

TEGE WEBINAR: Section 218 Tools, Tips and Compliance for Government Entities

Original Air Date: January 27, 2011

[SLIDE 1]

NARRATOR:

The information contained in this presentation is current as of the date it was presented. It should not be considered official guidance.

This program is being recorded, and will be maintained in accordance with federal record-keeping laws.

Music & Graphics

[SLIDE 2]

ROBERT:

Hello and welcome to this IRS Federal, State, and Local Governments Webinar covering Section 218 Tools, Tips and Compliance for Government Entities.

I'm Robert Westhoven and my co-presenter for this webinar is Dianne Morse. We are specialists that work with Federal, State, and Local Governments, otherwise known as FSLG.

You will find a link to information about us on this Web page. You will also find a link to a PDF file of this presentation, in case you would like to download or print a copy.

Here is what we will be covering in today's program:

- A general overview of Section 218;
- A review of some great reference tools, including IRS Publication 963 and SSA's State and Local Coverage Handbook; as well as
- An introduction to the newly developed FSLG Compliance Self-Assessment Tool.

The office of Federal, State and Local Governments was formed in the year 2000. We are under the Tax Exempt and Government Entities Operating Division. The mission of FSLG is to provide government entities top quality customer service by helping them understand and comply with their tax responsibilities with integrity and fairness to all.

Before we begin, I need to review some administrative items. First, tax professionals may receive a Certificate of Completion that can be used to request a Continuing Professional Education credit, if the event meets your organization's or state's CPE requirements.

To receive a Certificate of Completion, you must have registered for today's program by entering your email address on the registration page and used the same email address to attend, so we can verify your participation.

Second, this program will be archived on our Web site at <http://www.IRSvideos.gov/webinars> for later viewing.

However, only those attending today's session, January 27, 2011 will be able to receive a Certificate of Completion. Those entitled to certificates will receive them by email approximately one week following this webinar.

The information we are presenting to you today is a complicated area of law. We encourage you to return to the IRS website to review this webinar presentation again at a later date.

We have some great information to share with you today, so why don't we get started.

[SLIDE 3]

Music & Graphics

DIANNE:

Hello Everyone. I'm Dianne Morse a Specialist from the office of FSLG.

Did you ever wonder why some public employers pay Social Security and Medicare taxes while others do not? The answer may be found in Section 218 of the Social Security Act.

This session will discuss Section 218 compliance for government entities. Section 218 coverage involves agreements between a state and the Social Security Administration to provide social security and/or Medicare coverage to employees of governmental entities. This means you must withhold from your covered employees' wages Old Age and Survivor Disability Insurance, otherwise known as OASDI, and Medicare tax. In addition, employers must contribute their portion of these taxes.

Two common social security and/or Medicare issues where Section 218 can be involved are:

Elected and most appointed officials are employees by law. If payments are being made to these officials but the entity is not filing Forms 941 or 944, an issue may exist or

A city has a Section 218 modification covering participants in the retirement system. The employees are ineligible to participate in the retirement system until they have worked at the city for one year. The ineligible employees are not being covered for social security. However, the State's Section 218 Agreement covers retirement system ineligible – thus the city should be covering them for social security.

As you can see, there are a number of factors to consider. Our goal is to give you the information you need to comply with the rules.

In December 1996, the Social Security Administration's Inspector General issued a report which indicated there were 17 billion dollars annually in unpaid social security taxes attributable to public employers.

The IRS was notified of these findings as we are charged with enforcing these rules. The IRS conducted a study and concluded many public employers would self correct problems if they were made aware of them. This webinar is an attempt to assist today's governmental employers in that endeavor.

Section 218 compliance is the cornerstone of FSLG's activities and is the primary purpose our division was formed.

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FSLG would like to thank the Social Security Administration and the National Conference of State Social Security Administrators for their assistance and contributions in the preparation of this presentation.

FSLG, SSA and the NCSSEA have forged a working relationship to provide state and local government entities the assistance and information they need to be compliant with their Section 218 and other tax withholding and reporting obligations.

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FSLG provides a clear point of contact for all government entities for their tax issues. Our primary focus is on information return reporting and employment tax compliance.

We are responsible for administering the Internal Revenue Code, performing examinations and compliance checks, conducting outreaches and collecting taxes.

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The Social Security Administration, or SSA, is responsible for administering the Social Security Act as well as interpreting Section 218 Agreements and modifications.

Final determinations regarding State Section 218 Agreements are governed by Federal law and are made by SSA.

In the PDF files for this presentation, there are references to citations from SSA's State and Local Coverage Handbook denoted as SL followed by the applicable section number.

This handbook may be found under the publications link on the SSA website at <http://www.ssa.gov/slge>

The State and Local Coverage Handbook is used by State Social Security Administrators and Social Security's regional and parallel office staffs to administer the Social Security and Medicare coverage provisions under Sections 218 and 210 of the Social Security Act.

