**Meeting Date:**     **January 30, 2019**

**Agenda Item:**      **# 14**

# AGENDA SUMMARY REPORT

**SUBJECT:**

Consideration of Initiation of Social Security Section 218 Agreement Contract Process

**SUMMARY:**

Social Security coverage is available to state and local government employees through a unique voluntary federal-state agreement authorized by Section 218 of the Social Security Act. Employees covered under a Section 218 Agreement have the same coverage and benefit rights as employees mandatorily covered for Social Security and Medicare.

The Section 218 Agreement contract process is a 6-step process which can take anywhere from 18-24 months. The Board can decide to terminate the process, at any point, up to the point after voting is done and approved, of submission to the federal social security administration. The agreement is only legally binding once all parties – including the SSA - have approved, signed and dated the agreement.

The first step in the contracting process is for an agency to submit its responses to a questionnaire, where we state our intention to proceed with the process. After receiving the questionnaire, the CalPERS State SS Agency will send us the appropriate resolution packet. There are two primary forms – majority vote and divided vote and the resolution packet will reflect that primary difference.
Majority vote is just that – all members will vote and if majority want in – everyone will be covered, if not – then no one will be covered. Divided or Division Vote is where everyone votes – but those that don't want to be in Social Security will not be in. Those employees that do want in  will be, and if one person says yes, then all future employees will be covered by SS.

**STAFF RECOMMENDATION:**

Authorize General Manager to Initiate Social Security Section 218 Agreement Contract Process.

**ATTACHMENTS:**

1.     Correspondence dated September 21, 2018 from Official State Social Security Administrator CalPERS.
2.     Procedures
3.     Draft Resolution
4.     Correspondence – CalPERS 05/11/2018

Official State Social Security Administrator
California Public Employees' Retirement System
P.O. Box 720720
Sacramento, CA 94229-0720

Phone: (916) 795-0810 | Fax: (916) 795-3005
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442
www.calpers.ca.gov/SSSA

September 21, 2018

CalPERS ID No.: 1157424734

John Pegan, Human Resources
Mendocino Transit Authority
241 Plant Rd
Ukiah, CA 95482

Dear Mr. Pegan,

Thank you for contacting the State Social Security Administrator's Office (SSSA) regarding Social Security coverage.

The Section 218 Agreement contract process is a six-step process. This process can take 18-24 months to complete.

| | |
|---|---|
| Step 1 | Resolution Information Packet |
| Step 2 | Procedure Plan |
| Step 3 | Election |
| Step 4 | Application & Agreement Documents |
| Step 5 | SSA Review |
| Step 6 | SSA Decision |

This package provides detailed information on the steps and questionnaire to request to initiate or modify a Section 218 Agreement for Social Security coverage. The SSSA will provide templates for every step. These documents should not be modified in any way as only the content included in the documents provided by this office will be accepted.

Please return, the completed *Coverage Questionnaire* to begin the process. The SSSA will provide you with the step 1 documents.

If you have any questions regarding the enclosed information, please contact this office via email at sssa@calpers.ca.gov or via telephone at (916) 795-0810.

Sincerely,

Christina Bame
State Social Security Administrator Program

Enclosures

STATE OF CALIFORNIA
SOCIAL SECURITY PROGRAM FOR CALIFORNIA PUBLIC AGENCIES

PROCEDURES FOR CONDUCTING A
DIVISION OF RETIREMENT SYSTEM FOR SOCIAL SECURITY COVERAGE FOR AGENCIES
CONTRACTING WITH THECALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

The procedures described herein are primarily based on Sections 22150, 22151, 22151.1 and 22152 of the California Government Code, Sections 598.60 through 598.68 of the California Code of Regulations, and Section 218(d) of the Social Security Act.

THE TERM "MEMBER" APPLIES TO ALL PERSONS ELIGIBLE TO JOIN THE RETIREMENT SYSTEM, WHETHER OR NOT THEY HAVE ELECTED TO JOIN. (Section 22015 of the Government Code)

1.   The governing body of the Public Agency initiates the Division procedures by adopting a resolution provided by the California Public Employees' Retirement System (CalPERS) to:

    a.   Request authorization to divide the Public Agency's retirement system;

    b.   Establish the effective date of Social Security coverage (See page 4, Item 14);

    c.   State which exclusions from Social Security coverage are to be requested (See page 4, Item 15);

    d.   Name the Local Division Officer who will conduct the Division on behalf of the Public Agency; and

    e.   Specify the plan of combination of Social Security and the present retirement system, (i.e., supplementation, coordination, etc.).

