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MEMORANDUM

TO: Missouri School Districts with §218 Agreements
FROM: Vandee DeVore, Assistant Social Security Administrator
DATE: May 15, 2009
RE: Social Security & Medicare Withholding—Category 1

This memorandum serves to amend and clarify the Office of Administration's October 22, 2008, letter to your school district concerning Social Security withholdings on public school employees. **Please use this as guidance for implementation and future reference.**

The *Federal Section 218 Task Force for Missouri School Districts* was formed to address Section 218 Social Security coverage issues that arose in Missouri school districts. On March 31, 2009, the Social Security Administration (SSA) issued its Task Force Report summarizing its determination. A copy of the report can be found at the Missouri State Social Security Administrator (MSSSA) website through the Office of Administration at www.oa.mo.gov/acct/ssa.htm by selecting the *Information for School Districts* heading. The SSA determined that some school district employees were improperly covered and, in some cases, not covered by Social Security. The SSA report provides further clarification regarding the reduction in the number of employees originally thought to be impacted by this issue. The report outlines the reasons for this conclusion and the requirement by SSA for affected school districts to implement changes effective July 1, 2010.

A Section 218 agreement is a voluntary written agreement between the State and the Social Security Administration (SSA) to provide Social Security and Medicare coverage for state and local government employees, including school districts. In 1951, Missouri requested Social Security coverage and extended coverage to the school districts.

Since that date, much has changed in the federal and state statutory scheme resulting in a need to classify school districts into four distinct categories for the purpose of determining which employees are covered by Social Security and which ones have coverage options. The four categories are identified below based upon applicable coverage modification events related to each school district.

- Category 1: Modifications executed 1/01/51 – 10/31/65 (477 school districts)
- Category 2: Modifications executed 11/01/65 – 8/12/84 (33 school districts)
- Category 3: Modifications executed 8/13/84 – 8/28/91 (3 school districts)
- Category 4: Modifications executed 8/29/91 – 8/27/03 (1 school district)

Because your school district executed its coverage modification between 1/01/51 and 10/31/65, it is a "Category 1" school district.

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

- Full-time employees who are members of PSRS **and** who work in one of the 10 statutorily identified positions of: teacher, teacher-secretary, substitute teacher, supervisor, supervising principal, principal, superintendent, assistant superintendent, nurse or librarian. (The statutory positions are defined in Attachment #1 for your convenience.)
- Part-time employees with Missouri teaching certificates who are members of either PSRS or PEERS **and** who work 17 or more hours per week in one of the 10 statutorily listed positions of: teacher, teacher-secretary, substitute teacher, supervisor, supervising principal, principal, superintendent, assistant superintendent, nurse, or librarian.

The aforementioned positions excluded from Social Security are DESE Position Codes 10-60 and a select few found in Codes 70-90. A guide to DESE's Core Data Code positions for Social Security purposes are listed on our website at <http://oa.mo.gov/acct/pdf/PositionGuideDESEcodes.pdf>

Coverage for Part-Time Employees:

Part-time employees (working 17 or more hours but less than full-time) with a teaching certificate working in one of the 10 statutory positions who are members of PEERS will no longer make Social Security contributions effective July 1, 2010. Social Security coverage can only be reinstated if certain employees in each school district pass a referendum to continue Social Security coverage. Attachment #2 provides more explanation regarding the process and details for the option of holding a referendum.

Extra Duties or Positions:

If an employee occupies a position excluded from Social Security coverage as discussed above, then any compensation received by the employee for **extra duties** performed while in that position for the same school district will be excluded from Social Security coverage as well. If the employee occupies any **additional positions** for the same district, compensation received for the additional positions will be excluded from Social Security coverage.

- Example #1: 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.
- Example #2: 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 an employee occupies a position covered by Social Security as discussed above, then any compensation received by the employee for **extra duties** performed while in that position for the same school district will be covered by Social Security. If the employee occupies any **additional positions** for the same district, compensation received for the additional positions will be covered by Social Security.