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The National Conference of State Social Security Administrators provides a network of communication for federal, state and local governments concerning social security coverage and federal employment tax policy.

They also proactively work with SSA and IRS to address social security, Medicare coverage and employment tax issues raised by state and local government employers and state social security administrators throughout the United States.

In addition, they work with federal officials to ensure legislative and regulatory changes address state and local concerns.

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Each State has a designated official, the State Social Security Administrator, who is responsible for administering and maintaining the State's Section 218 Agreement.

The state administrator acts as a liaison between state and local government employers and federal agencies, including SSA and IRS.

The state administrator will also prepare Section 218 modifications to include additional coverage groups and correct errors in other modifications.

The State Social Security Administrator is the principal state official responsible for these functions. SSA, IRS, public employers and employees should contact the designated Administrator to help resolve questions as to who is and is not covered.

On slide 59 of the PowerPoint, we've provided a link to a list of State Social Security Administrators as posted on the NCSSSA website.

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Music & Graphics

ROBERT:

So, what is the current status of social security and Medicare coverage for public employees? There are five different situations to consider and they are as follows:

1. Since January 1, 1951, States could extend social security coverage to employees of the State and its political subdivisions through voluntary agreements with the SSA. Beginning in 1966, agreements for social security coverage also include Medicare. These agreements are commonly known as "Section 218 Agreements."
2. Employees who ARE covered by a retirement system can be covered or not covered for social security and Medicare or Medicare-only based on facts and circumstances.

3. Employees hired prior to April 1, 1986 are exempt from mandatory Medicare if they are members of a qualifying retirement system, and have been in continuous employment with the same State or local entity since March 31, 1986. However, these employees may be covered for Medicare-only under a Section 218 Agreement if the State or political subdivision so desires.

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4. State and local government employees who are not covered for Social Security under a Section 218 Agreement or by mandatory law, and who were hired or rehired after March 31, 1986, are subject to mandatory Medicare-only coverage, unless specifically excluded by law.
5. Effective for services performed after July 1, 1991, Social Security and Medicare coverage is mandatory, with a few exceptions, for all State and local government employees who are not covered by a qualifying public retirement system.

We would like to clarify that Section 218 coverage is different from mandatory social security and mandatory Medicare coverage. They each have their own rules while still providing social security and Medicare coverage for employees. Section 218 is a Social Security Act provision whereas mandatory social security and mandatory Medicare are Internal Revenue Code provisions.

We must first determine if the employee's position is covered under a Section 218 agreement, and, if not, only then do we apply the mandatory coverage rules.

The focus of today's presentation, however, is on Section 218 coverage.

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Music & Graphics

DIANNE:

We would like to start by covering the basic concepts of Section 218. Although federal tax requirements generally apply on the same basis to public as well as to private employers, there is a unique history to social security and Medicare coverage for state and local government employees. Special provisions are involved for the application of these taxes, as well as their requirements for withholding and reporting.

State and local government employees were excluded from social security coverage from 1935 until 1950 because of unresolved legal questions regarding the federal government's authority to tax state and local governments.

Because many governmental employees did not participate in a retirement system, the 1950 Social Security Amendments added Section 218 to make Social Security coverage for State and local governmental employees possible.

A Section 218 Agreement is a written voluntary agreement between a state and SSA, pursuant to the provisions of Section 218 of the Social Security Act. It provides social security and Medicare or Medicare-only coverage for state and local government employees.

The term refers to the original agreement and all subsequent modifications.

These agreements can cover services of employees who are covered by a public retirement system as well as those who are not.

In order to establish an Agreement, there must be authority under federal and state law. The types and extent of coverage must be consistent with these laws as well.

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Coverage under an Agreement must be provided for employees by groups, known as “coverage groups”.

Section 218 coverage is based on the position an employee occupies. Once a position is covered under a Section 218 Agreement, any employee filling that position is a member of the coverage group for social security and/or Medicare.

Section 218 coverage was initially provided to all positions not covered by a retirement system; commonly referred to as a Section 218(b)(5) absolute coverage group. Since the inception of Section 218, Social Security has consistently made coverage determinations based on the facts as they existed on the applicable date of the Section 218 agreement or modification. Thus, absolute coverage positions continue to be covered by Section 218 even if they later come under a retirement system.

Absolute coverage group positions are all positions that were not under a retirement system on the “applicable date” of the Section 218 agreement or modification and are not Section 218 mandatory or optional exclusions.

In order to determine what positions are Section 218(b)(5) absolute coverage positions, we must determine what positions were covered by a retirement system on the applicable date of the agreement or modification for coverage. This information can generally be found by looking at the state or local retirement plan statutes that were in effect on the applicable date. In most cases these were drafted in the 1950s.

