

**Analysis of the Colorado State-Federal Agreement (Section 218 Agreement) and
Sample Section 218 Agreement Modification ("Plan and Agreement")**

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NOTE

The State of Colorado, as with all other states, is a party to voluntary Social Security (and Medicare) coverage agreements entered into by political subdivisions and departments and agencies of the State. Thus, individual Plan and Agreements entered into by governmental entities of the State can only occur by means of "Modifications" to the State's master "State-Federal" (Section 218) Agreement.

Subsequent to entering into the State of Colorado's master State-Federal (Section 218) Agreement and various "Modifications" of that State-Federal Agreement, such as the sample Town's Plan and Agreement that follows this analysis, Federal statutory changes were adopted that affected several of the provisions in those original Agreements. Consequently, when reviewing a Section 218 Agreement or Modification or individual entity's Plan and Agreement, the latest edition of the *Federal-State Reference Guide, IRS Pub. 963*: www.irs.gov/pub/irs-pdf/p963.pdf, (as well as official legal authority) should be consulted.

Following are some examples of provisions in Colorado's master Agreement and the sample Town's Plan and Agreement that have been affected by subsequent changes in the law. These represent only a few examples of some provisions of the Agreements and their corresponding Modifications and are not intended to be considered a complete analysis of the documents.

Please contact the Colorado State Social Security Administrator at (303) 318-8060 or dean.conder@state.co.us to ensure you are accurately and completely interpreting any Section 218 Agreement or Plan and Agreement as well as to verify all other Social Security and Medicare coverage and public pension plan requirements that apply to all state and local government employees in Colorado.

- **The services listed in the Sample Town's Section 218 (or Plan and Agreement) Definitions section (paragraph 1, c; subparagraph 1) are still excluded from Social Security (Old Age, Survivor, Disability Insurance "OASDI") by the U.S. Social Security Act and U.S. Internal Revenue Code. In Colorado, the Public Employees' Retirement Association of Colorado (PERA) is the most common statewide retirement system that allows state and local governments to exclude their employees from OASDI coverage. Since April 1, 1986, however, anyone hired or rehired on or after that date must pay into Medicare (Health Insurance, "HI") even if the employee is covered by a qualifying Federal Insurance Contribution Act ("FICA") replacement retirement system, such as PERA.**
- **The services listed in the Sample Town's Section 218 (or Plan and Agreement) Definitions section (paragraph 1, c; subparagraphs 2 through 6, known as "mandatory exclusions") of the entity's Section 218 Agreement are still mandatorily excluded from Social Security (OASDI) and Medicare by the U.S. Social Security Act. Anyone employed by the entity in any of those categories are ineligible for Social Security and Medicare coverage and no withholding or payment of the FICA taxes are applied to wages of those workers by the employer.**

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- **The services listed in the Town's Definitions section (paragraph I, c; subparagraphs 7, "services of an extremely temporary nature such as possemen, election judges, etc., or those compensated solely on a fee basis") and 8 ("positions filled by popular election") were originally "optionally excluded" when the Agreement was signed. Those optional exclusions must now be covered by either full FICA (under "mandatory Social Security" provisions contained in the U.S. Internal Revenue Code whereby Social Security and Medicare ("full FICA") coverage is provided to government employees who are not under a Section 218 Agreement) or covered by a qualifying FICA replacement public retirement system. Optional exclusions can also be covered by full FICA by modifying the original Section 218 Agreement to, instead, include the coverage groups under Social Security and Medicare. The coverage groups that are affected are:**
 1. Elective positions.
 2. Part-time positions.
 3. Fee-based positions.
- **Since January 1987, the State of Colorado (through the Public Employees' Social Security Program in the Department of Labor and Employment) is no longer responsible for collecting and transmitting FICA taxes from state and local government employers to the United States government. State and local employers now are responsible for transmitting their payments directly to the U.S. government and the Internal Revenue Service is responsible for ensuring correct FICA is paid by all such entities.**
- **Section 218 coverage, since April 20, 1983, can no longer be terminated, although that was allowable when the State and this sample Town's Plan Agreement were first adopted.**