- Example: If a Custodian also coaches the Girls' Volleyball Team and receives a stipend, both the Custodian wages, and the coaching stipend are covered by Social Security.

Rehired Annuitants:

Individuals who are drawing their PSRS retirement and return to work in a school district less than 550 hours per year will contribute to Social Security regardless of position, unless a new PSRS membership is established.

Critical Shortage Hires:

Critical Shortage Hires are covered by Social Security regardless of position.

Unused Sick or Annual Leave Payouts:

This type of compensation is treated the same as the position's wages for Social Security and Medicare coverage.

For further information please see our *Frequent Asked Questions* page at www.oe.mo.gov/acct/schooldistricts.htm . School districts may email questions to 218agreements@oe.mo.gov.

If a **position** remains in question, a district's superintendent may request a determination by using the form at www.oe.mo.gov/acct/resources.htm and submitting it to the MSSSA.

If employees have questions about their Social Security benefits, they should contact their local SSA field office. Locations for those offices can be found at www.socialsecurity.gov. SSA also provides online resources for WEP and GPO at www.ssa.gov/gpo-wep. The MSSSA cannot assist in these benefit questions.

If employees have questions regarding PSRS/PEERS retirement benefits and calculations, they should contact the retirement system at www.psrsmo.org.

We understand that this is a complex issue that will require each school district time to fully process the impact to it and its employees. The Office of Administration wants to provide necessary assistance in this process and will schedule conference calls in the near future so that school districts will be able to ask questions in a collective format for state and federal officials. We will be providing additional information on the www.oe.mo.gov/acct/schooldistricts.htm website regarding the dates and locations of these calls.

Attachments

ATTACHMENT #1
TEN STATUTORILY DEFINED POSITIONS
FOR CATEGORY 1 AND CATEGORY 2 DISTRICTS

(1) Teacher

- DESE Position Code 60 and select other positions under 70-90
- A position in which the occupant is required by State law, on the date the District's §218 coverage modification was executed, to have a Missouri teaching certificate. If the position was created after the execution of the District's §218 coverage modification, then the position must require a Missouri teaching certificate at inception.
- If the **State** does not initially require the occupant of a position to have a Missouri teaching certificate but later imposes such a requirement, then that position will not be a "teacher" position for §218 purposes and it will remain covered by Social Security. If a **District** imposes a teacher certification requirement on a position for which State law does not require teacher certification, then that position will not be considered a "teacher" position for §218 purposes and it will remain covered by Social Security.
 - For example, State law does not require "hall monitors," "study hall monitors," "teacher's aides," "instructional aides," "coaches," etc., to have Missouri teaching certificates, thus, individuals occupying such positions are not "teachers" for §218 purposes and are covered by Social Security.
- The position of Counselor is considered a "teacher" because State law has always required that position to have a teaching certificate.

(2) Teacher-Secretary

- DESE Position Code 60 and select other positions under 70-90
- A position in which the individual works part-time as a "teacher" (as defined above), and part-time as a secretary.
- The term "Teacher-Secretary" does not include "substitute teachers" who also work "part-time as "secretaries" because the job duties and qualifications for a "teacher" are substantially different than those for a "substitute teacher." Thus, the term "Teacher-Secretary" would include only "part-time teachers" who also work as "part-time secretaries."

(3) Substitute Teacher

- DESE Position Code 60 and select other positions under 70-90
- This is a position in which the occupant stands in for a "teacher" on a temporary basis.
- Individuals in this position are required to have a Missouri "substitute certificate of license to teach."
- Does not include Rehired Annuitants working >550 hours per year.

(4) Supervisor

- DESE Position Code 30
- This is a position requiring a Missouri license to teach and in which the occupant is employed in the supervision of instruction, or in teaching and in the supervision of instruction.

(5) Principal or (6) Supervising Principal

- DESE Position Code 20
- This is a position requiring a Missouri license to teach and DESE Administrator Certification.

