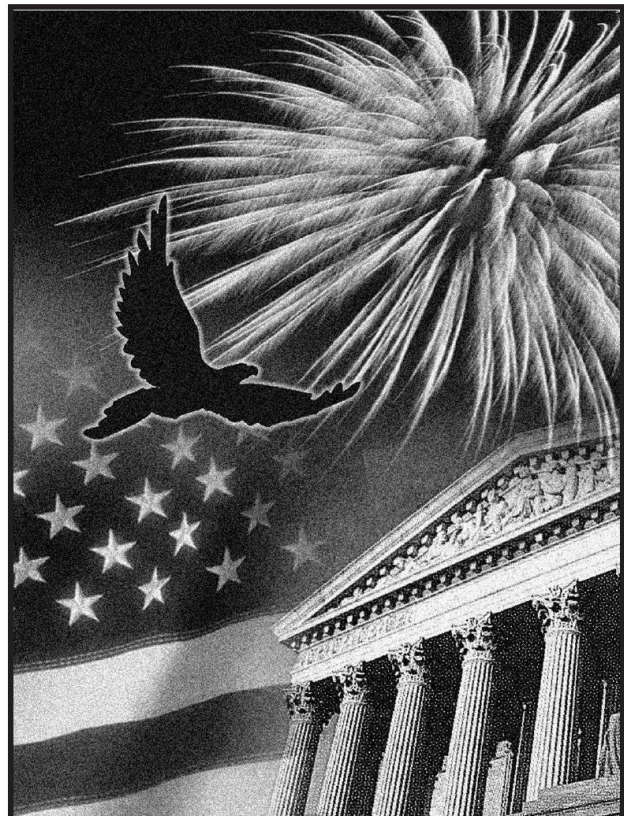


# Publication 963

(Rev. July 2020)

## Federal-State Reference Guide

Volume 6 of 6



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Publication 963 (Rev 07 2020) Catalog Number 59247D  
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Different rules, however, control whether a transfer affects an employee's status for purposes of the Medicare tax wage base. In the case of an employee who is subject to the Medicare tax, even if the employee transfers from one state employer to another state employer of that state or from one political subdivision employer to another political subdivision employer of that political subdivision, a new Medicare tax wage base applies to wages received from the second employer. Thus, the rules that determine whether there is a new Medicare tax wage base are the same as those applicable to employees of private employers.

## **SERVICES EXCLUDED FROM EMPLOYMENT**

**Q8.** What services are excluded from the definition of employment?

**A8.** See sections 3121(b)(1)-(6), (8)-(20) of the Code for a list of services that

are excluded from the definition of employment for purposes of the social security taxes, including the Medicare portion of the taxes.

**Q9.** A 218 agreement may contain terms optionally excluding from social security coverage certain types of employment. 42 U.S.C. section 418(c)(3). If employment is optionally excluded from coverage under the terms of a 218 agreement, is that employment subject to the Medicare tax if services are performed by an individual otherwise subject to the Medicare tax under the rules of Q&A1 and Q&A2?

**A9.** Yes. The optionally excluded services are subject to the Medicare tax if they are performed by an individual otherwise subject to the tax under the rules of Q&A1 and Q&A2 above.

**Q10.** A student is hired by a school, college, or university after March 31, 1986, to perform services for the school, college, or university. The student is in a group optionally excluded from coverage under the terms of an applicable 218 agreement. Are the services performed by the student subject to the Medicare tax?

**A10.** Services performed by a student employed by a school, college, or university are not subject to the Medicare tax if the student is enrolled and regularly attending classes at the school, college, or university. Section 3121(b)(10) of the Code. Services of a student that are subject to contributions under a 218 agreement continue to be subject to such contributions.

## **DEFINITION OF WAGES**

**Q11.** Is the definition of wages for Medicare tax purposes the same as the definition of wages for making social security contributions under 218 agreements?

**A11.** No, not in all cases. The term 'wages' for purposes of paying Medicare tax is defined by section 3121(a) of the Code. The term 'wages' for purposes of making contributions under a 218 agreement is defined by section 209 of the Social Security Act. 42 U.S.C. section 409. Questions concerning the definition of wages (and employment) for purposes of paying Medicare tax should be directed to the Service. Questions concerning the definition of wages (and employment) for purposes of making 218 contributions should be directed to the Social Security Administration (SSA).

## **RULES FOR REPORTING AND PAYMENT OF MEDICARE TAX**

**Q12.** Is the Medicare tax reported and paid to the Internal Revenue Service or to the SSA?

**A12.** The Medicare tax is reported and paid to the Service (1) by a state employer of a state if on April 7, 1986, NO employee of any state employer of that state was covered under a 218 agreement, and (2) by a political subdivision employer of a political subdivision if on April 7, 1986, NO employee of any political subdivision employer of that political subdivision was covered under a 218 agreement.

The Medicare tax is reported to the State Social Security Administrator (1) by a state employer of a state if on April 7, 1986, ANY employee of any state employer of that state was covered under a 218 agreement, and (2) by a political subdivision employer of a political subdivision if on April 7, 1986, ANY

employee of any political subdivision  
employer of that political subdivision was  
covered under a 218 agreement.

**Q13.** A 218 agreement was in effect with state X on or before April 7, 1986. The agreement provided for coverage of employees of a political subdivision employer of political subdivision A but not for coverage of any employee of any political subdivision employer of political subdivision B. After April 7, 1986, a modification of the 218 agreement was executed providing for coverage of some, but not all, employees of a political subdivision employer of political subdivision B. The effective date of the new coverage was April 1, 1986. When that political subdivision employer of political subdivision B reports and pays the Medicare tax on wages for services performed by those of its employees who are not subject to the modification, is the tax reported and paid to the State Social Security



Administrator or to the Internal Revenue Service?

**A13.** The tax is reported and paid to the Internal Revenue Service. Modifying a 218 agreement after April 7, 1986, to extend coverage on a retroactive basis does not change the agency to which the employer must report and pay the Medicare tax for services performed by employees who are subject to the Medicare tax.

**Q14.** How is the Medicare tax reported and paid to the Internal Revenue Service?

**A14.** Taxable wages must be reported on line 6 of Form 941E, Quarterly Return of Withheld Federal Income Tax and Hospital Insurance (Medicare) Tax. The reporting, depositing, and paying of the Medicare tax are subject to the same rules applicable to private employers.

These rules are similar to those applicable to income tax withholding.

**Q15.** How is the Medicare tax reported and paid to the SSA?

**A15.** The Medicare tax is reported and paid to the SSA just as contributions under a 218 agreement are reported and paid to the SSA.

**Q16.** Will all penalties for failure to pay the Medicare tax and failure to make timely deposits of that tax be assessed against state and political subdivision employers?

