United States General Accounting Office
Washington, DC 20548

Health, Education, and
Human Services Division

B-284947

August 31, 2000

The Honorable E. Clay Shaw, Jr.
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives

Subject: Social Security: Coverage for Medical Residents

Dear Mr. Chairman:

In 1998 a federal court ruled that the University of Minnesota was not liable for Social Security contributions for wages paid to certain medical residents as part of their residency training. The court ruled, in part, that these medical residents met certain criteria to be considered "students" and therefore qualified for an exception to paying Federal Insurance Contributions Act (FICA) taxes and Social Security coverage. This ruling generated a number of applications for tax refunds to the Internal Revenue Service (IRS) by medical residents and by medical institutions that pay the employer's share of Social Security. As of April 7, 2000, medical residents and their employers had submitted 228 claims for refunds totaling more than $162 million. The Social Security Administration (SSA) estimates that if all the medical residents in the country were exempt, the loss to the Social Security Trust Funds over the next decade could be in the billions of dollars.

You asked us to provide information about (1) how IRS and SSA are proceeding since the court decision and (2) what decisions IRS has made about refunding taxes for Social Security paid by medical residents and their employers and the effect of those decisions on the Social Security Trust Funds. We interviewed IRS and SSA headquarters officials to obtain information on the laws, regulations, and policies applicable to medical residents and how IRS and SSA have been implementing them. Our review was conducted between February and August 2000 in accordance with generally accepted government auditing standards.

In brief, IRS, the agency responsible for collecting taxes for Social Security, completed assembling its guidelines in April 2000 for how its employees should respond to the refund applications received since the court decision. Any determinations about refunds had been placed on hold until these guidelines were in place and IRS had trained its revenue agents to apply the guidelines, which was done in July 2000. Under the IRS guidelines, which clarify existing agency policy, refund decisions will continue to be

made on a case-by-case basis, by considering a variety of facts. For example, determining whether a medical resident qualifies for an exception as a student will depend on such factors as whether the residency program includes regularly scheduled lectures and classroom time, evaluation by faculty members based on academic standards, and student benefits such as health insurance, housing, and discount event tickets. Under these guidelines, it is possible that decisions about exemptions will vary even among residency programs at the same institution. Now that the guidelines are in place and revenue agents are trained, IRS expects to resume considering refund claims. However, because each claim will involve weighing a complex set of factors, IRS has no estimate of when the first cases will be completed. In addition, it is impossible to know at this point how many refunds IRS will make or what effect such IRS decisions will have on the Social Security Trust Funds.

BACKGROUND

To become a physician in the United States, an individual must graduate from an accredited medical school, pass a licensing examination, and complete 1 to 7 years of graduate medical education in an accredited medical residency program, usually at a teaching hospital. As a part of their graduate medical education, these medical residents are involved in direct patient care, which ranges from taking medical histories and performing examinations to assisting in surgery. Medical residents are paid a salary for these services and may receive other benefits such as vacations, sick leave, and malpractice insurance coverage. In calendar year 1999 the average annual salary paid to medical residents was about $39,000. During the 1998-99 academic year, there were about 97,000 medical residents in the United States.[1] These medical residents participated in approximately 7,900 residency programs at about 1,500 teaching hospitals, most of which are not parts of schools.[2]

Authorized by title II of the Social Security Act, the Old Age, Survivors, and Disability Insurance (OASDI) programs, commonly referred to as “Social Security,” provide financial protection for covered employees and their families against the loss of earnings due to retirement, death, or disability. About 96 percent of the U.S. workforce pay Federal Insurance Contributions Act (FICA) taxes on their wages to fund these Social Security programs and Medicare. In 2000, the Social Security portion of FICA taxes is 12.4 percent of a worker’s annual wages up to $76,200 and are split evenly between employee and employer or paid in full by the self-employed.[3] Two federal agencies have key roles related to Social Security and FICA. SSA maintains individual records on each

[1]This included about 67,000 graduates of U.S. medical schools, about 26,000 graduates of Canadian and foreign medical schools, and about 3,600 graduates of osteopathic medical schools.

[2]Throughout the report, we focus specifically on medical residents, except when we use estimates from SSA’s Office of the Actuary. These estimates include dental residents as well.

