

NCSSSA Handbook for State Social Security Administrators

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The NCSSSA Leads the Way



The National Conference of State Social Security Administrators has provided for 50 years a united perspective on state and local social security coverage and federal employment taxes. We have built a conduit that directs the flow of information between the states and the federal government. This means that the NCSSSA has a voice in developing federal policies and legislation with an eye on the needs of state and local governments. You can count on the NCSSSA for:

- **Keeping Abreast of the Latest Ideas**

We provide the latest information concerning state and local social security coverage and federal employment tax reporting issues through a quarterly newsletter and periodic bulletins. This gives you the opportunity to resolve this year's questions and respond to next year's opportunities. The NCSSSA offers a collective pool of knowledge and technical expertise on both coverage and reporting that is available no where else.

- **Building Professional Networks**

The NCSSSA annual meeting is designed to immerse you in a total learning process lead by SSA and IRS executives as well as fellow state officials. During intensive seminars, round table discussions and informal debates, you can explore new ideas, tackle common problems or simply ask federal representatives "Why?" During these four days, you can develop professional relationships with other state officials that will prove invaluable for years to come.

- **Access to Federal Policy Makers**

We offer the opportunity for states to develop working relationships with officials from the SSA and the IRS.

- **State and Local Employer Representation**

The NCSSSA provides access to the appropriate officials for resolving social security coverage and employment tax reporting problems. Our organization is the only direct communication link between the federal government and state and local employers. The NCSSSA understands the unique nature of state and local coverage and is recognized by both the SSA and IRS as the representative of the public employer on state and local issues.

- **The Role of the State Social Security Administrator**

The NCSSSA represents the administrator with the IRS and SSA in negotiating and resolving the focus and needs of the states concerning the duties of the state administrator.

- **Legislative Input**

The NCSSSA provides the opportunity for each state to influence the outcome of federal social security coverage and reporting legislation, regulation and proposals.



The ever-changing and complex social security and employment tax regulations require constant monitoring and interpretation. For 50 years the National Conference of State Social Security Administrators (NCSSSA) has provided an effective network of communication for federal, state and local governments concerning social security coverage and federal employment tax policy.

With the enactment of Section 218 to the Social Security Act in 1950, states could first exercise the option of providing social security coverage for state and local employees. By the end of 1951, 30 states had executed Section 218 Agreements with the federal government. The individual department responsible for administering the social security program varied from state to state, depending on the particular state's enabling legislation.

State administrators began to operate in an area where no precedent existed. It became apparent that a forum was needed where the administrators could address the many problems and questions posed by the new program. The first forum between state social security administrators and federal officials was held in January 1952, in Bloomington, Indiana. As a result, the NCSSSA was established to provide a unified state perspective at the federal level for problem solving and to maintain an open forum for the development of new policy.

Since its formation in 1952, the NCSSSA has worked closely with SSA and IRS to address social security and medicare coverage and employment tax issues raised by state and local government employers and state social security administrators throughout the United States. The NCSSSA works with federal officials to ensure legislative and regulatory changes address state and local concerns. The NCSSSA provides leadership to state and local governments through accurate interpretation of federal laws and regulations, communication of Federal tax policy, and resolution of problems arising at the state and local level.

The NCSSSA hosts national workshops periodically and annual meetings where SSA and IRS officials address the concerns of State and local government representatives in a face-to-face format. NCSSSA officials represent public sector employers on various SSA and IRS committees and work groups.

INTRODUCTION

When the Social Security Act was enacted in 1935, social security coverage was limited to private sector employees as it imposed an employment tax on workers and their employers. States, their political subdivisions and employees were not included in this legislation because there was a constitutional concern about taxing the states for the employer portion of the social security tax. Some states that did not have retirement systems, however, expressed a desire to cover certain employees, and in the Social Security Amendments of 1950, Congress created Section 218 of the Social Security Act

This federal law allows states, effective January 1, 1951, to enter into voluntary agreements with the Social Security Administration (SSA) for social security coverage. Once the federal-state agreement is in place, each state then enters into voluntary agreements with their political subdivisions to provide the desired coverage. Congress authorized, with the 1954 amendments to the Act (effective January 1, 1955), the social security coverage of individuals who are covered under their public employer's retirement system.

The cost of providing social security and medicare coverage for governmental employees under Section 218 is the same as that for employees who are mandatorily covered under the Federal Insurance Contributions Act (FICA).



STATE SOCIAL SECURITY ADMINISTRATOR

Responsibilities (*State and Local Coverage Handbook (SLCH) Section 325*)

SSA Regulation 20 CFR 404.1204 requires that each state designate an official to act for the state in administering that state's Section 218 Agreement. This official, the state social security administrator, acts for the state with respect to its responsibilities for maintaining and administering the provisions of the agreement. The state administrator's responsibilities include:

- Maintaining physical custody, in a secure location, of the Section 218 Agreement, its modifications and all intrastate agreements;
- Providing copies of all modifications and intrastate agreements to active political subdivisions with explanations of any changes that have been overridden by subsequent changes to federal law;
- Taking appropriate steps to execute modifications to the original agreement that include additional coverage groups, correcting errors in modifications or identifying additional political subdivisions that join a covered retirement system;
- Conducting referenda on the coverage of services of individuals in positions under a retirement system;
- Serving as an information liaison for federal, state and local agencies in the education and training of public employers;
- Drafting and publishing rules, policies, procedures and standards for operation of the state social security administrator's office;
- Providing the SSA with notice and evidence of the legal dissolution of covered state or political subdivision entities;
- Providing guidance to the state's governmental employers on issues related to Section 218 coverage;
- Working with SSA and the Internal Revenue Service (IRS) in addressing coverage and taxation questions related to the agreement and modifications; and
- Working with SSA in addressing social security contribution payment and wage reporting questions for wages paid prior to 1987.

Notification of Change (*SLCH Section 325*)

The state is responsible for notifying SSA of any changes regarding the designated state social security administrator.

