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Office of Personnel Management

FPM Letter 832-1

Federal Personnel Manual System

FPM Letter 832-1

Advance Edition 12/15/83

Published in advance
of incorporation in FPM
Supplement 832-1*

RETAIN UNTIL SUPERSEDED

SUBJECT: Social Security Coverage for Federal Employees

Washington, D. C. 20415
December 29, 1983

Heads of Departments and Independent Establishments:

1. This letter transmits to agencies a draft of the text of a new FPM Supplement 832-1 entitled Social Security Retirement, Survivors and Disability Insurance, and the Medicare Program. This supplement has been prepared by the Social Security Administration which is solely responsible for its content.

2. Public Law 98-21, The Social Security Amendments of 1983, enacted on April 20, 1983, is a comprehensive legislative package designed to restore financial stability to the Social Security System in the short-term and in the long-range future. This new law contains several significant features which affect many current Federal employees and all future Federal employees. The most significant feature is the extension of Social Security coverage to new Federal employees on January 1, 1984. Thus, the Social Security Administration has produced a new FPM Supplement 832-1 (copy attached) to familiarize Federal agencies with the duties and responsibilities assigned them by P.L. 98-21.

3. FPM Supplement 832-1 will be distributed as an FPM installment as soon as possible.

Donald J. Devine
Director

Attachment

Inquiries: Office of Retirement and Survivors Insurance, Social Security Administration,
Department of Health and Human Services (301) 594-3666.

Code: 832, Social Security Retirement, Survivors Insurance, Disability Insurance, and
Medicare

Distribution: FPM (advance edition limited)

*Supplement not yet issued

The material in this chapter has been prepared by the Social Security Administration and is included in the Federal Personnel Manual Supplement for the use of Federal agencies. Questions about Social Security coverage should not be directed to the Office of Personnel Management; instead, they should be directed to agency personnel offices for referral to the Social Security Administration.

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Chapter 832

Social Security Retirement, Survivors, and Disability Insurance, and
Medicare

Subchapter 1. Application to Federal Civilian Employment--General

1-1. Introduction

Prior to 1983, service of most Federal civilian employees was not covered by the Social Security program. Legislation enacted in 1982 imposed the hospital insurance portion of the Social Security tax on all Federal employees not already covered by Social Security, effective January 1, 1983. The Social Security Amendments of 1983 extended full coverage and taxation to most new Federal employees and certain other employees and officials effective January 1, 1984.

As a rule of thumb, it can be assumed that a new employee will be covered by Social Security unless specifically excluded by law. Therefore, most employees hired after January 1, 1984, will be automatically covered and Social Security taxes withheld. This supplement outlines most of the coverage and exclusions from coverage.

Service performed in the employ of the United States Government and wholly owned instrumentalities thereof was excluded from Social Security coverage by the original Social Security Act (act) of 1935. The act was

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amended in 1950, and later, to provide Social Security coverage for service of those Federal civilian employees not covered under the Civil Service Retirement System, or another Federal retirement system, and some employees of some Federal instrumentalities as a supplement to coverage under the retirement system of the instrumentality. Service of all uniformed members of the Armed Forces on active duty was covered beginning in 1957.

supplement

As used in this supplement, the "Social Security program" encompasses the collection of Social Security taxes, the payment of Social Security benefits, and the administration of Medicare (a program of health insurance for the aged and disabled).

1-2. Applicable Provisions of Laws

The Federal Insurance Contributions Act (FICA), Chapter 21 of the Internal Revenue Code (code), imposes a payroll tax, commonly referred to as a FICA or Social Security tax, upon both employers and employees. The tax is a percentage of the wages paid to an employee for work in covered employment, up to a maximum amount for a year. Most of the tax is allocated to the trust funds from which Social Security retirement, survivors and disability insurance benefits are paid (old age, survivors and Disability Insurance (OASDI) portion). A smaller portion (the hospital insurance portion) is allocated to the trust fund from which Medicare benefits are paid. (See 2-13. for tax rates and allocations and maximum wages subject to tax.)