[3]The total FICA tax is 15.3 percent—12.4 percent is used to fund Social Security programs, and 2.9 percent funds the hospital insurance portion of Medicare.

worker's reported wages subject to the FICA tax and disburses benefits based on these reported wages. IRS collects FICA taxes and issues refunds.

No federal law provides that medical residents are uniformly subject to, or exempt from, paying the FICA tax. However, federal law contains provisions under which medical residents could potentially be exempt. For example, school, college, and university students employed at the school at which they are enrolled and regularly attending classes can be exempt. Thus medical residents could be exempt if they are employed by the school, college, or university at which they are students, enrolled, and regularly attending classes. However, SSA points to a 1965 change in the Social Security Act that established a requirement that medical interns pay FICA taxes as an example of a congressional decision to ensure that interns receive social security coverage.

Before 1987, SSA had responsibility for collecting payments from state and local employers, made in lieu of FICA taxes, to the Social Security Trust Funds to obtain Social Security coverage. These payments were made under what are known as "section 218" agreements between state and local governments and SSA.[4] (Refer to encl. 1 for more information on these agreements.) SSA, in enforcing its section 218 agreements, had consistently held that medical residents were not students; students were excluded from Social Security coverage in many of the section 218 agreements. Accordingly, prior to 1987, even if students were excluded from coverage in a section 218 agreement, medical residents who worked for state and local governments, including public medical schools, and their employers were required to make Social Security payments in lieu of FICA taxes. After 1987, state and local employees covered under section 218 agreements paid FICA taxes to the IRS.

In 1990, in accordance with its policy that medical residents were not students, SSA attempted to collect unpaid Social Security contributions for 1985 and 1986 for medical residents enrolled in the University of Minnesota, a state university. The resulting 1998 court decision held that SSA's own regulations required a case-by-case determination of whether medical residents at the University of Minnesota were students. The decision, made by the U.S. Circuit Court of Appeals for the 8th Circuit, affirmed a district court ruling that the state of Minnesota was not liable for employer payments in lieu of FICA taxes on amounts paid to medical residents attending the University of Minnesota in 1985 and 1986 (State of Minnesota v. Apfel, 151 F.3d 742 (8th Cir. 1998)). The court found these medical residents were students within the meaning of the Social Security Act. (See encl. 2 for an expanded discussion of this case.)

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[4]When the Social Security Act was enacted in 1935, state and local governments were exempted from participation. Section 218 of the Social Security Act, enacted in 1950, allows a state to reach an agreement with SSA allowing some or all state and local government employees to receive Social Security coverage. Until 1987, these employees and their employers made payments in lieu of FICA taxes to SSA. In 1987, these employees became subject to FICA taxes, which are collected by the IRS. However, states continue to have section 218 agreements with SSA to specify which state and local employees participate in Social Security.

Following the 1998 court ruling, a number of tax consultants advised their clients that medical residents in general might qualify for the FICA student exception and not have to pay taxes for Social Security. These tax consultants worked with a number of colleges and universities that filed FICA tax refund claims with the IRS.

IRS HAS DEVELOPED DETAILED GUIDANCE FOR CASE-BY-CASE DETERMINATIONS OF CLAIMS

IRS has the primary responsibility for determining FICA liability and collecting FICA taxes for all medical residents.[5] The agency has regulations and guidance to be used to determine whether employees qualify for the student exception, and this guidance indicates that medical residents do not automatically qualify as students—instead, their status must be considered on the basis of the particular facts and circumstances of each case.[6] IRS has not developed data concerning the number or portion of medical residents that are currently paying FICA taxes. However, because the court decision generated a number of requests for FICA refunds, IRS recently developed 31 pages of legal guidance and trained some of its revenue agents to provide a consistent approach for examining refund claims. The legal memorandum, dated April 19, 2000, expands on the existing IRS regulations and provides a roadmap for determining whether the student FICA exception is applicable for any specific medical residency program. Because the determination process involves making judgments about a number of detailed factors, residency programs and individual medical residents will continue to need case-by-case evaluation.

The process involves several different tests that must be applied to each program. As figure 1 shows, these tests focus on determining (1) whether the resident's employer meets certain requirements and (2) whether the resident meets the requirements to be considered a student under the exception.