An example of this would be when evaluating whether a City’s fireman position is covered by a Section 218 Agreement or modification. The relevant State and/or City retirement statutes in effect on the “applicable date” of the Agreement or modification must be examined to see what positions were covered. The “applicable date” may be the date the Section 218 Agreement or modification was executed by SSA, its effective date, or the designated date. Your State Social Security Administrator will be able to tell you which date applies to your entity.

If the position did not exist on the applicable date, then SSA must determine whether the position would have been covered by a retirement system if it had existed on that date.

Additional coverage, to provide social security and/or Medicare to non-covered employees, is provided by modifications to the original agreement. An Agreement may be modified to increase, but not decrease, the extent of coverage.

Each modification, like the original Agreement, is binding upon all parties. The initiative for securing coverage lies with the state.

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Each state decides, within federal and state law, which groups to include under its Agreement and when coverage begins. The state can choose to cover non-retirement system groups, retirement system groups, or both.

Before legislation was enacted in 1983, states could terminate coverage for any group of employees covered under the state's Agreement.

A state did this by providing a two-year advance notice to the federal government. Once it was terminated, the coverage for this group of employees could not be reinstated.

The 1983 Social Security Amendments rescinded this provision of the Act and prohibited states from terminating coverage on or after April 20, 1983, but permitted states to cover again any group terminated before this date.

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Music & Graphics

ROBERT:

There are some key dates to be aware of when considering Section 218 agreements, social security and Medicare coverage.

Beginning in 1951, states could voluntarily elect social security coverage for public employees not covered under a public retirement system, by entering into a Section 218 Agreement with SSA.

As of 1955, states could extend social security coverage to employees (other than police officers and firefighters) covered under a retirement system, provided coverage was authorized by the State and approved through a voluntary referendum of retirement system members.

In 1956, the Act was amended to authorize certain States to divide retirement systems into two separate groups: those who desired coverage and those who did not.

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In 1965, Medicare was enacted, and employees covered for social security under a Section 218 Agreement were automatically covered for Medicare beginning July 1, 1966.

Section 218 Agreements are permanent and as of April 20, 1983, coverage under a Section 218 Agreement, and any executed modifications, cannot be terminated unless the governmental entity is legally dissolved. Employees hired after March 31, 1986 are mandatorily covered for Medicare, unless specifically excluded by law, regardless of their membership in a retirement system. Occasionally, we find employers that erroneously assume that if a position is not covered by social security, it is exempt from Medicare.

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As of 1986, Section 218 modifications providing Medicare-only coverage to employees hired before April 1, 1986, who are members of a retirement system, may be executed after a successful referendum has been held.

Starting in 1987, State Social Security Administrators were no longer responsible for collecting social security contributions from public employers. Since that date, public employers pay their federal employment taxes directly to the Internal Revenue Service in the same manner as private employers.

As of July 2, 1991, most state and local government employees became subject to mandatory social security and Medicare coverage, unless, they are members of a qualifying public retirement system. Additionally, those employees who are covered by a Section 218 agreement would also be covered for social security and Medicare as discussed earlier.

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In 1994, Section 218 was amended to allow all states the option to extend social security and Medicare coverage to police officers and firefighters who participate in a public retirement system. Under previous law, only 23 states were specifically authorized to do so. The Social Security Protection Act was enacted on March 2, 2004. It included a provision requiring public employers to disclose to newly hired public employees that they are earning retirement benefits not covered by social security, if applicable.

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Music & Graphics

DIANNE:

Despite the numerous provisions governing State and local coverage, one aspect of the process has been consistent:

Coverage for public employees is activated by a Section 218 Agreement between the State and SSA on behalf of those employees.

SSA cannot enter into an agreement with a political subdivision. The State enters into an agreement with SSA on behalf of a political entity.

The State Social Security Administrator plays a vital role in representing the entity and State's interests during this process.

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A Section 218 Agreement is a written legal document, which prescribes in detail how coverage may be provided, for whom, and under what conditions. The Original Section 218 Agreement incorporates the provisions, definitions, and conditions for coverage under the agreement as defined under Federal and State laws.

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In addition, a State's 218 Agreement provides authority for optional exclusions and allows for up to 5 years of retroactive coverage. The agreement must specify the date on which it will be effective. Each State must provide the authority related to a Section 218 Agreement through "enabling legislation".

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This enabling legislation provides the legal authority in which States can enter into a Section 218 Agreement with the Commissioner of Social Security. The Agreement extends coverage, carries out the provisions, and permits modifications. It also outlines the State's responsibilities under Section 218. All States have enacted enabling legislation to enter into Section 218 Agreements.

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This legislation indicates the extent coverage may be provided within the State:

It must provide for the election of optional exclusions, or state these exclusions are not permitted. If optional exclusions are permitted, it must specify whether such exclusions may be exercised by individual coverage groups, or mandatorily to all coverage groups.

