# REPORT

## FEDERAL SECTION 218 TASK FORCE FOR MISSOURI SCHOOL DISTRICTS

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# REPORT

## FEDERAL SECTION 218 TASK FORCE FOR MISSOURI SCHOOL DISTRICTS

## EXECUTIVE SUMMARY

This report presents the results of the Federal Section 218 Task Force for Missouri School Districts' (Task Force) review of the Social Security coverage issues in the Missouri Public School Districts. The Task Force was led by the Kansas City Regional Commissioner for the Social Security Administration (SSA) and included representatives from the Internal Revenue Service (IRS), Missouri Office of Administration/Division of Accounting, and the Missouri Public School Retirement System (PSRS)/Public Education Employee Retirement System (PEERS). The objectives of the Task Force were to compile relevant information, determine the proper application of the 1951 Missouri Section 218 Agreement and subsequent coverage modifications, and to develop a process for evaluating which positions in the Missouri public schools are subject to Social Security coverage. To accomplish these objectives, the Task Force met regularly to research and review Federal and state law and applicable Social Security policy. The Task Force also met with outside organizations, including educational associations, which were able to provide needed information or assistance. As a result of this review, the Task Force recommended that the determinations of Social Security coverage should be implemented beginning July 1, 2010. Those recommendations were accepted by SSA and IRS.

Based upon an exhaustive review of all relevant information, the Task Force determined that some school district employees were improperly considered as being covered or not covered by Social Security. These coverage misconceptions could not be attributed to any one cause. Section 218 issues are complex and in Missouri, several statutory changes to either expand coverage of a retirement system or provide an employee the option to choose between two retirement systems resulted in even greater complexity. The Task Force discovered that there are employees covered by PSRS who are also covered by Social Security but are not paying Social Security taxes. There are also employees in some school districts erroneously paying Social Security taxes because the school districts did not follow the required statutory process to request Social Security coverage for these employees.

To determine the positions covered by Social Security in the Missouri school districts, the Task Force grouped the school districts into four distinct categories:

- Category 1 – includes 478 school districts
- Category 2 – includes 33 school districts
- Category 3 – includes 3 school districts
- Category 4 – includes 1 school district

These categories are based upon dates that were instrumental in making the Social Security coverage determinations for the school districts as set forth in Exhibit 3. There is a fifth category to cover a request for Social Security coverage for a school district in the future.

In all of these categories, a full-time "teacher" who both has a **license to teach** and is in a **position that Missouri law requires to have a license to teach**, is excluded from Social Security coverage. A teacher includes the positions of teacher, teacher-secretary, substitute teacher, supervisor, supervising principal, principal, superintendent or assistant superintendent, nurse, and librarian. In Categories 3 and 4, due to a change in Missouri law in 1984, full-time employees who have a license to teach are excluded from Social Security coverage regardless of the position held. This change does not apply to employees in Categories 1 and 2 because the school districts in those categories executed coverage modifications before that change in Missouri law and under Federal law, Social Security coverage cannot be terminated after April 1983.

Teachers working less than full-time (part-time teachers) in Categories 2, 3, and 4 are covered by Social Security. In Category 1, however, there is a unique coverage issue involving part-time teachers. The part-time teachers in this category were covered by Social Security, under various authorities, until July 1, 2000. Following that date, there was no federal law or coverage modification to provide Social Security coverage for the part-time teachers who were in the PEERS retirement system; however, these part-time teachers have continued to pay Social Security taxes since July 1, 2000, without a coverage modification. To correct this situation, each school district will have to hold a referendum if Social Security coverage is to continue.

In summary, beginning July 2000, most, if not all, part-time teachers in Category 1 school districts who are members of PEERS have paid into Social Security erroneously because the school district did not execute an approved coverage modification. It is reasonable to assume that these employees would prefer to continue their Social Security coverage. Continued Social Security coverage is not possible in any of these school districts unless a referendum to do so is passed or unless there is federal legislation that would resolve the coverage problem. Because these employees have been paying Social Security taxes and most likely relying on this coverage, we believe that it is reasonable to assume that they would prefer to have this coverage and that they would be disadvantaged if a referendum did not pass. In contrast, there are some employees in every school district who have not paid Social Security taxes but should have. These employees should be paying Social Security taxes because, under the school district's coverage modification, they are legally covered by Social Security.

The Social Security coverage determinations made by the SSA will be implemented on July 1, 2010. On that date, some employees will begin paying Social Security tax while others will stop paying the tax. To prepare for the changes, the Task Force will meet and devise a plan for implementation including communication with the Missouri school districts and their employees. Continued communication and cooperation should ensure smooth implementation and future compliance. While implementation falls mainly to the State, both SSA and IRS have pledged to provide support as appropriate.

## LEGISLATIVE BACKGROUND

### FEDERAL LEGISLATION

***VOLUNTARY SECTION 218 AGREEMENTS.*** State and local government employees were excluded from Social Security coverage when the Social Security Act was enacted in 1935. Pursuant to the Social Security Amendments of 1950, Section 218 was added to the Social Security Act in recognition of the fact that many state and local government employees were not covered by a retirement system. Section 218 allowed states to enter into voluntary agreements with the Federal government to provide Social Security coverage to those state and local government employees who were not covered by a retirement system. The voluntary agreements are called Section 218 Agreements[1]. All states have executed Section 218 Agreements that vary from state to state.

***SOCIAL SECURITY AMENDMENTS OF 1954 – SOCIAL SECURITY COVERAGE EXTENDED TO STATE AND LOCAL GOVERNMENT EMPLOYEES COVERED BY A PUBLIC RETIREMENT SYSTEM.*** The Social Security Amendments of 1954 allowed states to extend Social Security coverage to state and local government employees who were members of public retirement systems (except police officers and firefighters) if the coverage was authorized by the state and approved through a voluntary coverage referendum.