Section 3121(u) of the code (26 U.S.C. 3121(u)) imposes the hospital insurance portion of the Social Security tax, generally, on all Federal employees not subject to the full tax. Section 3121 of the code defines the terms "wages," "employment", "employee" and specifies certain exceptions to those terms.

The Social Security Act, for Social Security benefit purposes, contains provisions similar to those in the code. Section 209 defines "wages" and section 210 defines "employment" and "employee" (42 U.S.C. 409 and 410).

In addition to the above provisions of law, section 3122 of the code and section 205(p) of the act (42 U.S.C. 405(p)) address the responsibilities of Federal agencies with respect to Federal employment covered by Social Security. These sections provide, in effect, that determinations as to employment and wages for employees of the United States, or its wholly owned instrumentalities, are to be made by the head of the employing agency or instrumentality, or by his/her designated agents. Such determinations are made in accordance with the applicable provisions of the code and act. (See 1-5. for further discussion of agency determinations.)

1-3 Responsibilities of the Internal Revenue Service (IRS)

The IRS is responsible for determining liability for Social

Security taxes and collecting such taxes. It provides employers with appropriate instructions with respect to employer responsibilities in this connection.

1-4. Responsibilities of Department of Health and Human Services (HHS)

Two components of HHS have responsibility for the Social Security program.

The Social Security Administration (SSA) is responsible for the payment of retirement, survivors and disability benefits to individuals who meet eligibility requirements. SSA maintains records of earnings reported for individuals subject to Social Security taxes. It uses these records to determine if a worker had sufficient employment covered by Social Security to be insured for retirement, survivors or disability benefits. The amount of benefits payable is based upon the earnings reported.

The Health Care Financing Administration (HCFA) administers the Medicare program. See subchapter 4 for a discussion of Medicare (health insurance) benefits.

1-5. Responsibilities of Employing Agencies

The employing agency, or instrumentality, has certain responsibilities with respect to the withholding and payment of Social

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Security taxes, as explained in (a) - (e) below.

(a) Determining the employees whose wages are subject to Social Security taxes.

Subchapter 2 explains Federal employment which is covered by Social Security. Note that Federal employment covered by Social Security is subject to full Social Security taxation (both the OASDI and HI portions). A few types of Federal employment are excluded from all Social Security taxes, as explained in sections 2-6. and 2-7. All other Federal employment is subject only to the health insurance portion of the Social Security tax. Subchapter 2 explains wage payments which are subject to both full and partial Social Security taxation.

Generally, a Federal agency will determine the Social Security tax status of service of its own employees under the pertinent provisions of supplement law, as explained in this. The agencies must determine such matters as:

1. Date an individual became a Federal employee.
2. Date an individual's Federal employment terminated.
3. Whether an individual is in a position which will be mandatorily covered by Social Security beginning January 1, 1984, even

though the individual is not a newly hired Federal employee, e.g., whether a position is listed in the Executive Schedule (see 2-1.).

4. Whether an individual is a newly hired Federal employee (see 2-2.).

5. For the legislative branch, whether an individual was subject to subchapter III of chapter 83 of Title 5 U.S. Code (Civil Service Retirement System) on December 31, 1983. (See 2-4. for further discussion of the status of legislative branch employees.)

6. Whether an individual is a reemployed annuitant or a retired member of the uniformed service (see 2-5.).

7. Whether an individual is an employee of the Federal government (see 2-8. for meaning of employee).

(b) Obtaining the Social Security number of each covered employee.

The employee's name and Social Security number is to be taken from his/her Social Security card and used on the appointing SF-50, Form W-2 and all other documents where it is required. If an employee was never issued a number, have him/her contact the nearest Social Security office to complete Form SS-5, Application for Social Security Number, and present evidence of indentity, birth and, if foreign born,

of U.S. citizenship or current alien status.-- If the card has been lost or the name changed, proof of identity and U.S. citizenship or current alien status (if foreign born) is required.. It usually takes two weeks or less to get a Social Security card.