NOTE: In the early 1980's, many entities adopted Resolutions, Ordinances, or took other legal action to advise the State of Colorado (which, in turn, advised the U.S. Social Security Administration) of their decisions to terminate participation in the Social Security program "upon giving at least two years' advance notice in writing to the Administrator." Due to the April 20, 1983, change in the Social Security Act, which became effective upon signature of the President of the United States, many entities were actually denied the right to withdraw from their Section 218 Agreement with the U.S. Social Security Administration. Consequently, some entities may have incorrectly assumed that submitting the request to terminate participation was sufficient and erroneously stopped paying Social Security.

STATE-FEDERAL AGREEMENT

The Federal Security Administrator, hereinafter called the Administrator, and the Department of Employment Security of the State of Colorado, subject to the approval of the Governor, have by agreement in accordance with the terms and conditions stated in this Agreement, to extend in conformity with Section 211 of the Social Security Act and with Section 3 of an Act of the State of Colorado enacted by the 38th General Assembly of the State of Colorado and known as Chapter 237, Colorado Session Laws 1951, the insurance system established by Title II of the Social Security Act, to services performed by individuals as employees of the political subdivisions of the State as listed in the appendix attached hereto and made a part hereof except services expressly excluded from this Agreement.

Definitions

For purposes of this Agreement:

1. The term "political subdivision" includes an instrumentality of this State, or one or more of its political subdivisions, but only if such instrumentality is a juridical entity which is legally separate and distinct from the State and only if its employees are not by virtue of their relations to such juridical entity, employees of the State or subdivision. Political subdivisions of the State which are school districts are not included.
2. The term "employee" means a person performing services which constitutes employment, as defined in Section 2 (b) of Chapter 237, Colorado Session Laws 1951, and Section 210K of the Social Security Act, for

a political subdivision or subdivisions as defined above.

3. The term "employment" means any service performed by an employee in the employ of a political subdivision of the State, except and excluding--
- a. Employees of political subdivisions of the State which are school districts,
 - b. Any services performed by an employee in a position which on the date of execution of this Agreement is covered by a retirement system,
 - c. Services performed by an employee who is employed to relieve him from unemployment,
 - d. Services performed in a hospital, home or other institution by an inmate thereof,
 - e. Covered transportation service (as defined in Section 210 (1) of the Social Security Act),
 - f. Services excluded from employment by any provision of Section 210 (4) of the Social Security Act, other than paragraph (8) of such Act,
 - g. Services of any class or classes of positions, the compensation for which is on a per diem basis,
 - h. Services in any class or classes of positions filled by popular election, if so provided in the Plan submitted by the political subdivision under Section 5 of Chapter 237, Colorado Session Laws 1951,
 - i. Services of an emergency nature.

B. Contributions by the State.

The State will pay to the Secretary of the Treasury, at such time or times as the Administrator may by regulation prescribe, amounts equivalent to the sum of the taxes which

would be imposed by Sections 1400 and 1410 of the Internal Revenue Code if the services of employees covered by this Agreement constituted employment as defined in Section 1426 of such code.

C. Compliance With Regulations.

The State will comply with such regulations as the Administrator may prescribe to carry out the purposes of Section 218 of the Social Security Act.

D. Modifications.

This Agreement will be modified at the request of the State to include political subdivisions or coverage groups, or both, in addition to those political subdivisions listed in the appendix, or to include additional services not now included in this Agreement, such modification to be consistent with the provisions of Section 218 of the Social Security Act. Said modification may be accomplished from time to time by adding to the appendix hereof separate pages bearing an appropriate heading which will identify them as modifications of this Agreement by attachment to the appendix and stating their purpose. Said addenda shall state the name or names of the political subdivision involved, the coverage group added, the exclusions from coverage, if any, and the effective date upon which this Agreement shall be applicable to said added group of employees. The endorsement at the end of said attached page or pages of the approval of said modification duly signed by the parties hereto through their respective agents shall constitute proper execution of the modification.