It must provide authority to divide retirement systems and

It must provide the Governor authority to conduct referendums.

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For purposes of a Section 218 Agreement, a state includes the 50 states, Puerto Rico, the Virgin Islands, and interstate instrumentalities. It does not include the District of Columbia, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. Social security coverage can vary widely within a state, or even a local area. You cannot make an assumption about Section 218 coverage for an entity, and whether it is in compliance with all applicable laws merely because of the status of a similar entity, either in the same or a different state.

[SLIDE 24]

Music & Graphics

ROBERT:

How is an interstate instrumentality affected or governed by Section 218?

An instrumentality is an organization created by or pursuant to state statute, operated for public purposes and expressly declared by statute to be an instrumentality. Generally, an instrumentality performs governmental functions, but does not have the full powers of a government, such as police authority, taxation, and eminent domain. An interstate instrumentality is an independent legal entity organized by two or more states to carry on governmental functions. Examples include a regional planning authority, transportation system, water district, or port authority.

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As required for States, Interstate Instrumentalities must have legal authority to enter into a Section 218 Agreement. This authority is generally conferred in the enabling acts of member States and in the statutes establishing the instrumentality.

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Music & Graphics

ROBERT:

What entities can a section 218 agreement apply to?

Because of the voluntary nature of Section 218 Agreements, the extent of social security coverage varies from state to state. The Section 218 Agreement can apply to:

- Employees of the State or
- Employees of the State and any one or more political subdivisions, or
- Employees of one or more political subdivisions.

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It is important to understand what constitutes a political subdivision.

A political subdivision is a separate legal entity of a State that has governmental powers and functions. Local governments are generally political subdivisions of states and differ from state and federal governments in that their authority is not based directly on a constitution. Each state constitution describes in detail a procedure for establishing local governments. In most cases, the state legislature must approve the creation or incorporation of a local government.

The local government then receives a charter defining its organization, authority and responsibilities, including the means for electing governing officials

For example, a soil conservation district was established to carry out a state conservation program. The soil conservation district was created by statute as a political subdivision of the state and was under the control of a board of supervisors elected or appointed in accordance with state law. This is a political subdivision of the state.

A political subdivision ordinarily includes cities, counties, water districts, townships, villages, schools and other similar governmental entities.

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Music & Graphics

DIANNE:

A modification is a written agreement between the State and the Social Security Administration to make the original Agreement applicable to employee positions not previously covered, or to modify the original Agreement in some other respect.

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Modifications to Section 218 Agreements are necessary to

- Implement changes in the law,
- Provide coverage for retirement systems,
- Cover new entities not covered by a retirement system, or
- Cover additional services in a group already covered (for example, services previously optionally excluded).

In addition, modifications may be needed to cover ineligible, employees changing to the “Yes” group in a divided retirement system, or previously terminated groups.

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Modifications may also be needed to

- Provide Medicare only coverage for employees hired prior to April 1, 1986;
- Increase the threshold amount for election worker services;
- Identify new entities that join a State retirement system; or
- Correct errors. An error modification provides retroactive coverage to employees who have been erroneously paying social security.

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Music & Graphics

ROBERT:

The term Coverage Group is important when you consider Section 218 agreements. Coverage under Section 218 Agreements can be extended only to groups of employees, known as coverage groups. There are two types of coverage groups: absolute coverage groups (which are non-retirement system groups); and retirement system coverage groups.

Absolute coverage groups include the services of all employees in positions not covered by a retirement system except those whose services are mandatorily or optionally excluded from social security and Medicare coverage. They may also be referred to as non-retirement system groups or Section 218(b)(5) groups. A state may extend Section 218 coverage to an absolute coverage group without considering the desires of the employees.

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A retirement system coverage group consists of employees working in positions covered by a public retirement system. To determine if an individual is occupying a position under a retirement system, you must look to state law and the applicable date of the Section 218 Agreement or modification.

Although an individual may be ineligible to become a member of the retirement system because of a personal disqualification, such as: age, length of service, or if they simply choose not to join, they still occupy a position under the retirement system.

Ineligibles cannot constitute a separate coverage group. However, they may be covered with other employees in one of several ways. The State must specify in the agreement or modification whether coverage of ineligibles will continue or terminate if they later become eligible for membership in the non-218 covered retirement system.

Those individuals who have a choice of joining the retirement system are called “optionals”. Under a favorable majority vote referendum, ineligibles and optionals are automatically covered. Under a favorable divided vote referendum, optionals who voted “yes” and all future optionals would be covered.

A group covered by a retirement system may be provided social security and Medicare coverage under an Agreement only after a referendum is held.

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A referendum is a voting process and is a State matter.

Certain minimum conditions, outlined in the Act, must be met and the Governor, or a designee, is required to certify the conditions were met. In most states, the State Social Security Administrator performs this certification.