***SOCIAL SECURITY AMENDMENTS OF 1983 – SOCIAL SECURITY COVERAGE CANNOT BE TERMINATED.*** In 1981, Congress and the President appointed The National Commission on Social Security Reform. The Commission's report, issued in January 1983, became the basis for the 1983 Social Security Amendments which resolved the short-term financing problem and made many other significant changes in Social Security law. One of those changes was the rescission of the Social Security Act provision that allowed states to terminate Social Security coverage for employees covered under the state's Section 218 Agreement. Beginning April 20, 1983, states were no longer allowed to terminate Social Security coverage for such employees.

***OMNIBUS BUDGET RECONCILIATION ACT OF 1990 – MANDATORY SOCIAL SECURITY COVERAGE.*** Section 11332 of Public Law No. 101-508 amended the Social Security Act to require Social Security coverage for state and local government employees who were not members of a Social Security equivalent public retirement system as defined in the Internal Revenue Code or who were not covered under a Section 218 Agreement. The amendment was effective July 2, 1991, and is commonly called Mandatory Social Security Coverage. Pursuant to IRS Reg. Sec. 31.3121(b)(7)-2(e)(2), a pension, annuity, or retirement fund is a retirement system with respect to an employee if it provides a retirement benefit to the employee that is comparable to the benefit provided under the Old-Age portion of the Old-Age, Survivor and Disability Insurance program of Social Security - otherwise known as a Social Security Equivalent Retirement System.

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[1] For the definition of terms used in this report see Exhibit 1.

## STATE OF MISSOURI LEGISLATION

### *1951 – VOLUNTARY SECTION 218 AGREEMENT*

Effective January 1, 1951, the State of Missouri entered into a Section 218 Agreement, providing Social Security coverage to state employees who were not otherwise covered by an existing retirement system. Coverage was provided to political subdivisions, such as school districts, when the state, on behalf of a political subdivision, executed a coverage modification.

When Missouri entered into its Section 218 Agreement, the only existing retirement system was the Missouri Public School Retirement System (PSRS)[2] which was established pursuant to the Public School Retirement Act of Missouri effective July 1, 1946. The positions covered by the PSRS were identified by statute and from 1951 until 1984, only "teachers" "duly certificated under the laws governing the certification of teachers"[3] and working full-time could be members of PSRS. "Teacher" was defined to include the following ten positions: teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent, assistant superintendent, nurse,[4] and librarian.

### *1965 – ESTABLISHMENT OF NON-TEACHER RETIREMENT SYSTEM*

On November 1, 1965, an important change occurred in the pension environment, when the Non-Teacher School Retirement System of Missouri was created to cover all school district employees working 20 hours or more per week who were not covered by PSRS. The name of the non-teacher retirement system was changed to the Public Education Employee Retirement System (PEERS)[5] in August 2005.

### *1984 – EXPANSION OF PSRS MEMBERSHIP*

The Missouri legislature expanded the group of employees who could be members of PSRS effective August 13, 1984. Beginning on this date, PSRS covered any full-time school district employee holding a license to teach, regardless of the position held. For example, a bus driver holding a license to teach would be covered by PSRS, whereas previously only an employee holding a license to teach in one of the ten positions listed above was eligible for membership.

### *1991 – EXPANSION OF PSRS MEMBERSHIP AND OPTION PROVIDED*

Effective August 29, 1991, Missouri law was amended to expand PSRS eligibility further to cover employees with a license to teach working 20 or more hours per week but less than full-time, regardless of the position held. At this time, the law was also amended to allow employees with a license to teach occupying a position which would otherwise qualify for membership in PEERS to

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[2] Both the Kansas City Public Schools and the St. Louis Public Schools have separate retirement systems. Those retirement systems are not at issue.

[3] The requirement that a teacher be certified to teach will be referred to in this report as a license to teach.

[4] To be a member of PSRS, a nurse must have a license to teach but a license to teach is not required to work in the Missouri public school districts in the nurse position.

[5] The non-teacher retirement system will be referred to as PEERS for the remainder of this report.

have the option of becoming a member of PSRS if the employee elected that option within 90 days. These employees were automatically put in PEERS with the option to elect membership in PSRS.

### *1997 - OPTION PROVIDED*

The Missouri legislature amended the law in 1997 to provide that any employee with a license to teach, after August 28, 1997, who occupied a position that would otherwise qualify for membership in PEERS, would be a member of PSRS. These employees were given the option of electing membership in PEERS within 90 days.

### *2003 – EXPANSION OF PSRS MEMBERSHIP AND OPTION PROVIDED*

The most recent change to PSRS eligibility requirements occurred on August 28, 2003, when the legislature expanded coverage to employees with a license to teach working at least 17 hours, but less than 20 hours per week. In addition, the law provided that an employee with a license to teach who, on or after August 28, 2003, was employed by a public school for at least 17 hours but less than 20 hours per week was a member of PSRS but had the option of electing membership in PEERS within 90 days.

## RESULTING SOCIAL SECURITY COVERAGE ISSUES

Political subdivisions, including school districts, wanting to extend Social Security coverage to their employees had to execute coverage modifications on an entity-by-entity basis. From 1951 until 1965 when PEERS coverage began, 478 school districts executed coverage modifications and the Social Security coverage provided in those modifications could not be terminated after April 20, 1983. From 1965 until 1984, when the law changed to expand PSRS coverage to all employees holding a license to teach regardless of the position held, 33 additional school districts executed coverage modifications. From the research conducted by the Task Force, it appears that the expansion of PSRS membership in 1984 marks the time when erroneous terminations of Social Security contributions[6] began. The erroneous continuation of Social Security coverage and payment of taxes for employees in some school districts began in July 2000 when PEERS became a Social Security Equivalent Retirement System.