2.   The Public Agency submits to the Board of Administration, California Public Employees' Retirement System, State Social Security Administrator Program, P. O. Box 720720, Sacramento, California 94229-0720:

    a.   One copy of the resolution requesting authorization to conduct the Division. The State authorizes the Division and appoints a State Supervisor. The Public Agency is advised of the authorization and appointment;

    b.   A list of all positions established in the Public Agency, whether or not they are subject to the retirement system. The Public Agency will be advised which positions are considered Police and Fire positions; individuals in Police and Fire positions are not eligible to vote in the Division; and

    c.   A completed coverage questionnaire.

3. CalPERS will provide the Public Agency with a draft of the Notice of Division, Statement of Information and Plan of Procedure to be completed and returned for approval.

4. The Public Agency establishes the date on which the Division will be held. The Division must be held no less than 90 days after the date the Notice of Division is distributed to eligible employees. The Local Division Officer prepares and submits to the State Supervisor for approval:

   a. A proposed Notice of Division to be given to eligible members of the retirement system;

   b. A proposed Statement of Information to employees to inform them of the rights and benefits which will accrue to them and to their dependents and survivors, and the liabilities to which they will be subject, if their services are covered under Social Security. The Statement must include a general explanation of the modified retirement system that may result from Social Security coverage; and

   c. A proposed Plan of Procedure to be followed in the conduct of the Division.

      NOTE: CalPERS must receive the completed Plan of Procedure and Notice forms at least 3 weeks prior to the date the Public Agency intends to distribute them to the eligible members. The Public Agency should allow time to prepare its final copies, arrange for distribution, etc.

5. <u>After</u> receiving approval by the State Supervisor of the Notice, Statement, and Plan, the Local Division Officer may distribute the Notice and Statement of Information to members of the retirement system. Notice must be given to members of the retirement system <u>on leaves of absence and to all employees becoming members of the retirement system up to and including the date of Division.</u>

   If any doubt arises as to an employee's eligibility to participate in the Division, a Notice and Statement should be given to the employee; his or her status can be resolved later. Under Section 598.64 of the California Code of Regulations, notice must be given by personal delivery or by first class mail and must be posted on all bulletin boards maintained by the Public Agency to give notices to employees.

6. On the date established for the Division, each member of the retirement system eligible to vote is to be supplied with a Division election form, approved by the State Supervisor, for each member to indicate whether he or she wishes to be covered by Social Security. If the form is supplied by mail, it must be sent by first class mail and must be accompanied with a stamped return envelope and instructions as to the date it must be postmarked and the address to which it must be returned.

On the date of the Division, the Local Division Officer establishes a list of eligible members of the retirement system. To be eligible to participate in the Division, an employee must be a member of and in a position covered by the retirement system on the date of the Division. Members who fall within coverage exclusions elected by the Public Agency are not eligible.

7. Section 598.65 of the Administrative Code requires the return of the Division election form within ten days of the division date. Failure to return a properly executed form by such time is considered an election to be included in the group that does <u>not</u> desire Social Security coverage.

8. At the close of the Division period, the Local Division Officer will:

   a. Certify the Completion of the Division procedures to the State Supervisor.

   b. Prepare a certified list of persons who were eligible to receive a Division election form and indicate the choice made by each individual as follows:

      YES - Members who chose to be covered under Social Security.
      NO - Members who chose not to be covered under Social Security.
      NR - Members not returning the Division election form.

   c. Send the list and all returned Division election forms to the State Supervisor for certification to the Board of Administration of the California Public Employees' Retirement System, to be maintained as a permanent record by the Board.

   d. To avoid misunderstanding, notify each member on the list who will <u>not</u> be covered under Social Security.

9. After the ten-day Division period, the governing body of the Public Agency <u>may</u> officially request Social Security coverage by adoption of a resolution and execution of an agreement with the State. The resolution and coverage agreement documents necessary for the Public Agency's governing body to formally request coverage will be provided. Allow 3 weeks for receipt of these documents.

   a. The following will be sent to CalPERS:

      (1) The original and one certified copy of the Resolution (PERS-SOC-33D).

