists employ the use of informal telephone contacts with both their local state administrators and regional SSA office contacts to resolve Social Security coverage issues. This should continue to be the first type of contact for such coverage questions.

Where the Specialist determines that the worker at issue is an employee subject to FICA covered by a Section 218 Agreement, the Specialist should nevertheless contact SSA to obtain an informal concurrence with the determination. If SSA agrees with the determination, the Specialist should document the case file and issue workpapers appropriately.

FSLG Policy - Unagreed Cases

If, the taxpayer under exam disagrees with the Specialist's proposed adjustment that the worker in question is covered under the Section 218 Agreement, the case will require a *formal written interpretation* from SSA regarding Section 218 Social Security coverage for the positions in question. The most common scenario is a situation where the Section 218 Agreement provides global coverage but does not list specific covered and/or excluded position(s). For example, a Section 218 Agreement exists but the Agreement is not clear concerning which positions are covered, which positions are excluded from coverage, or whether "all positions are covered." In certain instances, the position in question may not have existed at the time the Agreement was executed. In order to determine or assess the proper Social Security coverage and FICA tax liability, the Specialist must contact his or her regional SSA official (SSA Coverage Specialist) to request a formal written interpretation of the Agreement.

Coordination with SSA offices

To accommodate a formal request, SSA has provided a list of SSA Coverage Specialists and their e-mail addresses (Attachment 1). The Specialist must use the appropriate SSA Coverage Specialist to request formal written interpretations of coverage issues. Because encrypted emails cannot be sent to SSA, taxpayer information must be redacted before e-mailing a formal request to SSA offices. Include a statement in the e-mail such as "Taxpayer identifying information can be provided via phone, fax or mail as required." To ensure that formal requests are submitted in a consistent manner, the attached "Social Security Referral" form must be used when submitting a formal request to SSA (Attachment 2). This form should be completed for each request and attached to the e-mail contact sent to the SSA Coverage Specialist. A copy of the email should be sent to the group manager.

SSA will use this mailbox system to manage its workload and track and control timely responses to FSLG. The Specialist can expect to receive a receipt acknowledgement within 5 workdays and a written response to the request within 60 days. If there has been no response from SSA within 60 days, initiate a follow-up contact; if you receive no response, contact your manager. The written response may be received by any means necessary (i.e. fax, e-mail, or regular mail) and will be used as the primary supporting documentation for the proposal of additional FICA tax related to these specific positions.

Disclosure

Internal Revenue Code section 6103(l)(1)(A) authorizes the Internal Revenue Service to share information with SSA with respect to taxes imposed by IRC chapters 2, 21 and 24 as necessary for purposes of SSA's administration of the Social Security Act. Any return information in the possession of IRS with respect to these three chapters, including results of an examination or compliance check, can be disclosed to SSA for its use in administering the Social Security Act. The information that is authorized to be disclosed is not limited to specific items of information; it is limited only to information with respect to taxes imposed by specified chapters of the Code. However, SSA's use of the information is limited to administration of the Social Security Act and IRS should not disclose information it knows that SSA does not need or cannot use in connection with this purpose. Additionally, this contact with SSA is not considered a third-party contact under Section 7602(c) and Form 12175 is not required.

If you have any questions concerning the initial contact procedures, contact Sunita Lough, Director of Federal, State, and Local Governments at (202) 283-9818.

Attachments:

- SSA Regional Office Contact Information
- Social Security Referral Form
- Memorandum of Understanding with SSA

**Social Security Administration's Regional Offices
Contact Information**

Regional Office	Email Address	Inclusive States
Region I: Boston	BOS.CPS.RSI.SSI@ssa.gov	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Region II: New York	NY.CPS@ssa.gov	Puerto Rico, Virgin Islands, New Jersey, New York
Region III: Philadelphia	PHI.MOS.RSI.SSI.Prog@ssa.gov	Delaware, DC, Maryland, Pennsylvania, Virginia, West Virginia
Region IV: Atlanta	ATL.MOS.CPS.RSIPT@ssa.gov	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Region V: Chicago	CHI.ARC.MOS.CRSI.SSI@ssa.gov	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Region VI: Dallas	DA.RSI@ssa.gov	Arkansas, Louisiana, New Mexico, Oklahoma, Texas
Region VII: Kansas City	KC.MO.RO.CPS@ssa.gov	Iowa, Kansas, Missouri, Nebraska
Region VIII: Denver	DEN.RSI@ssa.gov	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Region IX: San Francisco	SF.MOS.Programs.Support.Center@ssa.gov	American Samoa, Arizona, California, Guam, Hawaii, Nevada
Region X: Seattle	SEA.CPS.RPST@ssa.gov	Alaska, Idaho, Oregon, Washington

Social Security Referral Form Section 218 Interpretation Request

Date of Referral:

State:

Entity type:
(i.e. City, County, Public School, etc.)