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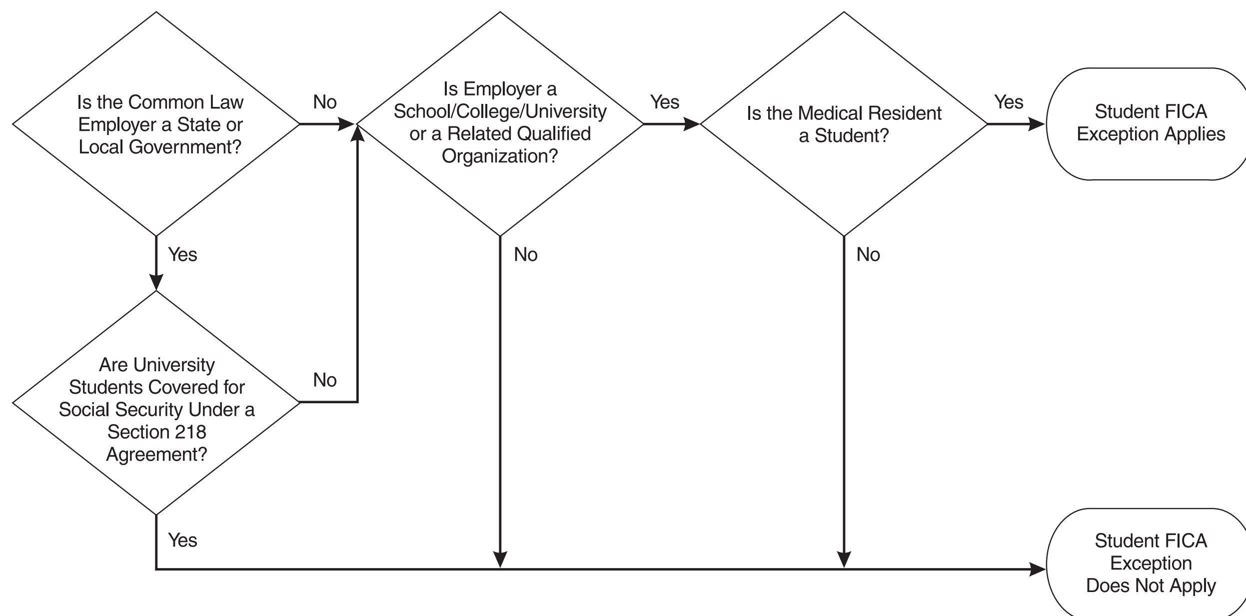
[5]SSA's responsibility for determining and collecting Social Security contributions in lieu of FICA ended in 1986 and had applied only to those individuals employed by state and local governments.

[6]See 26 C.F.R. section 31.3121(b)(10)-2 and Revenue Procedure 98-16, issued January 16, 1998.

Figure 1: Overview of the Process for Making Refund Decisions



Source: Based on an IRS legal memorandum of April 19, 2000.

Determining the Common-Law Employer
and Applying the Section 218 Test

As figure 1 shows, the first step in the process (see the diamond-shaped box in the upper-left-hand corner of the figure) involves identifying the "common-law" employer. Although it is not necessarily the entity that pays the resident, the common-law employer is the party that has the right to direct and control the resident. Determining who has control can itself be very complicated. For example, as the IRS memorandum notes,

> "While the primary purpose of [graduate medical education] programs is to train medical doctors in a medical specialty, they also provide residents who perform patient care services. . . . The fact that the sponsoring institution evaluates the resident's training progress does not necessarily mean that it has the right to direct and control the resident's patient care services."

If IRS determines that the common-law employer is a state or local government, and if the state or local government participates in Social Security through a section 218 agreement that does not explicitly exclude coverage for students,[7] the exception does

[7]While a section 218 agreement permits state and local government employees to participate in Social Security, the agreements may also exclude certain groups of employees from coverage, such as students or employees of certain entities.

not apply, and the medical resident is subject to FICA. As of July 1, 2000, only three states and Puerto Rico have section 218 agreements that require Social Security coverage for either all university students (Florida, Vermont, and Puerto Rico) or some university students (Alabama) employed at public schools, according to SSA. However, several states elected to exclude university students during the recent limited window of opportunity to exclude students from coverage under section 218 agreements. Thus university students may have been covered in these states during the years involved in the refund claims. If the common-law employer is not a state or local government, the process proceeds to the next step—determining whether the employer meets qualifying criteria.

