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RETURNING ALASKA STATE EMPLOYEES TO SOCIAL SECURITY COVERAGE

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You asked us to examine the costs and consequences of returning the Alaska state employees who are members of the Public Employees' Retirement System Tier IV defined contribution retirement plan to coverage under the federal Social Security program. Specifically, you were interested in the impact of making those employees eligible for Social Security's "Old-Age, Survivors, and Disability Insurance" benefits.

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SUMMARY

As you know, Alaska state employees first hired on or after July 1, 2006, are enrolled in Tier IV of the Public Employees' Retirement System (PERS), which provides a defined contribution retirement plan as opposed to the defined benefit pension plan of older tiers within the system.[1] According to Division of Retirement and Benefits (DRB) Director Pat Shier, federal law does not allow states to segregate groups of employees by tiers or specific benefit packages for the purposes of joining Social Security. Instead, with a few exceptions for specific job classes (primarily firefighters and police officers), all employees in a given retirement system must be provided an equal opportunity to join Social Security should their employer seek to re-enter the system. Therefore, it does not appear that the State has the option of returning only employees in defined contribution plans to Social Security. Likewise, Neither Mr. Shier, nor Tim Beard, Social Security Administration Liaison to Alaska, are aware of any provision of federal law that would allow a state to create a wholly separate retirement system solely for the purpose of providing Social Security coverage only to a select group of employees.[2] You may wish to consult with Legal Services for a more detailed analysis of federal law on this topic.

Because it does not appear possible to return only PERS Tier IV employees to Social Security, the balance of this report discusses the primary potential obstacles and impacts of offering coverage to all current PERS members. We caution, however, that it is not possible to know the precise outcomes of such an offering; therefore, while we are able to discuss with confidence the general processes and overarching consequences associated with returning to Social Security, estimates of the number of employees and costs involved with such action require a high degree of speculation. Where we make such estimates, they should be viewed only as examples of possible outcomes.

Process

In order to return to Social Security, Alaska must alter its "Section 218" agreement with the Social Security Administration. As part of that process, federal law requires that all of the employees in a retirement system be given the opportunity to vote in a referendum prior to the system entering the federal program. Two types of referenda are possible: a simple majority referendum, which requires over 50 percent of current employees to agree to the switch; and a divided referendum wherein employees who agree to Social Security coverage and all future newly hired employees enter the system while employees who vote "no" remain uncovered.

State Obstacles and Impacts

In addition to the referenda mentioned above, a number of highly challenging obstacles stand in the way of Alaska re-entering Social Security. Primary among these is the retirement benefit protection that every current employee enjoys under the state constitution. There appear to be few legal options for the state to reduce benefits despite the fact that the supplemental annuity plan was established as a replacement for Social Security, which the Legislature intended to end if the state re-joined the federal program. It may be possible to design a system that replaces a portion of current benefits with an equivalent level of Social Security benefits; however, such a system would be highly complex, requiring extensive actuarial

[1] As you know, SB 141 (9 FSSLA 2005), made sweeping changes to the state's public employee and teacher retirement plans. More information on that legislation is available at *http://www.legis.state.ak.us/basis/get_bill.asp?bill=SB%20141&session=24*.

[2] Mr. Shier can be reached at (907) 465-4817 or *pat.shier@alaska.gov*. Mr. Beard can be reached at (206) 615-2125 or *Tim.Beard@ssa.gov*.

analysis. Even then, it would almost certainly be left to the courts to determine what constitutes equivalent benefits on a case-by-case basis.

Although it is unclear to what extent findings in other jurisdictions are applicable to Alaska, research has consistently shown that extending Social Security to currently non-covered employees raises the overall costs of retirement plans for those jurisdictions substantially. Most recently, a task force in Maine made this determination in 2010.

Impacts on Employees

With the data and time available to us, we are unable to provide reliable analyses of specific impacts on state employees should Social Security become part of their benefits packages. In general, it appears that low-wage employees with relatively short tenures of employment would benefit most, while long-term, higher paid workers would see no benefit. All current employees with fewer than 30 years of qualifying service in Social Security who receive a state pension would experience substantial reductions in benefits under two provisions of federal law. In effect, both these employees and the State would pay the same amount of Social Security payroll taxes as do other covered workers but would experience lower levels of benefits.

We believe the totality of the issues we outline in this report strongly suggest that very few members of the defined benefit plans in PERS would choose to be covered by Social Security, and that the defined contribution Tier IV members would likely prefer their current supplemental annuity plan. Should the state move forward with a divided referendum in order to guarantee that all future newly hired employees would be in Social Security, it would likely take a period of at least 12-17 years before replacement of members of older tiers with new employees would lead to a majority of PERS members being covered. Complete conversion of the system would likely take much longer.