Why did school district employees stop paying Social Security taxes, not pay Social Security taxes at all, or in some school districts pay Social Security taxes when they should not? Nothing the Task Force reviewed directly answers those questions. Section 218 issues are exceedingly complex and, as best can be determined, these actions resulted from a misunderstanding about the consequences of the state law changes, a lack of understanding of Social Security coverage issues, and a lack of communication.

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[6] In Missouri, the Social Security and Medicare taxes are remitted as one contribution. To avoid misunderstanding, the Federal Insurance Contribution Act payment will be referred to as a Social Security contribution or tax.

## FEDERAL SECTION 218 TASK FORCE FOR MISSOURI SCHOOL DISTRICTS

### MISSION OF THE TASK FORCE

In recognition of the complexity of the Social Security coverage issues in the Missouri public school districts (excluding charter schools), the Section 218 Task Force for Missouri School Districts was formed and led by the Kansas City Regional Commissioner for SSA. Other members of the Task Force included the SSA Regional Chief Counsel, the IRS Midwest Area Manager and a member of his staff, the Director[7] and Assistant Director, Missouri Office of Administration/Division of Accounting, the General Counsel of PSRS/PEERS, and staff of the Regional Commissioner and the Deputy Commissioner for Retirement and Disability Policy, SSA.

The Task Force was organized to determine the proper application of the Missouri Section 218 Agreement and subsequent coverage modifications. Once this was done, the Task Force was charged with developing a process to evaluate which positions in the Missouri public schools were subject to Social Security coverage. To accomplish these goals, the Task Force met regularly to research and review Federal and state law and applicable Social Security policy. As outlined below, the Task Force also met with outside organizations that were able to provide needed information or assistance.

*December 2008 Meeting – Initial Fact Finding of State and Federal Agencies*

Representatives from the SSA, the IRS, and the Missouri Office of Administration, met from December 16, 2008, to December 18, 2008. The purpose of this initial meeting was to provide the representatives of the State of Missouri and Federal agencies who had been directly involved in the Missouri 218 issue the opportunity to meet to discuss the history of the Social Security coverage issues in Missouri, to identify the existing issues and concerns, and to determine what additional information might be needed to make informed determinations.

At this initial meeting, representatives of the Missouri Department of Elementary and Secondary Education (DESE) were invited to give a briefing on the information it gathers from Missouri school districts and its process for certifying teachers[8]. The DESE representatives explained the DESE Core Data System which is a critical data source for determining position classification. This system is used consistently across the State of Missouri.

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[7] The Director, Office of Administration, Division of Accounting, serves as the Missouri State Social Security Administrator (MSSSA).

[8] DESE advised the Task Force that the granting of teaching certificates was vested in the State Board of Education and DESE in the Missouri Constitution of 1945 and that a teaching certificate has been a requirement to hold a teaching position since 1939.

According to DESE, school districts submit information which includes the position code for the employee based upon the duties of the employee. The following is a list of the positions, along with the corresponding position code, reflected in DESE's Core Data System:

10-Central Office Administration
20-Building Principals
30-Supervisors
40-Media Personnel
50-Guidance Personnel/Placement Specialists
60-Teachers
70-Other Pupil Service Personnel
80-Aides
90-Ancillary Personnel

DESE explained that the school district position codes 10 through 60 require a license to teach. This information will be used by school districts to identify those positions covered by Social Security. If the employee is a member of PSRS and working full-time under these position codes, the school district would know that the employee does not pay Social Security taxes. For specific assignments identified under position code 70, if the assignment requires a license to teach and the teacher is working full-time on that assignment, the teacher would not pay Social Security taxes. Generally, the assignments identified under position codes 80 and 90 do not require a license to teach and are covered by Social Security.

According to DESE, "classified" positions are positions other than those identified in codes 10 through 90. These positions are reported to DESE by the school districts but do not have a course code and do not require a license to teach. The classified positions include Secretary, Maintenance Worker, Custodian, Bus Driver, and Food Service Worker. These positions may, or may not, be covered by Social Security.

*January 2009 Meeting – Continued Fact Finding*

The Task Force met from January 14, 2009, to January 16, 2009. This meeting was an opportunity to discuss in detail the legislative and regulatory history relating to Section 218 coverage in Missouri. This discussion provided Task Force members with a strong foundational understanding of both the Social Security coverage issues and at what point in time the coverage deviations occurred. The Task Force also discussed the Core Data System maintained by DESE and agreed that this system and the categorization of positions by DESE provided the bright line needed to resolve many of the Social Security coverage issues in Missouri.

To determine the technological implications of changing payroll systems to reflect proper Social Security coverage, Software Technology Incorporated (STI) was invited to meet with the Task Force. STI is a software provider that handles the payroll system for 327 school districts and 22,478 PSRS members. According to the STI representative, STI software will not require programming changes to implement the coverage determinations. The Task Force also identified the software providers for the other school districts.

Following the January meeting, Task Force members continued to analyze the Social Security coverage issues and developed a spread sheet to reflect the proper coverage determination for

school district employees. Other software providers were contacted, after the January meeting, to discuss the programming implications. The research revealed that approximately 67% of the districts could implement the coverage determinations with no programming changes to payroll systems, while 28% would require programming changes before implementation. The impact on the other 5% of school districts is unknown at this time – we expect that the payroll system for these districts is either unique to that district or manual. Overall, we found no indication that the payroll system conversions would preclude implementation on July 1, 2010.

*February 2009 Meeting with Educational Associations*

The Task Force met on February 5, 2009, in the PSRS boardroom in Jefferson City, Missouri, with representatives of Missouri Educational Associations[9]. This meeting was an opportunity to both provide information on the work of the Task Force and to address concerns and questions from the Associations. After providing the historical context of the Missouri 218 issue and explaining how and why the Social Security coverage determinations will be made by the SSA, the Regional Commissioner confirmed that the effective date for implementation of the coverage determinations would be July 1, 2010. He also clarified that for purposes of Social Security coverage, a "teaching" position is any position that under state law, requires a license to teach. Full-time teaching positions are not covered by Social Security[10]. These two announcements alleviated major concerns of the Associations' representatives.

