

Federal Update 2004-24

September 23, 2004

TO: NCTR Membership
FROM: Cindie Moore, Washington Counsel
RE: Today's Meeting with Social Security Administration (SSA) about
"Section 419" Notice

Representatives of state and local governments (SLG) groups, including NCTR, NASRA, and NCPERS, met today with SSA officials about the "Section 419" notice requirement. As you recall, state and local government employers who hire individuals for non-Social Security covered positions on or after January 1, 2005, must provide them with a new notice. The notice must explain the possible reduction of their future Social Security benefit because they are taking a non-Social Security covered position. The reductions occur by operation of the Government Pension Offset (GPO) and Windfall Elimination Provision (WEP). The individuals must sign the notice. The employer must then send the notice to the retirement system that covers the individuals. Section 419 is the location of the new requirement in the Social Security Protection Act, signed into law on March 2, 2004.

During the meeting, the SLG representatives had a chance to ask the SSA officials about the procedures surrounding the use of the notice and its wording. The SSA officials circulated a draft notice at the meeting. The draft appears at the end of this Update. I will provide a brief background and then list the issues we discussed. **Note that the notice has not been finalized, so some of the information provided below may change.**

Background

The notice requirement consists of three parts:

- The employer gives the individual the notice
- The individual reads the notice and signs it
- The signed notice is sent to the applicable retirement system

If any of these activities is not carried out, no penalty is imposed. Why then was the notice enacted? The notice serves a strictly informational purpose: to alert individuals hired into non-covered positions about the possible reduction in their future Social Security benefits. At present, many individuals are not aware of the reduction until they apply for their benefits.

Issues regarding Procedures

Issue One: when should the individual being hired receive the notice? The statute says that the notice must be provided "prior to the date of the commencement of the

individual's employment in the position [.]” The SSA officials said that the exact timing of giving the notice is not critical but did not provide any guidance.

Issue Two: must the employer use the form provided by SSA or prepare its own form? SLG reps asked whether they could add the name of the employer, retirement system, or both to the form. This line of inquiry led to the SSA officials asking whether SLGs would like the option of either creating their own form or using the SSA form. The reps indicated that both alternatives should be available. The SSA officials will look into that possibility.

Issue Three: should all individuals being hired into non-covered positions receive the notice or just those who will likely be eligible for a pension? Certain students at public universities, election workers, and a few other groups are not required to be covered by Social Security and, because of the nature of the work, will not likely be eligible for a pension. The SSA officials discussed the possibility of employers giving the notice only to individuals with some likelihood of receiving an eventual pension, but there did not appear to be unanimity on the subject.

Issue Four: what is the employer supposed to do with the signed form? The statute is silent on this point, but an implication exists that the employer should retain the form. The SSA officials said that each employer will have to decide where to keep the form and how long to retain it.

Issue Five: what is the applicable retirement system to do with the signed form? As with Issue Four, the statute is silent, but the same implication applies. The SSA officials indicated that retirement systems would have to make the same decisions as the employers.

Issue Six: how will employers be able to obtain the forms? The SSA officials said they are considering hard copy forms and also posting the form on their website. They have made no decision yet about how they will distribute the hard copy forms.

Issue Seven: will SSA make the publications referenced in the form (see draft) available to employers in hard copy form? The SSA officials seemed willing to do so, but were not specific.

Issues regarding Wording

SLG representatives raised the following concerns about the wording of the form.

-Adding a note in paragraph one to the effect that the WEP and GPO do not affect an individual's Medicare eligibility

-Adding a note that exceptions exist to the applicability of WEP and GPO

-Adding a reference in the first paragraph that the reduction in Social Security benefits is due to earnings from separate employment covered by Social Security (WEP) or from a spouse's Social Security earnings (GPO)

-Deleting the paragraphs that explain the rationale of the WEP and GPO

-Adding a line in the signature area for the individual to print his/her name and also a line for an employee identification number, though not a Social Security number (SSN) (The SSA officials appeared reluctant to have the SSN appear on the form.)