BACKGROUND ON SOCIAL SECURITY

The federal Social Security Act was approved in 1935 and continues to provide funding for a range of social programs through a payroll tax paid by participating employers and their employees.[3] The largest of these programs is the "Old-Age, Survivors, and Disability Insurance" (OASDI) program, which provides a monthly benefit to retired participants, their spouses, and surviving dependents. These participants are eligible to begin receiving reduced benefits at age 62, and full benefits, or their "Primary Insurance Amount" (PIA), between age 65 and 67, depending on the year in which individual participants were born.[4]

In the federal budget for fiscal year (FY) 2010, Social Security was allocated $708 billion, representing roughly 20 percent of U.S. government spending, and making it the second-largest single item in the

[3] Additional information about Social Security and its various programs is available at *http://www.ssa.gov/*.

[4] Reduced benefits equal 70 percent to 80 percent depending on the age at which participants would have qualified for full benefits. The retirement age for full benefits is 65 for those born prior to 1938, and increases by two months for each ensuing birth year until 1943, at which point the retirement age remains at 66 years until the birth year 1955. For subsequent birth years until 1960 the qualifying age for full retirement again increases by two months for every ensuing year. For all subsequent years, the Social Security retirement age is 67 years. By delaying claiming benefits participants can gradually increase the amount of their monthly benefit until age 70.

federal budget behind expenditures for defense ($715 billion). Retirement benefits are expected to average $1,117 per month for 36 million recipients in FY 2010.[5]

The Social Security Administration (SSA) describes its method for calculating OASDI benefits of individual recipients as follows:

> **Step 1**- Determine the number of years of earnings to use as a base. If you were born after 1928, that base number is your 35 highest years of earnings. Fewer years are used for people born in 1928 or earlier.
>
> **Step 2-** Adjust, or "index," the earnings in these years for wage inflation.
>
> **Step 3-** Determine your average adjusted monthly earnings based on the number of years in step 1. If you don't have earnings in 35 different years, some years with $0 earnings will be used to figure this average amount. *[Leg. Research note: only earnings up to an annual maximum are considered. In 2010, maximum earnings were $106,800.]*
>
> **Step 4-** Multiply your average adjusted monthly earnings by percentages in a formula that is set out by law. If you turn 62 in 2010, that formula adds together:
>
> - 90 percent of your first $761 of average monthly earnings,
> - 32 percent of the amount between $761 and $4,586, and
> - 15 percent of everything over $4,586 to give you your full retirement benefit amount. (If you start your benefits before you reach full retirement age, this amount will be reduced by up to 25 percent.)[6]

The OASDI benefit formula is designed to be progressive in that it seeks to provide a higher percentage of income replacement to lower-income individuals. Therefore, wage replacement rates for workers with adequate years of qualified service generally range from 25 percent for high-income earners to 55 percent for low-income workers. As an example, if a 65 year-old retires in 2010 having earned the maximum wage in the OASDI formula for her entire 35-year career, she would earn the maximum initial monthly benefit amount of $2,249, or $26,988, in the first year. This represents about 25.3 percent of the $106,800 maximum earnings amount for her final year of work. (Of course, this worker may earn more than the maximum OASDI wage, which would reduce, as a percentage, the amount of total income replaced by the benefit.) By contrast, a 65 year-old who had earned just one-quarter of maximum annual earnings under the OASDI formula for his entire adult working life would qualify for an initial monthly benefit of about $1,006, or $12,072 for the first year. This equates to about 45.2 percent of this worker's final year earnings of $26,700, which is, incidentally, nearly identical to the recent national personal median income for workers aged 18 years and older.[7]

PUBLIC EMPLOYEE PARTICIPATION IN SOCIAL SECURITY

Upon its enactment in 1935, the Social Security Act mandated coverage for workers in commerce and industry, who represented about 60 percent of the total workforce at the time. Government workers were not required to join because most were already covered by a retirement system. In addition, there

[5] Center on Budget and Policy Priorities, *http://www.cbpp.org/cms/index.cfm?fa=view&id=1258*.

[6] A more detailed explanation for calculating Social Security benefits is available at *http://ssa.gov/pubs/10070.html*.

[7] These figures are our calculations from SSA formulae and include reductions in benefits due to the workers in our example having drawn benefits one year prior to their regular retirement age of 66. Median 2009 personal income is from the U.S. Census Bureau: *http://www.census.gov/hhes/www/cpstables/032010/perinc/new02_001.htm.*

were constitutional concerns over whether the federal government could impose a payroll tax on state governments.

