

Section 218 Agreement FAQs

These FAQs will be updated as needed. Please check back regularly.

Last Updated: 10/6/2020

LEGEND

Q# – Received *prior to* Town Hall meetings

Q# – Received *at* Town Hall meetings

Q# – Received *since* Town Hall meetings

ISSUE

Q1: *What is the problem with my Social Security benefits?*

VTA employees participate in defined-benefit pension plans. They are the VTA/ATU Pension Plan and the CalPERS Pension Plan. For our employees to participate in Social Security, there must be a Section 218 Agreement with the Social Security Administration (SSA) in place. There is no record of VTA ever having entered into a Section 218 Agreement.

VTA has been paying the employer portion of Social Security taxes as far back as we have records. VTA is also withholding Social Security taxes from employee paychecks. This shows the intent has always been to have our employees covered by Social Security in addition to the VTA/ATU Pension Plan and/or CalPERS. The problem is that without a Section 218 Agreement in place, the SSA does not have to provide benefits to our employees based on their time at VTA.

VTA has a plan to correct this but we need your help! All current employees have the power to protect our Social Security benefits and we ask all our employees to support and to cast a ballot for a Section 218 Agreement.

Q2: *Does this affect me and how?*

This issue affects all past and current VTA employees who have ever participated in a defined-benefit pension plan during their time at VTA. This applies to every job classification in both the CalPERS and VTA/ATU pension plans.

Without a Section 218 Agreement in place, all VTA employees are at risk of having their Social Security benefits reduced or eliminated.

The good news is that the SSA is currently providing benefits even without a Section 218 Agreement although this can change at any time. The SSA can choose **not** to provide Social Security benefits to VTA employees until a Section 218 Agreement is in place. This is true even though VTA employees contribute to Social Security and VTA pays the employer portion of Social Security taxes.

Q3: *How far back does this go?*

VTA's predecessor, the Santa Clara County Transit District, should have entered into a Section 218 Agreement with the SSA in the early 1970s. CalPERS is the state agency responsible for maintaining Section 218 Agreements. CalPERS conducted an audit and informed us that a Section 218 Agreement for VTA or the Santa Clara County Transit District did not exist. VTA has reviewed its records and confirmed this is true.

Records show that the Santa Clara County Transit District withheld Social Security taxes and paid the employer portion of the taxes at least as far back as December 1974. This means the issue has been around at least since December 1974 for members of the VTA/ATU Pension Plan.

Q4: *Why is VTA still taking Social Security taxes out of my paycheck if there is no Section 218 Agreement?*

The SSA currently honors past contributions and employer-paid taxes by providing Social Security benefits even when there is no Section 218 Agreement in place. VTA is continuing to withhold Social Security taxes and is paying the employer portion of the tax with the goal of avoiding a gap in Social Security coverage until a Section 218 Agreement is in place. This good-faith effort of continuing the practice of taking these deductions also shows SSA our commitment to rectify the problem.

Q5: *I'm already receiving Social Security benefits. Does this mean I'm going to stop receiving benefits?*

The SSA's current practice is to provide benefits as if there were a Section 218 Agreement in place. But nothing requires the SSA to continue this practice. If we do not have a successful vote, that practice could end at any time.

Q6: *What is the impact of the administrative employees who came over from the County of Santa Clara (County) to VTA in 1995? Were they not covered under the County's Agreement until then?*

The County has its own Section 218 Agreement. The Section 218 issue applies only to VTA employees during their time as VTA employees. Coverage under the County's Section 218 Agreement did not carry over when employees left the County and joined VTA.

Q7: *What is the impact of the Santa Clara County Transit District employees who came over from the County to VTA in 1995? Were they not covered under the County's Agreement until then?*

The Santa Clara County Transit District (Transit District) was a separate legal entity and distinct from the County. The Transit District did not have a Section 218 Agreement. The County's Section 218 agreement did not cover the Transit District employees.