      (2) The original and one signed copy of the Application-Agreement (PERS-SOC-32D).

b. The request will extend Social Security coverage to:

(1) All retirement system members who chose Social Security during the Division; and

(2) All new and reinstated employees who become members of or qualify for membership in the retirement system (except Police and Fire) after the Division date.

10. After the State executes the agreement with the Public Agency, an executed copy will be returned to the Public Agency. The State will then request inclusion of the Public Agency in the master Social Security agreement between the State and the Federal Government. Accompanying the State's request will be a certification to the Federal Government of the proper conduct of the Division.

11. The Public Agency will be officially in the Social Security program as of the date the request for coverage is approved by the Federal Government. The Public Agency will be notified by the State of the date and it will be assigned an employer identification number for Social Security purposes. To be eligible for retroactive coverage, the members must be in an employment relationship on the Federal approval date.

12. If the retirement formula is to be <u>changed from Full to Modified</u>, upon the Federal approval for coverage, the governing body of the Public Agency may then proceed to <u>amend its CalPERS contract</u>. Modified CalPERS member contributions may be effective no earlier than the date the federal government approves the agreement to include the Public Agency in the program.

13. All Social Security taxes will be deposited directly to the Internal Revenue Service. The Internal Revenue Service will provide reporting information.

14. <u>EFFECTIVE DATE OF COVERAGE</u> (Page 2, Resolution PERS-SOC-40D)

Coverage may be requested retroactive to five years prior to the first year in which all coverage procedures, including Federal approval, are completed, or any date thereafter. <u>Both the employer and employee will be required to pay Social Security and Medicare contributions retroactive to the effective date of coverage.</u> Your local Social Security office can give you information on the effect of retroactive coverage on Social Security benefits.

15. <u>OPTIONAL EXCLUSIONS</u> (Page 2, Resolution, PERS-SOC-40D)
    The following optional exclusions are the only ones permitted. Some of them can be further divided into particular classes. The Public Agency should contact State Social Security Administrator's Office if it desires to exclude a specific class of positions to insure proposed exclusion is acceptable under the Social Security Act. It is suggested that you do not request an optional exclusion that does not apply to your agency. Also, please keep in mind, that under these "Division" procedures, only members of a retirement system and optional non-members are involved.

    The Public Agency may request exclusion of the following services:

    a.   <u>All classes of elective positions</u> or one or more of the following classes of elective positions: legislative, executive, and judicial.

    b.   <u>All classes of part-time positions</u>, or certain particular classes of part-time positions, such as part-time clerical positions. If any part-time positions are excluded, a definition of a part-time position for Social Security purposes must be entered on the Applicant Questionnaire. <u>This is a permanent definition</u>.

    c.   <u>All classes the compensation for which is on a fee basis</u>. A fee basis position is one for which compensation is by fees received for particular services in the discharge of public duties, such as sometimes occurs with a justice of the peace, or building inspector. If you wish to request the "fee-basis" exclusion, please contact the State Social Security Administrator's Office.

    d.   <u>Agricultural labor</u>, as the term is defined in the Social Security Act, <u>if such work would be excluded if performed for a private employer</u>.

    e.   <u>Student services if such work would be excluded if performed for a private employer</u>. The student exclusion applies only to certain student nurses and to students who are employees of the school they are attending. It does not apply to students working in a city library or recreation department, for example.

16. Your local Social Security office will answer questions relating to Social Security benefits. Questions relating to the Division procedures should be directed to:

    CalPERS - State Social Security Administrator Program
    P.O. Box 720720
    Sacramento, Ca 94229-0720

    Telephone: (916) 795-0810

## RESOLUTION

WHEREAS, <u>Mendocino Transit Authority</u> hereinafter designated as "Public Agency",

desires to include services performed by its employees in positions covered by <u>California Public</u>

<u>Employees' Retirement System</u> in the California State Social Security Agreement of March 9,

1951, providing for the coverage of public employees under the old age, survivors, disability

and health insurance system established by the Federal Social Security Act, as amended; and

WHEREAS, State and Federal laws require, as a condition of such coverage, that a

referendum first be authorized by the Board of Administration, Public Employees' Retirement