In 1950, Congress moved to offer voluntary coverage to state and local government employees not covered by a public pension plan and then, in 1955, extended voluntary coverage to those already in retirement plans. In 1983 public employers lost the option to withdraw from the program once their employees had entered the system. Finally, in 1990, participation in Social Security became mandatory for most public employees not covered by a retirement plan. In 2005, about 25 percent of state and local government employees, or roughly 6.8 million workers, were not covered by Social Security. Nearly 70 percent of the non-covered payroll is concentrated in seven states—California, Colorado, Illinois, Louisiana, Massachusetts, Ohio, and Texas.[8]

ALASKA STATE EMPLOYEE PARTICIPATION IN SOCIAL SECURITY

In the 1950's the Territory of Alaska expanded retirement benefits to all its employees, except those covered by the Teachers' Retirement System (TRS), and enrolled those employees in Social Security. In the 1960's, the state developed the Public Employees' Retirement System (PERS), and offered participation in the system to its political sub-divisions. Throughout the 1970s a number of local governments removed their employees from Social Security and, in 1978, employees of the state voted to rescind coverage in favor of developing an alternate retirement plan supplement. On January 1, 1980, the state enacted the Supplemental Benefits System, which includes an annuity plan (SBS-AP) intended to be a replacement of OASDI retirement payments.[9]

Currently, the SBS-AP requires employees to contribute 6.13 percent of their gross salaries; an amount that is then matched by an equal employer contribution. Alaska Statute § 39.30.150 makes clear that the supplemental annuity is intended as a replacement of Social Security, and that the State is under no obligation to continue making contributions to the system should its employees rejoin the federal program. Indeed, pursuant to AS § 39.30.170, employers are barred from participating in both SBS and Social Security.

PROCESS FOR REJOINING SOCIAL SECURITY

Section 218 of the Social Security Act (42 USCS § 418) enumerates the rules under which states may reinstate participation in OASDI. The law requires that states amend their "Section 218" agreements with the Social Security Administration, identifying the specific "coverage groups" of employees who will participate in the program. The state has the option, but not the obligation, to form separate coverage groups and thereby exclude from Social Security coverage of the following positions:

- Police and Firefighters;
- Employees of institutions of higher learning covered by a retirement system separate from that of other state employees;
- Elective positions;

[8] Workforce participation information is from "Social Security: Issues Regarding the Coverage of Public Employees," statement of Barbara D Bovbjerg, Director, Education, Workforce, and Income Security, *United States Government Accountability Office* report GAO-08-248T, November 6, 2007, p. 4; online at *http://www.gao.gov/new.items/d08248t.pdf*.

[9] This information is from the Alaska Division of Retirement and Benefits (*http://doa.alaska.gov/drb/help/about.html*).

- Part-time positions;
- Those paid on a fee basis;
- Agricultural labor;
- Services performed by a student; and/or
- A number of less common positions enumerated in federal statute, few of which would appear to impact Alaska state employees.

It is important to note that in order for states to rejoin Social Security, their employees must agree to do so through a secret ballot referendum in one of two methods. The first is through a *simple majority referendum* in which all of the employees in the retirement system cast a vote, besides those excluded under terms of the Section 218 Agreement. The state may rejoin the system only if a majority of employees agree to do so. Under this method, individuals who vote against rejoining would nevertheless be required to do so. The other method is a *divided referendum* wherein the state is permitted to establish two separate retirement systems—one for the employees who voted against rejoining Social Security, and another for those who opted to rejoin and all future new employees. Under both referenda the state is required to provide employees ninety days' notice prior to the vote and any selection made pursuant to that vote is irrevocable—that is, once a position has reentered Social Security it cannot be removed.[10]

OBSTACLES TO REJOINING SOCIAL SECURITY AND IMPACTS ON THE STATE OF ALASKA

Employee Referenda

The obstacles the state would face and the impacts it would experience should it seek to return its employees to Social Security coverage largely depend on how retirement benefits packages would change as a result. Clearly, however, among the primary significant obstacles will be the employee referenda discussed above. Although this agency takes no policy position on this topic, we are confident, for reasons we outline below, that the passage of any plan by simple majority referendum that includes Social Security, and that is both fiscally sustainable and politically viable to policymakers, is highly doubtful. It would be possible for the state to implement a switch to Social Security through the divided referendum process; however, it appears unlikely that a significant percentage of current PERS members would agree to the change. Therefore, the conversion of PERS into a system wholly covered by Social Security would be accomplished through attrition, with members of older retirement tiers slowly being replaced by newly-hired employees.