**A16.** The Service will waive penalties for failure to pay and for failure to make timely deposits of the Medicare tax with respect to services performed through the fourth quarter of 1986, so long as all payments due for April through

December of 1986 are paid by February 2, 1987. If all payments due for April through December 1986 are not paid by February 2, 1987, this automatic waiver of penalties is not applicable, even with respect to amounts paid by February 2, 1987. Penalties may be waived, however, if the employer shows reasonable cause for failure to pay and failure to make timely deposits of the tax. See sections 6651 and 6656 of the Code. A state employer or political subdivision employer should not report any Medicare tax wages on line 6 of Form 941E for the second or third quarter unless appropriate deposits and/or payments are made for that quarter.

**Q17.** If a state employer or a political subdivision employer has federal employees on the state or political subdivision payroll, how should that

employer report the full social security tax or the Medicare portion of the social security tax, whichever is applicable?

**A17.** The state employer or political subdivision employer should use Form 941E to report the full social security taxes and or the Medicare portion of the taxes. For those federal employees subject to the FULL social security taxes, the tax must be included with the withheld federal income tax on line 3 of Form 941E, with an attached supporting statement showing the amount of wages subject to the social security taxes, the amount of the taxes withheld, and the employer's share of the taxes. For those federal employees subject ONLY to the Medicare portion of the social security taxes, the

Medicare tax must be reported on line 6 of Form 941E.

**Q18.** If a state employer or a political subdivision employer must report and pay the Medicare tax to the Service as explained in Q&A12, how should the employer transmit Copy A of Forms W-2 for newly hired employees who are subject to the Medicare tax?

**A18.** For newly hired employees subject to the Medicare tax, the employer should transmit Copy A of Forms W-2 with a Form W-3, Transmittal of Income and Tax Statements, and should check the 'Medicare Fed. emp.' checkbox in Box 2 on the Form W-3. This checkbox will be changed to 'Medicare government employee' on the 1987 Form W-3 to reflect the extension of the Medicare tax to state and political subdivision employees. For employees not subject

to the Medicare tax, the employers should follow the current practice of transmitting Copy A of Forms W-2 with a Form W-3, checking the '941/941r' checkbox in Box 2 on the Form W-3.

**Q19.** If a state employer or a political subdivision employer must report and pay the Medicare tax to the State Social Security Administrator as explained in Q&A12, how should the employer transmit Copy A of Forms W-2 for newly hired employees subject to the Medicare tax?

**A19.** For newly hired employees subject to the Medicare tax, the employer should transmit Copy A of Forms W-2 with a Form W-3 S&L, Transmittal of Income and Tax Statements for State and Local Governmental Employers, and should check the 'Medicare Government Employee' checkbox on the Form W-3

S&L IN ADDITION TO the 'Section 218' checkbox. For those employees covered under a 218 agreement, the state employer or the political subdivision employer should follow the current practice of transmitting the Forms W-2 with a Form W-3 S&L, checking the 'Section 218' checkbox in Box 2 on the Form W-3 S&L. If the employer also has employees who are not covered under the 218 agreement and who were hired before April 1, 1986, then for those employees, the employer should transmit Forms W-2 with a Form W-3 and should check the '941/941u' box on the Form W-3

# **Revenue Ruling 88-36**

## **FICA, HOSPITAL INSURANCE; STATE AND POLITICAL SUBDIVISION EMPLOYEES**

### **SECTION 3121. - DEFINITIONS**

FICA, hospital insurance; state and political subdivision employees. Guidance is provided, in question and answer form, concerning the application of the hospital insurance (medicare) tax portion of the Federal Insurance Contributions Act (FICA) by section 3121(u) of the Code, to wages for services performed by state and political subdivision employees hired after March 31, 1986. Rev. Rul. 86-88 supplemented.

The Service has issued Rev. Rul. 88-36, supplementing Rev. Rul. 86-88, 1986-2 C.B. 172, in question and answer format, which provides guidelines concerning the 1985 amendment to section 3121(u), which extended Medicare (the hospital portion of FICA) to wages for services rendered by state



and political subdivision employees hired after March 31, 1986. The ruling addresses such areas as the types of services which are subject to the medicare tax and the continuing employment exception. In general, an individual, who was employed by a state or political subdivision before March 31, 1986 and who was performing regular and substantial services for remuneration, will not be subject to the tax on services performed after that date. This rule applies only if the employment was not terminated after April 1.

This revenue ruling supplements Rev. Rul. 86-88, 1986-2 C.B. 172, which provides guidelines, in question and answer form, concerning the 1985 amendment of section 3121(u) of the Internal Revenue Code. In general, the amendment extends the hospital insurance (medicare) tax portion of the Federal Insurance Contributions Act (FICA) to wages for services rendered by state and

political subdivision employees hired after March 31, 1986.

In this revenue ruling, the terms 'state,' 'political subdivision,' 'state employer,' 'political subdivision employer,' and 'continuing employment exception' have the same meanings as in Rev. Rul. 86-88.

## **SERVICES SUBJECT TO THE MEDICARE TAX**

**Q1.** If an individual receiving social security retirement insurance benefits was hired as an employee of a state or political subdivision after March 31, 1986, are the services performed by the individual for the state or political subdivision subject to the medicare tax?

**A1.** Yes. The fact that an employee is receiving social security retirement insurance benefits does not affect the employee's liability for the medicare tax.

**Q2.** Are services performed by an election official or election worker for a state employer or political subdivision employer subject to the medicare tax?

**A2.** Yes, unless the remuneration paid in a calendar year for such service is less than \$100. Section 3121(u)(2)(B) (ii)(V) of the Code, added by section 1895(b)(18)(A) of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 852.

This amendment is effective for services rendered after March 31, 1986.

**Q3.** A township has a small number of regularly employed fire fighters. To assist these fire fighters, certain residents of the township have volunteered their services in cases of emergency. The township alerts these residents to emergencies by sounding a siren. The township keeps a record of

the residents who respond to the emergency calls and periodically pays each such resident a nominal amount for each emergency for which the resident performed services. Are the payments made to the residents by the township subject to the medicare tax?

**A3.** No. The services are considered to be performed by an employee of a state or political subdivision on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency and thus are not subject to the medicare tax. See Section 3121(u)(2)(B)(ii)(III) of the Code.

## **THE CONTINUING EMPLOYMENT EXCEPTION**

**Q4.** An individual was hired in September 1984 as a part-time cook by a state hospital to perform two hours of paid

service each Sunday preparing the evening meal. The individual is not a patient or inmate of the hospital and has worked two hours each week as an employee of the hospital continuously since September 1984. Are the individual's services performed after March 31, 1986, subject to the medicare tax?

- A4.** No. The continuing employment exception applies here if the individual was performing regular and substantial services for remuneration for the state employer or political subdivision employer before April 1, 1986. Whether this requirement is met is a question of fact. On these facts, the individual's services are determined to be regular and substantial, and the exception applies.

**Q5.** In November 1982, an individual was elected to a state public office for a four-year term beginning in January 1983, making the individual an employee of the state. In November 1986, the individual was re-elected. Are the individual's services performed in the second term that begins in January 1987 subject to the medicare tax?

**A5.** No. The continuing employment exception applies here if the employment relationship has not been terminated after March 31, 1986. The individual was re-elected before the first term expired, so there was no break in the employment relationship.