E. Termination by the State.

The State, upon giving at least two years' advance notice in writing to the Administrator, may terminate this Agree-

ment, either in its entirety or with respect to any coverage group, effective at the end of a calendar quarter specified in the notice; provided, however, that the Agreement may be terminated in its entirety only if it has been in effect from the effective date specified under Part "H" for not less than five years prior to receipt of such notice; and provided further that the Agreement may be terminated with respect to any coverage group only if it has been in effect with respect to such coverage group for not less than five years prior to receipt of such notice.

F. Termination by the Administrator.

If the Administrator, after notice and opportunity for hearing to the State, finds that the State has failed or is no longer legally able to comply substantially with any provision of this Agreement or of Section 218 of the Social Security Act, he shall notify the State by giving notification in writing to the Executive Director of the Department of Employment Security that this Agreement will be terminated in its entirety, or with respect to any one or more coverage groups, at such time designated in, but not later than two years from the date of such notification, as he deems appropriate, unless prior to such time he finds that there no longer is any such failure or that the cause for such legal inability has been removed. If, under this part, or Part "E", an Agreement is terminated with respect to any coverage group, such termination shall be effective also with respect to any additional services in such coverage group included in the agreement pursuant to any modification thereof under Part "D".

G. Adjustments, Refunds and Interest on Delinquent Payments.

1. If more or less than the correct amount due under Part "B" of this Agreement is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under Part "B" shall be made, without interest, upon such conditions, in such manner, and at such times, as may be prescribed by regulation of the ^{Secretary} Administrator. If an overpayment cannot be adjusted under this subpart, refunds shall be made in accordance with Section 212 (h) (3) of the Social Security Act.
2. If the State does not make, at the time or times due, the payments provided for under this Agreement, there shall be added, as part of the amounts due (except in the case of adjustments made in accordance with the provisions of subpart 1. of this part), interest at the rate of six per centum per annum from the date due until paid, and without prejudice to other available methods of collection, the ^{Secretary} Administrator, in his discretion, may deduct such amounts plus interest from any amounts, now or hereafter provided, which he may certify to the Secretary of the Treasury for payment to the State under any provision of the Social Security Act. Amounts so deducted shall be deemed to have been paid to the State under such provision of the Social Security Act.

H. Effective Date.

This agreement is effective as of

1. January 1, 1951, or,

2. The respective effective date specified in the appendix to this agreement with respect to each of the political subdivisions listed therein.

* This agreement is entered into this 13th day of NOVEMBER, 1957, by Arthur J. Altmeyer, Commissioner for Social Security, pursuant to Section 218 of the Social Security Act, acting herein by virtue of authority vested in him by Oscar R. Ewing, Federal Security Administrator, in Federal Security Agency Order 9 dated March 8, 1951, and the State of Colorado, acting herein through Bernard E. Tests, Executive Director, by virtue of the authority granted by Chapter 237, Colorado Session Laws 1951.

S/ARTHUR J. ALTMAYER
Arthur J. Altmeyer
Commissioner for Social Security

Bernard E. Tests
Bernard E. Tests
Executive Director

Approved:

Sam Thouten
Governor of Colorado

SAMPLE

Section 218 Agreement
Modification

PLAN AND AGREEMENT

THE TOWN OF _____, hereinafter called
(Name of Political Subdivision)
"Political Subdivision," does hereby apply to the Colorado
Department of Employment Security, hereinafter called "Department,"
pursuant to the provisions of Section 5 of that certain Act known
as House Bill No. 291, (enacted by the 38th General Assembly of the
State of Colorado), to extend the insurance system established by
Title II of the Social Security Act to services performed by indi-
viduals as employees of the Political Subdivision.

The Political Subdivision submits for the Department's
approval this Plan and Agreement to become effective on the date
hereinafter stated.

I. Definitions.

For purposes of this Plan and Agreement.

(a) The term "Department" means Department of Employment
Security, State of Colorado.

(b) The term "employee" means an employee as defined in
Section 210 (K) of the Social Security Act and shall include an
officer.