Resources

Social Security Administration

- *State and Local Coverage Handbook, Pub 16-055* (Informational and procedural handbook for state administrators)
- *SSA Headquarters and Regional Office Directory, Pub 03-009* (Phone and address information for SSA national, regional and parallel social security offices)
- *Coverage for State and Local Government Employees, Pub 05-10051* (Fact sheet)
- *A Pension From Work Not Covered By Social Security, Pub 05-10045* (Fact sheet)
- *Government Pension Offset, Pub 05-10007* (Fact sheet)
- Web site: www.ssa.gov

Internal Revenue Service

- *Federal State Reference Guide, Pub 963* (Informational guide for state administrators and public employers)
- Web site: www.irs.ustreas.gov

National Conference of State Social Security Administrators

- *Directory Of State's Coverage Agreements* (General and specific coverage information for each state)
- *Annual Conference Proceedings* (Recap of the annual conference and annual activities)
- *Standard Operating Procedures Manual* (Program and procedural information for the NCSSSA)
- *Annual Conference Program Directory* (Phone and address information for each state)
- Web site: www.ncsssa.org
- *NCSSSA Today* (Quarterly newsletter published by the NCSSSA)

State Resources

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Communication Network

Communication is one of the keys in performing the duties and responsibilities of the state social security administrator. This requires communication and interaction with every entity from the Social Security Administration to the reporting official of the state's smallest political subdivision.

State administrators should begin their communications network with fellow state administrators through the National Conference of State Social Security Administrators. The NCSSSA offers a wide range of information sources such as working committees, newsletters, a web page, special publications and an annual conference.

The next step is to promote working relationships with officials in the SSA parallel social security office, SSA regional and national offices, IRS district and regional offices and the nearest IRS service center. SSA Publication No. 03-009, Headquarters & Regional Office Directory, provides the name, address and telephone number of all SSA officials involved in state and local coverage. Copies of the directory may be obtained from the SSA's Office of External Affairs at 410/965-0442.

Continuous contact with local officials and the political subdivisions of a state is essential to performing the role of the state administrator. State administrators should develop a communications system with their local entities that includes newsletters, informational bulletins and presentations.

It is important that the state administrator distribute appropriate information to state agencies and political subdivisions. The state administrator should collect relevant information from the NCSSSA, SSA information releases, payroll and tax guides and Internet sources. The state administrator should be aware of any changes in coverage requirements, withholding provisions, reporting stipulations, publications or forms enacted via federal agency regulatory action or legislative mandates.

Employer and professional associations, such as a state Municipal League or CPA Society, are important assets for the state administrator. These associations publish newsletters and bulletins that will incorporate state and local coverage information from the state administrator. They also host seminars, workshops and conferences on a regular basis in which the state administrator can participate.

Public employer retirement systems (PERS) are also an information dissemination source for the state administrator. A PERS will generally produce regular publications and host educational seminars that the state administrator can utilize. Other state government agencies are good sources for information collection and dissemination, such as the Department for Local Government, the Secretary of State, Legislative Auditor or a state agency that has local government oversight responsibilities.

Coverage Database

A necessity for every state administrator is a coverage database of all the political subdivisions, both those with Section 218 Agreements and those without. The database should contain—at the minimum—the following information for each political subdivision:

- Entity name, address, telephone number, fax number, e-mail address.
- Name of a contact person knowledgeable about the entity's FICA coverage (usually, the payroll officer).
- Entity Employer Identification Numbers (EIN) assigned by the IRS for reporting purposes.
- The "69" number for Section 218 covered entities. Note: SSA previously assigned a reporting and coverage number beginning with the prefix "69" to all covered political subdivisions (69-NNNNNNN). States now sequentially assign the 69 number to those political subdivisions brought under Section 218 coverage.
- Effective dates of coverage and the applicable modification number(s) for covered entities.
- Any optional exclusion for covered entities.
- Any unique coverage situations for covered entities.

Maintaining Contact

The state administrator should identify all new, inactive, merged or dissolved political subdivisions through local ordinances, legislative action, newspaper articles, from oversight state agencies and from multi-employer retirement systems. Contact with counties, cities and their professional associations will also provide the state administrator with knowledge of new, inactive, merged or dissolved political subdivisions.

States should periodically review the status of their 218 political subdivisions that have previously been declared "inactive" to ascertain if the entity again has employees who are receiving wages and if the entity is properly withholding the appropriate social security and/or medicare taxes. States are responsible for notifying the SSA when a 218 political subdivision becomes "inactive" or has been "re-activated".

When an entity becomes inactive or reactivated, the State should send a letter to the appropriate SSA Regional Office, Attention: RSI Team. The letter should include the name of the entity, entity's EIN, the modification number the entity is covered under, the effective date of the entity's inactivation or the effective date of the entity's reactivation. If the State later receives information that an inactive entity has been dissolved in its entirety, the State should take prompt action to have the entity's coverage dissolved (see SLCH 500).

Non-Section 218 covered political subdivisions should be included in the state

administrator's database, if possible. This will assist the administrator in identifying any non-Section 218 entity, with a retirement system, that is paying FICA. The state administrator can then execute the proper modification to ensure the employees have the desired voluntary coverage.

There are many ways a state administrator can maintain regular and useful contact with the political subdivisions. Some of the more common methods include:

- Participating in outreach seminars which may be hosted or organized by the state administrator, by state or federal agencies or by public employer associations.
- Periodic letters to all Section 218 entities to ensure the state administrator has the correct address, EIN and contact person. This information request can also identify merged or dissolved political subdivisions. (See sample on page 26.)
- Periodic letters to all non-Section 218 entities asking if their FICA coverage and retirement system status has changed. This can help identify those non-Section 218 political subdivisions with retirement systems that may be erroneously paying FICA to the IRS without a Section 218 Agreement. See the Non-218 Political Subdivision Questionnaire on page 27 for a sample survey that states may utilize to identify those non-Section 218 governmental employers that may require coverage under the 218 agreement.
- Distribute a regularly published technical newsletter to all state agencies and political subdivisions.
- Develop a web site. The state administrators of Colorado and Kentucky have their own web sites that may be used as models in developing a site. These web addresses are:

Colorado pess.cdle.state.co.us

Kentucky sssa.state.ky.us

Other web sites that can be of use to the state administrator are:

