

Social Security Administration

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under the retirement system when the group was covered (including ineligible who had been optionally excluded from coverage under section 218(c)(3)(B) of the Act).

(d) *Referendum procedures.* Prior to signing the agreement or modification, the governor or an official of the State named by the governor (for an interstate instrumentality, its chief executive officer) must certify to the Commissioner that:

(1) All eligible employees were given at least 90 days' notice of the referendum;

(2) All eligible employees were given an opportunity to vote in the referendum;

(3) Only eligible employees were permitted to vote in the referendum;

(4) Voting was by secret written ballot on the question of whether service in positions covered by the retirement system should be included under an agreement;

(5) The referendum was conducted under the supervision of the governor or agency or individual named by him; and

(6) A majority of the retirement system's eligible employees voted for coverage under an agreement.

The State has two years from the date of a favorable referendum to enter into an agreement or modification extending coverage to the retirement system coverage group. If the referendum is unfavorable, another referendum cannot be held until at least one year after that unfavorable referendum.

(e) *Who is covered.* If a majority of the eligible employees in a retirement system vote for coverage, all employees in positions in that retirement system become covered.

(f) *Coverage of employees in positions under more than one retirement system.*

(1) If an employee occupies two or more positions each of which is under a different retirement system, the employee's coverage in each position depends upon the coverage extended to each position under each system.

(2) If an employee is in a single position which is under more than one retirement system (because the employee's occupancy of that position permits her or him to become a member of more than one retirement system), the

employee is covered when the retirement system coverage group including her or his position is covered under an agreement unless (A) he or she is not a member of the retirement system being covered and (B) he or she is a member of a retirement system which has not been covered. This rule also applies to the coverage of services in police officers' and firefighters' positions in States and interstate instrumentalities as discussed in § 404.1212(c).

[53 FR 32976, Aug. 29, 1988, as amended at 61 FR 38367, July 24, 1996; 62 FR 38451, July 18, 1997]

§ 404.1207 Divided retirement system coverage groups.

(a) *General.* Under section 218(d)(6)(C) of the Act certain States and under section 218(g)(2) of the Act all interstate instrumentalities may divide a retirement system based on whether the employees in positions under that system want coverage. The States having this authority are Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin.

(b) *Divided retirement system coverage group.* A divided retirement system coverage group is a grouping under a retirement system of positions of members of the system who voted for coverage and positions of individuals who become members of the system (the "yes" group), and positions of members of the system who did not elect coverage (the "no" group) and ineligible employees (see § 404.1208). For purposes of this section for groups covered after 1959, the term "member" also includes individuals who have an option to become members of the retirement system but have not done so. The position of a member in the "no" group can be covered if, within two years after the agreement or modification extending coverage to the "yes" group is executed, the State provides an opportunity to transfer the position to the covered "yes" group and the individual

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occupying the position makes a written request for the transfer. The members of the "no" group can also be covered if, by referendum, a majority of them vote for coverage. If the majority votes for coverage, all positions of the members of the "no" group become covered. There is no further subdivision of the "no" group into those who voted for and those who voted against coverage. If the State requests, the ineligible in the "no" group may become part of the "yes" group and have their services covered.

(c) *Referendum procedures.* To divide a retirement system, the State must conduct a referendum among the system's employees. If the system is to be divided, the governor or an individual named by him must certify to the Secretary that:

- (1) The referendum was held by written ballot on the question of whether members of a retirement system wish coverage under an agreement;
- (2) All members of the retirement system at the time the vote was held had the opportunity to vote;
- (3) All members of the system on the date the notice of the referendum was issued were given at least 90 days' notice regarding the referendum;
- (4) The referendum was conducted under the supervision of the governor or agency or person designated by him; and
- (5) The retirement system was divided into two parts, one composed of positions of members of the system who voted for coverage and the other composed of the remaining positions under the retirement system.

After the referendum the State may include those members who chose coverage under its agreement as a retirement system coverage group. The State has two years from the date of the referendum to enter into an agreement or modification extending coverage to that group.

[53 FR 32976, Aug. 29, 1988, as amended at 70 FR 41956, July 21, 2005]

§ 404.1208 Ineligible employees.

(a) *Definition.* An ineligible is an employee who, on first occupying a position under a retirement system, is not eligible for membership in that system because of a personal disqualification

like age, physical condition, or length of service.

(b) *Coverage of ineligible employees.* A State may, in its agreement or any modification to the agreement, provide coverage for the services of ineligible employees in one of three ways:

- (1) As part of or as an addition to an absolute coverage group;
- (2) As part of a retirement system coverage group covering all positions under the retirement system; or
- (3) As part of or as an addition to a retirement system coverage group composed of those members in positions in a retirement system who chose coverage.

§ 404.1209 Mandatorily excluded services.

Some services are mandatorily excluded from coverage under a State's agreement. They are:

- (a) Services of employees who are hired to relieve them from unemployment;
- (b) Services performed in an institution by a patient or inmate of the institution;
- (c) Transportation service subject to the Federal Insurance Contributions Act;
- (d) Certain emergency services in case of fire, storm, snow, volcano, earthquake, flood or other similar emergency; and
- (e) Services other than agricultural labor or student services which would be excluded from coverage if performed for a private employer.

(f) Services covered under section 210(a)(7)(F) of the Act. (See § 404.1200(b).)

[53 FR 32976, Aug. 29, 1988, as amended at 57 FR 59911, Dec. 17, 1992]

§ 404.1210 Optionally excluded services.

Certain services and positions may, if the State requests it, be excluded from coverage. These exclusions may be applied on a statewide basis or selectively by coverage groups. They are:

- (a) Services in any class or classes of elective positions;
- (b) Services in any class or classes of part-time positions;