-Adding a space in which the employer can insert its name and its identification number (if applicable)

The SSA officials expressed interest in these changes, but did not make any specific commitments.

Final Issues and Timetable between Now and the January 1 Effective Date

Re-hire and Multiple Hire Situations: We touched on the circumstances under which a re-hired individual would have to receive the notice. There was some discussion, but no conclusion except a witty suggestion by one of the SLG reps: "When in doubt, have them fill it out!" We also discussed whether substitute teachers who work in several school districts would have to receive the notice from each district. There was general agreement that that situation would likely be the case.

Timetable: The SSA officials said they would take comments for only a week or so more. **Thus, if you have any further concerns, please contact me IMMEDIATELY.** SLG reps are scheduled to meet on Monday, September 26 to get any final thoughts to SSA. Moreover, the officials said they do not have sufficient time to re-circulate the form. (Note that there will be no formal rule making process.) Between now and the effective date, they will finalize the form and the Communications Office will launch an outreach campaign to education employers about the new requirement.

As I receive additional information, I'll be in touch.

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Statement Concerning Your Employment in a Job Not Covered by Social Security

Your earnings from this job are not covered under Social Security. When you retire, you may receive a pension based on earnings from this job. If you do, your pension may affect the amount of the benefit you receive from Social Security. Under the Social Security law, there are two ways this can happen.

Windfall Elimination Provision

Under the Windfall Elimination Provision, your Social Security retirement or disability benefit is figured using a modified formula when you are also entitled to a pension from a job where you did not pay Social Security tax. As a result, you will receive a lower Social Security benefit than if you were not entitled to a pension from this job. For example, if you are age 62 in 2004, the maximum reduction in your Social Security benefit is \$306. This provision reduces, but cannot totally eliminate, your Social Security benefit.

Because of the way Social Security benefits are figured, people who work in a job covered by Social Security for a long time and who also have low earnings receive an advantage not shared by a high-income worker. Under Social Security, the low-income worker receives a benefit that represents a higher percentage of pre-retirement income than does the higher paid worker.

Formerly, those who spent only part of their working lives in jobs covered by Social Security, and had low earnings under Social Security as a result, were treated as workers with low earnings over their lifetime. Therefore, they received an unintended advantage when their benefits were figured. The modified benefit formula used under the Windfall Elimination Provision corrects this.

For additional information, please refer to SSA Publication No. 05-10045, The Windfall Elimination Provision.

I certify that I have received the SSA-1945 that explains if I become entitled to a pension from this job where I do not pay Social Security tax, the amount of my Social Security benefit may be affected.

Signature of Employee _____

Date _____

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Government Pension Offset

Under the Government Pension Offset Provision, any Social Security spouse or widow(er) benefit to which you become entitled will be offset if you also receive a pension based on work where you did not pay Social Security tax. The offset reduces the amount of your Social Security spouse or widow(er) benefit by two-thirds of the amount of your pension.

For example, if you get a monthly Federal, State or local government pension of \$600 based on earnings that are not covered under Social Security, two-thirds of that, \$400, is used to offset your Social Security spouse or widow(er) benefit. For example, if you are eligible for a \$500 widow(er) benefit, you will receive \$100 per month from Social Security, $\$500 - \$400 = \$100$. Even if your pension is high enough to totally offset your spouse or widow(er) Social Security benefit, you are still eligible for Medicare at age 65 +

The reduction under the Government Pension Offset is similar to the way benefits are figured for people who qualify for both a Social Security retirement or disability benefit and a Social Security benefit as a spouse. In these cases, the spouse benefit is reduced dollar-for-dollar by the amount of the Social Security benefit received based on his or her own covered employment.

For additional information, please refer to SSA Publication No. 05-10007.

SSA publications and additional information are available at www.socialsecurity.gov. You may also call toll free 1-800-772-1213, or contact your local Social Security office.