Currently, the Division of Retirement and Benefits estimates that Tier IV will grow at 3.5 percent per annum. Assuming this growth rate would apply to new employees covered by Social Security, the majority of PERS members would remain outside of Social Security for approximately 15-18 years, and achieving complete coverage of the system could take much longer.[11] These time frames could be substantially reduced if the state workforce expands at a rapid rate or if retiring employees are primarily replaced by new-hires. Nonetheless, under a divided referendum, the conversion of the state's workforce to Social Security would likely be quite a lengthy process.

[10] We include a copy of 42 USCS § 418 (Section 218 of the Social Security Act) as Attachment A.

[11] The DRB employee replacement estimate is based on the growth of PERS Tier IV. That figure and other data on numbers of employees and their salaries that appear in this report were provided by Kathy Lea, Retirement and Benefits Manager. Ms. Lea can be reached at (907) 465-3226 or *kathy.lea@alaska.gov.*

Recent data from the Division of Retirement and Benefits show that 11,830, or roughly 71 percent, of the PERS' 16,772 members are in defined benefit Tiers I-III. In contemplating the likelihood of these employees electing to join Social Security, the experience of the Municipality of Anchorage (MOA) may be instructive.

In 1975, the City of Anchorage and the Greater Anchorage Area Borough unified under the MOA and gave municipal employees the opportunity to withdraw from Social Security in favor of being covered solely by the PERS. The SBS-AP was not yet in existence; nonetheless, approximately 90 percent of employees chose to opt-out of Social Security.

As we indicated, current state employees in PERS Tiers I-III are, like the MOA employees of the mid-70s, covered by a defined benefit pension. State employees have the additional benefit of the SBS-AP, to which long-term employees have been contributing for many years and around which many if not most have planned their retirements. When state employees voted to withdraw from Social Security in 1978, they did so with the belief that the SBS-AP, then being developed, would, over the course of a career, provide benefits that are comparable to Social Security at a similar cost while providing greater flexibility in how those benefits are ultimately distributed. Although estimating and comparing benefits for individuals is made difficult by the many variables involved (investment returns, years of service, previous private sector work, variation in salaries, etc.), our research indicates that, overall, SBS-AP likely remains more attractive than Social Security to the majority of current employees, particularly for long-term state workers and those who earn above-average salaries. Table 1 shows the number of PERS employees in each retirement tier at the end of 2010, their aggregate total and average individual salaries, and the amount of SBS-AP contributions made by the state for calendar year 2010.

TABLE 1: PERS MEMBERSHIP, SALARIES, AND STATE SBS-AP CONTRIBUTIONS, 2010

Retirement System Tier	Number of Active State Employees	Total Salaries	Average Salary	State Portion of Supplemental Benefit Annuity (6.13 percent of salary)
PERS I	2,294	$150,751,625	$65,716	$9,497,352
PERS II	3,130	$202,730,658	$64,770	$12,772,031
PERS III	6,406	$359,688,755	$56,149	$22,660,392
Total Defined Benefit	**11,830**	**$713,171,038**	**$60,285**	**$44,929,775**
PERS IV	4,942	$193,336,590	$39,121	$12,180,205
Total PERS	**16,772**	**$906,507,628**	**$54,049**	**$57,109,981**

Notes: Salaries are for calendar year 2010. All tiers but PERS IV are closed to new members. Tier IV is projected to grow at an annual rate of 3.5 percent, while salaries for its members are expected to increase by an average of 4 percent per annum.
Source: Kathy Lea, Retirement & Benefits Manager, Alaska Department of Administration, Division of Retirement and Benefits. Ms. Lea can be reached at (907) 465-3226 or *kathy.lea@alaska.gov*.

It is possible that, relative to older tiers, a higher proportion of employees currently enrolled in the defined contribution PERS Tier IV would elect to join Social Security due to their perceptions that the federal system provides a greater degree of security than their current benefits, which largely depend on investment returns and do not guarantee a specified pension amount. However, given that this cohort of employees is relatively young on average and may not plan to make a career out of state employment,

many will likely prefer the higher degree of flexibility, control over investments, portability, and potential for higher returns offered by the SBA-AP.[12]

In addition to the strictly comparative advantages that the SBS-AP likely enjoys over Social Security in the eyes of many employees, a source of resistance to the federal program may arise due to concerns over the future of OASDI benefits. As you know, the solvency of the Social Security system is threatened by the historically large cohort of "baby-boomers" reaching retirement age in coming years. According to the Government Accounting Office (GAO), by 2017 the Social Security system will pay out in benefits more funds than it receives in revenues. Current projections indicate that the Social Security Trust Fund will be exhausted by 2037 unless retirement ages are raised, benefits are reduced, and/or taxes for the program are increased.[13] The specter of any one or a combination of these changes to Social Security will likely give pause to employees asked to join the system.