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If a group of employees is covered by a retirement system, social security coverage may be extended by a Section 218 Agreement, using either a majority or divided vote referendum. Under a majority vote referendum, social security and Medicare coverage may be extended to employees in positions covered by a retirement system, only if a majority of the eligible employees of the retirement system vote in favor of such coverage. If the vote is favorable, all current and future retirement system members, optionals, and ineligible are covered.

All states are authorized by federal law to use the majority vote referendum procedures.

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DIANNE:

The Act authorizes entities to divide a retirement system established by the state, a political subdivision, or an interstate instrumentality into separate coverage groups based on whether the employees in positions under that system want social security coverage.

These “divided vote” states are not limited to holding divided vote referendums. They are also permitted to hold majority vote referendums if they so desire. The rules pertaining to the divided vote process are extremely complex and you will need to contact your State Social Security Administrator as it is a very fact specific situation.

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Twenty-three States have divided vote authority. See SL 30001.330 for a list of those states.

However, some of these states have not exercised their option to conduct divided vote referendums as part of their enabling legislation. Again, contact your state administrator to see if your state is one of them.

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A retirement system, for coverage under an Agreement, is a pension, annuity, retirement or similar fund or system established by a state or political subdivision.

The system need not be created by the legislature of the state or the political subdivision, nor does it have to be a plan under which the benefits are guaranteed by the state constitution. The plan is considered established by the entity if there is any payment of public funds toward the cost of the plan, or the plan is established under the entity’s authority.

A retirement system is also established if State law requires retirement system protection for employees, for example firefighters or police, on a mandatory basis. This is true whether or not the employing entity has actually implemented the retirement system pursuant to the law.

For example, a state requires cities with a population of 5,000 or more to have a retirement system for their police. City X, with a population of 7,000, does not implement one. The police officers of that city are still considered to be under a retirement system for Section 218 purposes because of the state requirement.

Whether a position is under a retirement system is not determined by whether the employee is a member of the system, personally ineligible to join the system, or whether he has or had the option to join the retirement system.

A position is under a retirement system if any individual who occupies the position may become a member of the retirement system by virtue of his occupancy of that position.

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Music & Graphics

ROBERT:

Once coverage is provided for State and local government employees, it generally continues unless an event occurs which results in a termination of the coverage. An entity with a Section 218 Agreement may terminate its existence as a governmental entity, or be merged or consolidated into another entity. An individual may change employers. These events may terminate Section 218 coverage.

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For example:

A school teacher is covered as an employee of School District A, a Section 218 covered entity. He subsequently resigns to accept a position with School District B, a non-covered Section 218 entity. His coverage for Social Security ceases as of the date he resigns from School District A as School District B does not have a Section 218 Agreement and his position is in a qualifying retirement system.

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Social security and Medicare coverage for non-retirement system groups, also known as absolute coverage groups, continues as long as the governmental entity exists. This is true, even if the positions are later placed under a retirement system.

For example: A water district's Section 218 Agreement is effective January 1, 1959, and covers all positions. On July 1, 1994, the district joins the State's public retirement system. Section 218 coverage continues for all employees under the Agreement and they remain covered for social security and Medicare in addition to now being covered by the public retirement system.

This also includes police and firefighter positions which, after Section 218 coverage is obtained with an absolute coverage group, are subsequently covered under a retirement system. This area in particular is misunderstood and frequently treated incorrectly in regard to entities' Section 218 Agreements. If you have questions regarding the social

security and Medicare coverage of your police or firefighter positions, contact your State Social Security Administrator.

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Following a favorable majority vote referendum, services under the retirement system, including positions brought under the retirement system in the future, are mandatorily covered under the State's Section 218 agreement.

After a favorable majority vote referendum, Social Security and Medicare coverage will continue as long as the governmental entity exists, even though the positions are later removed from under the retirement system, the system is abolished, or the positions are placed under an additional retirement system.

For additional information on continuation of coverage rules related to referendums, you can refer to Chapter 5 of IRS Publication 963, Federal-State Reference Guide which can be found at the IRS website.

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Consolidations, Annexations and Miscellaneous Transitions of entities are very fact intensive. It must be determined whether there was an annexation, consolidation, reorganization, a name change, or if a new legal entity was created. Sometimes this situation requires a State Attorney General Opinion.

Again, contact your State Social Security Administrator when these events occur to discuss how it affects the coverage of social security and Medicare for the employees.

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Music & Graphics

DIANNE:

When a state or local government entity voluntarily enters into a Section 218 Agreement, it is important to determine which employee services will be excluded from social security coverage. Certain services – known as mandatory exclusions – are excluded from Section 218 coverage. There are also optional exclusions under Section 218 that may be covered if an entity elects to do so during their individual modification process. It is important to remember that coverage under a Section 218 Agreement supersedes all other considerations.

