

## § 404.1022

## 20 CFR Ch. III (4–1–14 Edition)

(a) Your work is covered by a retirement system established by a law of the United States; or

(b) You are—

(1) A patient or inmate of a hospital or penal institution and your work is for that hospital or institution;

(2) A student employee (a student nurse, dietitian, or physical or occupational therapist, but not a medical or dental intern or resident in training) of a District of Columbia hospital, clinic, or medical or dental laboratory;

(3) An employee serving temporarily in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(4) A member of a board, committee, or council of the District of Columbia paid on a per diem, meeting, or other fee basis.

(c) *Medicare qualified government employment.* If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

[45 FR 20075, Mar. 27, 1980, as amended at 57 FR 59914, Dec. 17, 1992]

### **§ 404.1022 American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.**

(a) *Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.* Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a private employer is covered as employment the same as in the 50 States. Work done by a resident of the Republic of the Philippines working in Guam on a temporary basis as a nonimmigrant alien admitted to Guam under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is excluded from coverage regardless of the employer.

(b) *Work for American Samoa or a political subdivision or wholly owned instrumentality of American Samoa.* Work as an officer or employee (including a member of the legislature) of the government of American Samoa, its political subdivisions, or any wholly owned instrumentality of any one or more of these, is covered as employment (unless the work is covered by a retirement system established by a law of the United States). The officer or em-

ployee is not considered as an employee of the United States, an agency of the United States, or an instrumentality of the United States, for purposes of title II of the Act. We consider any pay for this work to have been paid by the government of American Samoa, or the political subdivision or the wholly owned instrumentality of American Samoa.

(c) *Work for Guam, the Commonwealth of the Northern Mariana Islands, or a political subdivision or wholly owned instrumentality of Guam or the Commonwealth of the Northern Mariana Islands.* Work as an officer or employee (including a member of the legislature) of the government of Guam, or the Commonwealth of the Northern Mariana Islands, their political subdivisions, or any wholly owned instrumentality of any one or more of these, is excluded from coverage as employment. However, the exclusion does not apply to employees classified as temporary or intermittent unless the work—

(1) Covered by a retirement system established by a law of Guam or the Commonwealth of the Northern Mariana Islands;

(2) Done by an elected official;

(3) Done by a member of the legislature; or

(4) Done in a hospital or penal institution by a patient or inmate of the hospital or penal institution.

(d) *Medicare qualified government employment.* If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

[45 FR 20075, Mar. 27, 1980, as amended at 57 FR 59914, Dec. 17, 1992; 69 FR 51556, Aug. 20, 2004]

### **§ 404.1023 Ministers of churches and members of religious orders.**

(a) *General.* If you are a duly ordained, commissioned, or licensed minister of a church, the work you do in the exercise of your ministry is excluded from employment. However, it is treated as self-employment for social security purposes. If you are a member of a religious order who has not taken a vow of poverty, the same rule applies to the work you do in the exercise of your duties required by that order. If

you are a member of a religious order who has taken a vow of poverty, the work you do in the exercise of duties required by the order (the work may be done for the order or for another employer) is covered as employment only if the order or autonomous subdivision of the order to which you belong has filed an effective election of coverage. The election is made under section 3121(r) of the Code. For the rules on self-employment coverage of ministers and members of religious orders who have not taken vows of poverty, see § 404.1071.

(b) *What is an ordained, commissioned, or licensed minister.* The terms *ordained*, *commissioned*, or *licensed* describe the procedures followed by recognized churches or church denominations to vest ministerial status upon qualified individuals. If a church or church denomination has an ordination procedure, the commissioning or licensing of a person as a minister may not make him or her a commissioned or licensed minister for purposes of this subpart. Where there is an ordination procedure, the commissioning or licensing must be recognized as having the same effect as ordination and the person must be fully qualified to exercise all of the ecclesiastical duties of the church or church denomination.

(c) *When is work by a minister in the exercise of the ministry.* (1) A minister is working in the exercise of the ministry when he or she is—

(i) Ministering sacerdotal functions or conducting religious worship (other than as described in paragraph (d)(2) of this section); or

(ii) Working in the control, conduct, and maintenance of a religious organization (including an integral agency of a religious organization) under the authority of a religious body constituting a church or church denomination.

(2) The following rules are used to decide whether a minister's work is in the exercise of the ministry:

(i) Whether the work is the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the religious body which is his or her church or church denomination.

(ii) Work in the control, conduct, and maintenance relates to directing, man-

aging, or promoting the activities of the religious organization. Any religious organization is considered to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith according to either the requirements or sanctions governing the creation of institutions of the faith.

The term *religious organization* has the same meaning and application as is given to the term for income tax purposes under the Code.

(iii) If a minister is working in the conduct of religious worship or the ministration of sacerdotal functions, the work is in the exercise of the ministry whether or not it is performed for a religious organization. (See paragraph (d)(2) of this section for an exception to this rule.)

*Example:* M, a duly ordained minister, is engaged to work as chaplain at a privately owned university. M spends his entire time working as chaplain. This includes the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is working in the exercise of the ministry.

(iv) If a minister is working for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all work by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of the organization is in the exercise of the ministry.

*Example:* M, a duly ordained minister, is engaged by the N Religious Board as director of one of its departments. M performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is working in the exercise of the ministry.

(v) If a minister, under an assignment or designation by a religious body constituting a church, works for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him or her, even though the service may not

involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of the ministry.

*Example:* M, a duly ordained minister, is assigned by X, the religious body constituting M's church, to perform advisory service to Y company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is working in the exercise of the ministry.

(vi) If a minister is working for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the work is not performed under an assignment or designation by ecclesiastical superiors, then only the work done by the minister in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of the ministry. (See paragraph (d)(2) of this section for an exception to this rule.)

*Example:* M, a duly ordained minister, is engaged by N University to teach history and mathematics. M does no other work for N although from time to time M performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not working for N under an assignment by his ecclesiastical superiors. The work performed by M for N University is not in the exercise of the ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of the ministry.

(d) *When is work by a minister not in the exercise of the ministry.* (1) Work performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of the ministry is not excluded from employment.

(2) Work performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of these, is not in the exercise of the ministry, even though the work may involve the ministration of sacerdotal functions or the conduct of religious worship. For example, we con-

sider service performed as a chaplain in the Armed Forces of the United States to be work performed by a commissioned officer and not by a minister in the exercise of the ministry. Also, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of the ministry.

(e) *Work in the exercise of duties required by a religious order.* Work performed by a member of a religious order in the exercise of duties required by the order includes all duties required of the member of the order. The nature or extent of the work is immaterial so long as it is service which the member is directed or required to perform by the member's ecclesiastical superiors.

**§ 404.1024 Election of coverage by religious orders.**

A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of that religious order, may elect to have social security coverage extended to the work performed by its members in the exercise of duties required by that order or subdivision. The rules on the election of coverage by these religious orders are described in 26 CFR 31.3121(r). The rules on determining the wages of members of religious orders for which an election of coverage has been made are described in § 404.1046.

**§ 404.1025 Work for religious, charitable, educational, or certain other organizations exempt from income tax.**

(a) *After 1983.* Work done after 1983 by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a) of the Code is covered as employment unless the work is for a church or church-controlled organization that has elected to have services performed by its employees excluded (see § 404.1026). (See § 404.1059(b) for special wage rule.)

(b) *Before 1984.* Work described in paragraph (a) of this section which was done before 1984 is excluded from employment. However, the exclusion does