(c) Withholding Social Security taxes from employee's wages (see 2-9. through 2-11. for information on wages subject to Social Security taxes); depositing Social Security taxes periodically, in accordance with IRS instructions; and filing form 941 with the IRS quarterly, reconciling taxes withheld to wages paid.

(d) Furnishing employees with Form W-2 (Withholding Tax Statement), completed in accordance with IRS instructions, by January 31 of the year following the year wages were paid.

(e) Sending copies A of the Forms W-2 to the appropriate SSA Data Operations Center, as instructed by IRS.

Subchapter 2

Social Security Coverage and Taxation of Federal Civilian Employment

2-1. Social Security Coverage Status of Federal Civilian Employees

Prior to January 1, 1984, most Federal civilian employment was subject only to the health insurance portion of the Social Security tax.

beginning with wages paid in 1983. Employment covered by Social Security prior to 1984, and subject to full Social Security taxation, was primarily service of temporary or intermittent employees who were not covered by a retirement system established by a law of the U.S.

Beginning January 1, 1984, the following Federal civilian employment is covered by Social Security and subject to full Social Security taxation:

(a) Federal employees newly hired on or after January 1, 1984
(see 2-2. for meaning of newly hired);

(b) Service performed as the President or Vice-President of the United States;

(c) Service performed as the Chief Justice of the United States; an associate justice of the Supreme Court, a judge of a United States Court of Appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States Magistrate, or a referee in bankruptcy or United States bankruptcy judge;

(d) Service performed as a Member, Delegate, or Resident Commissioner of or to the Congress;

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(e) Any service in the legislative branch of the Federal Government if such service is performed by an individual who, on December 31, 1983, is not subject to subchapter III of chapter 83 of title 5 United States Code (see 2-4. for discussion of the status of legislative branch employees); and

(f) Service performed--

(I) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code;

(II) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service; or

(III) in a position to which the individual is appointed by the President (or his designee) or the Vice-President under section 105(a)(1), 107(a)(1) or (b)(1) of Title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule.

2-2. Newly Hired Federal Civilian Employees

Beginning January 1, 1984, newly hired Federal civilian employees are subject to full Social Security taxation. A newly hired Federal civilian employee is either one with no prior Federal employment or one

hired after a separation exceeding 365 days from Federal employment. (An employee who moves from one agency to another is not newly hired; nor is an employee who is converted to another or a different appointment in his/her agency.)

For purposes of this provision, "Federal employment" includes service as a member of the uniformed services on active duty.

In determining whether there was prior Federal employment, or a separation exceeding 365 days, consider all employment for any Federal agency, wholly-owned instrumentality, and service as a member of the uniformed services on active duty.

Under the Social Security Act, annuitants (except retired members of the uniformed services) are not to be considered newly hired employees (see 2-5.), even if it has been more than 365 days since they last worked for the Federal Government.

Example 1: B, a civilian employee of the Department of Defense, resigned effective November 15, 1983. In June 1984 he was hired by the Department of State. B's employment for the Department of State will not be subject to full Social Security taxation since he did not have a separation from Federal employment exceeding 365 days.

Example 2: Jane, an employee of IRS, was on maternity leave beginning

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January 1983. After using all leave, she was placed on leave without pay until November 15, 1983, when she resigned. Jane was rehired by the IRS on November 1, 1984. Jane will not be subject to full Social Security taxation as her break in service did not exceed 365 days.

Example 3: Bob was hired by the Department of Commerce on October 3, 1983, on a temporary appointment (subject to full Social Security taxation and not to coverage under the Civil Service Retirement System).

On April 22, 1984, his appointment is converted to Career Conditional. Bob will not be subject to full Social Security taxation because he is not a newly hired employee.