(c) The term "services" includes all services performed
by individuals as employees of the Political Subdivision, except:

(1) Any service performed by an employee in a
position covered by a retirement system on the date this
agreement is made applicable to his coverage group.

(2) Service performed by an employee who is employed to relieve him from unemployment.

(3) Service performed in a hospital, home or other institution by an inmate thereof.

(4) Covered transportation service (as defined in Section 210 (1) of the Social Security Act).

(5) Service (other than agricultural labor or service performed by a student) excluded from employment by any provisions of Section 210 (a) of the Social Security Act, other than paragraph (8) of such section.

(6) Services of an emergency nature, such as those required to care for fires, floods or other unforeseen disasters.

(7) Services of an extremely temporary nature such as possemen, election judges, etc., or those compensated solely on a fee basis.

✓ (8) POSITIONS FILLED BY POPULAR ELECTION,

II. Services Covered.

This Plan and Agreement includes all services performed by individuals for the Political Subdivision excepting those services which are expressly excluded herefrom under Section I above.

III. Administration of the Plan.

The Political Subdivision agrees and has heretofore authorized and directed the appropriate officers and employees to do and perform all things found necessary by the Department or the Federal Security Administrator, to make such reports in such form and containing such information as the Department may from time to time require,

and to comply with such provisions as the Department or the Federal Security Administrator may from time to time find necessary to ensure the correctness and verification of such reports.

IV. Contributions.

(a) The Political Subdivision will pay into the Contribution Fund established by said State Act, with respect to wages as defined in Section 2 of said Act, on or before the 18th day of the month immediately following the end of the calendar quarter, contributions equivalent to the sum of the taxes which would be imposed by Sections 1400 and 1410 of the Internal Revenue Code if the services covered by this Plan and Agreement constituted employment as defined in Section 1426 of such code.

(b) The Political Subdivision agrees and contemplates that it shall impose upon each of its employees, as to services which are covered by this Plan and Agreement, a contribution with respect to his wages, not exceeding the amount of the tax which would be imposed by Section 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act, and to deduct the amount of such contribution from his wages as and when paid and to match such amounts with funds appropriated for that purpose by the Political Subdivision. It is further understood that the contributions so collected shall be paid into the Contribution Fund in partial discharge of the liability of the Political Subdivision, but that failure to make such deduction shall not relieve the employee or the Political Subdivision from liability therefor.

V. Adjustments, refunds and interest on delinquent payments.

(a) If more or less than the correct amount due under Part IV of this Plan and Agreement is paid with respect to any remuneration, proper adjustment, if adjustment is practicable, or refund shall be made without interest in such manner and at such times as the Department shall prescribe.

(b) If the Political Subdivision does not make, at the time or times due, the payments required under this Plan and Agreement, there shall be added, as part of the amounts due, except as provided in paragraph (a) hereof, interest at the rate of six percent per year, computed at the rate of 1/2 percent per month for each month or fraction of a month that such Political Subdivision is delinquent in its payments to the Department.

(c) Without prejudice to other available methods of collection, the Department in its discretion may deduct such delinquent amounts plus interest from any other moneys payable to the Political Subdivision by any department, agency or fund of the State, including but not limited to funds in possession of the County Treasurer allocated to the Political Subdivision and derived from general taxation, upon proper certification by the Department that said delinquent accounts are due and payable.

VI. Termination.

(a) The Political Subdivision may request the Department to take all necessary steps with the Federal Security Administrator, pursuant to Section 218 (g) of the Social Security Act, to terminate this Plan and Agreement and the State-Federal Administrator Agreement

executed pursuant to Section 3 of said State Act either in its entire application to the Political Subdivision or with respect to any coverage group. Upon good cause shown at a time and in a manner to be specified by the Department, the Department shall give the notice to the Federal Security Administrator required by Part F of said State-Federal Administrator Agreement and comply with all parts thereof and of Section 218 (g) of the Social Security Act for the purpose of granting the requested termination to the Political Subdivision.

