

CHAPTER 6. SOCIAL SECURITY

6-1. BACKGROUND. The 1935 Social Security Act and related laws establish a number of programs which have the basic objectives of providing for the material needs of individuals and families, protecting aged and disabled persons against the expenses of illnesses that could otherwise exhaust their savings, keeping families together, and giving children the opportunity to grow up in health and security. These include:

- a. Retirement insurance.
- b. Survivors insurance.
- c. Disability insurance.
- d. Hospital and medical insurance for the aged, the disabled, and those with end-stage renal disease.
- e. Black lung benefits.
- f. Supplemental security income.
- g. Unemployment insurance.
- h. Public assistance and welfare services, including: 1) Aid to needy families with children; 2) Medical assistance; 3) Maternal and child health services; 4) Child support enforcement; 5) Family and child welfare services; 6) Food stamps; and 7) Energy assistance.

The Department of Health and Human Services operates the retirement, survivors, disability, hospital and medical insurance, black lung benefit, and supplemental security income programs. The others are operated by the States with Federal cooperation.

6-2 PARTICIPATION REQUIREMENTS. Sec. 218 of the Social Security Act (42 U.S.C. Sec. 218 (1985 Supp.)) provides that a State may enter into a voluntary agreement with the Secretary of Health and Human Services to provide Social Security coverage for its employees or employees of local governments (e.g., HAs) within the State. Generally, before enactment of Sec. 9002 of the Omnibus Budget Reconciliation Act of 1986 (OBRA'86), wages paid by HAs were excluded from taxation under the Federal Insurance Contributions Act (FICA) by Sec. 3121(b)(7) of the code.

6-3. CHANGES TO SOCIAL SECURITY ACT. OBRA'86 amended Sec. 218 of the Social Security Act with the result that, starting in 1987, state governments are relieved from (1) collecting Social Security (FICA) contributions from HAs and (2) liability for verifying and depositing the amounts owed by HAs.

6-4. CHANGES TO INTERNAL REVENUE CODE. Among other changes, OBRA'86 enacted Sec. 3121(b)(7)(E) and Sec. 3126 of the Code. Sec. 3121(b)(7)(E) provides that services covered under a Sec. 218 agreement will be treated as employment for purposes of FICA, effective with respect to wages paid after December 31, 1986. Sec. 3126 specifies who must file the FICA tax return, Form 941 (see paragraph 6-6).

6-5. EFFECT OF PROVIDING THAT SERVICES UNDER SEC. 218 AGREEMENT ARE SUBJECT TO

FICA. States are no longer responsible for collecting the Social Security contributions from HAS and reporting those amounts to Social

6-1

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Security. Thus, each HA covered by a Sec. 218 agreement must file its return with the IRS and deposit FICA taxes through the Federal Tax Deposit system. (See IRS Circular E, Employer's Tax Guide, available from IRS offices, for further information.)

- 6-6. RETURN USED TO REPORT FICA TAXES. HAS covered by Sec. 218 agreements should use Form 941, Employer's Quarterly Federal Tax Return, to report FICA taxes starting with the return due for the calendar quarter ending March 31, 1987. HAS covered by Sec. 218 agreements should no longer file Form 941E, Quarterly Return of Withheld Federal Income Tax and Hospital Insurance (Medicare) Tax. HAS covered by Sec. 218 agreements should report all FICA taxes (including Medicare tax) and withheld Federal income tax on Form 941 even if some employees are subject only to the Medicare tax. HAS not covered by Sec. 218 agreements should continue to file Form 941E. Under no circumstances should a HA file both Form 941 and Form 941E.
- 6-7. EMPLOYER IDENTIFICATION NUMBER. HAS must use their individual employer identification number (EIN) and not the number assigned by the Social Security Administration for purposes of payment of Sec. 218 contributions. If a HA has not been assigned an EIN, it should file Form SS-4, Application for Employer Identification Number, with the appropriate Internal Revenue Service Center. The EIN is a 9-digit number arranged as follows: 00-0000000. Form SS-4 is available at Internal Revenue Service or Social Security Administration Offices.
- 6-8. PENALTIES. Absent a showing of reasonable cause, HAS are subject to penalties for late filing and late payment under IRC Sec. 6651 and to penalties for failing to deposit or for claiming overstated deposits under IRC Sec. 6656.
- 6-9. IMPACT OF OBRA'86 ON HAS NOT COVERED BY SEC. 218 AGREEMENTS. HAS not covered by Sec. 218 agreements should continue to file Form 941E to report withheld Federal income tax as well as Medicare tax for employees hired after March 31, 1986. See Rev. Rul. 86-88, 1986-2B I.R.B. 10. Treatment of Medicare tax for employees hired after March 31, 1986 by HAS not covered by Sec. 218 was not affected by OBRA'86. HAS not covered by Sec. 218 agreements are reminded that the transition rules do not apply to them. They must make deposits under the rules applicable to all employers and must aggregate withheld Federal income tax with any Medicare tax and any non-Sec. 218 agreement FICA taxes due.
- 6-10. FOR ADDITIONAL INFORMATION. For additional information about reporting any payment of Federal employment taxes, see IRS Circular E. Assistance on Social Security matters may be obtained at the nearest Social Security District Office. This office provides information routinely to inquirers and advises and assists claimants and beneficiaries free of charge regarding any Social Security matter.
- 6-11. CAUTION. Each HA should examine its files for positive documentation that it is covered under a Sec. 218 agreement. Unless the HA is specifically included in a Sec. 218 agreement, its employees may not have

any Social Security coverage and may not be entitled to any benefits even though deductions and payments for such coverage have been made. It may not be possible in some instances to secure a full refund of any payments erroneously made. Documentation of proper participation in Social Security is in the form of a contract between the HA and the state agency responsible for administering Social Security activities. If the contract cannot be located, the HA shall contact the state's Social Security office in writing immediately to obtain the contract. Knowledge of the receipt of Social Security benefits by a former employee is not sufficient documentation.