Example 4: Paul, an employee of the Department of Defense, resigned to accept a 3-year assignment as a National Guard technician with the National Guard of "X" State. He is serving such assignment on December 31, 1983. His assignment is completed on April 14, 1984. On May 1, 1984, he is re-employed by the Department of Defense. The National Guard Technician's Act (32 U.S.C. 709) specifies that technicians are employees of the United States. Due to this provision, Paul's break in service was less than one month, and he is not subject to full Social Security taxation.

2-3. Executive Schedule and Senior Executive Service Positions

Service in a position which is not listed in the portions of the Executive Schedule specified in section 210(a)(5)(B) of the Social

Security Act, but which when established was designated to be treated as if it were listed therein is not automatically covered as of January 1, 1984, for individuals so employed on December 31, 1983. Coverage of service of individuals whose employment in such positions begins on or after January 1, 1984, will depend upon whether the individual is a newly hired Federal employee (see 2-2.).

Some Senior Executive Service (SES) positions (see 5 CFR 737.33) were listed in the Executive Schedule (5 U.S.C. 5315 and 5316) before the SES was established, and have not been deleted. The creation of the SES effectively removed such positions from the Executive Schedule. Therefore, an agency should determine the status of service in an SES position without regard to Executive Schedule listing. The service of a career SES appointee will be covered on or after January 1, 1984, only if the individual is a newly hired Federal employee. Service of a noncareer SES appointee will be covered beginning January 1, 1984, regardless of such appointee's previous election to opt in or out of Civil Service Retirement coverage.

2-4. Legislative Branch Employees

The Social Security coverage status of an employee in the legislative branch depends upon whether the individual was subject to Subchapter III of chapter 83 of title 5, U.S. Code (the Civil Service Retirement System) on December 31, 1983. Examples are provided to illustrate this provision.

(a) Individual employed by the Legislative Branch after December 31, 1983, and NOT subject to the Civil Service Retirement System (CSRS) on December 31, 1983.

Such an individual will be subject to full Social Security taxation, if employed by the legislative branch on January 1, 1984, or any date thereafter. Therefore, service of an individual not under the Civil Service Retirement System on December 31, 1983, will be covered by Social Security for employment in the legislative branch beginning after December 31, 1983.

Example 5: J. was discharged from the U.S. Navy in October 1983. He was hired as an employee of the legislative branch in March 1984. J. was never covered under the Civil Service Retirement System. J's service will be subject to full Social Security taxation since he was not subject to the Civil Service Retirement System on December 31, 1983.

(b) Individual employed by the Legislative Branch after December 31, 1983, and subject to the Civil Service Retirement System on December 31, 1983.

Employees of the legislative branch who were under the CSRS on December 31, 1983, are not subject to full Social Security taxation if employed by the legislative branch on January 1, 1984. If at anytime after that date, an employee of the legislative branch terminates employment, but resumes employment at a later date, the coverage status would depend upon whether the individual was a "newly hired" Federal employee.

If the break in Federal service exceeded 365 days, work would be covered; otherwise it would not.

The same rule applies if an individual enters employment in the legislative branch after January 1, 1984. If the individual was subject to the CSRS on December 31, 1983, (regardless of the branch of the Federal Government by which employed on that date) his/her service in the legislative branch would be covered only if the individual is a newly hired Federal employee (see 2-2.).

Example 6: M. was employed by the Department of Interior until January 15, 1984. He was under the CSRS on December 31, 1983. He became an employee of the legislative branch in June 1984. His service is not subject to full Social Security taxation. He is not a newly hired Federal employee, as his break in Federal employment did not exceed 365 days.

Example 7: M. retired from the Department of Treasury, became entitled to a civil service annuity, and was reemployed by the House of Representatives. A reemployed civil service annuitant is exempt from Social Security coverage. Therefore, such an individual employed in the legislative branch on December 31, 1983, or any time thereafter, is excluded from Social Security coverage (see 2-5.).