**Q6.** B, a school district employee, performed regular and substantial services for remuneration for a political subdivision employer during the school

year beginning in September 1985 and ending in May 1986. In May 1986, the school district notified B that B's employment would be terminated as of the end of May 1986 because the school district might not receive sufficient funding. B continued to be covered under the school district's health insurance program through August 1986 on the same basis as before May 1986. Sufficient funding was provided, and in September 1986 B began working on the same basis as before. Are B's services performed after August 31, 1986, subject to the medicare tax?

**A6.** No. In fact, B's employment with the school district was continuous because the school district received sufficient funding. The school district's personnel policies indicate that the employment relationship continued because B

retained health insurance coverage.  
See Q&A6 of Rev. Rul. 86-88.

**Q7.** C, a professor at a state university, performed regular and substantial services for remuneration for the university from September 1985 to June 1986. C was granted a leave of absence for the 1986-1987 school year, with the right to return to the same position at the end of the leave. In September 1987, C returned from the leave and resumed the same position with the university. Are C's services performed after returning from the leave of absence subject to the medicare tax?

**A7.** No. The leave of absence was granted by the university and did not terminate the employment relationship. The university's personnel policies indicate that the employment relationship



continued because C was given the right to return to the same position. See Q&A6 of Rev. Rul. 86-88.

**Q8.** D taught a two-hour photography course twice a week at a local community college in the spring semester, which began on March 1, 1986. D then signed a three-year agreement with the college that he would teach the same course every spring. When D returned in the spring of 1987, were his services subject to the medicare tax?

**A8.** No. D was performing regular and substantial services for remuneration prior to April 1, 1986. The employment relationship was not terminated, as D had a commitment to return to the same position each spring.

**Q9.** Each summer, a Township Parks Department advertises for workers to cut grass. E was hired by the township in May 1985 to cut grass during that summer. E stopped performing services for the township at the end of that summer. In May 1986, E was again hired by the township to cut grass. Are E's services performed when E returned in

**A9.** Yes. E's employment relationship was terminated after April 1, 1986, as E had no commitment to perform services for the township each summer.

**Q10.** A part-time police officer has been paid on a weekly basis since March 10, 1986, to be 'on call' for a set schedule of hours each week. When the officer is 'on call,' he must stay at his residence and be available to provide assistance

in the case of an emergency or to handle any police business that may arise. Are the services performed by the officer after April 1, 1986 subject to the medicare tax?

**A10.** No. Although the officer responds to calls on an 'as needed' basis, he has a set schedule of hours during which he is performing the service of being available to respond to such calls. Based on the above facts, the officer was performing regular and substantial services for remuneration prior to April 1, 1986 and thus, qualifies for the continuing employment exception to the medicare tax.

## **Revenue Procedure 91-40**

### **SECTION 1. PURPOSE**

This revenue procedure sets forth rules relating to the minimum retirement benefit

requirement prescribed under section 31.3121(b)(7)-2 of the Employment Tax Regulations.

## **SECTION 2. BACKGROUND**

Section 3121(b)(7)(F), added to the Internal Revenue Code by section 11332(b) of the Omnibus Budget Reconciliation

Act of 1990, Public Law No. 101-508, 104 Stat. 1388, generally expands the definition of employment, for purposes of the Federal Insurance Contributions Act (FICA), to include service as an employee for a state or local government entity unless the employee is a “member of a retirement system” of such entity. Section 3121(b)(7)(F) is effective with respect to service performed after July 1, 1991. Thus, wages for services performed after July 1, 1991, received by an employee of a state or local government entity who is not a member of a retirement system of such entity will generally be subject to FICA taxes, and will also be taken into account in

determining the employee's eligibility for Social Security and Medicare benefits. Under section 31.3121(b)(7)-2(e) of the regulations, a retirement system generally includes any pension, annuity, retirement or similar fund or system within the meaning of section 218 of the Social Security Act that is maintained by a state, political subdivision or instrumentality thereof to provide retirement benefits to its employees who are participants. However, the definition of retirement system is limited in order to carry out the purposes of section 3121(b)(7)(F) of the Code and the corresponding provisions of the Social Security Act. Under the regulations, in order for service in the employ of a state or local government entity to qualify for the exception from employment under section 3121(b)(7), the employee must be a member of a retirement system that provides certain minimum retirement benefits to that employee. To meet this minimum retirement benefit requirement with respect to an

employee, section 31.3121(b)(7)-2(e)(2)(i) of the regulations generally requires that a retirement system provide benefits to the employee that are comparable to those provided in the Old-Age portion of the Old-Age, Survivor, Disability Insurance program under Social Security. Section 31.3121(b)(7)-2(e)(2)(vi) of the regulations provides that the Commissioner may, through guidance of general applicability, promulgate additional testing methods to determine whether, a retirement system meets the minimum retirement benefit requirement. This revenue procedure is an exercise of this authority. It outlines a set of safe harbor formulas for defined benefit retirement systems. Benefits calculated under one of these formulas are deemed to meet the minimum retirement benefit requirement. In addition, procedures are set out by which an employer may determine whether retirement benefits calculated under other formulas meet the

minimum retirement benefit requirement of the regulations with respect to an employee.

### **SECTION 3. DEFINED BENEFIT RETIREMENT SYSTEM SAFE HARBOR FORMULAS**

01 Final and highest average pay formulas.

- (1) Periods of 36 months or less. A defined benefit retirement system that calculates benefits by reference to a participant's average compensation meets the minimum retirement benefit requirement with respect to an employee if it makes available to the employee a single life annuity payable beginning no later than age 65 that is at least 1.5 percent of average compensation for each year (or fraction thereof) of credited service. For this purpose, average compensation may be defined as the average of the employee's compensation over the 36 (or fewer)

consecutive or non-consecutive months that provides the highest such average, the average of the employee's compensation for his or her last 36 (or fewer) months of service with the employer, or the average of the employee's compensation for his or her high consecutive or nonconsecutive or final 3 (or fewer) calendar or plan years of service.

- (2) Periods of more than 36 months. A defined benefit retirement system that calculates benefits by reference to a participant's average compensation over a period of more than 36 months meets the minimum benefit requirement in the same manner as a retirement system described in section 3.01(l) except that the

- (3)



Averaging period	Factor
37-48 months	1.55 percent
49-60 months	1.60 percent
61-120 months	1.75 percent
Over 120 months	2.00 percent

## 02 Formulas using fractional accrual rule.

A defined benefit retirement system that calculates benefits based on a pro rata accrual towards a projected normal retirement benefit may meet the minimum retirement benefit requirement in the same manner as provided in section 3.01(I) provided the projected normal retirement benefit under the plan formula is greater than or equal to the benefit described in such section.