Constitutionality

To this point we have discussed the implementation of Social Security as a replacement of SBS-AP. This is because, as we mentioned, AS § 39.30.150 clearly states that the supplemental annuity is "in place of contributions to the federal" program and that the Legislature intended for the state to be "under no obligation to continue making contributions" to SBS-AP should it resume participation in Social Security. It is crucial to recognize, however, that this statute was enacted prior to the Alaska Supreme Court's decision in *Hammond v. Hoffbeck* (627 P.2d 1052, 1981). That case involved a challenge by police and firefighters to a law reducing occupational disability and death benefits offered through PERS and a change to the requirements to receive those benefits. The challenge was based on Article XII, Sec. 7, of the Alaska constitution, which reads as follows:

> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished.

In finding for the plaintiffs, the Court did not hold that no facet of a retirement plan could be altered once an employee was hired, but made plain that any modification to a plan

> that operate[s] to a given employee's disadvantage must be offset by comparable new advantages to that employee [627 P.2d 1052, 1057].

This decision is significant not just because it proscribes diminishing current employees' retirement benefits, but because it does so at the level of the *individual*. Therefore, although the state may make changes to benefits, those changes are prohibited not just from diminishing benefits overall, but also from reducing the retirement benefits of *any individual* worker. As a result, barring a reversal by the Court or the success of an argument that the annuity plan is somehow outside the scope of the definition of a retirement benefit, the prospect of terminating SBS-AP in favor of Social Security would appear to be a prima facie constitutional violation in the likely event that any employee could show that making that switch would reduce his or her benefits. It does not appear that such a case has yet been considered in Alaska and the question is, therefore, not a settled matter. It is clear, nonetheless, that should a change

[12] The OASDI benefit is, in one sense, every bit as "portable" as the SBS-AP in that regardless of where an individual works, the benefit will continue to accrue so long as the employer participates in Social Security. This type of portability differs from that of the SBS-AP in that the funds involved are not under the control of the employee, nor does that individual have access to the principal of the account or the ability to control investments to maximize returns.

[13] For more information see, for example, a recent GAO report online at *http://www.gao.gov/new.items/d11125.pdf*.

in benefits to current employees be implemented, litigation would follow and the state would carry a heavy burden in showing the new system meets constitutional requirements.

Benefit Design and Cost

Despite the challenges involved, it could be possible for the state to prevail in a legal challenge. To do so, policymakers would need to carefully design a benefits package based on Social Security that would not diminish benefits, and that would preferably attract some portion of current employees (and all future hires). Designing such a system would be quite complicated and require analysis at an actuarial level. In general we envision the following possible options for the general design of those benefits:

Social Security in addition to current benefits—Such a system would pose the fewest constitutional problems, and may be more widely supported by current employees, as benefits would be increased rather than decreased, or exchanged for an equivalent benefit. This option would, however, likely be the most expensive. Assuming all employees joined, the costs would include all current expenditures plus the state's half of the Social Security tax, which would equate to a first-year increase of 6.13 percent of the entire state payroll, or about $57.1 million of 2010 salaries, plus associated increases in administrative costs. These costs would increase annually with wage inflation. It is unlikely, however, that all employees would enter the system (assuming a divided referendum), and labor unions or employees might still sue over their portion of the payroll tax.

Hybrid mandatory SBS-AP and Social Security—It is possible to design a benefit package that coordinates SBS-AP and Social Security benefits so that the overall benefit remains comparable to what an employee might have accrued under SBS-AP alone. The cost of such a system would depend on detailed analyses of benefits, and the amount of SBS-AP contributions required to maintain an equivalent benefit for individuals. Presumably, the cost would be lower than simply adding Social Security, but would be higher than current spending.

Hybrid voluntary capped SBS-AP and Social Security—Similar to the mandatory participation model discussed directly above, but offers a voluntary SBS-AP in addition to Social Security. Under this plan employees could opt-in to SBS-AP and make contributions up to a specified maximum percentage of wages. The state would then match that contribution up to a specified amount. This plan might save the state a portion of the costs of the mandatory hybrid because a certain percentage of employees would decline participation. In addition, because Social Security benefits would be accruing, the state might be able to cap its SBS-AP matching contribution at rates significantly lower than the current 6.13 percent.

Partial pension benefit replacement—This option forgoes changing the SBS-AP in favor of altering pension benefits to reflect a coordination with Social Security. Designing such a system could be simpler from an actuarial standpoint because the older tiers of PERS and Social Security are defined benefit plans, so there may be fewer moving variables in combining the two systems. In addition, the overall costs of the program could be lower than the options mentioned above. However, this option would almost certainly be extremely unpopular with employees in the defined benefit plans and, therefore, face enhanced resistance.