218 Modification(s): (List all info known)

Modification #:	Effective Date of Modification:	Execution Date of Modification:

Positions requiring coverage determination:

Position Name: (List all identified during exam requiring 218 coverage determination)	Date Position created: (MM/DD/YY)	Did position exist prior to the entity joining a Retirement System? (Y or N)	Employee Status (federal or state statute, common law, etc)

Additional Information:

[Enter a summary of any additional documentation/research resulting from issue development deemed necessary - limited to 500 characters. If additional documentation is needed - fax to Regional SSA Coverage Specialist.]

IRS contact name, title, telephone number and email address:

[Enter FSLG Specialist's name, title, telephone number and email address]

Social Security Referral Form Section 218 Interpretation Request

This form should be used when coordinating with Social Security Administration (SSA) on Section 218 Agreement coverage issues arising in FSLG examinations. Page 1 of this form will be completed by the Specialist assigned the FSLG examination, and submitted directly to the designated Regional SSA office for your state via the email address provided. (See listing attached.)

NOTE: Because we do not have the ability to send encrypted messages between agencies, FSLG will need to redact any taxpayer information when communicating with SSA offices. We can include a statement in the e-mail such as "Taxpayer identifying information can be provided via phone, fax or mail as required."

Instructions for completion of Referral Form:

Date of Referral: Enter the date of submission to SSA

State: Enter the State (i.e. Texas)

Entity Type: Enter the type of Entity that you have under examination (i.e. City, County, School District, Housing Authority, Fire Protection District, etc)

218 Modification(s):

- **Modification #:** Enter each Modification Number applicable to the entity that you have under examination.
- **Date Position Created:** Enter the creation date of the worker position (worker class) for which you are seeking a 218 coverage determination.
- **Employee Status:** i.e., common law status as defined for income tax purposes

Additional Information: Include any additional information to summarize your analysis of the facts and circumstances of issue development that would assist the SSA Coverage Specialist in determining if this position is covered under this entity's 218 agreement or not. This information could include but not be limited to, position descriptions (if available), and analysis of common law employee status with respect to income tax ONLY, State statutes and/or City ordinances that define the position as an employee.

IRS contact name, title, telephone number and email address: Enter your name, title, and contact information so that the SSA Coverage Specialist can contact you when necessary.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
SOCIAL SECURITY ADMINISTRATION
AND THE
INTERNAL REVENUE SERVICE
FOR
STATE AND LOCAL GOVERNMENT COMPLIANCE ISSUES**

**Section 1.
Purpose**

This Memorandum of Understanding (MOU) specifies the responsibilities of the Social Security Administration (SSA) and the Internal Revenue Service (IRS) with respect to reporting and compliance requirements for state and local government employers under the Social Security Act (Act) and the Internal Revenue Code (Code). This includes specifying the responsibilities of both agencies for performing compliance reviews, educating public employers, and improving the reporting process between SSA and IRS to detect compliance problems.

Additionally, this MOU addresses activities intended to improve the wage reporting of state and local government entities. These specifically include the responsibilities of the IRS and SSA regarding meeting the educational needs of public employers and improving the operational and informational exchanges between the agencies.

**Section 2.
Background**

Public Law 99-509, enacted October 21, 1986, revised Section 218 of the Act and Sections 3121 and 3126 of the Code to transfer from the states and SSA to the IRS responsibility for the collection of Social Security contributions from state and local government employers under Section 218 Agreements. Prior to 1987, the State Social Security Administrators were responsible for reporting covered wages to SSA, collecting the Social Security and Medicare contributions from public employers, and depositing those amounts to the Social Security Trust Funds. Beginning January 1, 1987, state and local government employers became responsible for the reporting and payment of Social Security and Medicare taxes directly to the IRS.