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Federal law requires the exclusion of the following five services from Section 218 coverage under the Social Security Act:

1. Services performed by individuals hired to be relieved from unemployment.

This exclusion does not include services performed by individuals under work-training or work-study programs. These programs are designed to provide work experience and training to increase the employability of the person, and not to relieve them from unemployment.

2. Services performed in a hospital, home or other institution by a patient or inmate thereof as an employee of a state or local government.

Generally, services performed by inmates or patients of a state or political subdivision are excluded from coverage. Such services may be excluded whether performed within the prison or outside prison confines. If the services performed by patients or inmates are part of a rehabilitative or therapeutic program of the institution, these services are not usually performed as employees. Services performed outside (or inside) of a prison for an entity other than the state or political subdivision of which the prison is a part, may be covered for social security and Medicare if an employment relationship exists.

3. Services performed by an employee hired on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency.

This does not include workers considered temporary for other reasons, or those who deal with emergencies on a regular or continuing basis. It includes only those who are hired in response to a specific emergency. The services of volunteer firefighters are generally not eligible for the exclusion from social security or Medicare for emergency workers.

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4. Services performed by transportation system employees who are covered for Social Security under Section 210(k) of the Social Security Act.
5. Other services that would be excluded if performed for a private employer because the work is not defined as employment under Section 210(a) of the Social Security Act.

This includes services performed by a nonresident alien temporarily residing in the U.S. holding an F-1, J-1, M-1 or Q-1 visa, when the services are performed to carry out the purpose for which the alien was admitted to the U.S.

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ROBERT:

Optional exclusions can be taken by the state in any combination, and applied to both the absolute and the retirement system coverage groups. The State can allow for optional exclusions on a statewide basis or allow each political entity to decide.

Beginning July 2, 1991, most services that were optionally excluded under a Section 218 Agreement are covered by the mandatory social security provisions unless the employee

is covered under a qualifying public retirement system, or the services are excluded from mandatory social security coverage.

Under a Section 218 Agreement, a state has the option to exclude from social security coverage the following six services when they are performed by members of any coverage group including retirement system coverage groups.

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1. All services in any class or classes of elective positions.

These are positions filled by an election. The election may be by a legislative body, a board or committee, or by the qualified electorate of a jurisdiction. The method of selection must constitute an election under state law.

Elected and most appointed officials are employees of the public entity they serve, and are generally subject to the rules that apply to other workers. Withhold social security and Medicare taxes for any official who is either covered under a Section 218 Agreement or not a qualified participant in a public retirement system. Any official elected or appointed after March 31, 1986, is subject to Medicare.

2. All services in any class or classes of part-time positions.

A part-time position is one for which the number of work hours normally required by the position in a week or a pay period is less than the normal time requirements for the majority of the positions in the entity.

For example, a community college treats a teacher as a full-time employee if the teacher is assigned to work 15 classroom hours per week. A new teacher is assigned to work six classroom hours per week. Because the assigned classroom hours of the teacher are less than one-half of the school's definition of a full-time teacher, the teacher is a part-time employee.

Where the part-time position exclusion is taken, the state should include a definition of part-time in the Agreement or modification, if one has not been previously established.

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3. All services in any class or classes of positions compensated solely by fees received directly from the public, by an individual who is treated by the municipality as self-employed.

For example, a justice of the peace authorized to perform wedding ceremonies and the fee is paid directly to the justice, who is not required to submit the payment to the city.

When a public official receives payment for services from government funds in the form of a wage or a salary, the payment is not a fee, even if the compensation is called a fee.

For example, a city building inspector collects a fee from the public, but is required to submit the funds to the city. The city then pays the building inspector a salary out of the proceeds of the funds which are subject to all applicable employment taxes.

4. Agricultural labor, but only those services that would be excluded if performed for a private sector employer.

A state which excludes agricultural labor in its original Section 218 Agreement may later modify the agreement to cover it. However, if agricultural labor is not initially excluded, it cannot be excluded later. If a state has not taken the agricultural exclusion, then all remuneration for agricultural labor is covered for social security.

5. Services performed by election officials or election workers paid less than the calendar year threshold amount mandated by law.

If the state's Section 218 Agreement does not have an election-worker exclusion, or the entity has an Agreement that does not exclude election workers, social security and Medicare taxes apply from the first dollar paid.

6. Services performed by students enrolled and regularly attending classes at the school, college or university for which they are working.

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In general, if the Agreement does not specifically exclude these services when the coverage group is brought under the Agreement, they are covered for social security and/or Medicare.

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Music & Graphics

DIANNE:

So, how are election workers treated under a Section 218 agreement?

The Social Security Act was amended for years beginning with 1968 to allow States to modify their Agreements to exclude the services of election workers whose pay was below a mandated threshold amount.