Replacing SBS-AP with Social Security—A straight swap of the two benefit systems would likely be the least expensive option for the state given that Social Security taxes constitute an increase of just 0.07 percent of wages over SBS-AP contributions, plus administrative costs. As we mentioned, however, this option—and indeed any of the

potential designs we've outlined or combinations thereof—would likely face vigorous opposition.

We note that none of the options outlined above would reduce the state's current unfunded pension liabilities unless a significant portion of current employees in the defined benefit tiers of PERS agreed to join Social Security. Even in that scenario, current liabilities would likely remain and future liabilities would be impacted only to the extent that OASDI benefits replaced a portion of the pension plan. Due to the defined contribution design of both the SBS-AP and the PERS Tier IV pension, neither has the ability to affect changes in pension debt.

The GAO reviewed research on the topic of public pension plans re-joining Social Security and found a consensus estimate among several studies that the increased costs to such plans would range from between 2 and 7 percent of new employee salaries, if only those employees are covered. In order to extend coverage to current employees, increased costs are cited at 3 to 11 percent of overall payroll. We cannot say with confidence that these findings would translate to PERS under any of the possible benefit plans outlined above, but assuming the costs to Alaska fall within the GAO's range, extending Social Security to all employees in PERS could be expected to incur first-year expenditure increases of between roughly $27.2 million and $99.7 million.[14]

Among the states, Maine appears to have most recently lent serious consideration to enrolling its employees in Social Security. A 2009 Legislative Resolve established the Maine Unified Retirement Plan Task Force, which spent ten months studying various benefit design options for new employees with the underlying intent of including Social Security. The Task Force's March 2010 final report concludes that the state's current retirement system was the least costly of all of the options it examined. Again, whether these findings would apply to Alaska would require extensive analysis of various plan options.[15]

IMPACTS ON ALASKA STATE EMPLOYEES

Determining the impacts on employees joining Social Security is made difficult by many of the same unknown variables and complexities as is approximating impacts on the state. The impact on each individual employee would vary depending on the individual's pay scale, years of service, and private sector work history, as well as the design of the benefit system implemented with Social Security. In general, Social Security, under its current structure, would most likely benefit low-wage employees with relatively short tenures of service with the state, and would probably represent a significant disadvantage to the vast majority of medium to high income employees with long state careers. Beyond these generalizations, we hesitate to make direct quantitative comparisons between potential benefit plans due to the complexities we've mentioned and because such comparisons could be misleading depending on the structure of the retirement system after the addition of Social Security.

BENEFIT REDUCTION DUE TO GOVERNMENT PENSION OFFSET PROVISIONS

Two provisions of federal law serve to reduce the OASDI benefits of workers who have earned pensions from employers who do not pay Social Security taxes—they are the "Government Pension Offset" (GPO) and the "Windfall Elimination Provision" (WEP). These offsets present an additional complication in determining the impacts of returning to Social Security, but their impact is an obvious and substantial

[14] For more information see GAO/HEHS 98-196 at *http://www.gao.gov/archive/1998/he98196.pdf*.

[15] The Maine PERS report is available at *http://www.mainepers.org/PDFs/other%20publications/MainePERS%20Final%20URP%20Task%20Force%20Report%203-9-2010.pdf*.

detriment to all employees with vested state pensions, particularly for those who have spent the majority of their careers with the state.

Government Pension Offset

When first implemented in the 1930s, spousal benefits under Social Security were intended to compensate spouses who were financially dependent on a working spouse while staying home to raise families. The non-working spouse qualified for a benefit equal to 50 percent of the working spouse's OASDI benefit once both had reached full retirement age. It has always been the case that if a person worked in a job covered by Social Security, the resulting OASDI spousal benefit would be reduced dollar-for-dollar by the value of his or her own retirement benefit. Since 1983, however, workers receiving a pension from an employer not covered by Social Security whose spouses receive an OASDI benefit have their spousal benefit reduced by two-thirds of their pension. Consider the following example; a woman works for the State of Alaska for 15 years, with none of that service covered by Social Security, and earns a pension of $1,200 per month. Her husband works a private-sector job covered by Social Security for 25 years and earns an OASDI benefit of $1,800 per month. Normally, the wife would receive a $900 OASDI spousal benefit at full retirement age; however due to the GPO, that benefit is reduced by two-thirds of her pension, or $800, and she would receive only the remaining $100.