System, and conducted among the "eligible employees" (as defined in Section 218(d)(3) of the

Social Security Act) of the Public Agency; and

WHEREAS, it is necessary that the "Public Agency" now designate any classes of

positions covered by said retirement system which it desires to exclude from coverage under

said insurance system;

# Draft

NOW, THEREFORE, BE IT RESOLVED, that the Board of Administration, Public Employees'

Retirement System be, and hereby is requested to authorize the foregoing referendum; and

BE IT FURTHER RESOLVED, that upon receipt of authorization from the Board of

Administration, a referendum shall be conducted in accordance with the requirements of

Section 218(d) of the Social Security Act, and applicable State and Federal laws and regulations;

that such referendum shall be held on the question of whether service in positions covered by

said retirement system should be excluded from or included under an agreement under the

insurance system established under the Social Security Act, as hereinbefore provided, with such

coverage effective as to services performed on and after _____; and

BE IT FURTHER RESOLVED, that the following classes of positions covered by said

retirement system of the "Public Agency" shall be excluded from coverage under said

agreement:

1.  All services excluded from coverage under the agreement by Section 218 of the

    Social Security Act; and

2.  Services excluded by option of the Public Agency (**Check a or b; fill in b if**

    **checked**):

    ☐   a. No optional exclusions desired.


    ☐   b. Service performed: _____

BE IT FURTHER RESOLVED, that not less than ninety days' notice of such referendum be given to all "eligible employees" as hereinabove provided; and that _____ is hereby designated and appointed to conduct such referendum on behalf of the "Public Agency" in accordance with law, regulations, and this resolution, including the giving of proper notice thereof to all such "eligible employees"; and

BE IT FURTHER RESOLVED, that with respect to eligible members thereof, the benefits and contributions of the said retirement system shall (**not be modified in any way**) (**be modified pursuant to provisions of Article 13, County Employees' Retirement Law of 1937**) (**be modified pursuant to the provisions of the Public Employees' Retirement Law**); and

BE IT FURTHER RESOLVED, that the Public Agency will pay and reimburse the State at such time and in such amounts as may be determined by the State the approximate cost of any and all work and services relating to such referendum.

Draft

_____
Presiding Officer

_____
Official Name of Public Agency

_____
Date

CERTIFICATION

I, _____, _____of the <u>Mendocino Transit Authority</u>, State of California, do hereby certify the

foregoing to be a full, true, and correct copy of Resolution No. _____ adopted by the _____ of

the <u>Mendocino Transit Authority</u> at the regular/special meeting held on the _____th day of

_____, _____, as the same appears of record in my office.

Signature: _____**Draft**_____

Title: _____

Date: _____

**CalPERS**

California Public Employees' Retirement System

May 11, 2018

CalPERS ID No.: 1157424734

Mr. John Pegan
Mendocino Transit Authority
241 Plant Road
Ukiah, CA 95482

Dear Mr. Pegan,

This is in response to your inquiry regarding Social Security coverage.

Following are the two methods by which the agency that has a retirement plan can provide Social Security coverage:

1.    Coverage can be on an "all or none" basis. All eligible members of the retirement plan would vote in a Referendum. If a majority of the members vote in favor of Social Security coverage, all employees occupying positions covered under the retirement plan would be covered under Social Security, including those who voted "no". Under these procedures, Social Security coverage usually supplements the present retirement plan.

2.    Coverage can be on a "divided" basis. Under this procedure, each employee who is a member of the retirement system on the election date would make an individual choice as to whether or not he personally wishes to be covered under Social Security. All new employees are covered under Social Security on the date they become members of the retirement plan.

The first step under either procedure would be for the agency to adopt a resolution (enclosed Form PERS- SOC-40R or SOC-40D) to request permission to conduct a referendum or division among eligible members of the retirement plan. Please indicate whether the retirement plan will be modified on the last page of the resolution. The enclosed questionnaire (PERS-SOC-56A) should also be completed and returned with the resolution.

**Please do not retype the Resolution and/or agreement documents. Only documents provided by this office will be accepted.**

If you have any questions regarding the enclosed information, please contact this office at (916) 795-0810.

Sincerely,


Veronica Silva-Gil
State Social Security Administrator Program

Enclosures