Example 8: M., an employee of the legislative branch and covered by the CSRS terminated his employment on December 30, 1983. He was reemployed in the same position beginning January 3, 1984. Since M. was not subject

to the CSRS on December 31, 1983, his service in 1984 will be covered under Social Security. If, on the other hand, M. had terminated his employment on December 31, 1983, his service will not be covered under Social Security, since he was under CSRS on that date.

2-5. Reemployed Annuitants and Retired Members of the Uniformed Services

Service performed by reemployed Civil Service, Foreign Service and other Federal civilian annuitants is subject only to the health insurance portion of the Social Security tax.

Retired members of the uniformed services who are employed by the Federal Government fall under the general coverage rules explained in

2-1. and 2-2.

An individual who is both a reemployed Civil Service Annuitant and retired member of a branch of the uniformed service is considered a reemployed Civil Service Annuitant.

A person who terminated his or her civil service annuity upon reemployment by the Federal Government is not considered a civil service annuitant.

2-6. Service Within and Outside the U.S.

For Social Security taxation purposes, the "U.S." is the 50 States.

the D.C., Puerto Rico, Virgin Islands, Guam, and American Samoa.

Employment performed within the U.S. is covered without regard to the citizenship or place of residence of the employee.

Employment performed outside the U.S. is covered only if the employee is a U.S. citizen or, beginning January 1, 1984, a resident alien of the U.S. The Departments of Defense and State are the principal agencies employing people outside the U.S., and this provision will relate primarily to them. For this purpose, a "resident alien of the U.S." means an alien who is not now physically present in the U.S. but who nevertheless makes his home in the U.S. Those aliens admitted to the U.S. with visas permitting residence ordinarily are resident aliens.

However, the employing agency is not bound to accept the visa as a determination of the status of an alien. It may properly consider other factors and conclude that the alien is no longer a resident of the U.S. or never acquired residence in the U.S. For example, the agency may consider that an alien present in his native country and applying for a job of indefinite duration to be performed in that country is not a resident of the U.S. Keep in mind that if an individual is a resident for Social Security tax purposes, he/she is a resident for income tax withholding purposes.

2-7. Employment Excluded From All Social Security Taxation

The following Federal employment is specifically excluded from all Social Security taxation: (1) service performed by an inmate in a U.S.

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penal institution;

(2) service performed by an employee included under 5 U.S.C. 5351(2), which relates to certain interns, student nurses, and other student employees of Federal Government hospitals, but does not include a medical or dental intern or resident in training;

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

(4) service performed by a nonresident alien individual temporarily present in the U.S. as a nonimmigrant under subparagraphs (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act.

2-8. Meaning of Employee

There may be instances where individuals are engaged to perform work for the Federal Government, but there is a question as to whether the individual is performing the work as a self-employed independent contractor, or as an employee. An example is consultants engaged to do specific work.

Where the Federal agency has the right to control the individual as to the manner in which the work will be done, and when and where it will be done, the individual is an employee.

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Where income tax is withheld, it can be assumed that the individual is an employee.

2-9. Meaning of "Wages"

"Wages" subject to full or partial Social Security taxation means all remuneration for employment not specifically excluded by law. Wages may be paid on an hourly, weekly, monthly, or yearly basis. Wages may be paid to the worker whose employment is involved or to a third party on his behalf, e.g., a trust, union funds, or a bank. The amount of wages actually paid to the employee during the year is to be reported on form W-2.