PLAN TO CORRECT

Q8: *What is VTA doing to address this?*

CalPERS is the State Social Security Administrator in California. VTA is working closely with CalPERS to put a Section 218 Agreement in place. Putting a Section 218 Agreement in place can only be done through an election. VTA must follow CalPERS's detailed process to allow current employees to vote on whether to participate in Social Security. For this to be successful, only **"YES"** votes ensure that all past, present and future employees will get their Social Security benefits.

Q9: *Why should I vote YES?*

A "YES" vote will allow us to preserve the Social Security benefits we all thought we were paying for.

Social Security benefits include both retirement benefits AND disability benefits that people can obtain long before retirement. Some estimate that 1 in 4 workers will become disabled and will need to draw up their disability benefits. No matter how long you've been at VTA or how long you have until retirement, a **YES** vote protects these important benefits.

Q10: *Is there any impact to those receiving Social Security benefits now?*

A **"YES"** vote means no changes whatsoever. Contributions and benefits continue. A **"NO"** vote could have an impact on active employees and retirees. The precise implications of a **"NO"** vote may vary from person to person. In general, if someone retired on or before December 31, 2016, then under SSA's current practice they are unlikely to be affected by even a **"NO"** vote. But there is nothing that legally requires SSA to continue this practice. See [FAQ Q22](#) -- *What happens if the vote fails?*

Q11: *How does this impact new employees?*

A **"YES"** vote keeps the status quo – nothing changes and no one is impacted, including new employees. New employees would continue to qualify for the same Social Security retirement and disability benefits they thought they were getting when they were hired.

A **"NO"** vote means that new employees will not earn eligibility credits for benefit calculation at retirement. This also impacts Social Security disability and death benefits, which are important not only for the employee but for their family members as well.

VOTING PROCESS

Q12: *How does the vote work?*

Within the next few months, VTA will complete the paperwork to hold the vote. The law requires VTA to mail a notice of the election at least 90 days before the election date. VTA expects to hold the election in the first quarter of 2021.

Under the law, only VTA's current employees participating in a particular pension plan (VTA/ATU Pension Plan or the CalPERS Pension Plan) can vote in the Section 218 election for that pension plan. More than half of the employees eligible to vote in a plan's election must affirmatively vote **"YES"** for this to succeed.

Let's put that into numbers. The VTA/ATU Pension Plan currently has approximately 1,500 members. At least 751 current ATU employees must vote "YES" to have a Section 218 Agreement for the VTA/ATU Pension Plan. For the CalPERS plan, at least 313 of the approximately 625 employees under that plan will have to vote "YES" to have a Section 218 Agreement for the CalPERS plan. If someone does not vote, fills out their ballot incorrectly, or submits their vote too late, they are counted as a "no" vote. That's why it is critically important that **YOU** and all your colleagues vote.

Q13: *What is VTA doing to support the voting process?*

VTA recognizes the importance of this issue and VTA's Board of Directors created a subcommittee to address it. The subcommittee consists of Board Chairperson Cindy Chavez, Vice Chairperson Glenn Hendricks, and Alternate Member Howard Miller. This subcommittee and staff are working hand-in-hand with your union leadership to address this problem in a unified effort.

VTA and the unions recognize that a successful vote is in the best interest of all employees. For this reason, we are committed to educating current employees on the issue. In addition to direct mailings to each current employee, VTA will hold several virtual town hall meetings. VTA will regularly communicate with employees via email, posted signs and bulletins, a new web page on The Hub, an external website at <https://www.vta.org/section-218>, and will hold supervisor briefings. If needed, VTA may also reach out to employees individually, either via phone or in person. VTA is exploring other ways to maximize participation like having people vote by mail or in person before the election date. VTA will continue to collaborate with the unions on all these efforts.

Q14: *Why can't former employees vote?*

The laws and regulations created by Congress, the Social Security Administration, the State Legislature, and CalPERS restrict voting to current employees who also participate in a defined-benefit pension plan. VTA has no choice in this regard; it must follow the law.

Q15: *How will the voting process be conducted?*

Voting will be done through secret ballot. Ballots will be sent either via U.S. mail or distributed in person. Ballots can be mailed in or dropped off at select VTA locations. Employees will have up to 30 days to submit their vote. The vote is slated for early March 2021. VTA staff will count the votes all at one time under CalPERS' supervision.