### 03 Additional requirements for defined benefit plan formulas to meet safe harbors.

- (1) Calculation of compensation.
  - (a) To meet the requirements of any of the defined benefit safe harbor formulas for plan years beginning after July 1, 1991, a retirement system must calculate benefits based on a definition of compensation that meets the requirements of section 31.3121(b)(7)- 2(e)(2)(iii)(B) of the regulations.
  - (b) In the event that the definition of compensation under the retirement system is less inclusive than the definition otherwise permitted under this section, the applicable benefit percentage in the safe harbor formula of section 3.01 must be increased to account for the lower compensation base. The benefit percentage for employees in a retirement system

whose benefits are computed using this definition must be multiplied by the ratio of (i) aggregate compensation (defined as under section 3.03(l)(a) and assuming that compensation considered in determining retirement benefits is limited to the contribution base described in section 3121(x)(1)) of these employees to (ii) aggregate compensation (as defined under the plan) of these employees. This ratio may be determined based upon the compensation during the immediately preceding plan year. In the case of a retirement system sponsored by more than one employer, this ratio must be calculated separately with respect to the employees of each employer whose benefits are computed using this definition. The rule in this section 3.03(l)(b) is illustrated by the following example: Example. A defined

benefit retirement system maintained by a political subdivision provides a retirement benefit equal to 2.5 percent of a participant's average compensation during his or her last calendar year of service. The compensation used for this purpose satisfies section 3.03(l)(a), except that it caps the compensation taken into account at \$30,000. Assume that the ratio under section 3.03(t)(b) is 150 percent. This figure is derived by comparing the total compensation of employees in the plan (using the plan definition but capping compensation at the FICA contribution base (rather than at \$30,000)) to the total compensation (using only the plan definition of compensation) of employees in the plan. The retirement system meets the requirements of 3.03(l) because the plan benefit percentage of 2.5 percent is more than

150 percent of the applicable safe harbor benefit percentage of 1.5 percent.

(2) Credited service.

- (a) In order to meet the requirements of any of the defined benefit safe harbor formulas, a formula must generally include in credited service the employee's entire period of actual service with the employer since commencing participation in the retirement system, plus any past service credited under the retirement system. A formula may, however, exclude any periods of actual service for the employer that are treated as employment under section 3121(b) of the Code, provided that during such periods the employee did not participate in the retirement system. A retirement system subject to paragraph (f)(2)(i)(B) of section

31.3121(b)(7)-2 of the regulations (relating to the treatment of benefits accrued in plan years beginning prior to January 1, 1993) may also limit service consistent with the rules contained in that paragraph.

- (b) A formula may limit the maximum period of service that is credited for accrual purposes under this rule. If this limit is less than 30 years in the case of formulas described in section 3.01(l) or (2), or 35 years in the case of formulas described in section 3.02, however, the benefit formula must be increased by the ratio of 30 (or 35) years to such lower limit.
- (c) Except as provided in section 3.03(4) with respect to part-time and other classes of employees, a formula may limit the periods of actual service actually credited for accrual purposes under this rule to whole years or

similar periods, provided the periods are reasonable.

- (d) The rules in this subsection are illustrated by the following example: Example. In 1995, an employee is a participant in a retirement system with 5 years of credited service. Assume that the retirement system provides benefits under a formula described in section 3.01. In January 1996, the employee moves to a position that is not covered by the retirement system. Assume that service in the new position constitutes covered employment under section 3121(b) of the Code for purposes of the FICA (e.g., because a section 218 voluntary agreement is in effect with regard to such position). In January 1998, the employee returns to the old position and recommences participation under the retirement system. The employee

must be treated as being in the employee's sixth year of credited service in determining whether the benefit under the retirement system meets the minimum retirement benefit requirement. This is because the retirement system may generally disregard the service of an employee that constitutes employment under section 3121(b) for purposes of the FICA.

- (3) Treatment of prior distributions from the retirement system. In determining whether the requirements of any of the defined benefit safe harbor formulas are met, prior distributions may continue to be considered as part of the benefit accrued under the retirement system unless they were distributed by the employer without any election by the employee. In addition, if a retirement system gives



a former employee credit for benefit determination purposes for periods of prior service with respect to which a prior distribution was made only if the employee contributes to the system an amount equal to all or a portion of the prior distribution (with or without interest), and this option is provided on reasonable terms, such prior service is not required to be taken into account in determining whether the requirements of any of the defined benefit safe harbors are met until the required contribution is actually made. If prior service is not taken into account under this rule, the prior distribution may not be taken into account either. The rules of this paragraph is illustrated by the following example:

Example. An employee retires under the early retirement option under a retirement system maintained by a

state government. The employee elects to receive a single sum distribution representing the entire accrued benefit under the plan. Subsequently, the employee is rehired by the same employer. The plan does not provide for any recontribution of the prior distribution. Whether the employee is a member of the retirement system from which the employee received the distribution is determined without regard to the single sum distribution. That is, a single life annuity that is the actuarial equivalent of the single sum may be treated as part of the accrued benefit under the plan. Similarly, all periods of service credited under the plan during the employee's previous service must be considered.

- (4) Credited service for part-time, seasonal, and temporary employees.

To meet the requirements of any of the defined benefit safe harbor formulas with respect to a part-time, seasonal or temporary employee for plan years beginning after December 31, 1992, a safe harbor formula may not permit double proration of the employee's benefits under the retirement system. See 29 CFR §2530.2042(d) for a description of double proration of benefit accruals. Under this rule, the benefit under the retirement system may be prorated either on the basis of full-time service or on the basis of full-time compensation, but may not be prorated based on both service and compensation. In addition, a safe harbor formula may not subject the crediting of service used in calculating the benefit of any part-time, seasonal or temporary employee to any conditions, such as a requirement that

the employee attain a minimum age, perform a minimum period of service, be credited with a minimum number of hours of service, make an election in order to participate, or be present at the end of the plan year. The requirements of this section 3.03(4) will be deemed met with respect to an employee, however, if the requirements of section 31.3121(b)(7)-2(d)(2)(ii) of the regulations relating to amounts distributable upon certain events are met with respect to such employee. See section 31.3121(b)(7)-2(d)(2)(iii) of the regulations for the definitions of part-time, seasonal, and temporary employee for this purpose.

04 Examples of application of safe harbor formulas.

The application of the defined benefit safe harbors are illustrated in the following examples:

Example 1. An employee has been a participant in a state retirement system for 9 years and several months at the beginning of a plan year of the system. The employee has only 9 years of credited service under the system at the beginning of the plan year, however, because the retirement system calculates service for accrual purposes on the basis of whole years of actual service. Under the retirement system, each participant is credited with a retirement benefit based upon the participant's highest average compensation over 36 consecutive months times his or her years of service (as so determined). Assume the retirement system imposes no other conditions on the accrual of benefits and meets the service crediting requirements of section 3.03(2). If at all times during the plan year prior to being

credited with a tenth year of service the employee has a total accrued benefit of at least 13.5 percent of his or her highest average compensation (1.5 percent times 9 years), and at all times during the plan year after being credited with the tenth year of service the employee has a total accrued benefit of at least 15 percent of his or her highest average compensation (1.5 percent times 10 years), and the retirement otherwise meets the requirements of this revenue procedure and the regulations, the employee will be treated as a qualified participant throughout the plan year. This analysis applies without regard to whether the participant actually accrues a benefit in the plan year or is credited with an additional year of service for accrual purposes (e.g., if future accruals under the plan have been frozen or if the participant has obtained the maximum level of benefits under the plan).