Determining Whether the Employer
Meets Qualifying Criteria

The student exception to FICA is available only if the common-law employer is a school, college, university, or an organization that is organized and operated for the benefit of and controlled by the school, college or university.[8] The IRS memorandum states that a university medical school clearly qualifies, but a hospital that is a separate legal entity from the university may not. Even if a hospital is part of a university, it might not qualify. For example, if the hospital is separately incorporated under state law, the hospital and university are separate legal entities for the purposes of applying the employment tax provisions, including the exception. An excerpt from the IRS guidance shows how claims determinations will involve case-by-case analysis and how the outcomes might be different from employer to employer:

> "A simple starting point . . . is whether the hospital and the university have different EINs [employer identification numbers used for tax purposes]. If they have different EINs, they generally should be separate employers and assertions that they are not should be carefully examined. . . . Even if wages paid to university employees and medical residents are reported under the same EIN, the university may be merely acting as a common paymaster . . . . Thus, if wages are reported under the same EIN, it must [also] be determined whether the university hospital is incorporated separately under state law."

Determining Whether the Medical Resident
Qualifies as a Student Under the Law

As with questions related to employer status, the questions related to whether a medical resident qualifies as a student for Social Security exception purposes are extensive and often complex. The IRS memorandum calls for examining status on a program-by-program, year-by-year basis. Table 1 shows examples of the kinds of facts and circumstances that would need to be considered.

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[8]These related organizations are described under section 509(a)(3) of the Internal Revenue Code.

Table 1: Examples of Evidence to Be Gathered and Evaluated for the Student Status Test

Type of consideration	Questions to address
Teaching approach	Are there regularly scheduled lectures and classroom time? Do residents participate in formal "teaching rounds"? If so, is there a record of the teaching rounds that have taken place?
Evaluation	Are residents evaluated by faculty members of the school, college, or university based on academic standards?
Distribution of time	What percentage of time is spent in direct patient contact versus classroom study or formal teaching rounds?
Eligibility for student benefits	Can the resident receive benefits that students are entitled to, such as student health insurance, discount event tickets, housing, and library access?
Degree or certificate	Will the training program lead to obtaining a degree or certificate?

IRS Trained Staff Handling FICA Refund Claims

Having developed its memorandum, IRS, with input from SSA, has also trained its staff on what the memorandum contains and how it should be applied. Over a 3-day period in July 2000, IRS provided specific training for 55 revenue agents responsible for handling FICA refund claims. This training also covered other procedural steps that must be followed before granting a refund. For example, before IRS will authorize a FICA tax refund, entities filing the refund claim must submit a statement that the employer has obtained the employee's consent to receive a refund of the employee portion of FICA, which the employer is to forward to the employee when it is received.

DECISIONS ON APPLICATIONS FOR REFUND CLAIMS ARE STILL PENDING

In response to the increase in FICA refund claims after the 1998 court decision, IRS decided to suspend consideration of these claims until after it had developed detailed guidance. Now that the guidance is in place and the revenue agents have received training, IRS expects to resume consideration of the refund claims. Given the complexity and case-by-case nature of these determinations, IRS has no estimate of when the first cases will be completed or of how many of the refund claims will result in refunds and what the dollar amount will be. Agency officials told us that they expect to monitor the outcomes of the initial decisions to determine whether any additional action or clarification is needed.

As Table 2 shows, through April 7, 2000, IRS had received 228 refund claims for tax years 1995 through 1999. These claims had been submitted by 148 entities such as medical schools or teaching hospitals and by 11 individuals. The refund claims add up to an amount in excess of $162 million plus accrued interest. However, the actual amount may be considerably more because 71 of the claims are "protective claims"—claims filed for a nominal amount before the 3-year statute of limitation expires that enable the claimant to calculate the refund amount at a later date.