A "Section 218 Agreement" is a written agreement between a state and SSA to provide Social Security and/or Medicare coverage for employees of a state or local government. Beginning January 1, 1951, Section 218 Agreement coverage was available for the services of employees in positions not covered under a retirement system. These

non-retirement system positions are referred to as absolute coverage groups. The Social Security Amendments of 1954, effective January 1, 1955, allowed states to voluntarily extend Section 218 Agreement coverage to the services of employees in positions covered under a retirement system. These groups are referred to as retirement system coverage groups. Since April 20, 1983, coverage under a Section 218 Agreement cannot be terminated unless the state or local government entity is legally dissolved.

In 1986, Public Law 99-272 mandated Medicare coverage for all state and local government employees hired, or rehired, after March 31, 1986. In 1990, Public Law 101-508 mandated Social Security coverage, effective July 2, 1991, for virtually all state and local government employees not covered by either a public retirement system or a Section 218 Agreement.

Section 3. Responsibilities

The SSA is responsible for the Social Security and Medicare coverage provisions under the Act. The IRS is responsible for the Social Security and Medicare taxation provisions under the Code.

With respect to state and local government taxation issues, under the authority of Chapter 21 of the Code, IRS is responsible for:

- Administering the Federal Insurance Contributions Act (FICA), including the mandatory Social Security and Medicare provisions concerning services performed by state and local government employees;
 - Assuring that there is proper reporting and collection of Social Security and Medicare taxes by state and local governments under the FICA through examination and other compliance programs; and
- Interpreting the FICA provisions applicable to state and local governments through published guidance, e.g., Regulations, revenue rulings, and revenue procedures, and through non-precedential advice to taxpayers and IRS personnel, e.g., private letter rulings and field directives.

With respect to state and local government coverage issues, under the authority of Sections 218 and 210 of the Act, SSA is responsible for:

- Making rules and Regulations and establishing procedures, not inconsistent with Title II of the Act (42 U.S.C. 401 et seq.), which are necessary or appropriate to carry out certain provisions of the Act;

- Adopting reasonable and proper rules and Regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits under the Act;

Maintaining and executing Section 218 Agreements and Modifications to such agreements;

Determining the coverage status of state and local government employees covered under a state's Section 218 Agreement and modifications thereof, and the mandatory coverage provisions under Section 210 of the Act, for Social Security and Medicare benefit purposes; and

- Assuring the accurate crediting of earnings to all workers; maintaining accurate earnings records; verifying the earnings amounts provided; and correcting erroneously posted amounts, as required by law.

Section 4.

Educating State and Local Government Employers

IRS will advise and educate state and local government employers about Social Security and Medicare taxation provisions under the FICA, including those provisions relating to reporting and deposit processes for Social Security and Medicare taxes.

SSA will advise and educate State Social Security Administrators and state and local government employers about the Social Security and Medicare coverage provisions under Sections 210 and 218 of the Act and the Annual Wage Reporting (AWR) process.

IRS and SSA will promote better state and local government reporting practices by conducting periodic joint educational workshops for state and local government employers.

SSA and IRS will review IRS Publication 963, Federal-State Reference Guide for State and Local Government Employers, a multi-agency document published by the IRS, to determine whether a revision of the publication is necessary. New editions of Publication 963, or supplementary publications (additions/deletions), will be created jointly by the IRS and SSA.

Section 5.

Improving the Coordination Process Between IRS and SSA

IRS and SSA agree to implement a standing Section 218 Committee beginning in Fiscal Year 2002 to discuss policy, procedural, and compliance issues relating to Social Security and Medicare coverage and taxation of state and local government employees.

The Section 218 Committee will meet semiannually, or more frequently, if appropriate, to evaluate findings and develop proposals and alternatives for executive decision-making.

The Section 218 Committee will evaluate information exchange methods for data concerning state and local government employers and will periodically provide recommendations for improving the coordination process. As an essential part of this process, the Committee will study the feasibility of perfecting the Section 218 Agreement/Modification information retained in IRS and SSA databases. The Section 218 Committee will consider sharing perfected Section 218 Agreement/Modification data with State Social Security Administrators.

Section 6.

Disclosure of Federal Returns and Federal Return Information

SSA is bound by the provisions of Section 1106 of the Act and Section 6103 of the Code. IRS is bound by the provisions of Section 6103 of the Code.

Section 6103(l)(1)(A) of the Code authorizes the IRS, upon written request, to disclose returns and return information with respect to taxes imposed by chapters 2, 21, and 24 to SSA for purposes of SSA's administration of the Act.

The term "Federal Return" means a "return" as defined in Section 6103(b)(1) of the Code. The term "Federal Return Information" means "return information" as defined in Section 6103(b)(2) of the Code.