Example 2. Assume the same facts as in Example 1, except that the plan grants 1 month of credited service for every whole month of actual service, and that the employee had 111 months of service (9 years and 3 months) at the beginning of the plan year. If at all times during the first month of the plan year prior to being credited with the 112th month of service the employee has a total accrued benefit of at least 13.875 percent of his highest average compensation (1.5 percent times 111 months, divided by 12), and at all times during the first month of the plan year after being credited with the 112th month of service the employee has a total accrued benefit of at least 14 percent of his highest average compensation (1.5 percent times 112 months, divided by 12), and the retirement system otherwise meets the requirements of this revenue procedure and section 31.3121(b)(7)-2(e) of the regulations, the participant is a qualified participant in the plan within the meaning of

section 31.3121(b)(7)-2(d)(1) for the entire first month of the plan year.

Example 3. Assume the same facts as in Example 1, except that, instead of crediting only whole years of participation for accrual purposes, the retirement system credits only service during plan years in which a participant has at least 1,000 hours of service. Thus, as in Example 1, the participant has 9 years of credited service at the beginning of the plan year. If at all times during the plan year prior to meeting the 1,000-hour requirement the employee has a total accrued benefit of at least 13.5 percent of his or her highest average compensation (1.5 percent times 9 years), and at all times during the plan year after meeting the 1,000-hour requirement the employee has a total accrued benefit of at least 15 percent of his or her highest average compensation (1.5 percent times 10 years), the employee will be treated as a qualified participant in the



retirement system within the meaning of section 31.3121(b)(7)-2(d)(1) of the regulations throughout the plan year.

## **SECTION 4. DEFINED BENEFIT RETIREMENT SYSTEMS WITH BENEFIT FORMULAS NOT DESCRIBED IN THE SAFE HARBORS OF SECTION 3**

01 In general.

A defined benefit retirement system that calculates benefits under a formula that does not meet one of the safe harbor formulas described in section 3 of this revenue procedure meets the minimum retirement benefit requirement with respect to an employee if the employee's accrued benefit as of the date of the determination is at least as great as the accrued benefit the employee would have if his or her accrued benefit had been calculated under the safe harbor formula in section 3.01(l). In determining whether this requirement is satisfied, the additional requirements set forth in section 3.03 must

be taken into account. The rules in this paragraph are illustrated by the following example:

Example. A defined benefit plan maintained by a political subdivision and described in section 457(b) of the Code provides only for single sum distributions and thus does not meet the requirements of any of the defined benefit safe harbor formulas. The plan may still meet the minimum retirement benefit requirement with respect to an employee if it provides a single sum with respect to such employee that is the actuarial equivalent (using reasonable actuarial assumptions) of a single life annuity meeting the requirements of section 3.01(1).

## 02 Treatment of past service credit.

In determining whether an employee's accrued benefit under a defined benefit retirement system that calculates benefits under a formula that does not meet one of the defined benefit safe harbor formulas is at

least as great as the accrued benefit the employee would have if his or her accrued benefit had been calculated under the safe harbor formula in section 3.01(1), a retirement system may ignore periods of service by an employee with the employer prior to his or her commencement of participation in the retirement system, notwithstanding the additional rules relating to credited service in section 3.03(2). If such periods of service are ignored, however, any accrued benefits attributable to such period of service must also be ignored. The rule in this paragraph is illustrated by the following example: Example: An employee begins to participate in a retirement system in the employee's fifth year of service. The retirement system provides credit for all past service with the employer. Assume the retirement system does not provide benefits under a formula that meets the requirements of any of the safe harbors. The employee must be treated as being in the employee's

fifth year of credited service if benefits attributable to the past service are to be taken into account in comparing the benefit under the retirement system to the benefit the employee would have under the safe harbor formula of section 3.01(1) to determine whether the minimum retirement benefit requirement is met.

## **SECTION 5. EMPLOYEES WITH MULTIPLE POSITIONS OR WHO PARTICPATE IN CERTAIN RETIREMENT SYSTEMS**

See section 31.3121(b)(7)-2(e)(2)(iv) and (v) of the regulations for rules to be used in determining the service, compensation and benefits taken into account for purposes of this revenue procedure in the case of employees who are employed in more than one position with the employer, and employees who are participants in retirement systems maintained by more than one employer, respectively.

# Guide to the Citations in this Publication

Citation Source	Example	Purpose
Internal Revenue Code	IRC Section 132(a)(1)	Title 26 of the United States Code, the primary statutory authority for laws dealing with federal tax.
Treasury Regulation	Treas. Reg. Section 1.162-2(a)(2)	Provides guidance for new legislation or to address issues that arise with respect to existing Internal Revenue Code sections. Regulations interpret and give directions on complying with the law.
Treasury Proposed Regulation	Prop. Reg. 106897-08	Generally, regulations are first published in proposed form in a Notice of Proposed Rulemaking (NPRM).
Treasury Decision	TD 9696	Document that contains the text of a final or temporary regulation
Revenue Procedure	Rev. Proc. 2020-1	An official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the IRC, related statutes, tax treaties and regulations and that should be a matter of public knowledge.
Revenue Ruling	Rev. Rul. 2012-25	An official interpretation by the IRS of the IRC, related statutes, tax treaties and regulations. It is the IRS conclusion on how the law is applied to a specific set of facts.
Notice	Notice 98-03	A public pronouncement that may contain guidance that involves substantive interpretations of the IRC or other provisions of the law.
Announcement	Ann. 85-113	A public pronouncement that has only immediate or short-term value.
Private Letter Ruling	PLR 200437030	A written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. It may not be relied on as precedent by other taxpayers or IRS personnel.
Technical Advice Memorandum	TAM 200222003	Guidance furnished by the Office of Chief Counsel to IRS personnel in response to an internal request concerning technical or procedural questions that develop during a proceeding.
Supreme Court Decision	269 U.S. 514 (1926)	Final decision on tax matter presented to Supreme Court from lower courts.
Social Security Act	42 U.S.C. Section 418	Original 1935 legislation establishing Social Security; now Title 42 of the United States Code.