Table 2: Number of FICA Refund Claims Filed by Tax Year as of April 7, 2000

Tax year	Claim type	Number of refund claims filed for specific tax year	Number of refund claims filed not specifying tax year (probable tax year inferred)[a]	Total by year	Dollars by year (in thousands)[c]
1995	All claims	107	15	122	$82,593
	Protective claims	35	5	40	[b]
1996	All claims	51	4	55	34,205
	Protective claims	20	1	21	[b]
1997	All claims	26	2	28	29,545
	Protective claims	3	1	4	[b]
1998	All claims	20	1	21	16,236
	Protective claims	4	1	5	[b]
1999	All claims	1	0	1	[b]
	Protective claims	1	0	1	[b]
Total, all years	**All claims**	**206**	**22**	**228**	**$162,579**
	Protective claims	**63**	**8**	**71**	**[b]**

[a] For claims without a specified tax year, we assumed that the initial claim was for tax year 1995 and that additional claims were for subsequent years. Due to the 3-year statute of limitations, tax year 1995 is the earliest year for which an entity could have filed a FICA refund claim in response to the July 1998 State of Minnesota v. Apfel ruling.
[b] Less than $1,000.
[c] Totals may not add due to rounding.
Source: IRS taxpayer data.

In June 2000, IRS asked its field offices[9] for updated data on the number of claims received as of April 17, 2000, the last day that entities could submit FICA refund requests for tax year 1996. While those data are not yet available, the 122 claims submitted for 1995 exceeded the number of claims for four following years, as Table 2 shows. Thus, when IRS receives the updated data, there may be an increase in the number of claims for 1996. Moreover, IRS may continue to receive claims for 1997 through 1999 until 3 years after the filing date of each tax year. The decisions that IRS makes on these refund claims could have a significant effect on the Social Security Trust Funds, because repayments for valid refund claims are deducted from the amounts IRS pays to the Trust Funds.

IRS decisions on refunds can also have an effect on future collections for the Social Security Trust Funds, because entities who have been granted refunds usually will not pay FICA taxes in the future unless the facts and circumstances have changed. SSA officials prepared an estimate of the effect on the Social Security Trust Funds if all medical residents and their employers were exempt from paying FICA taxes. They estimated this amount to be as much as $5.6 billion from 2000 to 2009. These officials also prepared a later estimate of the effect on the Trust Funds that reflects a smaller but

[9] IRS national office contacted each of its 33 district offices, 10 service centers and 6 Tax Exempt/Government Entities examination areas.

growing number of medical residents receiving exemptions from coverage from IRS. Under this scenario, the Trust Funds would lose approximately $3.9 billion from 2001 to 2010.[10] This would, according to SSA, affect the long-range (75-year) solvency of the Trust Funds by 0.01 percent of taxable payroll.

SSA officials told us that the agency believes its long-standing policy that residents do not qualify as students leads to equal treatment under the law for all individuals in residency programs while making decisions on a case-by-case basis raises a question of fairness. For example, if medical residents at some institutions not affiliated with a school, college or university, could not meet the statutory test of being “enrolled and regularly attending classes” at a “school, college, or university” then they have no chance to qualify as students like medical residents at other hospitals do. SSA stated that, consistent with its policy on acquiescence rulings, it plans to take steps to restore national uniformity. The agency is exploring whether to seek legislation amending the Social Security Act to clarify that medical residents are covered for Social Security purposes.

SSA officials cautioned us that treating medical residents as students could have other potential consequences for the medical residents, such as not earning credits toward retirement, survivor, and disability benefits. SSA estimates that 270,000 residents would lose Social Security coverage over 10 years if this were to occur. SSA officials also said that because many residents are married and have children and they work as residents for many years, their loss of coverage could have a very significant effect on their potential disability benefits or their family’s survivor benefits. Thus, a resident who became disabled might not be eligible for Social Security disability benefits, and the family of a deceased resident might not be eligible for survivor benefits, unless previous work history was sufficient to qualify the resident or the resident’s family for such benefits. It is unlikely, however, that treating medical residents as students would have a significant effect on their retirement benefits. Even if they do not begin paying into Social Security until later in life, after their formal schooling and residency end, their relatively high salaries and the method used to calculate retirement benefits would likely result in their receiving only marginally lower Social Security benefits than they would receive if they had begun paying earlier.