Pursuant to the Act, the SSA is charged with responsibility for administration of the Act. Federal Returns and Federal Return Information (whether originals, paper copies, photocopies, microfilm, magnetic media, or any other form) received from the IRS pursuant to Section 6103(l)(1)(A) will be used only to the extent necessary for the purpose of SSA's administration of the Act. Such information shall not be used for the SSA's administration of any other statute.

The term "SSA Representative" means an officer or employee of the SSA designated in writing by the SSA to the Commissioner, IRS, as an individual who is authorized to inspect or receive Federal Returns and/or Federal Return Information with respect to chapters 2, 21, and 24 taxes on behalf of the SSA as provided by Section 6103(l)(1)(A) of the Code, but only so long as the duties and employment of such officer or employee require access to such Federal Returns and/or Federal Return Information for purposes of administration by the SSA of the Act.

Upon the occurrence of any change in employment, duties, or other relevant matters affecting an SSA Representative's authority to access Federal Returns and Federal

Return information, or status as an SSA Representative, the SSA shall promptly advise in writing the Commissioner or his or her designated representative of such change.

The term "disclosure" means the making known to any person in any manner Federal Return or Federal Return Information. An SSA Representative to whom a Federal Return or Federal Return Information has been disclosed may only disclose such return or return information to another officer or employee of the SSA only to the extent necessary for the purpose of SSA's administration of the Act. Disclosures to contractors and administrators are not allowed.

In accordance with Section 6103 of the Code, this agreement shall constitute a request for the Commissioner, IRS to disclose returns and return information with respect to taxes imposed by Chapters 2, 21, and 24 of the Code to the SSA for purposes of its administration of the Act. Specifically, when the IRS becomes aware of a state or local government employer whose noncompliance with the reporting requirements has resulted in a failure to correctly report employee wages for Social Security purposes, the IRS will provide SSA with the information identifying such entities so, if needed, SSA will be able to contact the employer and obtain the information required to correct employees' earnings records.

Section 7. Disclosure Safeguards

As an express condition for the inspection and disclosure of Federal Returns and Federal Return Information, the SSA agrees to comply with the safeguards and requirements prescribed by Section 6103(p)(4) of the Code and with such provisions governing implementation of such safeguards and requirements as may be established by Regulations and written procedures; provided by existing Regulations; or contained in IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies.

The SSA will make its officers and employees aware that under Section 6103(a) of the Code, they are required to maintain the confidentiality of Federal Returns and Federal Return Information and that under Section 6103(a)(1), as Federal Officers or Employees, they are prohibited from disclosing Federal Returns or Federal Return Information except as specifically authorized under the Code. The SSA will also make its officers and employees aware that the Code's confidentiality restrictions are enforced by criminal penalties for individuals convicted of willful unauthorized disclosure of Federal Returns or Federal Return Information (see Section 7213 of the Code), criminal penalties for individuals convicted of unauthorized access/inspection of Federal Returns or Federal Return Information (see Section 7213A; and 18 U.S.C. 1030(a)(2)(B)), as well as a civil damages remedy against the United States available to persons whose Federal Returns or Federal Return Information has been unlawfully accessed or disclosed by any Federal officer or employee (see Section 7431 of the Code).

**Section 8.
Notices and Contacts**

SSA will provide any information required under the MOU to the Director, Government Entities, or to such other person(s) as that Director or the Commissioner, IRS or his designee shall designate. The IRS will provide any information required under this MOU, in accordance with Section 6103 of the Code, to the Deputy Commissioner for Disability and Income Security Programs of the SSA, or to such other SSA Representative(s) as the Deputy Commissioner shall designate.

**Section 9.
Funding**

Each agency will be responsible for funding the costs it incurs in performing its responsibilities under this MOU.

**Section 10.
Effective Date, Modifications and Termination**

This MOU will become effective upon signature by the authorized representatives for IRS and SSA. Any modification or amendment of this MOU must be agreed to by both parties in writing and will be effective upon the date of execution or such other date as may be provided in the modification or amendment. This MOU can be terminated by either IRS or SSA upon written notification of the other party at least 90 days in advance of the termination date.

**Section 11.
Signatures**

Internal Revenue Service
Commissioner,
Tax Exempt and Government Entities

Social Security Administration
Deputy Commissioner for
Disability and Income Security
Programs


Date: 2-8-02


Date: APR - 4 2002