# Statutory Citations for State Enabling Laws

Statutory Citations for State Enabling Laws As of April 2020	
State or U.S. Territory	Citation
Alabama	Code of Alabama, Title 36. Public Officers and Employees, Chapter 28, Social Security for State, Municipal, Etc., Employees, § 36-28-1, et seq.
Alaska	Alaska Statutes Annotated, Title 39, Public Officers and Employees, Chapter 30. Insurance and Supplemental Employee Benefits, Article 1, Old Age and Survivors Insurance, § 39.30.010, et seq.
Arizona	Arizona Revised Statutes Annotated, Title 38. Public Officers and Employees, Chapter 5. Social Security and Retirement, Article 1, Social Security for Public Officers and Employees, § 38-701 et seq.
Arkansas	Arkansas Code Annotated, Title 24. Retirement and Pensions, Chapter 1. General Provisions, Subchapter 2. Public Employees' Social Security, § 24-1- 201, et seq.
California	Annotated California Codes, Government Code, Title 2. Government of the State of California, Division 5. Personnel, Part 4. Federal Old Age and Survivors' Insurance, Chapter 1. General Provisions, Definitions, Designation of Special Groups, Article 1. General Provisions and Definitions, § 22000, et seq.
Colorado	Colorado Revised Statutes Annotated, Title 24. Government—State Public Employees' Retirement Systems, Article 53. Public Employees' Social Security, § 24-53-101, et seq.
Connecticut	Connecticut General Statutes Annotated, Title 5. State Employees, Chapter 66. State Employees Retirement Act, Part I. General Provisions, § 5-152 et seq.
Delaware	Delaware Code Annotated, Title 29. State Government, Part V. Public Officers and Employees, Chapter 57. Social Security, § 5701, et seq.
Florida	Florida Statutes Annotated, Title XXXVII. Insurance (Chapters 624-651), Chapter 650. Social Security for Public Employees 650.01, et seq.
Georgia	Code of Georgia Annotated, Title 47. Retirement and Pensions, Chapter 18. Social Security Coverage for Employees of the State and Political Subdivisions of the State, Article 1. General Provisions § 47-18-1, et seq.
Hawaii	Hawai'i Revised Statutes Annotated, Division 1. Government, Title 7. Public Officers and Employees, Chapter 88. Pension and Retirement Systems, Part VI. Federal Social Security for Public Employees, § 88-211, et seq.
Idaho	Idaho Code Annotated, Title 59. Public Officers in General, Chapter 11. Social Security Benefits, § 59-1101, et seq.
Illinois	Smith-Hurd Illinois Compiled Statutes Annotated, Chapter 40. Pensions, Act 5. Illinois Pension Code, Article 21, Social Security Enabling Act 5/21-101, et seq.
Indiana	Annotated Indiana Code, Title 5. State and Local Administration, Article 10.1. Social Security Coverage for Public Employees, Chapter 1. Definitions, 5-10.1-1- 1, et seq.
Iowa	Iowa Code Annotated, Title III. Public Services and Regulation [Chs. 80-122C], Subtitle 3. Retirement Systems [Chs. 97-98A], Chapter 97C. Federal Social Security Enabling Act, 97C.1, et seq.



Statutory Citations for State Enabling Laws As of April 2020	
State or U.S. Territory	Citation
Kansas	Kansas Statutes Annotated, Chapter 40. Insurance, Article 23. Old-Age and Survivors Insurance for Public Employees, 40-2301.
Kentucky	Baldwin’s Kentucky Revised Statutes Annotated, Title VIII. Offices and Officers, Chapter 61, General Provisions as to Offices and Officers; Social Security for Public Employees; Employees Retirement System, General Provisions, Social Security for Public Employees, 61.410, et seq.
Louisiana	Louisiana Statutes Annotated, Louisiana Revised Statutes, Title 42. Public Officers and Employees, Chapter 13. Old Age, Survivors, Disability, and Health Insurance, § 1001, et seq.
Maine	Maine Revised Statutes Annotated, Title 5. Administrative Procedures and Services, Part 21. Social Security for State and Municipal Employees, Chapter 431. Social Security for State and Municipal Employees, § 19001, et seq.
Maryland	Annotated Code of Maryland, State Personnel and Pensions, Division III. Other Retirement and Pension Provisions [Titles 35-End], Title 36. Social Security Benefits, § 36-101, et seq.
Massachusetts	Massachusetts General Laws Annotated, Part I. Administration of the Government (Ch. 1-182), Title XVII. Public Welfare (Ch. 115-123B), Chapter 118C. Coverage of Certain Employees Under the Federal Social Security Act, § 1, et seq.
Michigan	Michigan Compiled Laws Annotated, Chapter 38. Civil Service and Retirement, Social Security for Public Employees, 38.851, et seq.
Minnesota	Minnesota Statutes Annotated, Retirement (Ch. 352-356B), Chapter 355. Social Security Coverage, State and Local Government Employees, § 355.01, et seq.
Mississippi	West’s Annotated Mississippi Code, Title 25. Public Officers and Employees; Public Records, Chapter 11. Social Security and Public Employees’ Retirement and Disability Benefits, Article 1. Social Security Benefits, § 25-11-1, et seq.
Missouri	Vernon’s Annotated Missouri Statutes, Title VIII. Public Officers and Employees, Bonds and Records, Chapter 105. Public Officers and Employees--Miscellaneous Provisions Generally, § 105.005, et seq.
Montana	Montana Code Annotated, Title 19. Public Retirement Systems, Chapter 1. Social Security, Part 1. General Provisions, § 19-1-101, et seq.
Nebraska	Revised Statutes of Nebraska Annotated, Chapter 68. Public Assistance, Article 6. Social Security, §68-601, et seq.
Nevada	Nevada Revised Statutes Annotated , Title 23. Public Officers and Employees (Chapters 281-289), Chapter 287. Programs for Public Employees, Participation of Employees of State and Its Political Subdivisions in Federal Old-Age and Survivors’ Insurance, §287.050, et seq.
New Hampshire	Revised Statutes Annotated of the State of New Hampshire, Title VI. Public Officers and Employees (Ch. 91 to 103), Chapter 101. Old Age and Survivors’ Insurance, §101:1, et seq.
New Jersey	New Jersey Statutes, TITLE 43. Pensions and Retirement and Unemployment Compensation, Subtitle 9 Social Security, Chapter 22, Old Age and Survivors Insurance for Public Employees, § 43:22-1, et seq.