AGENCY COMMENTS

IRS and SSA both provided comments on the draft report. (See enclosures 3 and 4.) IRS agreed with the report’s discussion of the applicable law and the agency’s actions to administer it. SSA, in its comments, reiterated its concern that treating medical residents as students would (1) adversely affect medical residents because they would lose Social Security earnings credits and the benefits derived from them, and (2) result in a loss of

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[10] Under this estimate, SSA assumes the percentage of medical and dental residents not covered by FICA will grow from about 19 percent in 1998 to about 71 percent in 2010 because more and more medical programs will be designed to meet the guidelines set forth by the ruling of the United States Court of Appeals for the Eighth Circuit.

revenues to the Social Security Trust Funds. SSA stated that the loss of revenues would have a small effect on the long-range solvency of the OASDI program. SSA also made technical comments on the report, which we incorporated where appropriate.

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We will make copies of this letter available to those who are interested on request.

If you or your staff have any questions, please call me or Kay Brown, Assistant Director, at (202) 512-7215. Other staff who contributed to this letter include Ralph Block, George Bogart, Robert McKay, Chuck Novak, Chuck Shervey, and Elwood White.

Sincerely yours,

Barbara D. Bovbjerg
Associate Director, Education,
Workforce, and Income Security Issues

Enclosures

SECTION 218 AGREEMENTS

When the Social Security Act was enacted in 1935, service performed in the employ of a state or local government was excluded from the definition of "employment" for purposes of assessing the employee and employer taxes. However, the act has been amended over time to permit Social Security coverage for these public employees.[11]

In 1950, section 218 of the Social Security Act was enacted, allowing a state to enter into an agreement with SSA to extend Social Security coverage to its state and local government employees. The law required such agreements (referred to as "section 218 agreements") to provide that states pay to the Treasury amounts equivalent to the sum of the employee and employer taxes that would be imposed if the services covered by the agreement constituted employment as defined in FICA. Through such agreements, certain state and local government employees made contributions to Social Security even though they were not actually subject to FICA taxes.

This situation changed in 1987 when the Omnibus Budget Reconciliation Act of 1986 amended the FICA definition of "employment" to include service performed under the employ of a state or political subdivision pursuant to a section 218 agreement. Consequently, state and local government employees participating in Social Security through section 218 agreements are subject to FICA taxes. Accordingly, responsibility for FICA collection based on section 218 agreements was transferred from SSA to IRS.[12]

Section 218 agreements may also have special provisions related to state or local government employees who are students. A state may include within a section 218 agreement a provision excluding students who are employed at state or local public schools from Social Security coverage. However, in order to be exempt from FICA when a section 218 agreement includes such an exclusion, individuals, including medical residents, would have to meet the criteria for the FICA student exception described previously, just as students in private schools must do. Without such an express exclusion in the section 218 agreements, these student employees in a state with a section 218 agreement will participate in Social Security and be subject to FICA taxes even when their counterparts who are working for private employers and qualify for the student exception cited above are not.

In 1998 the Congress passed a law to allow states that had not originally excluded students employed at state or local public schools from Social Security coverage in their section 218 agreements to do so.[13] States had to act to exclude these students during the January 1 to March 31, 1999, period, with the exclusion effective July 1, 2000. According to SSA officials, all states that had extended coverage to these students took full

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[11]Some states have chosen to maintain their own retirement systems and not have their employees participate in Social Security.

[12]However, in the absence of an applicable section 218 agreement, if employees of state and local governments are not members of a retirement system, they are provided Social Security coverage.

[13]This change was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999.

advantage of this opportunity and excluded university students except Alabama, Florida, and Vermont, and also Puerto Rico. As a result, since July 1, 2000, only university students employed at state or local public schools in Florida, Vermont, and Puerto Rico and some of the university students so employed in Alabama have been required to pay FICA taxes as a result of a section 218 agreement.

STATE OF MINNESOTA V. APFEL

In State of Minnesota v. Apfel[14], the U.S. Circuit Court of Appeals for the 8th Circuit considered the state's liability for unpaid Social Security contributions for medical residents enrolled in the state university's graduate medical education program. Because the years of employment at issue were 1985 and 1986, preceding the transfer of collection responsibility and the responsibility for determining coverage liability for employees covered by section 218 agreements to IRS, this case involved SSA's administration of the program. The court considered whether medical residents working for the university were "employees" under Minnesota's section 218 agreement in effect at that time and, if so, whether they were exempted by the student exclusion included in that agreement.