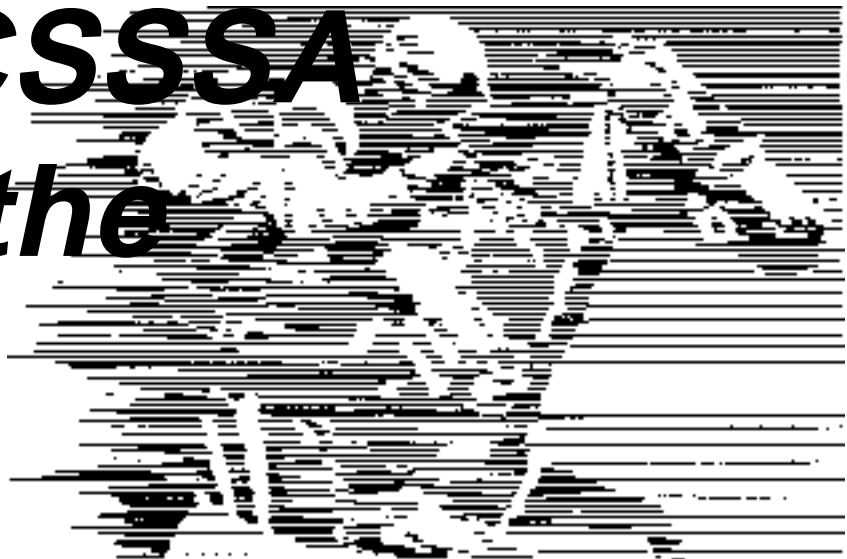
Government Finance Officers Association www.gfoa.org

American Payroll Association www.americanpayroll.org

Commerce Clearing House www.cch.com

- The state administrator should compile a state-specific coverage and reporting manual for use by the state's public employers. Some states have published such a manual that can, in conjunction with IRS Publication 963, be used to assist in developing a state specific manual.

The NCSSSA Leads the Way



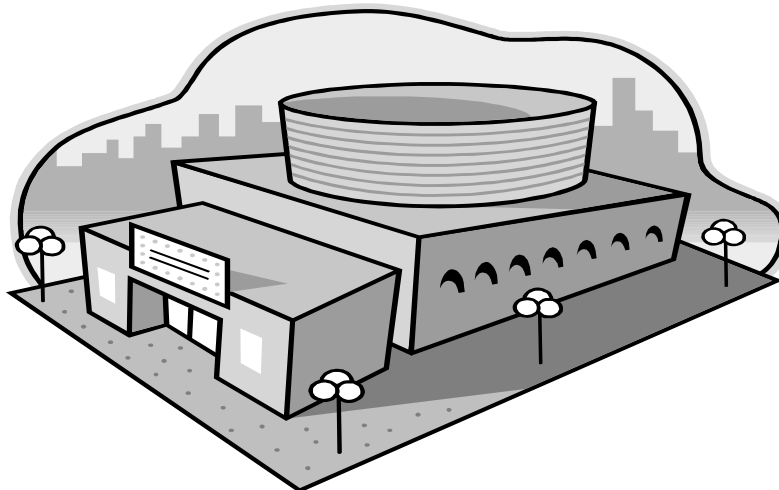
SOCIAL SECURITY AND MEDICARE COVERAGE FOR PUBLIC EMPLOYERS

GENERAL COVERAGE RULES

State and local government employees are covered by social security and/or medicare through a federal-state agreement or mandatorily under federal law. The federal-state agreement is commonly referred to as a Section 218 Agreement because it is authorized under Section 218 of the Social Security Act.

FICA coverage (social security and/or medicare) for employees of state and local governments can be determined four different ways:

- States and their political subdivisions may extend FICA coverage to services performed by their employees through voluntary Section 218 Agreements.
- Effective for services performed after July 1, 1991, all state and local government employees, with certain exceptions, not covered under a Section 218 Agreement or by a public retirement system are mandatorily covered by FICA. The public employer retirement system must be a qualifying retirement system as defined by 26 CFR §31.3121(b)(7)-2 and Revenue Procedure 91-40. Mandatory FICA, under Section 210 of the Act, was enacted by the Public Law 101-508.
- State and local government employees hired after March 31, 1986 are mandatorily covered for medicare, unless specifically excluded.
- Medicare coverage for state and local employees hired before April 1, 1986, who are members of a public retirement system, is available through a voluntary Section 218 Agreement.



VOLUNTARY COVERAGE UNDER SECTION 218 AGREEMENTS (SLCH Chapter 400)

Definitions (See SLCH Section 115 for additional definitions applicable to state and local coverage)

State

For purposes of a Section 218 Agreement, a “state” includes the 50 states, Puerto Rico, the Virgin Islands and interstate instrumentalities.

Political Subdivision

A “political subdivision” includes an instrumentality of a state, an instrumentality of one or more political subdivisions of a state or an instrumentality of a state and one or more of its political subdivisions. An instrumentality is organized to carry on some function of government. A political subdivision includes counties, cities, townships, villages, school districts, special districts and other similar governmental entities.

Section 218 Agreements

A written voluntary agreement between the state and the Social Security Administration pursuant to Section 218 of the Act to provide social security and/or medicare coverage for state and local employees.

FICA

The Federal Insurance Contributions Act (FICA) imposes two taxes on employers and employees for services that are covered under the Social Security Act. The first tax is for the Old Age, Survivors and Disability Insurance (OASDI) programs. These programs provide social security retirement, disability and survivors benefits. The second tax imposed by FICA is for the Hospital Insurance (HI) under Part A of medicare. The HI program provides hospital, doctor and certain other related benefits.

Extension of Coverage under Agreements

All 50 states, Puerto Rico and the Virgin Islands have entered into voluntary Section 218 Agreements with SSA. The agreements cover services performed in *positions*, not by individuals filling the positions, and if the position is covered under the agreement, then any employee filling that position is subject to FICA taxes.

Most state and local governments have covered the services of all or some of their employees—exclusions to coverage are available. States may modify their Section 218 Agreement by extending FICA coverage to specific groups of employees. The state may also allow their political subdivisions to decide whether any of their employees will be included under the agreement.

Coverage under the Agreement is provided for services performed by groups of employees—not on an individual basis. Each state decides, within federal and state law, which groups to cover under the state agreement and when coverage begins. The state can choose to cover retirement system groups, non-retirement system groups or both.

Absolute Coverage Group (Section 218(b)(5) of the Act) — If the group of positions to be covered are not under a retirement system on the date of the modification, these positions will be covered as an absolute coverage group—even if the positions come under a retirement system subsequent to that date.

Retirement System Coverage Group (Section 218(d)(4) of the Act) — When the positions being covered are under a retirement system on the date of the modification, they will be covered as a retirement system coverage group. This is true regardless of whether the positions being covered were not under a retirement system at some time during the retroactive coverage period.