On February 11, 2009, SSA and IRS briefed staff members of the House Ways and Means Subcommittee on Social Security, concerning the Section 218 issue in Missouri. The Task Force also continued to work on the details of the Social Security coverage determinations.

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[9] See Exhibit 2 for a list of the Educational Association attendees.

[10] The Social Security coverage for full-time educators is discussed more fully later in the report.

## FINDINGS OF THE FEDERAL SECTION 218 TASK FORCE ON MISSOURI SCHOOL DISTRICTS

The question of Social Security coverage for Missouri Public School Districts is a complex one. Since Missouri requested voluntary Social Security coverage in 1951, much has changed in the federal and state statutory scheme. As a result, the Task Force focused on several important dates that would be instrumental in making the Social Security coverage determinations. By pinpointing those dates, the Task Force was able to group the school districts into five distinct categories because the Social Security coverage determinations were common to all school districts in the given category. See Exhibit 3.

### THE FIVE DISTINCT CATEGORIES

**Category 1** begins on January 1, 1951, the effective date of Missouri's Section 218 Agreement, and ends on October 31, 1965. During this period, 478 school districts executed coverage modifications to request Social Security coverage for their employees who were not covered by an existing retirement system (this is called the absolute coverage group and is defined in Exhibit 1) or who were not eligible for coverage by PSRS due to a personal disqualification[11] (known as PSRS ineligibles). The school districts in Category 1 have never executed coverage modifications for PEERS. Positions covered as part of a state's absolute coverage group continued to be covered for Social Security even if the position was later included under a state retirement system. PSRS ineligibles are covered by Social Security until they become eligible for membership in PSRS.

**Category 2** begins on November 1, 1965, with the creation of the Non-Teacher School Retirement System of Missouri (name later changed to PEERS) and ends on August 12, 1984. Thirty-three school districts requested Social Security coverage during this period by executing PSRS ineligible or PEERS coverage modifications. It is important to note that during the Category 2 period, the Social Security Act was amended to provide that coverage under a Section 218 Agreement (and any executed coverage modifications) could not be terminated on or after April 20, 1983.

**Category 3** begins on August 13, 1984, and ends on August 28, 1991. On August 13, 1984, the General Assembly of Missouri changed the existing law to extend PSRS coverage to any full-time school district employee holding a license to teach regardless of the position held by the employee. Three school districts executed coverage modifications during this period to extend coverage to PEERS members, PEERS optionals and PEERS ineligibles. Mandatory Social Security was effective July 2, 1991. During this period, PSRS was a Social Security Equivalent Retirement System but PEERS was not.

**Category 4** begins on August 29, 1991, and ends on August 27, 2003. In 1991, Missouri statutes were amended to allow PSRS to cover employees working 20 or more hours per week but less than full-time and who held a license to teach. There is only one school district in Category 4 and that district executed coverage modifications during this period to extend Social Security coverage to

[11] A personal disqualification for membership in a retirement system could be age, hours of work, or length of service.

PEERS members, PEERS optionals and PEERS ineligibles. PEERS became a Social Security Equivalent Retirement System on July 1, 2000.

**Category 5** begins on August 28, 2003, when Missouri law was amended to allow PSRS coverage for employees working at least 17 hours per week who held a license to teach. At present, there are no school districts in Category 5 because none have executed coverage modifications after August 28, 2003. When a school district(s) executes a coverage modification after August 28, 2003, the Social Security coverage determinations will be made based upon the executed coverage modification and the law at the time of the modification.

As discussed below, the research conducted by the Task Force enabled the SSA to address Social Security coverage issues for the Missouri Public Schools and make the appropriate Social Security coverage determinations. The impact of those determinations will be based upon individual circumstances and cannot be fully known until the school districts review their payroll systems. For those employees who have not been paying Social Security but should, beginning July 1, 2010, PSRS/PEERS will provide information for members regarding the appropriate calculation of benefits. See Exhibit 5.

## CATEGORY 1 – POSITIONS THAT ARE COVERED BY SOCIAL SECURITY

The majority of Missouri School Districts requesting Social Security fall into Category 1. Category 1 begins on January 1, 1951, the effective date of the Missouri Section 218 Agreement and ends on October 31, 1965. It is important to remember that for a school district in this category, at the time the school district coverage modifications were executed, PSRS only covered "teachers" with a license to teach and under then existing Missouri law, "teacher" meant 10 specifically identified positions. Because of the coverage modifications executed by these school districts, employees with a license to teach working less than full-time in one of the statutorily defined "teacher" positions were covered by Social Security as "PSRS" ineligibles until they became eligible for membership in PSRS. At that time, Social Security coverage ceased. All other positions were included in the Section 218 absolute coverage group and are covered by Social Security even if the position is later covered by a retirement system.

For example, a bus driver is part of the absolute coverage group and covered by Social Security. In 1984, PSRS covered all employees with a license to teach without regard to the position held by the employee. It is possible that a bus driver in a Category 1 school district has a license to teach. When PSRS coverage expanded in 1984, the bus driver could be a member of PSRS but because the position of bus driver is part of the absolute coverage group, the position remains covered for purposes of Social Security even though the employee may be a member of PSRS. As a result, the bus driver may be a member of PSRS but must continue to pay Social Security taxes.