The court concluded that the residents did not meet the definition of employees under the section 218 agreement and thus should not have to pay FICA taxes; however, the court also went on to consider whether they met the criteria for the student exclusion. The court applied SSA regulations to determine the student exclusion, focusing on the facts of the case: particularly, the relationship between the residents and the university. That is, if the residents' "main purpose is pursuing a course of study rather than earning a livelihood," then they are considered students not subject to Social Security contributions. The court found persuasive the facts that the residents were enrolled in the university, paid tuition, and were registered for approximately 15 credit hours per semester. The court concluded that the primary purpose for their participation in the program was to pursue a course of study rather than to earn a livelihood. Therefore, the medical residents qualified for the student exception, and Social Security contributions were not required on their behalf.

As a result of the court decision, SSA issued an acquiescence ruling[15] on October 30, 1998, that applies to medical residents and their employers in the court's jurisdiction.[16] In the ruling, SSA agrees to apply section 218 agreement student exclusions to medical residents within the 8th Circuit Court's jurisdiction by making a case-by-case examination of the relationship between medical residents and their employer school, college, or university.

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[14] 151 F.3d 742 (8th Cir. 1998)

[15] Acquiescence rulings explain how SSA will apply a holding by a U.S. Court of Appeals that is at variance with SSA's national policies for adjudicating claims. As the court required, SSA will evaluate other claims in the jurisdiction of the 8th Circuit Court on a case-by-case basis.

[16] The 8th Circuit includes Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 17, 2000

Ms. Cornelia M. Ashby
Associate Director
Tax Policy and Administration Issues
U. S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Ashby:

Thank you for the opportunity to review and comment on the General Accounting Office's (GAO) correspondence to the Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, entitled "Social Security Coverage for Medical Residents." We agree with the letter's discussion of applicable law and the IRS's current actions to administer it.

We recently provided GAO with technical comments on the text of the draft and updated data on the number of FICA refund claims. Your staff has agreed to incorporate these changes into the letter. We have no further comments to offer at this time.

If you have any questions, please contact Mary Oppenheimer, Assistant Chief Counsel, Tax Exempt/Employment Tax/Government Entities at (202) 622-6010.

Sincerely,

Charles O. Rossotti

SOCIAL SECURITY

Office of the Commissioner

August 22, 2000

Ms. Barbara D. Bovbjerg
Associate Director, Education,
Workforce, and Income Security Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review the draft correspondence report, ASocial Security: Coverage for Medical Residents" (HEHS/GGD-00-184R). We believe that treating medical and dental residents as students will have adverse consequences for those residents, leading to the loss of Social Security earnings credits and the benefits that derive from these credits. The amounts paid to medical residents are substantial; the average stipend paid to medical residents is projected to be nearly $39,000 in 2001 and to increase to $57,000 by 2010.

Because many residents are married and have children and work as residents for up to 8 years, an exemption from Social Security coverage could have a very significant effect on their potential disability benefits or their family's survivor's benefits. Thus, SSA believes that it is vitally important to medical residents and their families that their wages continue to be covered for Social Security purposes.

As you know, the Court of Appeals decision (State of Minnesota v. Apfel, 151 F.3d 742 (8th Cir. 1998)) found that medical residents at the University of Minnesota qualified for the student exclusion from Social Security coverage. As a result of that decision, SSA acquiesced in the 8th Circuit, but not nationally. Therefore, consistent with our policy regarding acquiescence rulings, we plan to restore national uniformity. We are exploring legislation amending the Social Security Act to clarify that medical residents are covered for Social Security purposes.

We estimate that without legislative intervention, 270,000 medical residents who otherwise would be covered will lose some Social Security coverage over the next 10 years. Moreover, this loss of coverage will result in a significant loss of revenues to the OASDI trust funds –

SOCIAL SECURITY ADMINISTRATION WASHINGTON D.C. 20254

$3.9 billion over 10 years. Further, the long-range (75-year) solvency of the OASDI program will be worsened by 0.01 percent of taxable payroll.

We appreciate the opportunity to comment on your report on this important topic. Additional comments on your report are enclosed. If you have any questions, please have your staff contact Robert Berzanski at (410) 965-2675.

Sincerely,

Kenneth S. Apfel
Commissioner
of Social Security

Enclosure

(207091)