Mandatory and Optional Exclusions to Coverage

Federal law mandates the exclusion of the following services:

- Services of employees who are hired solely to provide relief from unemployment.
- Patients or inmates performing services in a hospital, home or other institution.
- Transportation system employees who are compulsorily covered.
- Employees working on a temporary basis because of an emergency or natural disaster.
- Employees whose services would normally be excluded from coverage if performed for a private employer (except agricultural labor and work by students). (For examples, the exclusion of nonresident aliens who have “F-1”, “J-1”, “M-1” or “Q-1” visas.)

Section 218 Agreements, at the option of the state or its political subdivisions, may include or exclude the following services:

- Services in elective positions
- Services in part-time positions
- Services in positions paid on a fee basis
- Agricultural labor
- Student services
- Services of election workers and officials, if the remuneration paid is less than the threshold amount established by the state’s agreement

Obtaining Coverage for Employees

Employees covered by a public retirement system that is not covered under a Section 218 Agreement cannot be brought under FICA coverage unless a majority of eligible members vote for FICA coverage in a referendum. However, in some states, divided retirement systems are permitted. A divided retirement system occurs when a state divides the system into two parts: one part containing members who vote for social security/medicare coverage and the other part containing members who do not vote for coverage. A member voting “no” when the system is divided is not covered as long as continuous employment is maintained under the same employer’s retirement system.

States permitted to use divided retirement system coverage:

Alaska	Massachusetts	Pennsylvania
California	Minnesota	Rhode Island
Connecticut	Nevada	Tennessee
Florida	New Jersey	Texas
Georgia	New Mexico	Vermont
Hawaii	New York	Washington
Illinois	North Dakota	Wisconsin

Termination of Coverage

Section 218 Agreements in effect as of April 20, 1983 and all agreements entered into on or after that date are permanent and cannot be terminated.

Voluntary Medicare Only Coverage (SLCH Section 459-461)

States may extend voluntary Medicare-only coverage to services performed by state or local government employees, not covered for full FICA, who were hired before April 1, 1986. Such coverage is subject to the usual referendum, modification and coverage rules under Section 218 of the Act.



MANDATORY COVERAGE

MANDATORY FICA COVERAGE

State and local government employees who are not covered by a Section 218 Agreement or by a public retirement system are generally subject to FICA coverage and withholding. FICA coverage is mandatory for services performed after July 1, 1991, unless the employees are statutorily excluded or are members of a public retirement system that meets certain IRS requirements.

A retirement system is defined, under Section 218 of the Act, as any pension, annuity, retirement or similar fund or system maintained by a state or local government or instrumentality to provide retirement benefits to participating employees. The IRS has issued guidance on the retirement system requirements and the definition of a member of a retirement system in 26 CFR §31.3121(b)(7)-2 and in Revenue Procedure 91-40. See Publication 963 (the Federal State Reference Guide) Appendix for more details.

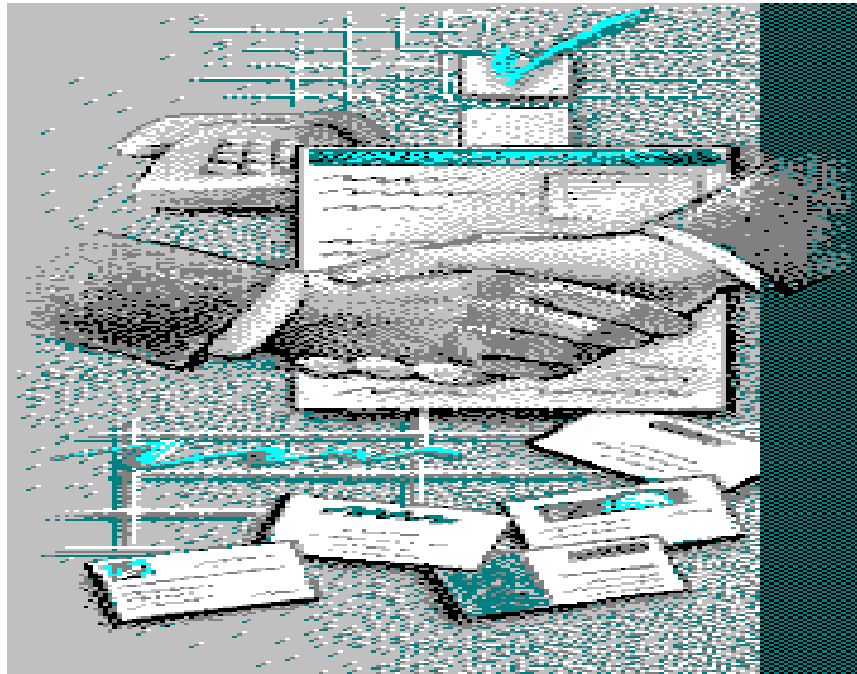
MANDATORY MEDICARE COVERAGE

State and local government employees hired after March 31, 1986 are subject to mandatory coverage of the medicare-only portion of the FICA tax, unless they are covered for full FICA. The FICA coverage can be imposed either by voluntary Section 218 coverage or by mandatory FICA. This coverage is referred to as “Medicare Qualified Government Employment” (MQGE). Employees hired before April 1, 1986, who are not covered under a Section 218 Agreement or who are not subject to the mandatory FICA rules remain exempt from both social security and medicare taxes. The IRS has issued guidance in mandatory medicare in Rev Rul 86-88 and Rev Rul 88-36. See Publication 963 (the Federal State Reference Guide) Appendix for more details.

AGREEMENTS AND MODIFICATIONS (SLCH Chapter 500)

BASIC CONCEPTS

- The coverage of state and local employees must be requested by the state.
- Coverage is accomplished by means of an original agreement between the state and the Social Security Administration.
- There must be authority under both federal and state law to enter into an agreement. The types and extent of coverage provided under an agreement must be consistent with the federal and state laws.
- The state, by agreement, provides social security protection (retirement, survivors, disability and hospital insurance) for the employees it brings under the agreement.
- Coverage under an agreement must be provided for employees by “groups” (absolute coverage group or retirement system coverage group).
- The original agreement incorporates the basic provisions, definitions and conditions for coverage under the agreement.
- Additional coverage is provided by modifications to the original agreement. Each modification, like the original agreement, is a legal document.
- Generally, an agreement may be modified only to increase the extent of coverage.
- Once coverage is provided, it continues and cannot be terminated.
- The cost of providing voluntary social security for state and local employees is the same as that for employees who are mandatorily covered under FICA.
- SSA administers the social security and medicare coverage provided under Section 218 of the Act.