As explained earlier, beginning in 1991, the Missouri law was changed to provide employees with a license to teach who were working 17 or more hours per week but less than full-time, the option to elect membership in PEERS or PSRS. These employees are called PEERS/PSRS optionals. The employees who elected PSRS stopped paying Social Security taxes because, when the State law changed, they were no longer PSRS ineligibles. Those who elected or stayed in PEERS were covered by Social Security, under various authorities, until July 1, 2000, when PEERS became a Social Security Equivalent Retirement System. Beginning July 1, 2000, the optionals were no longer covered by Social Security because the Category 1 school districts have not executed a coverage

modification for PEERS as a retirement system group. Therefore, since July 1, 2000, Category 1 PEERS/PSRS optionals are excluded from Social Security coverage.

In Category 1 school districts, all employees are covered by Social Security except:

- A full-time employee or part-time PSRS/PEERS optional with a license to teach, who is
- A PSRS member, and who is
- Working in one of the 10 statutorily identified PSRS positions of teacher[12], teacher-secretary, substitute teacher, supervisor, supervising principal, principal, superintendent or assistant superintendent, nurse, or librarian.

### *EXTRA DUTIES OR POSITION*[13]

If a school district employee occupies a position excluded from Social Security coverage, then any compensation received by the employee for extra duties performed while in that position, will be excluded from Social Security coverage. If the employee occupies any additional positions with the same employer, compensation received for the additional positions will be excluded from Social Security coverage. For example, if the full-time speech teacher is the drama club sponsor and receives a stipend for sponsoring the drama club, then the stipend is not Social Security covered earnings. Or, if the full-time math teacher also coaches the freshman cross-country team after school and receives a stipend, the stipend will not be Social Security covered earnings. Conversely, if the employee occupies a position covered by Social Security, then any compensation received by the employee for extra duties performed while in that position, or for any additional positions occupied by the employee with the same employer, that compensation will be covered by Social Security.

## CATEGORY 2 – POSITIONS COVERED BY SOCIAL SECURITY

Category 2 covers the period of November 1, 1965, through August 12, 1984. The beginning date of November 1, 1965, is the date that PEERS began to cover all school district employees working 20 hours or more per week who were not covered by PSRS. When the Category 2 school districts executed coverage modifications, PSRS only covered "teachers" with a license to teach. Under the existing Missouri law, "teacher" meant the 10 positions specifically identified in the statute. Category 2 school districts also executed coverage modifications to cover PEERS and PSRS ineligibles. As a result, all employees of the Category 2 school districts are covered by Social Security except:

- A full-time employee with a license to teach, who is
- A PSRS member, and who is
- Working in one of the 10 statutorily identified PSRS positions of teacher, teacher-secretary, substitute teacher, supervisor, supervising principal, principal, superintendent or assistant superintendent, nurse, or librarian.

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[12] The position of counselor is considered a "teacher" under the statute.

[13] For purposes of determining Social Security coverage, extra duties and/or positions may include: career ladder, club/organization sponsorships, coaching, pre-school screening, staff/curriculum development workshops, tutoring before/after school, and student detention.

The less than full-time PSRS/PEERS optionals are excluded from Social Security in Category 1 school districts but not in Category 2 school districts because the Category 2 school districts executed coverage modifications to cover PEERS. As a result, coverage was voluntarily extended to the PEERS retirement system coverage group. The PEERS retirement system coverage group consists of positions under that retirement system. A position is under the retirement system if any individual who occupies the position may become a member of the retirement system by virtue of his occupancy of the position.

Beginning in 1991, part-time employees holding a license to teach were given the option to elect coverage in either PEERS or PSRS. For purposes of Social Security coverage, those employees are, without regard to their election, in a position under the PEERS retirement system and covered by Social Security.

### *EXTRA DUTIES OR POSITION*

The Social Security coverage determinations for extra duties and position in Category 2 are the same as those for Category 1.

## CATEGORY 3 – POSITIONS COVERED BY SOCIAL SECURITY

Category 3 begins on August 13, 1984, when the Missouri law was changed to allow any full-time school district employee holding a license to teach to be a member of PSRS without regard to the position held. It ends on August 27, 1991. Only three school districts executed coverage modifications during this period. All employees of these three school districts are covered by Social Security except:

- A full-time employee with a license to teach, who is
- A PSRS member

With the 1984 change in Missouri law, no longer was coverage by PSRS tied to the statutorily defined 10 "teaching" positions. As a result, as long as the employee held a license to teach, the position the employee occupied was excluded from Social Security coverage. The 511 school districts in Category 1 and 2 are not affected by this statutory change because in 1983, the Social Security Act was amended to prohibit the termination of Social Security coverage. As a result, full-time employees with a license to teach in non-teaching positions will pay Social Security taxes in Category 1 and 2 but will not in Category 3, 4, or 5.

Beginning in 1991, part-time employees holding a license to teach and who were working 17 or more hours per week, were given the option to elect coverage in either PEERS or PSRS. For purposes of Social Security coverage, those employees are, without regard to their election, in a position under the PEERS retirement system and covered by Social Security.

### *EXTRA DUTIES OR POSITION*

If a school district employee works full-time and occupies a position excluded from Social Security coverage, any compensation received for extra duties or for other positions held with the same employer will be excluded from Social Security. If the employee works less than full-time, any

compensation received for extra duties or for other positions held with the same employer will be covered by Social Security because the part-time position is covered by Social Security.

## CATEGORY 4 – POSITIONS COVERED BY SOCIAL SECURITY

Category 4 begins on August 29, 1991, when the Missouri law was changed to allow any school district employee working at least 20 hours per week, and holding a license to teach to be a member of PSRS without regard to the position held. It ends on August 27, 2003. There is only one school district that executed a coverage modification during this period. All employees of this school district are covered by Social Security except:

- A full-time employee with a license to teach, who is
- A PSRS member

Like in Category 3, as long as a school district employee holds a license to teach and is working full-time, the position the employee occupies is excluded from Social Security coverage. The same does not hold true for the employee working less than full-time. Beginning in 1991, part-time employees holding a license to teach were given the option to elect coverage in either PEERS or PSRS. For purposes of Social Security coverage, those employees are, without regard to their election, in a position under the PEERS retirement system and covered by Social Security.

