

**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.

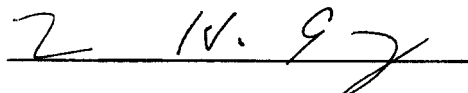
**Section 11.  
Signatures**

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