THE ORIGINAL AGREEMENT

What It Provides

The 218 agreement between the state and SSA establishes the framework for a continuing relationship between the state and the federal government and must be fully drawn and complete as to all details. The original agreement incorporates the basic provisions, definitions and conditions for coverage under the agreement and as defined under state law. Additional coverage is provided by modification to the original agreement. Each modification, like the original agreement, is a legal document and must be consistent with both federal and state law.

The original agreement provides the authority for covering state employees (if specified in the agreement) and employees of political subdivisions. It also provides the authority for adopting optional exclusions to the extent permitted by federal and state law. Provisions that apply on a statewide basis are included in the original agreement. The state also agrees to comply with the Commissioner's regulations concerning the agreement.

How Many Agreements Are There?

There is a Section 218 Agreement for each 50 states, Puerto Rico and the Virgin Islands (considered states for this purpose), and more than 60 interstate instrumentalities. The coverage under these agreements varies widely. A few states have almost no coverage under their agreements, while others provide coverage for virtually all services performed for the state and its political subdivisions.

Modifications to the Agreement

Amendments to the original agreement are made by modifications to the agreement. The agreement may need to be amended from time to time because of changes in federal or state law. For example, if a state is added to the list of states authorized to divide its retirement systems, the Agreement must be amended to authorize this coverage.

Who Can Execute an Agreement?

The term "execute" means putting the last required signature on the document. The agreement is signed on behalf of the state by an authorized state official before it is submitted to SSA. The authority to execute an agreement on behalf of the Commissioner of the Social Security Administration is delegated to the regional commissioners. The delegation requires a clearance by the SSA's Office of the General Counsel. Each of SSA's regional attorneys generally handles this clearance.

Processing of Original Agreements

Original agreements submitted by the states were processed in the same manner as modifications. Special considerations apply, however, regarding interstate instrumentalities. The laws of all the involved states must generally allow the agreement. Some functions also require the consent of Congress. A regional attorney normally addresses these questions as part of the legal clearance process.

MODIFICATIONS-GENERAL

Purpose of Modifications

In addition to amending the original agreement, modifications provide new coverage, identify new political subdivisions participating in a retirement system (which was covered on a statewide basis), correct errors and, under very limited conditions, exclude work previously covered.

How Modifications Are Processed

- Who initiates a modification?

Modifications are always initiated by the state. SSA may sometimes ask the state whether it wants to modify its agreement, for example, when a political subdivision has erroneously withheld, paid and reported FICA without coverage. The decision on whether to submit the modification rests, however, with the state.

- How many copies are required?

SSA asks the state to submit multiple copies of each modification. The number of copies varies in each of the SSA regions. Two copies should contain the original pen and ink signature of the authorized state official. This is so that after the document has been executed, both the state and SSA will have an original, signed document to keep as a permanent record. If the state wants more than one executed copy, it should supply the extra copies.

- Who reviews a modification?

A modification generally receives three reviews before it is executed. The state mails or delivers the modification to the Parallel Social Security Office (PSSO - the SSA district office usually in the state capital city), which reviews it. NOTE: Some SSA regions do not require PSSO review of the modification. When the PSSO is satisfied, it sends the modification to the regional office, which conducts a thorough review. The regional attorney also reviews the modification and clears it for execution.

- What happens when corrections are needed?

All additions or corrections to a modification require the state's written permission. Minor changes are usually handwritten. The changes are annotated to show the basis for such changes and are initialed by the person making them. Major changes sometimes require that a modification be completely rewritten. When this is necessary the regional office keeps a copy of the modification initially submitted in case it is necessary to establish the date of its submittal.

- Can the state withdraw a modification?

The state can withdraw a modification at any time before SSA executes it. When the withdrawal occurs, the regional office returns all copies of the modification to the state.

- Can a modification be disapproved?

A modification can be disapproved only for failure to meet a requirement of federal or state law. If a modification is legally deficient and the state does not withdraw it, the modification must be submitted to the regional commissioner for disapproval.

MODIFICATIONS THAT PROVIDE NEW COVERAGE

Absolute Coverage Groups (SLCH Section 560, Exhibits 4-6)

The modification must identify each group, must show an effective date of coverage for the group and must describe any optional exclusions applicable to the group. Both the effective date and the optional exclusions must be consistent with federal and state law.

If retroactive coverage is provided, the state must either designate a date (See Section 218(e)(2) of the Act) that controls who is entitled to the retroactive coverage or declare it does not wish to designate a date. If a date is not designated, the date the modification is executed by SSA will control.

Retirement System Coverage Groups - Majority Vote Basis (SLCH Section 560, Exhibits 7-12)

Groups covered by a retirement system may elect to obtain Section 218 coverage via a referendum. In such cases--and in addition to the requirement above--the modification must identify the retirement system and all entities that are a part of the coverage group. The modification must be accompanied by a certification of the results of the referendum.

Retirement System Coverage Groups - Desire for Coverage Basis (SLCH Section 560, Exhibits 13-17)

In addition to the requirements above, the modification must identify the division or part of the retirement system being covered and must be accompanied by a certification on the division.

Coverage of Additional Services

This generally involves the removal of one or more optional exclusions regarding a coverage group already included under the agreement. The modification must state its purpose, identify the exclusions being removed, and list any exclusions that still apply. It must show an effective date of coverage, which cannot be earlier than the effective date for the coverage group as a whole. If retroactive coverage is provided, a designated date (or an indication that none is desired) must be shown. If no date is shown, the date the modification is executed by SSA is the controlling date. If the positions are covered by a retirement system, a referendum must be held and a certification of its results must accompany the modification.

For example, a city originally chose to exclude elected positions from coverage. If the city now decides to cover these positions, it may request the state to modify the agreement. If the positions are covered by a retirement system, a referendum must be held for any elected official who is a participant.

Coverage of Ineligibles (SLCH Section 560, Exhibits 19-22)

An ineligible is an employee who performs service in a position under a retirement system but who is not eligible for membership in that system because of a personal disqualification. The personal disqualification could be because of: age, length of service, numbers of hours worked or date of hiring. Additional information concerning ineligibles can be found in Sections 421-425 of the SLCH.