Windfall Elimination Provision

For many years the OASDI benefit formula treated employees with the majority of their careers spent in jobs not covered by Social Security as long-term, low-wage workers by simply entering zero in years where no qualifying service took place. As a result, those workers benefitted from the progressive nature of the formula and received a significant percentage of any qualifying earnings as an OASDI benefit despite possibly having substantial pensions. In 1983, Congress sought to close this loophole by reducing from 90 percent to 40 percent the multiplier for the first $761 of average qualifying earnings for workers with fewer than 20 years of qualifying wages (see p. 3 for the full formula). The multiplier is increased 5 percent for each year of qualifying service over 20 years up to 30 years of service at which point the WPO is not in effect. Consider the following scenario; a worker with ten years of qualifying service covered by Social Security is paid an inflation-indexed total of $350,000 over those years. The OASDI formula is based on the inflation-indexed average monthly earning over 35 years (420 months). Without the WEP, the formula and resulting benefit are as follows:

Avg. earnings: $350,000 / 420 = $833.33

- OASDI benefit: ($761 × 0.90) + (($833.33 - $761) × 0.32) = **$708.05**

Applying the WEP to the same scenario provides the following benefit:

Avg. earnings: $350,000 / 420 = $833.33

- OASDI benefit: ($761 × 0.40) + (($833.33 - $761) × 0.32) = **$327.55**

As you can see, for employees who have qualifying Social Security earnings but spend the majority of their careers in non-covered positions, the WEP can cause major reductions in benefits. The obvious significance of this with regard to current Alaska state employees joining Social Security is that *their government pensions would cause a reduction in whatever OASDI benefits they subsequently compile*. So, in effect, the 12.4 percent collectively paid by the state and its current employees for Social Security payroll taxes would be purchasing only a fraction of the OASDI payment being earned by other

beneficiaries whose entire careers have been spent in covered positions. It is difficult to overstate the disadvantage this presents to current employees faced with the prospect of paying Social Security taxes.[16]

We hope you find this information to be useful. Please let us know if you have questions or need additional information.

[16] More information on the GPO and WEP is available at *http://ssa.gov/gpo-wep/*.

Attachment A

42 USCS § 418 (Section 218 of the Social Security Act)

1 of 1 DOCUMENT

*** CURRENT THROUGH PL 111-319 WITH GAPS OF PL 111-312 & 111-314, APPROVED 12/18/10 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 7. SOCIAL SECURITY ACT
TITLE II. FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

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42 USCS § 418

§ 418. Voluntary agreements for coverage of State and local employees

(a) Purpose of agreement.

(1) The Commissioner of Social Security shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this *title [42 USCS §§ 401* et seq.] to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 210(a) [*42 USCS § 410(a)*], for the purposes of this *title [42 USCS §§ 401* et seq.] the term "employment" includes any service included under an agreement entered into under this section.

(b) Definitions. For the purposes of this section--

(1) The term "State" does not include the District of Columbia, Guam, or American Samoa.

(2) The term "political subdivision" includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term "employee" includes an officer of a State or political subdivision.

(4) The term "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term "coverage group" means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Persons employed under *section 709 of title 32, United States Code*, who elected under section 6 of the National Guard Technicians Act of 1968 [*32 USCS § 709* note] to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this Act [*42 USCS §§ 301* et seq.], be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 205 of the Agricultural Marketing Act of 1946 (*7 U. S. C. 1624*) or section 14 of the Perishable

Agricultural Commodities Act, 1930 (*7 U. S. C. 499n*), between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

(c) Services covered.

(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3).

(4) The Commissioner of Social Security shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3).

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 210(a) [*42 USCS § 410(a)*] other than paragraph (7) of such section [*42 USCS § 410(a)(7)*] and service the remuneration for which is excluded from wages by subparagraph (B) of section 209(a)(7) [*42 USCS § 409(a)(7)(B)*].

(6) Such agreement shall exclude--

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 210(k) [*42 USCS § 410(k)*]),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 210(a) [*42 USCS § 410(a)*] other than paragraph (7) of such section [*42 USCS § 410(a)(7)*],

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency, and

(F) service described in section 210(a)(7)(F) [*42 USCS § 410(a)(7)(F)*] which is included as "employment" under section 210(a) [*42 USCS § 410(a)*].

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3)), whichever may be desired by the State.

(8) (A) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified at any time to exclude service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $ 1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(B) For each year after 1999, the Commissioner of Social Security shall adjust the amount referred to in subparagraph (A) at the same time and in the same manner as is provided under section 215(a)(1)(B)(ii) [*42 USCS § 415(a)(1)(B)(ii)*] with respect to the amounts referred to in section 215(a)(1)(B)(i) [*42 USCS § 415(a)(1)(B)(i)*], except that--

(i) for purposes of this subparagraph, 1997 shall be substituted for the calendar year referred to in section 215(a)(1)(B)(ii)(II) [*42 USCS § 415(a)(1)(B)(ii)(II)*], and

(ii) such amount as so adjusted, if not a multiple of $ 100, shall be rounded to the next higher multiple of $ 100 where such amount is a multiple of $ 50 and to the nearest multiple of $ 100 in any other case.