### *EXTRA DUTIES OR POSITION*

The Social Security coverage determinations for extra duties and position in Category 4 are the same as those for Category 3.

## SUMMARY

Once the Missouri school districts identify the employees affected by the SSA's coverage determinations, there will be employees who are dissatisfied with the change in coverage and believe they are adversely affected. Some employees will have to pay Social Security taxes when they have never done so before. Other employees will have to stop paying the Social Security taxes they have been paying for a few if not many years. Generally, the greatest impact will be on part-time employees because in almost all circumstances, full-time "teachers" are excluded from Social Security coverage. We will not know the extent of the impact until the school districts implement the Social Security coverage determinations.

## IMPLEMENTATION AND COMPLIANCE

### IMPLEMENTATION

With the assistance of the information provided by the Task Force, SSA has made the requisite Social Security coverage determinations for the Missouri Public School Districts. These changes will be implemented by the Missouri school districts on July 1, 2010, absent any federal legislative change.

Following this report, the Task Force will meet to devise a plan to ensure that the Social Security coverage determinations made by the SSA are implemented on July 1, 2010. Teachers will sign their contracts sometime in early 2010; therefore, the goal is to have the coverage determinations communicated to all school districts and employees before that time so that informed employment decisions may be made. It is anticipated that the MSSSA and the Assistant Director, Office of Administration/Division of Accounting, will be primarily responsible for communicating with school districts and employees to provide needed education and outreach. PSRS and other stakeholders will also have a role to play in implementation. SSA's Kansas City Regional Office will provide support as appropriate.

### COMPLIANCE

Future Section 218 compliance in Missouri is contingent upon continued cooperation and communication. The Task Force members and their respective agencies have committed to both. For example, the Missouri Office of Administration, through the MSSSA, will actively communicate and provide technical support to the school districts. The MSSSA will also work closely with DESE so that school district employees are correctly classified to ensure proper Social Security coverage. PSRS/PEERS and the MSSSA also will work closely together to determine the Social Security coverage implications of any proposed changes to the existing retirement systems. The IRS also will be involved in future compliance efforts in the State of Missouri through the Federal State & Local Governments Group (FSLG). SSA will maintain the strong working relationship developed with the MSSSA over the past few years to address coverage issues and provide coverage determinations. SSA also will provide Section 218 Training to SSA field office personnel and IRS FSLG field specialists to ensure that consistent and technically accurate assistance is provided to the school districts.

## EXHIBIT 1 - DEFINITIONS

**Section 218 Agreement**: A legal document reflecting the voluntary agreement between a state and the Federal government to provide Social Security coverage to state and local government employees. Section 218 was added to the Social Security Act in 1950 pursuant to Public Law No. 81-374.

A Section 218 Agreement covers positions, not individuals. If the position is covered for Social Security, then the employee filling the position is subject to Social Security and Medicare taxes.

**Content**: Includes the provisions, definitions, and conditions for Social Security coverage under the agreement. The agreement must specify the date on which it is effective. The original agreement should have an appendix that identifies the political subdivisions or coverage groups being covered, and the extent of the coverage.

**Coverage Modification**: Any amendment to a Section 218 Agreement is made by modification to the agreement. A modification may extend coverage to additional groups of employees or alter the agreement in some other respect. 20 C.F.R. § 404.1202(b). A modification may include additional coverage groups, correct errors in other modifications, identify additional political subdivisions that join a covered retirement system, or obtain Medicare coverage for public employees whose employment relationship with a public employer has been continuous since March 31, 1986. A modification cannot terminate Social Security coverage.

**Coverage Group**: A grouping by which employees are covered under a Section 218 Agreement. 20 C.F.R. § 404.1202(b). There are two basic coverage groups: (1) absolute coverage groups, and (2) retirement system coverage groups.

**Absolute Coverage Group**: A permanent grouping of employees whose positions are not under a retirement system. 20 C.F.R. § 404.1205(a). Coverage for this group is obtained under section 218 (b)(5) and (c)(1) of the Social Security Act. So far as Federal law is concerned, a state may provide coverage under its agreement for employees who are not in positions under a retirement system without regard to the desires of the employees individually or as a group. These positions remain covered under Social Security even if the positions are later covered by a retirement system group.

**Retirement System Coverage Group:** Congress authorized the coverage of employees under a retirement system in the 1954 Social Security Amendments. To cover these employees, the state must determine by referendum if the employees want the coverage. 20 C.F.R. § 404.1206(b). After a favorable referendum, the employees under the retirement system may be covered by an agreement or a modification to the agreement. The group of employees is called a retirement system coverage group and exists only for Social Security coverage purposes.

A retirement system coverage group consists of current employees (including retirement system ineligibles and optionals), future employees and all other employees in positions

which had been under the retirement system but which were not under the retirement system when the group was covered. 20 C.F.R. § 404.1206(c).

**Missouri Public School Retirement System (PSRS):** A defined benefit plan that provides disability and service retirement benefits to members, and to qualified beneficiaries of deceased members. PSRS was created on July 1, 1946, with the enactment of The Public School Retirement Act. PSRS is a corporate body but changes to the law governing PSRS can be made only by the Missouri Legislature. PSRS covers all Missouri public school districts (except those in the city of St. Louis and Kansas City), all Missouri public two-year colleges, and non-profit educational associations that have elected to join. http://www.psrs-peers.org

**Public Education Employee Retirement System (PEERS):** Formerly known as the Non-Teacher Retirement System, PEERS is a defined benefit plan covering staff of public school districts in Missouri (except those in the cities of St. Louis and Kansas City) who do not have a license to teach, all Missouri public two-year colleges, and non-profit educational associations that have elected to join. Changes to the law governing PEERS can be made only by the Missouri Legislature. http://www.psrs-peers.org PEERS is a retirement system coverage group.