- **Absolute Coverage Groups**

Where ineligible are covered as a part of, or an addition to, an absolute coverage group, the modification must state whether the coverage will continue or terminate for individuals who later become eligible to join the retirement system covering their positions.

- **Retirement System Coverage Groups - Desire for Coverage Basis**

Where ineligible are covered as a part of, or an addition to, a retirement system coverage group included under the Agreement on a desire for coverage basis, the modification must provide for the coverage to continue if the individuals later become eligible to join the retirement system. These ineligible will then be considered new “members” who are covered on a compulsory basis.

“Second Chance” Modifications (SLCH Section 560, Exhibit 17)

These provide coverage under a divided retirement system for individuals who did not vote for coverage when the system was divided. The second chance modification must be submitted within two years of execution of the modification that covered the “yes” group. No effective date of coverage is shown because the effective date is the same date that applied to the coverage group as a whole.

Modifications for Voluntary Medicare Only Coverage (SLCH Section 560, Exhibits 39-40)

States may provide medicare-only coverage to services performed by state and political subdivision employees who are members of a public retirement system and hired before April 1, 1986. Voluntary medicare-only coverage cannot begin before April 1, 1986.

Voluntary medicare-only coverage is subject to the usual referendum and modification rules under Section 218 of the Act. If the state is one that is listed in Section 218(d)(6) of the Act, it may provide medicare-only coverage on a divided retirement system basis. An employee already covered for voluntary social security coverage or mandatory medicare-only (new hire) is not eligible to vote in a medicare-only referendum.

The same mandatory exclusions from social security coverage under a Section 218 Agreement apply to voluntary medicare-only coverage. The same optional exclusions may also be elected.

Eligibility requirements for voluntary medicare-only coverage are:

- The employee is performing services in a position not already covered under the Section 218 Agreement; and
- The employee is not considered a “new hire” for purposes of mandatory medicare-only coverage.

An employee is not considered a new hire if the following conditions are met:

- The employee performed regular and substantial services before April 1, 1986;
- The employee was a bona fide employee on March 31, 1986;
- The employment relationship with the employer was not entered into for the purpose of avoiding mandatory medicare-only coverage; and
- The employment relationship was not terminated after March 31, 1986.

Modifications That Identify New Political Subdivisions in a Retirement System Coverage Group

Coverage is automatic when a political subdivision joins a statewide retirement system that was covered under the agreement. The modification is necessary to update SSA’s records.

It must show both the effective date of coverage for the retirement system coverage group and the date the entity first had positions covered by the retirement system. An identification modification is not necessary where the entity was previously included as an absolute coverage group with either no optional exclusion or with exclusions that coincide with those applicable to the retirement system coverage group.

Modifications That Delete Coverage Previously Obtained

There are two occupational groups for which this is permitted. They are:

- Election officials and election workers (SLCH Section 560, Exhibit 25-28)
- Individuals compensated solely by fees (SLCH Section 560, Exhibit 23-24)

The effective date for the new exclusion from coverage must be prospective. For election officials and election workers, the effective date can be no earlier than the last day of the calendar quarter in which the modification is submitted. For individuals compensated solely by fees, the effective date can be no earlier than the last day of the calendar year in which the modification is executed. The exclusion applies to work performed after the effective date. It is also possible, in some cases, to delete “coverage” to correct an error.



MODIFICATIONS THAT CORRECT ERRORS

(SLCH Section 560, Exhibits 29-35)

General

These modifications must be accompanied by evidence of the error. It can be excerpts from minutes of meetings, affidavits by state or local officials, copies of intrastate agreements, etc. Either the state or local government may have made the error. A correctable error is one in which the Agreement or modification initially executed did not reflect the intent of the parties regarding the extent of coverage at that time. An entity's later change of mind regarding the coverage is not a correctable error.

Modifications to Correct Erroneous Reporting (SLCH Section 530.3)

A political subdivision without a Section 218 Agreement may be reporting FICA for its employees who are participating in a qualified retirement system. Another example would be an entity without a Section 218 Agreement or a retirement system erroneously withholding and reporting FICA prior to July 1991 (mandatory FICA). *NOTE: The only way to have coverage without a Section 218 Agreement is via mandatory FICA; however, social security coverage under mandatory FICA is negated by qualifying retirement system participation.* To correct this erroneous reporting, the state must provide coverage by either an error modification or a regular modification under the provisions of Section 218(e)(3). In either case, if the situation involves participation in a retirement system, the referendum procedures outlined in Sections 410 or 416 of the State and Local Coverage Handbook must be followed.

If, however, the erroneous reporting began prior to the participation in a retirement system, coverage would be provided as an absolute coverage group and no referendum is required.

Error Modification (SLCH Section 560.3(b))

This provides coverage as of the date the error first occurred, even though coverage is no longer possible as of that date under the normal rules. 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. This occurs when the error exists over a long period. For this reason, a modification that utilizes the provisions of Section 218(e)(3) of the Act is generally preferable to using the error format.

Section 218(e)(3) Modification (SLCH Section 530.3(c))

This is a regular modification that deems former employees to be part of the coverage group on the date designated to control for retroactive coverage under Section 218(e)(2), provided the following conditions are met:

- (a) Payments were made to the Secretary of the Treasury (IRS); and
- (b) No refund has been received.

Any effective date of coverage consistent with federal and state law may be used. It is desirable, however, to have the effective date include at least one period barred to refund under the IRS time limits. In this way the state assures that all former employees who were

not reported are covered. This type of modification provides coverage only for former employees who were erroneously reported. If the state wants to cover other former employees, it must use the “error” format. Also, if state law permits only limited retroactivity of coverage, it may be necessary to use the “error” format to provide the desired coverage.

The “effective date” for a Section 218(e)(3) modification is tied into the statute of limitations for correction of the earning records—three years, three months and 15 days. By statute, the SSA is barred from deleting an individual’s earnings beyond this point. If the modification is effective prior to expiration of the statute of limitations, this validates the coverage and the SSA will retain the earnings for the barred period. The SSA cannot delete the earnings from any barred period, even if the entity does not want coverage and no modification is executed.

MODIFICATION CHECK LIST

Use the following checklist to ensure that a modification can be executed as submitted.