(b) If the Department, after notice and opportunity for hearing to the Political Subdivision, finds that there has been a failure to comply substantially with any provision contained in this Plan and Agreement and in said State Act, it may terminate this Plan in its entirety, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the Department consistent with the provisions of the Social Security Act, and any delinquent payments incurred during the termination of this agreement shall be collected from the Political Subdivision in the manner set forth in Section V (c) of this agreement.

VII. Modification.

This Plan and Agreement may be modified, at the request of the Political Subdivision, to include coverage groups or services in addition to those now included by this plan. Such modification must be consistent with the State-Federal Administrator Agreement and the provisions of Section 218 of the Social Security Act.

VIII. Effective Date.

This Plan and Agreement shall be effective as of

JULY, 1, 1955

This Plan and Agreement is entered into and submitted by
the Political Subdivision this 6th day of JUNE, 1955

TOWN OF
(Name of Political Subdivision)

Attest:

By Byrd Hooley MAYOR.
Officer

D. E. East CLERK
Officer

The foregoing Plan and Agreement is approved and accepted.

July 27, 1955
(Date)

DEPARTMENT OF EMPLOYMENT SECURITY
State of Colorado

By Bernard E. Teets
Bernard E. Teets
Executive Director

Copy

2 pages

TOWN OF
ORDINANCE NO. 92

(Sample Ordinance which may be used as a guide by cities and towns where applicable)

Be it ordained by the ~~City~~ ^{THE TOWN OF} (Town) Council of _____ that it is the considered opinion of this body that the extension of the Social Security System to employees and officers of the ~~City~~ (Town) of _____ will be of great benefit, not only to the employees of the ~~City~~ (Town) by providing that said employees and officers may participate in the provisions of the Old-Age and Survivors' Insurance System, and will also be of great benefit to the ~~City~~ (Town) of _____ by enabling it to attract and retain in employment the best of personnel and thus increase the efficiency of its government.

The 38th General Assembly of the State of Colorado, in regular session, enacted a statute, known as House Bill No. 291, which is the enabling Act provided for in Section 218 of Public Law 734, 81st Congress, which designated the Department of Employment Security, State of Colorado, to act as the Department to implement the coverage of employees and officers under the said Old-Age and Survivors' Insurance System. The ~~City~~ (Town) of _____ is hereby authorized to execute and deliver to the Department of Employment Security, State of Colorado, a plan, or plans, and agreement, required under Section 5 of said enabling Act and the Social Security Act, to extend coverage to employees and officers of the ~~City~~ (Town) of _____ and do all other necessary things to effectuate coverage of employees and officers under the Old-Age and Survivors' Insurance System.

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The Clerk is hereby authorized to establish a system of pay roll deduction to be matched by payments by the ~~City~~ (Town) of _____, _____ to be made into the Contribution Fund of the Social Security Act through the Department of Employment Security, and to make charges of this tax to the fund, or funds, from which wage or salary payments are issued to employees of the ~~City~~ (Town) of _____. Such payments are to be made in accordance with the provisions of Section 1400 of the Federal Insurance Contribution Act on all services which constitute employment within the meaning of that Act. Payments made to the Department of Employment Security, State of Colorado, shall be due and payable on or before the 18th day of the month immediately following the completed calendar quarter, and such payments which are delinquent shall bear interest at the rate of 1/2 of 1 % per month until such time as payments are made.

Appropriation is hereby made from the proper fund, or funds, of the ~~City~~ (Town) of _____ in the necessary amount to pay into the contribution fund as provided in Section 3 (c) (1) of the enabling Act and in accordance with the Plan, or Plans, and Agreement. Authority is given to the Mayor and the Clerk of the ~~City~~ (Town) of _____ to enter into an agreement with the Department of employment Security, State of Colorado, which agreement shall be in accordance with House Bill No. 291 and with paragraph 218 of the Social Security Act. Such plan and agreement shall provide that the participation of this ~~City~~ (Town) of _____ shall be in effect as of JULY 1, 1955.

Dated this 6th day of JUNE ~~1955~~ 1955

Byrd Woolsey
Mayor
W. D. ...