If an election worker's compensation is less than a statutorily established amount (\$1,500 for calendar year 2011), it is generally not subject to Social Security and Medicare tax, unless those wages are covered under the state's Section 218 Agreement.

The State's Agreement may specify a lower threshold amount for election workers (for example, \$50 a calendar quarter or \$100 a calendar year).

[SLIDE 50]

In cases like these, Social Security and Medicare taxes do not apply until the election worker is paid at least the threshold amount specified in the State's agreement. Social Security and Medicare taxes will then apply from the first dollar paid and not just the amount over what is specified in the State's agreement.

For example, a government entity pays an individual \$200 in a calendar year for services as an election worker. The government entity does not employ the individual in any other capacity. The services of the government entity's election workers are covered by a Section 218 agreement if their remuneration is \$100 or more in a calendar year. The election worker is not covered by a retirement plan maintained by the government entity.

Social security and Medicare taxes apply to the entire \$200 paid to the election worker because the payments exceed the \$100 threshold in the Section 218 agreement. If the Section 218 Agreement does not exclude election workers from coverage, social security and Medicare taxes apply from the first dollar paid.

We've provided a link on slide 59 of the PowerPoint, available as part of this presentation, that outlines the coverage status of election workers for each State as posted on the Social Security Administration's website.

[SLIDE 51]

Music & Graphics

DIANNE:

We'd like to provide you with information related to the coverage of student services. Generally, students are excluded from Social Security and Medicare coverage if the student is performing services in the employ of a school, college or university where the student is enrolled and regularly attending classes.

The student exclusion applies only during periods of regular school attendance, whether during the regular academic year or in summer session. The exclusion does not apply to work done during summer vacation if the student is not enrolled and regularly attending a summer session.

Some students are covered for Social Security and Medicare under the State's Section 218 Agreement. Other States elected to provide Social Security and Medicare coverage to services performed by students in certain schools.

We've provided a link on slide 59 of the PowerPoint, available as part of this presentation, that outlines the coverage status of students for each State as posted on the Social Security Administration's website.

In those states with limited student coverage, contact the State Social Security Administrator to find out which schools have coverage for students.

[SLIDE 52]

Music & Graphics

ROBERT:

We would like to highlight some information related to Mandatory Social Security and Medicare coverage—

The Consolidated Omnibus Budget Reconciliation Act of 1985 mandated that state and local employees, hired or rehired after March 31, 1986, must be covered for Medicare regardless of their membership in a retirement system, unless specifically excluded.

We have found situations where cities fail to withhold Medicare tax on employees not covered for social security under the Section 218 Agreement. For example, in some states this includes police and firefighters. This issue may be identified by analyzing the Forms 941. If the social security and Medicare wages are the same amount, and the total compensation is greater than that amount, employers should verify that employees hired or rehired after March 31, 1986 are being properly covered for Medicare.

Effective July 2, 1991, Congress made social security coverage mandatory, with some exceptions, for state and local government employees who are neither covered by a Section 218 Agreement nor qualified participants in a public retirement system.

You should contact an FSLG Specialist for your state to discuss how mandatory social security and Medicare may apply to your employees not covered by a Section 218 Agreement.

We've provided a link on slide 58 of the PowerPoint, available as part of this presentation, to the FSLG newsletter which contains a list of the FSLG Specialists for each State.

[SLIDE 53]

While Section 218 coverage is based on the position an employee occupies, Mandatory coverage is based on an employee. It is important to understand that you must first determine whether the position or services are covered under a Section 218 agreement. We only apply the mandatory coverage rules when the employee's position, and therefore the employee, is not covered under the Section 218 agreement.

[SLIDE 54]

Music & Graphics

DIANNE:

Some specific areas to review to ensure proper Section 218 coverage are:

1. New political subdivisions formed in the state which may not be compliant with Section 218.

2. States where teachers are excluded from paying FICA on a statewide basis but the entity has a Section 218 Agreement. Review teacher duties not included in the definition of retirement system compensation, as well as whether the entity's Section 218 coverage has an exclusion for part time work, to determine proper treatment is being applied.

[SLIDE 55]

3. Political subdivisions which are covered by Section 218 subsequently establish a retirement system that would be a qualified, alternative retirement plan and, therefore, stop withholding social security on their employees.

Social security coverage under Section 218 cannot be terminated. Since social security coverage under Section 218 was in place prior to establishment of the retirement system, social security coverage continues after the retirement system is established.

Again, police and firefighters covered by a Section 218 agreement, as part of an absolute coverage group, who later become members of a retirement system, remain covered for social security and Medicare under the Section 218 agreement.

[SLIDE 56]

4. Cities and counties paying election workers should be aware of their state's treatment of these workers in relation to Section 218 coverage. Some states have not executed a modification increasing the FICA exclusion threshold amount from \$100 to \$1,500 for election workers.