- **Modification Language**—Does it conform to one of the exhibits in the State and Local Coverage Handbook? If not, does the difference require correction?
- **Required Signatures**—Is the signature that of an authorized state official? If not, does the state want to add that official’s name to the list of authorized officials? If “yes,” the state should write a letter to that effect. If “no,” the modification should be returned for a proper signature. Are at least two copies signed in pen and ink? If not, either retain the signed copy in SSA’s files or ask the state to sign another copy.
- **Effective Dates**—Do they conform to both federal and state law?
- **Optional Exclusions**—Does federal and state law permit them? Do the descriptions conform to federal law?
- **Status of Organization**—Is it a political subdivision? If coverage has previously been extended to this type of organization, or if it is clearly a political subdivision (e.g., city or county), no further documentation is needed. Otherwise, get evidence of its status. NOTE: Some SSA regional offices routinely require the enabling document for all modifications.
- **Does the Original Agreement Authorize the Coverage?**—If the original agreement does not authorize the coverage, it needs to be amended.
- **Retirement System Coverage Groups**—Does the necessary referendum certification accompany the modification? Is it in proper form? Is it signed by the authorized state official?
- **Designated Date (218(e)(2))**—Is it no earlier than the date the modification was submitted? If not, it must be changed.
- **Special provisions for named states (e.g., desire for coverage)**—Is the state on the applicable list?
- **State Procedures**—Have all state requirements and approvals been completed?

COVERAGE EXAMPLES

The following items are four examples of what could, and sometimes does, go wrong. Following the steps outlined in the “What is necessary” section of each example will solve the vast majority of the problems encountered by a state social security administrator.

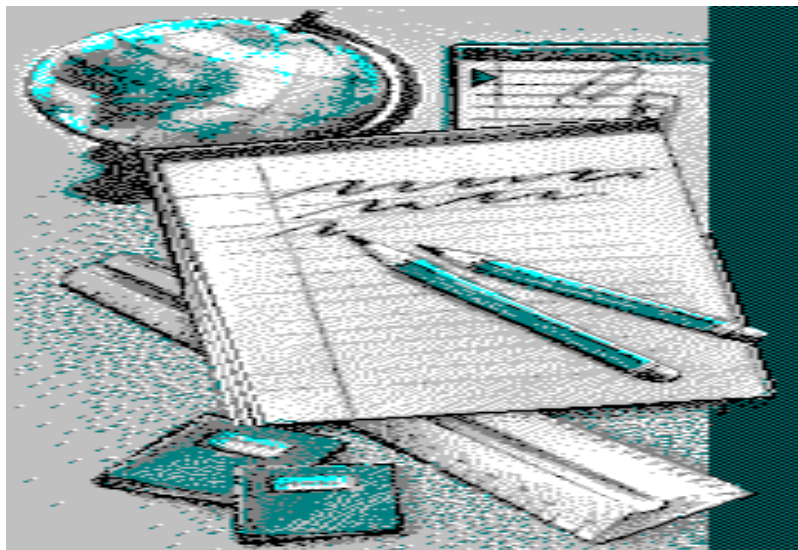
Example 1

New political subdivisions have been formed across the state during the past decade and some of them may not be compliant with the Social Security Administration and the Internal Revenue Service coverage rules.

Resolving these coverage problems is a monumental effort because each political subdivision is potentially unique. Some new entities have retirement system coverage and are also withholding FICA from their employees. Some new entities do not have retirement coverage for their employees and do not withhold FICA. In addition, a number of the new political subdivisions with retirement system coverage are not withholding social security but are withholding medicare-only. The remainder of the political subdivisions does not have retirement coverage and seem to be withholding FICA.

What is necessary to assist the political subdivisions to become compliant?

- The state social security administrator should have a coverage database that lists all political subdivisions in the state.
- The state administrator should develop a communications network with a multitude of sources that range from state oversight agencies to public employer retirement systems. The administrator should liaison with city, county and education officials and their professional organizations. All these contacts should be encouraged to inform the state administrator when a political subdivision is newly created, formed via a merger or dissolved.
- The state administrator should notify new entities about their social security and medicare coverage options under Section 218 of the Act.
- The state administrator should assist the new entities in obtaining information on mandatory FICA and mandatory medicare.
- The state administrator should, if voluntary social security and/or medicare coverage is desired, take the appropriate steps to initiate a coverage referendum, intrastate agreement and modification.



Example 2

A recent retiree from a political subdivision was denied benefits by the Social Security Administration because of a lack of Section 218 coverage—even though the public employer withheld FICA from the worker.

The employee previously worked for an entity that merged into a new political subdivision two years ago. The employee continued his employment with the new political subdivision that has a qualified retirement system, but no Section 218 coverage. Thus, the employee is not subject to social security.

It appears the new political subdivision did not notify the state social security administrator of its existence and/or the dissolution of the previous entities. Without a Section 218 Agreement, the new subdivision's employees do not have social security coverage, in spite of continuing FICA payments.

What is necessary to provide coverage to the employees of this political subdivision?

- * The state social security administrator meets with representatives of the new political subdivision as soon as possible. The state administrator educates these representatives in state and local coverage and provides the coverage options, including the option of no social security coverage.
- * The political subdivision decides it wants to provide social security and medicare coverage for its employees.
 - The state administrator proceeds to conduct a coverage referendum.
 - The state administrator recommends that the political subdivision continue withholding FICA during the three-month referendum process.
 - If the referendum is favorable, the state and the political subdivision execute a new intrastate agreement retroactive to the first day of erroneous reporting. This preserves the employees' social security coverage.
 - The state social security administrator executes the appropriate modification with SSA.
 - The new political subdivision is added to the state's coverage database.
 - The state administrator obtains copies of the legal documents that dissolved the previous entities. The SSA dissolution document for these entities is prepared and sent to SSA.
- * The political subdivision decides it does not want to provide social security and medicare coverage for its employees.
 - The employer determines which of the employees are covered under mandatory medicare by reviewing each employee's hire date. Those employees hired after March 31, 1986 will be covered by the medicare-only portion of the FICA tax under Section 3121(u) of the Internal Revenue Code.
 - The employer, following IRS procedures, files Forms 843 and 941-c with the IRS requesting refund of the appropriate FICA taxes withheld in error. The employer, following SSA procedures, files Forms W-2c and W-3c with the SSA correcting the employees' wage records. Refunds will be issued and wage records will be corrected for all periods open under the statute of limitations, usually three years, three months and fifteen days.
 - The new political subdivision is added to the state's coverage database.
 - The state administrator obtains copies of the legal documents that dissolved the previous entities. The SSA dissolution document for these entities is prepared and sent to the SSA.