2-10. Payments Which Are Wages

The following payments are wages for Social Security coverage and taxation purposes:

a. Salary - regularly scheduled payments as set by law for the worker's grade and schedule, including pay for overtime (WG, GS, GM, etc.);

b. Cost-of-living allowances - payments made in addition to the regular salary to workers in certain geographical areas;

c. Awards - All bonuses and awards paid workers by the employing

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agency;

d. Vacation pay and pay in lieu of vacation, including accumulated annual leave upon termination of employment;

e. Sick and accident disability payments made during the month of sickness/accident and the next six full calendar months;

f. Dismissal or severance pay - payment to an employee involuntarily separated without cause who has been employed continuously for at least 12 months, is not entitled to an immediate annuity and is not serving under an appointment with a time limitation;

g. Backpay under a statute - payment by the employing agency pursuant to an award, determination or agreement approved or sanctioned by a court or administrative agency charged with enforcing a Federal statute (Fair Labor Standards Act, Civil Rights Act, etc.), protecting an employee's right to employment or wages;

h. Wages earned before the worker's death and paid after death to a survivor or the worker's estate if paid in the year of death;

i. Employee taxes and other amounts deducted by the employer from the employee's wages;

j. Any payment made under 28 U.S.C. 371(b) to an individual

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performing service under 28 U.S.C. 294 which is received during the period of such service. (This relates solely to retired justices and judges who continue to perform judicial duties.) This provision becomes effective only after December 31, 1985.

2-11. Payments Which Are Not Wages

a. Traveling expenses - advances or reimbursements for traveling expenses incurred in the business of the employer, including per-diem;

b. Pensions and retirement pay (but see 2-10(j));

c. Sick pay after expiration of six calendar months following the last calendar month in which the employee worked for the employer;

d. Moving expenses if they are deductible for income tax purposes under and in the amounts stipulated by section 217 of the code;

e. Meals and lodging if furnished on the premises of the employer and for the convenience of the employer, and in the case of lodging, the employee is required to accept as a condition of employment;

f. Uniform or special clothing allowance.

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2-12. Resolving Coverage and Wage Questions

Federal agencies and instrumentalities may use the information in this chapter and applicable provisions of the Internal Revenue Code to determine whether employment is subject to full, partial or no Social Security taxation, and whether payments made to employees are "wages" for Social Security taxation purposes.

If a Federal Government component has any questions about the information given herein or about interpretation of the law, the question should be referred to the component's national office. That office may submit Social Security tax questions to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington D.C. 20224, Attention: Chief, CC: IND: I: 1.

2-13. Tax Rates and Maximum Taxable Wages

The Social Security tax rate schedule for employees and employers, each, is shown below:

	<u>EMPLOYEE RATE</u>			<u>EMPLOYER RATE</u>			<u>COMBINED RATE</u>
	<u>OASDI</u>	<u>HI</u>	<u>TOTAL</u>	<u>OASDI</u>	<u>HI</u>	<u>TOTAL</u>	
1983	5.4	1.3	6.7	5.4	1.3	6.7	13.40
1984	5.4	1.3	6.7	5.7	1.3	7.0	13.70
1985	5.7	1.35	7.05	5.7	1.35	7.05	14.10
1986-1987	5.7	1.45	7.15	5.7	1.45	7.15	14.30

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	<u>EMPLOYEE RATE</u>			<u>EMPLOYER RATE</u>			<u>COMBINED</u>
	<u>OASDI</u>	<u>HI</u>	<u>TOTAL</u>	<u>OASDI</u>	<u>HI</u>	<u>TOTAL</u>	<u>RATE</u>
1988-1989	6.06	1.45	7.51	6.06	1.45	7.51	15.02
1990 and later	6.2	1.45	7.65	6.2	1.45	7.65	15.30

The maximum amount of wages to which the Social Security tax rate applies is \$35,700 for 1983, and \$37,800 for 1984. This amount, also referred to as the wage base, is automatically adjusted each year to take account of increase in average earnings in the economy. The SSA must publish the wage base for the succeeding calendar year in the Federal Register by November 1 of each year.

The taxes are imposed without regard to the expectation of or receipt of Social Security benefits. A refund of taxes is possible only if they were improperly withheld or if excess taxes are withheld in a calendar year. In the first situation, the employer is expected to claim a credit against future taxes and to make a refund to the employee. In the second situation, the employee claims a refund when the individual income tax return is filed. There is a specific line item on form 1040 for claiming excess Social Security taxes.