**Ineligibles** – An ineligible is an employee who occupies a position covered by a retirement system, but who is not eligible for membership in that system because of a personal disqualification such as age, physical condition, or length of service. 20 C.F.R. § 404.1208(a). A state may, in its agreement, or by modification, provide Social Security coverage for the services of ineligible employees. 20 C.F.R. § 404.1208(b).

**PSRS Ineligible**: An employee who performs services in a position under PSRS but who is personally ineligible for membership in that retirement system because of personal disqualification such as number of hours worked or length of service.

**PEERS Ineligible**: An employee who performs services in a position under PEERS but who is personally ineligible for membership in that retirement system because of a personal disqualification such as number of hours worked.

**PEERS/PSRS Optionals** – In July 1991, Missouri law allowed employees with a license to teach occupying a position which would otherwise qualify for membership in PEERS to have the option of becoming a member of PSRS if the employee elected that option within 90 days. (S.B. No. 224). These employees were automatically put in PEERS with the option to elect membership in PSRS. The law changed in 1997 (S.B. No. 309), to provide that any employee with a license to teach, after August 29, 1997, who occupied a position that would otherwise qualify for membership in PEERS, would be a member of PSRS. These employees were given the option of electing membership in PEERS within 90 days. In 2003, Missouri law provided that an employee with a license to teach who, on or after August 28, 2003, was employed by a public school for at least 17 hours but less than 20 hours a week was a member of PSRS but had the option of electing membership in PEERS within 90 days. (H.B. No. 346 & 174).

The option to become a member of PEERS beginning in 1991 has Social Security coverage implications. If a majority of the eligible employees in a retirement system, in this case PEERS, vote for coverage, ALL employees in positions in that retirement system have Social Security coverage. 20 C.F.R. § 404.1206(e). The retirement system coverage group – PEERS - includes all current members of the retirement system, the ineligibles and the optionals. Program Operations Manual System (POMS) SL 30001.324. https://secure.ssa.gov/apps10/poms.nsf/aboutpoms Thus, those employees in school districts with modifications to cover PEERS members who are given the option of becoming PEERS members after the applicable date of the modification are covered by PEERS even if the employee chose PSRS. If the employee chose PSRS prior to the applicable date of the modification, the employee remains a PSRS member and is not covered by Social Security. If the employee chose PEERS, even before the applicable date of the modification to cover PEERS, the employee remains a PEERS member and is covered by Social Security. POMS SL 30001.350.B

**Social Security Equivalent Retirement System**: Pursuant to OBRA 1990, P.L. 101-508 section 11332, Social Security coverage became mandatory beginning July 2, 1991, for individuals covered by retirement systems whose benefits were not actuarially equivalent to those provided under the Old-Age portion of the Old-Age, Survivor and Disability Insurance program of Social Security. The requirements for an equivalent public retirement system are found in the Internal Revenue Code. 26 C.F.R. § 31.3121(b)(7)-2(b). PSRS was a Social Security Equivalent Retirement System in 1991. PEERS became a Social Security Equivalent Retirement System on July 1, 2000. See IRS Revenue Ruling 91-40 § 3.01(1) found in Publication 963. http://www.irs.gov/pub/irs-pdf/p963.pdf

## EXHIBIT 2 – EDUCATIONAL ASSOCIATION MEETING ATTENDEES

Jason Hoffman – Missouri Association of School Business Officials (MoASBO)

DeeAnn Aull – Missouri National Education Association (MNEA)

Roger Kurtz – Missouri Association of School Administrators (MASA)

Lee Bunch – Missouri School Counselor Association (MSCA)

Mike Wood – Missouri State Teachers Association (MSTA)

Luana Gifford – American Federation of Teachers (AFT)

Faye Peters - Missouri Association of Elementary School Principals (MAESP)

Ray Patrick – Missouri Association of Rural Education (MARE)

Krista Meyer – Missouri State Teachers Association (MSTA)

Jim Moody – Moody and Associates

Diane Golden – Missouri Council of Administrators of Special Education (MO-CASE)

Kim Moore – Missouri Association of School Psychologists (MASP)

Mike Rand – Missouri School Board Association (MSBA)

Jennifer Bass McGuire – Joint Committee on Public Employee Retirement (JCPER)

Tim King – Missouri Association of Secondary School Principals (MASSP)

Marc Maness – Springfield Public Schools (SPS)

Jim Kreider – Missouri Retired Teachers Association (MRTA)

Daniel Roth – Missouri School Public Relations Association (MOSPRA)

Penney Rector – Missouri Association of School Administrators (MASA)/
Missouri Association of Elementary School Principals (MAESP)

## EXHIBIT 3 – SOCIAL SECURITY COVERAGE

**AT A GLANCE**
**SOCIAL SECURITY COVERAGE ON JULY 1, 2010**

| Position | Category 1 (1/1/51 to 10/31/65) | Category 2 (11/1/65 to 8/12/84) | Category 3 (8/13/84 to 8/27/91) | Category 4 (8/28/91 to 8/27/03) |
|---|---|---|---|---|
| Full-time Teachers* who are PSRS members. Exception: see Critical Shortage Hires and Rehired Annuitants below. | No SS | No SS | No SS | No SS |
| Part-time teachers 20 or more hours per week but less than full-time on a regular basis. | PEERS members paid mandatory SS prior to 7/1/2000, then no SS. PSRS members paid SS until 8/28/91 then no SS. | SS | SS | SS |
| Part-time teachers 17 or more hours but less than 20 hours per week on a regular basis. | Paid SS until 8/28/2003, then no SS | SS | SS | SS |
| Part-time teachers working less than 17 hours per week. | SS | SS | SS | SS |
| Certificated teachers working full-time in non-teaching position. | SS | SS | No SS. When mods executed, positions covered by retirement system (PSRS) | No SS. When mod executed, positions covered by retirement system (PSRS) |
| Certificated teachers working part-time in non-teaching position. | SS | SS | SS | SS |
| Rehired Annuitants** | SS | SS | SS | SS |
| Critical Shortage Hires | SS | SS | SS | SS |
| Non-certificated personnel working in non-teacher positions | SS | SS | SS | SS |

*In Category 1 and 2 school districts a "teacher" is defined by statute and includes the 10 positions of Teacher, Teacher-Secretary, Substitute Teacher, Supervisor, Principal, Supervising Principal, Superintendent, Assistant Superintendent, Nurse, and Librarian.