Example 3

A political subdivision recently stopped withholding social security on its employees after implementing an qualified, alternative retirement plan. The entity was under the impression they could drop social security coverage for their employees and use the qualified retirement plan as an alternative. However, the employees of this political subdivision are covered by a Section 218 Agreement for social security purposes. Social security coverage under a Section 218 Agreement cannot be terminated.

What can states do to educate political subdivisions of this situation?

- The state social security administrator should use every means available to inform all political subdivisions of this potential problem. Seminars, newsletters, web sites and association meetings are but a few of the ways that a state administrator can educate political subdivisions.

Example 4

A state has not executed a modification increasing the FICA exclusion threshold amount from \$100 to \$1,000 for election workers. The state's cities and counties were under the impression that the election worker exclusion had been increased by Congress and did not withhold from this year's election workers.

The IRS, as part of the recent educational outreach, discovered the cities and counties were not withholding the proper amount from the payments to their election workers.

What can the state administrator do?

- The state social security administrator should research the status of modifications the state may have executed for the election worker exclusion. The modification could specify exclusion threshold amounts of \$50 a quarter, \$100 a year or \$1,000 a year. See SLCH Section 441.
- In some states the original modification was done on a statewide basis and the new modification for the increased exclusion can also be amended once on a statewide basis. In other states, however, where the original modification was amended on an entity-by-entity basis, the new modification must also be executed on an entity-by-entity basis.

Example 5

A governmental entity contacts the state administrator seeking social security coverage for its employees. The entity has not previously entered into a Section 218 Agreement, but does provide retirement coverage under a qualifying retirement system.

This entity is located in a state that is not permitted to divide the retirement system on the basis of the employee's desire for Social Security or Medicare coverage. See SLCH Sections 413-420 for information on "divided retirement systems" as authorized under Sections 218(d) of the Act.

What does the state administrator do?

The administrator—

- explains the coverage applicable to the entity: voluntary Section 218 coverage, mandatory social security and mandatory medicare;
- provides the entity with a draft resolution asking the Governor to authorize a coverage referendum (The entity's governing body must formally approve the resolution, which is then returned to the state administrator.);
- sets a date for the referendum, ensuring that the 90 days notice requirement will be met, and provides a "Notice of Referendum" to the entity for distribution to eligible employees;
- requests a list of the names and social security numbers of the eligible members of the retirement system establishing the pool of eligible voters for the referendum;
- offers employees and/or the entity's governing body the opportunity to educate themselves about social security, coverage and the referendum process;
- offers to arrange for SSA representatives to meet with employees to answer any questions regarding social security benefits;
- offers the Form SSA-7004 (Personal Earnings and Benefit Estimate Statement) to employees for verification of earnings status and an estimate of their individual social security benefits;
- conducts the referendum, ensuring the opportunity to vote was given and limited to eligible members, which must be held by secret, written ballot and is generally decided by a majority of the eligible members (some states require more than a simple majority per state statute);
- if the eligible employees vote for coverage, explains to the entity the optional exclusions that are available and the effective date of coverage provisions that are applicable.
- executes resolution and intrastate agreement between the entity and the state and returns a copy to the entity;
- prepares appropriate modification and referendum certification and forwards to the Parallel Social Security Office;
- adds the new political subdivision to the state's coverage data base.

SAMPLE OF AN FEIN UPDATE REQUEST

This state office is responsible for administering the state's Section 218 Social Security Coverage Agreement, and for maintaining a list of agencies and the assigned Federal Employer's Identification Number (FEIN). The Internal Revenue Service and the Social Security Administration use the FEIN to identify employers that have social security coverage.

We need to update our files for Section 218 coverage groups as the IRS has initiated an outreach and educational effort across the nation to assist state and local employers in maintaining a high degree of compliance.

Our file information should be the same as the IRS information shown on your Form 941 return.

(1) Please review the information below and make needed corrections on the blank lines provided below.

(2) If an FEIN has not and will not be used in the future to report or pay FICA and/or federal income taxes, write "inactive" beside that FEIN.

(3) If your agency is using an FEIN that is not listed, write in the new FEIN and name.

(4) If your agency has had a change in name, address or legal status, please advise.

(5) Upon completion, return to this office.

Call this office at _____ if you have any questions. Thank you for your assistance.

Contact Person _____ **Employer** _____
Phone Number _____ **E-mail** _____
Address _____

FEIN INFORMATION IN OUR FILES:

55-1234567 County of Smith
55-2345678 County of Smith Sheriff's Office

ENTER CORRECTIONS OR ADDITIONS BELOW:

FEIN: _____ AGENCY NAME _____
FEIN: _____ AGENCY NAME _____
FEIN: _____ AGENCY NAME _____
FEIN: _____ AGENCY NAME _____
FEIN: _____ AGENCY NAME _____

SAMPLE

Non 218 Political Subdivision Questionnaire

Entity Name
Entity Address
City, State Zip

State ID number
Date

The _____ is responsible for administering social security/medicare (FICA) coverage and reporting for all public employers in the State of _____. Social security and medicare coverage is different for public employers and their employees and in most cases may not be automatic.

Our duties include ensuring that your employees are properly covered for social security and medicare and that all public employees have the appropriate social security medicare wages credited to their accounts. We also want to help your agency meet all the federal withholding and reporting requirements for social security and medicare.

To help us meet these demands, please circle the appropriate answer to the questions below and return this to:

State Social Security Administrator
Agency Name
Agency Address
City, State Zip

Please call (NNN)NNN-NNNN if you have any questions.

- 1) Is social security being withheld from any of your employee's wages? (yes or no)
- 2) Do you have any employee who is a member of a qualified employer-provided retirement plan? (yes or no)
If yes, what is the name of the retirement plan? _____
- 3) Do you withhold social security and medicare from any employee who is a member of your employer-provided plan? (yes or no)
- 4) Do you withhold ONLY MEDICARE from any employee who is a member of your retirement system? (yes or no)
If yes, were any of these employees hired or elected prior to April 1, 1986? (yes or no)

AGENCY _____

CONTACT _____

TELEPHONE _____

NCSSSA Editor Note: States will want to investigate any non-Section 218 political subdivision that withholds social security and also provides retirement to an employee or any non-Section 218 political subdivision that withholds only medicare from a retirement participant that was hired prior to April 1, 1986.