Again, refer to the link we've provided regarding the coverage of election workers in each state and consult your State Social Security Administrator as necessary.

[SLIDE 57]

Our final coverage issue is where an entity's employees are covered by a qualified alternative retirement system. The entity does not have a Section 218 modification and they are erroneously withholding and paying social security on the employees' wages.

The State Social Security Administrator should be contacted to discuss the procedures for conducting a Section 218 referendum.

[SLIDE 58]

Music & Graphics

ROBERT:

Additional resources can be found on the websites listed in the PowerPoint available as part of this presentation for the

- IRS Office of Federal State and Local Governments,

- SSA State and Local Governments and
- The National Conference of State Social Security Administrators.

[SLIDE 59]

Again, we realize that the information we've presented to you today is an extremely complicated area of law. We encourage you to return to the IRS website to review this webinar presentation again at <http://www.IRSvideos.gov/webinars>

The FSLG specialists assigned to your state are available to assist with any questions you may have regarding this webinar or other employment tax issues. Your State Social Security Administrator should be contacted to discuss coverage questions or issues related to your State's Section 218 Agreement and modifications.

[SLIDE 60]

Music & Graphics

DIANNE:

Although the primary focus of this presentation is centered on Section 218 compliance, we want to take this opportunity to share a new resource that has been posted to the FSLG website at:

<http://www.irs.gov/govt/fslg>

That resource is the FSLG Compliance Self-Assessment Tool and it will provide valuable assistance in helping governmental entities comply with their employment tax withholding and reporting responsibilities.

[SLIDE 61]

Many representatives of state and local governments are concerned about whether they are aware of, or are meeting, all of their Federal tax responsibilities. With this in mind, FSLG has developed the Compliance Self-Assessment Tool to make it as convenient as possible to access all basic information in one place.

[SLIDE 62]

The benefits of the Tool are that it:

- Covers all major areas of tax law affecting governments
- It provides quick links to related educational materials and
- Allows entities to identify those areas where further assistance may be needed.

[SLIDE 63]

The FSLG Compliance Self-Assessment Tool is divided into seven topical areas. Each section provides a series of questions to quickly identify the tax issues government entities face and provides a brief explanation of the topic. We would like to present the seven areas to you with pertinent questions related to each of them.

[SLIDE 64]

The first is Social Security issues:

- Are some positions covered by a retirement plan and exempt from social security?
- Are some employees covered by social security under a Section 218 agreement with SSA or under mandatory provisions?

[SLIDE 65]

Medicare issues:

- Do you have employees exempt from Medicare tax?
- Are some types of payments exempt from Medicare?

[SLIDE 66]

Retirement plan issues:

- Are you complying with the contribution limits and tax-deferral rules for that type of plan?
- Do you report contributions and distributions correctly?

[SLIDE 67]

Worker Classification issues:

- Have you applied the common-law tests to determine whether your workers are correctly classified as employees or independent contractors?
- Are all your elected and appointed officials treated as employees?

[SLIDE 68]

Fringe Benefits issues:

Do you correctly withhold on and report employee fringe benefits, such as:

- Use of a vehicle
- Health benefits

- Uniforms or clothing
- Travel allowances

[SLIDE 69]

International Issues:

- Do you have workers who are nonresident aliens?
- Do you withhold according to treaty provisions?

[SLIDE 70]

and of course there are Other issues, including:

- Filing correct information returns timely
- Backup withholding when required
- Filing employment tax returns timely and
- Making deposits in correct amounts and on time

[SLIDE 71]

ROBERT:

The tool has been posted to the FSLG website at:

<http://www.irs.gov/govt/fslg>

Within the questions, there are numerous links to IRS information that will more fully address the issues raised. In order to maintain the tool in a convenient, short form, the amount of technical explanation within the tool itself is limited.

[SLIDE 72]

After completing the tool, you may then want to address flagged items by referring to the educational materials, a tax advisor, or your local FSLG Specialist

[SLIDE 73]

This tool is intended as a general guide to the most common issues you may deal with, and to direct you to further information as needed. Although it addresses the vast majority of issues affecting most governmental taxpayers, it cannot cover every situation you may encounter. If you believe you have a tax situation not addressed in the tool, please contact your FSLG Specialist for assistance.

Nothing in the tool should be regarded as official advice or a determination by the IRS with respect to any particular tax situation. You may need further assistance, and in some cases request a private letter ruling to make a determination on a particular issue.

[SLIDE 74]

Music & Graphics

DIANNE:

This concludes our webinar on Section 218 coverage and we would like to thank you for attending today's session.

In summary, we would like to say that we value your comments and would appreciate your feedback on this Webinar.

Please send your comments to: **tege.fslg.feedback@irs.gov**

On behalf of the Internal Revenue Service, we thank you for watching this program.

Have a good day.