**Rehired Annuitant is a retired PSRS member who returns to work in a PSRS covered position of no more than 550 hours and earns no more than 50% of the annual compensation payable to the position each school year. The employee pays SS but does not contribute to PSRS. If the employee exceeds 550 hours or the 50% earnings limit, the employee must start a new PSRS membership and at that point, would no longer be covered by SS.

## EXHIBIT 4 – EXAMPLES OF RETIREMENT BENEFITS

Mary is employed by a school district and has been contributing to only PSRS; as of July 1, 2010, she should be contributing to both Social Security and PSRS because the position she holds in the school district is covered by Social Security. Her spouse Joe is an auditor, working for a private employer and his wages have always been Social Security covered. They are the same age and both elect to retire at full retirement age (FRA). There is no age reduction in either of their Social Security benefits. Assume Mary earns $48,000 per year for computation purposes and retires after working for 30 years. Also, assume Joe's Social Security benefit at FRA is $2,000 per month. The following are several illustrations of how Mary's payment of Social Security tax will impact her benefits at retirement.

**Current PSRS Calculation:**

Calculating the Final Average Salary ("FAS") – **Average highest three consecutive annual salaries**. Add up the service credit. For Example: After 30 years of service a member retires.
(Final average salary) x (formula factor in statute) x (years of credit) = (annual benefit)

$48,000 x 0.025 x 30 years = $36,000

Total Annual Benefit = $36,000

**Social Security Coverage Impact on PSRS Beginning July 1, 2010:**

27 years of PSRS only & 3 years of Social Security & PSRS
$48,000 x .025 x 27 years = $32,400.00
$48,000 x .025 x 3 years x 2/3 = $2,400.
Total Annual Benefit = $34,800

20 years of PSRS only & 10 years of Social Security & PSRS
$48,000 x .025 x 20 years = $24,000
$48,000 x .025 x 10years x 2/3 = $8,000
Total Annual PSRS benefit = $32,000

15 years of PSRS only & 15 years of Social Security & PSRS
$48,000 x .025 x 15 years = $18,000
$48,000 x .025 x 15years x 2/3 = $12,000
Total Annual PSRS benefit = $30,000

10 years of PSRS only & 20 years of Social Security & PSRS
$48,000 x .025 x 10 years = $12,000
$48,000 x .025 x 20 years x 2/3 = $16,000
Total Annual PSRS benefit = $28,000

3 years of PSRS only & 27 years of Social Security & PSRS
$48,000 x .025 x 3 years = $3,600
$48,000 x .025 x 27 years x 2/3 = $21,600
Total Annual PSRS benefit = $25,200

0 years of PSRS only & 30 years of Social Security & PSRS
$48,000 x .025 x 30years x 2/3 = $24,000
Total Annual PSRS benefit = $24,000

When Mary has enough Social Security coverage (10 years), she is eligible to receive Social Security retirement benefits. The following chart shows examples of the combined benefit amounts for Mary depending at what point in her career she begins paying Social Security taxes. These benefit amounts are for illustration only. The Social Security benefits were computed using $48,000 per year in wages and the computation for workers born in 1947 who become age 62 in 2009. This computation was used because it is the most current information available for calculating a benefit reduction due to the windfall elimination provision (WEP). WEP applies to retirement (or disability) benefits received by a person, in this case Mary, when Mary also receives a pension from work where Social Security taxes were not taken out of her pay (her PSRS retirement benefit). Government pension offset (GPO) applies to benefits a person receives from a spouse's record as a wife/husband or widow/widower when that person also receives a pension from work where Social Security taxes were not paid. Therefore, Mary may have an offset when she receives a widow's benefit from Joe's record.

| # PSRS Only Years<br><br>Contrib. 13.5% | # Years PSRS & SS<br><br>Contrib. PSRS 9% SS 6.2% | Extra Contrib. Paid<br><br>1.7% | PSRS Benefits per month | SS FRA Gross Amt per month | SS FRA MBA after WEP | **Total** PSRS & SS with WEP per month | Spouses Benefit after GPO per month | Widows Benefit after GPO per month | **Total** PSRS & SS with WEP & Widows with GPO per month |
|---|---|---|---|---|---|---|---|---|---|
| 30 | 0 | 0 | $3,000 | 0 | 0 | $3,000 | 0 | 0 | $3,000 |
| 27 | 3 | $2,448 | $2,900 | 0 | 0 | $2,900 | 0 | $66 | $2,966 |
| 20 | 10 | $8,160 | $2,666 | $796 | $424 | $3,090 | 0 | $1,204 | $4,294 |
| 15 | 15 | $12,240 | $2,500 | $980 | $608 | $3,108 | 0 | $1,020 | $4,128 |
| 10 | 20 | $16,320 | $2,333 | $1,162 | $790 | $3,123 | 0 | $838 | $3,961 |
| 3 | 27 | $22,032 | $2,100 | $1,418 | $1307 | $3,407 | 0 | $582 | $3,989 |
| 0 | 30 | $24,480 | $2,000 | $1,528 | $1,528 | $3,528 | 0 | $472 | $4,000 |