(7) Superintendent or (8) Assistant Superintendent

- DESE Position Code 10
- This is a position requiring a Missouri license to teach and DESE Administrator Certification.

(9) Nurse

- DESE Position Code 70
- To be included in PSRS, and thereby excluded from Social Security, the employee must also have a Missouri license to teach.
- This is a position requiring Missouri Registered Nurses (RN) certification.
- This would not include LPN positions because the LPN position is a different position with different State certification requirements and legally restricted nursing duties; LPN's may only work under the direction of a doctor or RN.

(10) Librarian

- DESE Position Code 40
- This is a position requiring Missouri librarian certification.
- DESE currently refers to the librarian position as "Library Media Specialist" and to the certification as "Library Media Specialist."

ATTACHMENT #2 REFERENDUM GUIDE FOR CATEGORY #1 DISTRICTS

In Category 1 school districts, part-time employees (working 17 or more hours per week but less than full-time) with a teaching certificate working in one of the 10 statutorily defined positions, who are members of PEERS will no longer make Social Security contributions effective July 1, 2010. In order to continue Social Security coverage for these individuals, a district MUST contact the Missouri State Social Security Administrator and request to hold a referendum. To assist your Board in deciding on whether to take this action, please review the following:

If there is no referendum, or the referendum fails:

- Part-time employees (working 17 or more hours but less than full-time) who had the option to join either PSRS or PEERS will no longer be covered by Social Security and all contributions to Social Security must cease beginning July 1, 2010. **The employees that chose PEERS are the employees who will be eligible to vote in the referendum.**
- Absolute Coverage Group employees such as positions as Bus Driver, Cook, Custodian, etc. will not be affected. **These employees WILL NOT vote in the referendum.**

If the referendum is held, and is successful prior to July 1, 2010:

- Part-time employees (working 17 or more hours but less than full-time) who had the option to join either PSRS or PEERS and chose PEERS will continue to be covered by Social Security. **These are the employees who will be eligible to vote in the referendum.**
- Part-time employees (working 17 or more hours but less than full-time) who had the option to join either PSRS or PEERS and chose PSRS on or after July 1, 2000, will begin to be covered by Social Security. These employees will contribute to both PSRS and Social Security beginning July 1, 2010. In addition, the employer contribution will apply. **These employees WILL NOT vote in the referendum.**
- Absolute Coverage Group employees such as positions as Bus Driver, Cook, Custodian, etc. will not be affected. **These employees WILL NOT vote in the referendum.**

If the referendum is held, and is successful after July 1, 2010:

- Part-time employees (working 17 or more hours but less than full-time) who had the option to join either PSRS or PEERS and chose PEERS will have a gap in Social Security coverage and retroactive contributions to July 1, 2010 may apply. In addition, the employer contributions will also apply. **These are the employees who will be eligible to vote in the referendum.**
- Part-time employees (working 17 or more hours but less than full-time) who had the option to join either PSRS or PEERS and chose PSRS on or after July 1, 2000, will begin to be covered by Social Security. If there is retroactive Social Security coverage to any date on or after July 1, 2010, the employee will be responsible for the unpaid Social Security contributions. In addition, the retroactive employer Social Security contribution will apply. **These employees WILL NOT vote in the referendum.**

- Absolute Coverage Group employees such as positions as Bus Driver, Cook, Custodian, etc. will not be affected. **These employees WILL NOT vote in the referendum.**

For compliance with the July 1, 2010 date, many considerations should be evaluated in the timing of the referendum.

- In order to have the referendum completed for teaching contract negotiations, an approximate lead time of seven months is necessary. This includes the required 90 days notice of the vote to eligible employees. An extra 60 days is required if the eligible employees include deployed military personnel. Additional time is needed for the voting period, vote tally, certification of results, Governor/designee certification that requirements have been met, and approval by SSA.
- Because of the time involved, as shown above, if your Board opts to hold the referendum, and desires to have the vote results by January 1, 2010 for contract negotiation purposes, then the district must contact the Missouri State Social Security Administrator immediately.