<b>Statutory Citations for State Enabling Laws</b> <b>As of April 2020</b>	
<b>State or U.S. Territory</b>	<b>Citation</b>
<b>New Mexico</b>	New Mexico Statutes Annotated, Chapter 10. Public Officers and Employees, Article 14. Social Security Coverage § 10-14-1, et seq.
<b>New York</b>	McKinney’s Consolidated Laws of New York Annotated, Retirement and Social Security Law, Chapter 51-A of the Consolidated Laws, Article 1. Short Title § 1. Short title of chapter, Article 3. Federal Old-Age and Survivors Insurance Coverage for Certain Public Employees § 130, et seq.
<b>North Carolina</b>	North Carolina General Statutes Annotated, Chapter 135. Retirement System for Teachers and State Employees; Social Security; State Health Plan for Teachers and State Employees, Article 2. Coverage of Governmental Employees Under Title II of the Social Security Act § 135-19, et seq.
<b>North Dakota</b>	North Dakota Century Code Annotated, Title 52. Social Security, Chapter 52-10. Public Employees Under Federal Social Security § 52-10-01, et seq.
<b>Ohio</b>	Baldwin’s Ohio Revised Code Annotated, Title I. State Government, Chapter 144. Old Age and Survivors Insurance--Municipal Employees 144.01, et seq.
<b>Oklahoma</b>	Oklahoma Statutes Annotated, Title 51. Officers, Chapter 4. Old Age and Survivors Insurance Under Federal Act, § 121, et seq.
<b>Oregon</b>	Oregon Revised Statutes Annotated, Title 22. Public Officers and Employees, Chapter 237. Public Employee Retirement Generally, Social Security Act Coverage, 237.410, et seq.
<b>Pennsylvania</b>	Purdon’s Pennsylvania Statutes and Consolidated Statutes, Title 65 P.S. Public Officers, Chapter 10. Public Officer and Employee Social Security Contribution Law § 201, et seq.
<b>Puerto Rico</b>	Laws of Puerto Rico Annotated, Title Three. Executive, Chapter 33. Retirement of Government Personnel Federal social security for Puerto Rico § 813, et seq.
<b>Rhode Island</b>	General Laws of Rhode Island Annotated, Title 36. Public Officers and Employees, Chapter 7. Federal Old-Age and Survivors’ Insurance, § 36-7-1, et seq.
<b>South Carolina</b>	Code of Laws of South Carolina 1976 Annotated, Title 9. Retirement Systems, Chapter 3. Coverage of Public Officers and Employees, Under Federal Social Security Act, Article 1. General Provisions § 9-3-10, et seq.
<b>South Dakota</b>	South Dakota Codified Laws, Title 3. Public Officers and Employees, Chapter 3-11. Social Security Coverage 3-11-1, et seq.
<b>Tennessee</b>	West’s Tennessee Code Annotated, Title 8. Public Officers and Employees, Chapter 38. Social Security § 8-38-101, et seq.
<b>Texas</b>	Vernon’s Texas Statutes and Codes Annotated, Government Code, Title 6. Public Officers and Employees, Subtitle A. Provisions Generally Applicable to Public Officers and Employees, Chapter 606. Social Security, Subchapter A. General Provisions § 606.001, et seq.
<b>Utah</b>	Utah Code Annotated, Title 67. State Officers and Employees, Chapter 11. Federal Social Security § 67-11-1, et seq.
<b>Vermont</b>	Vermont Statutes Annotated, Title Three. Executive, Part 1. Generally, Chapter 19. Social Security for State and Municipal Employees § 571, et seq.



Statutory Citations for State Enabling Laws As of April 2020	
State or U.S. Territory	Citation
Virginia	Annotated Code of Virginia, Title 51.1. Pensions, Benefits, and Retirement, Chapter 7. Federal Social Security for State and Local Employees § 51.1-700, et seq.
Virgin Islands	Bill Number 10, Sixteenth Session, 1951.
Washington	Revised Code of Washington Annotated, Title 41. Public Employment, Civil Service, and Pensions, Chapter 41.48. Federal Social Security for Public Employees 41.48.010, et seq.
West Virginia	Annotated Code of West Virginia, Chapter 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc., Article 7. Social Security Agency, § 5-7-1, et seq.
Wisconsin	Wisconsin Statutes Annotated, Public Employee Trust Fund (Ch. 40), Chapter 40. Public Employee Trust Fund, Subchapter III. Social Security for Public Employees 40.40, et seq.
Wyoming	Wyoming Statutes Annotated, Title 9. Administration of the Government, Chapter 3. Compensation and Benefits, Article 3. Social Security § 9-3-301, et seq.

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# **Index**

Absolute Coverage Group **39, 41**

Accountable Plan **18, 34**

Additional Medicare Tax **15, 21**

Alternative lookback rule, retirement system **57**

Appointed officials **27, 33, 34, 51**

Back Pay **17, 73**

Board members **27**

Catch-up contributions

403(b) **19**

457(b) **19, 20**

Clothing provided by employer **18, 21**

COBRA **49**

Common-law employee **28, 29, 34, 35, 36, 37, 48, 61**

Commuting rule **18**

Conservation district **11**

Continuation of Coverage **41**

Continuing employment exception **4, 5, 49, 51, 59, 78, 90, 92, 93, 98, 99, 100**

Correcting Wage Reports **67**

Coverage group absolute **39, 41, 78**

retirement system **40, 41, 43, 44, 78, 80**

Coverage under Section 218 **38, 39, 42, 43, 44, 46, 60**

Deceased employee wages **16, 17, 68**

defined benefit plan **53, 54, 55, 56, 58, 78, 101, 102, 103, 104**

Defined contribution plan **53, 54, 55, 56, 59, 78**

Deposit rules **24, 27, 61, 95**

Disclosure of tax  
information **72, 74, 75, 76**

Divided retirement  
system **7, 11, 40, 41, 47**

Earnings record **6, 17, 52, 61, 70, 78**

Elected Officials **33, 43**

Election workers/  
officials **2, 7, 23, 43, 45, 46, 50, 98**

Elective positions **33, 43, 51**

Electronic Federal Tax Payment System  
(EFTPS) **24**

Emergency workers **27, 35, 42, 45, 47,  
50, 98, 100**

Employer Identification Number (EIN) **20,  
34, 68, 73, 78**

Employer pick-up contributions **19**

Employment tax returns **6, 27, 28, 87**

Federal government, authority **1, 9, 10**

Federal income tax withholding **14, 16, 22, 24, 28**

Federal State and Local Governments (FSLG) **38, 53, 71, 72**

Fee-based public officials **43, 46, 79**

FICA (Federal Insurance Contributions Act) **1, 6, 14, 24, 27, 79, 80**

FICA replacement plan. See Public retirement system **2, 3, 4, 6, 7, 14, 28, 40, 44, 47, 51, 53, 58**

Fire associations **11, 12**

Firefighters **1, 2, 17, 27, 29, 34, 36, 46, 47**

Firefighters social security coverage **2, 46, 47**

Foreign workers **42, 45, 47, 73, 74**

Form941 **6, 21, 24, 27, 34, 69, 73, 74**

941X **22, 74**

943 **74**

944 **6, 21, 22, 27, 74**

1099-MISC **6, 17, 22, 23, 36, 68, 73, 74**

2848 **74, 75**

8821 **72, 74, 75, 77**

I-9 **67**

SS-8 **33, 37**

SSA-7004 **66**

W-2 **6, 7, 16, 17, 20, 21, 22, 23, 31, 37, 46, 47, 66, 67, 68, 69, 70, 73, 80, 96** W-3 **6, 20, 21, 22, 23, 67, 68, 69, 73, 96**

W-4 **16, 20, 24, 25, 73**

W-9 **23, 36, 73**

Former participants retirement plan **58**

Fringe benefits **17, 18, 21, 73, 74**

FSLG (Federal State and Local Governments) **72**

Full retirement age **61, 62**

FUTA (unemployment tax) **12, 14, 16, 25, 28, 35, 79**

Government Pension Offset (GPO) **2, 62, 63, 64, 65, 79**

Health benefits **18, 65**

Income tax withholding **13, 14, 16, 18, 19, 20, 21, 22, 23, 24, 26, 28, 29, 33, 35, 36, 37, 73** Independent contractor **6, 28, 29, 30, 31, 32, 33, 36, 37, 69, 74**

defined **28, 29**

tax responsibilities **36**

Indian Tribal Governments **i, 7, 9, 12, 13, 28, 49, 71, 72, 73**

information reporting **23, 24, 26, 28, 36, 60, 72**



Information reporting penalties **25, 26**

requirements **26**

Information return reporting **23, 37, 67, 72, 73**

Inmates **27, 42, 44, 45**

Instrumentality defined **3, 7, 10, 11, 12, 13, 53, 78, 79, 81**

Interest on tax due **25, 26**

Internal Revenue Service **i, 2, 6, 66, 71, 73**

Interstate instrumentalities **1, 9, 10, 11, 40, 47, 79, 81**

Leased workers **35, 48**

Local government **i, 1, 2, 3, 4, 5, 9, 10, 14, 38, 39, 41, 42, 44, 49, 51, 53, 58, 59, 70, 72, 74** Mandatory

