

Social Security and Governmental Entities

Federal law requires that a governmental entity must have a “Section 218 Agreement” in order to pay into social security for any of their employees that adequately participate in a qualified retirement system. This only applies to the Social Security portion. **The Medicare portion must be paid for all employees** regardless of whether or not there is a 218 agreement. And even if there is a 218 agreement, the **Social Security and Medicare portions must be paid on any employee that does not adequately participate in a qualified retirement system.**

A qualified public retirement system is a pension, annuity, retirement or similar fund or system maintained by a state or local government that provides a retirement benefit to the employee that is comparable to the benefit provided by social security. There are generally two types of retirement systems that may meet the minimum benefit requirement. They are defined contribution plans and defined benefit plans. The IRS has provided publications to define what qualifies as a retirement system for social security purposes:

- Defined Contribution – IRS Publication 963 requires that the combined contribution (employer and/or employee) must be at least 7.5% of an employee’s compensation (during any period under consideration) in order to satisfy the definition of a social security equivalent retirement system.
- Defined Benefit – IRS Revenue Procedure 91-40 provides the Safe Harbor formulas to define what qualifies as a retirement system for social security purposes. For plans with final and highest average pay formulas:
 - Periods of 36 months or less - a plan meets the requirement if the benefit is at least 1.5 percent of average compensation during an employee’s last three years of employment, multiplied by the employee’s number of years of service.
 - 37 – 48 months – 1.55%
 - 49 – 60 months – 1.60%
 - 61 – 120 months – 1.75%
 - Over 120 months – 2.00%

The URS defined benefit program is a qualified retirement system, but others may also be qualified. The specifics of each plan would need to be evaluated to make that determination.

Defined Contribution Example: A Charter School has 10 employees.

- The school contributes 6% into a 401(k) plan for each employee;
- Employees are not required to contribute into their 401(k) plan;
- One of the employees contributes at least 1.5% of their compensation into their 401(k) plan;
- Since that employee’s total 401(k) contribution is at least 7.5% of their compensation, that employee CAN NOT participate in social security without the charter school having a 218 agreement.
- The other nine employees must participate in social security since their total 401(k) contribution is less than 7.5% of their compensation.
- This same analysis must be done each pay period for each employee unless the charter school has a 218 agreement.

At this time, none of the charter schools in Utah have a 218 agreement. So there are two options for each charter school.

1. The independent governing board of each Charter School must decide whether or not to hold a referendum allowing their eligible employees (those in positions covered by a qualified retirement system) to vote on whether or not to participate in social security. If that board decides not to hold a referendum, then that charter school must immediately stop paying into social security for all of their employees that are covered by a qualified retirement system.
2. If that board decides to hold a referendum, then they must pass an official resolution on the matter (I have a template for this) and work with me since I am required to administer that vote. In these cases, if you are currently paying into social security, then you would continue to do so until the result of the referendum is known.

There are very specific federal requirements that must be met in order for the referendum to be valid. Here are the main requirements:

1. The vote must be by secret ballot.
2. There must be a notice sent out to each eligible employee at least 90 days before the vote takes place.
3. Only current employees that are covered by a qualified retirement system when the 90 day notice is distributed AND are still employed and covered by a qualified retirement system on the date of the vote are eligible to vote.
4. A majority of eligible voters must vote in favor of participating in social security in order for the eligible employees of a charter school to participate in social security. Any eligible voter that does not actually vote is considered to have voted to NOT participate in social security.
5. The result of the vote applies to all employees of the charter school that adequately participate in the qualified retirement system.