The Commissioner of Social Security shall determine and publish in the Federal Register each adjusted amount determined under this subparagraph not later than November 1 preceding the year for which the adjustment is made.

(d) Positions covered by retirement systems.

(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on the date of enactment of the succeeding paragraph of this subsection [enacted Sept. 1, 1954] (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of enactment of such succeeding paragraph [enacted Sept. 1, 1954], no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A)). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A)) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1), an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Commissioner of Social Security that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement

system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this *title [42 USCS §§ 401* et seq.] to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group--

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this *title [42 USCS §§ 401* et seq.] has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B)).

(5) (A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this title to service in any policeman's or fireman's position.

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c), and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)

(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (e) only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term "institutions of higher learning" includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, New

Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after the date of enactment of this subparagraph [enacted Aug. 1, 1956], is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)

(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this *title [42 USCS § 401* et seq.].

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4) (B) and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7), modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part who desire coverage under the insurance system established under this *title [42 USCS §§ 401* et seq.].

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8)), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such paragraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Commissioner of Social Security prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (e)(1), any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be

effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under title III [*42 USCS §§ 501* et seq.], there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions other than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Commissioner of Social Security that--

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) shall not be considered a member of the retirement system.

(8) (A) Notwithstanding paragraph (1), if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of State agreements modified as provided in subsection (l) and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

(e) Effective date of agreement.

(1) Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is mailed or delivered by other means to the Commissioner of Social Security.

(2) In the case of service performed by members of any coverage group--

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member

of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Commissioner of Social Security.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by *sections 3101* and *3111 of the Internal Revenue Code of 1986* [*26 USCS §§ 3101, 3111*] had such services constituted employment for purposes of chapter 21 of such Code [*26 USCS §§ 3101* et seq.] at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

(f) Duration of agreement. No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after the date of the enactment of the Social Security Amendments of 1983 [enacted April 20, 1983].

(g) Instrumentalities of two or more States.

(1) The Commissioner of Social Security may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if--

(A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after the date of enactment of this paragraph [enacted Aug. 30, 1957]) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for the purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this paragraph [enacted Aug. 30, 1957] or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this *title [42 USCS §§ 401* et seq.]. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this Act [*42 USCS §§ 301* et seq.] may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and

(d)(3), apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3). For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(h) Delegation of functions. The Commissioner of Social Security is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of the Commissioner's functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

(i) Wisconsin Retirement Fund.

(1) Notwithstanding paragraph (1) of subsection (d), the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any success or system.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

(j) Certain positions no longer covered by retirement systems. Notwithstanding subsection (d), an agreement with any State entered into under this section prior to the date of the enactment of this subsection [enacted Sept. 1, 1954] may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on such date of enactment [enacted Sept. 1, 1954]), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of the enactment of this subsection [enacted Sept. 1, 1954], are no longer covered by a retirement system on the date such agreement is made applicable to such services.

(k) Certain employees of the State of Utah. Notwithstanding the provisions of subsection (d), the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

(l) Policemen and firemen in certain States. Any agreement with a State entered into pursuant to this section may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), be modified pursuant to subsection (c)(4) to apply to service performed by employees of such State or any political

subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after the date of the enactment of this subsection [enacted Aug. 1, 1956], but only upon compliance with the requirements of subsection (d)(3). For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(m) Positions compensated solely on a fee basis.

(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

(n) Optional medicare coverage of current employees.

(1) The Commissioner of Social Security shall, at the request of any State, enter into or modify an agreement with such State under this section for the purpose of extending the provisions of title XVIII [*42 USCS §§ 1395* et seq.], and sections 226 and 226A [*42 USCS §§ 426, 426-1*], to services performed by employees of such State or any political subdivision thereof who are described in paragraph (2).

(2) This subsection shall apply only with respect to employees--

(A) whose services are not treated as employment as that term applies under section 210(p) [*42 USCS § 410(p)*] by reason of paragraph (3) of such section [*42 USCS § 410(p)(3)*]; and

(B) who are not otherwise covered under the State's agreement under this section.

(3) For purposes of sections 226 and 226A of this Act [*42 USCS §§ 426, 426-1*], services covered under an agreement pursuant to this subsection shall be treated as "medicare qualified government employment".

(4) Except as otherwise provided in this subsection, the provisions of this section shall apply with respect to services covered under the agreement pursuant to this subsection.