Medicare coverage **3, 4, 22, 49, 50, 51, 79** continuing employment exception **4, 5,**

**49, 50, 51, 52, 59, 78, 90, 92, 93,  
98, 99, 100**

**Mandatory social security coverage 2, 3, 4,  
5, 6, 7, 10, 23, 38, 42, 43, 44, 45,  
46, 47, 48, 50, 51, 53, 55, 56, 57,  
58, 59, 65, 78, 79, 80**

**Mandatory social security coverage exclusions  
44, 45**

**Meals furnished by employer 18**

**Medicaid 50, 65, 66**

**Medicare benefits 61, 80, 101**

**coverage rules 2, 4, 5, 7, 8, 27, 28,  
38, 39, 40, 41, 47, 49, 50, 51, 58,  
74, 76**

**services not covered 1, 2, 3, 4, 7, 8,  
11, 13, 14, 19, 20, 27, 28, 37**

**voluntary 50, 52, 61, 65**

**Medicare Qualified Government Employment  
(MQGE) 22, 49, 79**

Military differential pay **16**

Modification Section 218 Agreement **3, 6, 7, 38, 39, 41, 43, 45, 46, 47, 50, 52, 60, 70, 76, 78, 79**

Multiple positions employee **57, 59**

National Conference of State Social Security Administrators (NCSSSA **i, 3, 7, 50, 77, 79**

Noncash payments **17, 21, 38**

Nonpayroll withholding **22, 24**

Nonqualified plan **19, 20, 21, 53**

Optional exclusions

Section 218 coverage **3, 5, 7, 38, 39, 42, 43, 44, 50, 77, 80, 94, 95**

Parallel Social Security Office (PSSO) **76**

Part-time employees **30, 31, 32, 34, 35, 43, 44, 54, 56, 57, 59, 65, 99, 100, 103**

Penalties **17, 25, 26, 36, 37, 66, 68, 88, 95, 96**

information reporting **26, 66, 68**

trust fund recovery penalty **26**

Pick-up contributions **19**

Police officers social security coverage **1, 2, 17, 27, 41, 46, 47**

Prisoners. See Inmates **27, 42, 44, 45, 50, 92**

Public Officials **33, 34, 43, 45, 46, 48, 79**

Public retirement system **i, 2, 3, 4, 5, 6, 7, 11, 14, 22, 27, 28, 38, 40, 42, 43, 44, 46, 47, 49, 50, 51,**

**53, 54, 56, 58, 59, 62, 78, 79, 80**

alternative lookback rule **57, 78**

definition **53**

qualified participant **3, 11, 27, 43, 46, 50, 53, 54, 55, 56, 57, 58, 59, 78, 80, 104**

Qualified participant retirement plan **11, 31, 51, 53, 54, 55, 56, 57, 58, 59, 78, 80**

Qualified retirement plan income tax withholding **11, 19**

Referendum (Social Security coverage)  
divided system **7, 11, 40, 41, 46, 47, 76, 80**

majority vote **11, 40, 41, 47**

Regional Commissioner SSA **60**

Rehired annuitants **58, 59**

Reimbursements business expenses **18, 29, 30, 34, 35, 37, 47**

Required exclusions **42, 50, 80**

Section 218 coverage **42, 80**

Retirement plans **19, 22, 65, 71, 72, 74**

Retirement system coverage group **39, 40, 41, 43, 44, 47, 78, 80**

Retirement system. See Public retirement system **38, 39, 40, 42, 80**

Seasonal employees **31, 32, 43, 54, 56, 57, 59, 103, 104**

Section 115 Internal Revenue Code **9, 13, 79**

Section 218 Agreement **i, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 19, 23, 27, 28, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56, 57, 58, 59, 60, 65, 70, 72, 74, 75, 76, 77, 78, 79, 80, 81, 92, 96, 101, 103**

modification(s) **3, 6, 7, 38, 39, 41, 42, 43, 45, 46, 47, 52, 60, 70, 76, 78, 79**

required exclusions **41, 42, 50, 80**

Section 403(b) plan **19, 22, 31, 54, 73**

Section 457 plan **19, 20, 22, 53, 54, 104**

Section 530 (Revenue Act of 1978) **i, 36, 37, 73, 83, 86, 87, 88**

Sick pay **16, 54**

Social security

benefits **6, 17, 20, 61, 62, 63, 66, 67, 70, 79, 81**

coverage **1, 2, 3, 6, 7, 13, 14, 17, 19, 27, 28, 38, 41, 42, 43, 44, 45, 47, 48, 50,**

**53, 55, 56, 57, 58, 60, 63, 65, 72, 74, 75, 76, 77, 79, 92, 94, 95**

earnings record **6, 7, 17, 52, 61, 69, 70, 78, 81**

exclusions **3, 5, 27, 34, 35, 38, 42, 43, 44, 45, 46, 47, 50, 51, 69, 77, 79, 80** key dates **2**

optional exclusions **3, 5, 38, 42, 44, 50, 80**

Social Security Administration **i, 6, 14, 17, 20, 45, 60, 65, 66, 69, 73, 80, 94, 95**

Social Security and Medicare wages defined **14**

Social Security coverage exclusions **42, 43, 44, 45, 46, 50**

Social Security number **7, 61, 66, 67, 68, 69, 81**

Social Security number verification service **66, 67, 69**

Social Security Statement **66, 67, 70, 80**

Social Security wage base **14, 21, 22, 35, 54, 61, 68, 69, 81, 94**

Soil conservation district **11**



State Social Security Administrator **2, 3, 5, 6, 7, 8, 10, 28, 33, 38, 41, 46, 48, 50, 51, 52, 56, 60, 70, 72, 74, 75, 76, 77, 79, 81**

Tax sheltered annuity **19, 73**

Temporary employees **56, 59, 103**

Temporary workers **32, 35, 59**

Third-party sick pay **16**

Trust fund recovery penalty **26**

Vacation pay **16, 29**

Vesting requirements **55, 56, 57, 59**

Voluntary Medicare **50, 52**

Volunteer firefighters **34, 35**

Wages deceased employee **16, 17, 68**

noncash **17, 21, 38**

Water conservation district **10, 11**

Wholly-owned instrumentality **10, 11, 12, 13, 78, 81, 90, 92, 101**

Withholding qualified plans **19**

Withholding income tax **13, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 33, 35, 36, 37, 73, 86, 87, 92**

Worker classification **6, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 73**