Q16: *What happens if the majority of active employees do not vote?*

For each vote to pass, a majority of eligible employees must affirmatively vote "YES". Any active employee who does not vote will be counted as a "NO" vote. This is how the law was written and VTA does not have a say in this matter. If a majority of active employees do not vote, then the vote will fail.

Q17: *How is an "active" employee defined?*

Active employees include employees on Family Medical Leave, disability or extended leave. In order to vote, an active employee must be currently employed by VTA and be an active member of a retirement system, either the VTA/ATU Pension Plan or CalPERS.



To be eligible to vote, you must be employed by VTA both on the date the notice of the election is mailed and on the date of the election itself. You must also be in the same retirement system on both those dates. This means that if someone retires after the 90-day notification but before the voting date, they are not eligible to vote. Similarly, if someone changes retirement systems after the 90-day notification but before the voting date, they are not eligible to vote in either election.

IMPLICATIONS OF VOTE PASSAGE OR FAILURE

Q18: *What happens if one ballot passes and the other one does not?*

VTA has two groups of active employees who will vote. The VTA/ATU Pension Plan members and CalPERS Pension Plan members. Each group has its own ballot. Each ballot must get a majority of “YES” votes to get a Section 218 Agreement in place for that particular pension group. Each voting group is independent; it is possible for one vote to pass and the other to fail. See [FAQ Q22](#) -- *What happens if the vote fails?*

Majority “YES” Vote Gets Us There

- A simple majority (50% plus 1 votes) is needed from both VTA/ATU Pension Plan active employees and CalPERS Plan active employees
 - ❖ VTA/ATU Pension Plan active employees: 1,481*  simple majority = **741**
 - ❖ CalPERS Pension Plan active employees: 628*  simple majority = **315**

Collective Bargaining Unit	Active Employees*
AFSCME	229
Extra-Help Retiree	1
Non-Represented	128
SEIU	239
TAEA	31
TOTAL:	628

* Numbers are as of September 4, 2020

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PASSAGE

Q19: *Will a YES vote increase the deductions on our current paycheck or just re-establish contribution credits to our past social security accruals?*

A “YES” vote keeps the status quo. Everything remains the same; there are no changes whatsoever.

Q20: *Once this vote passes, will we need to revisit it again?*

A successful “YES” vote means we will never have to do this again. Once we have a Section 218 Agreement in place, it is permanent.

Q21: *Could something else happen during this process that prevents us from participating in Social Security?*

After a “YES” vote, there are additional processes and verifications that CalPERS and SSA need to go through. However, we have no reason to believe there would be any impediments to the execution of a Section 218 Agreement after a successful vote.

FAILURE

Q22: *What happens if the vote fails?*

We are working hard to make sure that the vote does not fail. However, if it does, the plan affected by that vote will continue to lack a Section 218 Agreement. This means that the SSA will not be required to provide Social Security benefits for the members of that pension plan. This could mean that the plan’s members lose all or a portion of their Social Security benefits.

Q23: *I’m worried that people will not understand this issue and not vote “YES” or not vote at all. What are the downsides if the vote fails?*

If the vote should fail, then there are several consequences. VTA would have to stop withholding Social Security taxes from the paychecks of the employees in the pension group that failed. VTA would also have to stop paying the employer portion of Social Security taxes for those employees. This means those employees would stop earning eligibility for Social Security retirement and disability benefits. In addition, Social Security contributions for any “open tax years” would be subject to a refund. That means the affected employees would lose eligibility for benefits they otherwise would have earned during those years. Depending on individual circumstances, this could significantly reduce or eliminate someone’s eligibility for Social Security retirement or disability benefits and could have other negative tax consequences.

Q24: *If the vote fails, could we try again?*

Yes. VTA could try again after a one-year waiting period. However, during that time, VTA may be required to stop withholding Social Security taxes from employee paychecks and stop paying the employer portion of Social Security taxes. As a result, employees could lose at least one year of credit toward Social Security eligibility. Depending on your particular situation, this could significantly reduce your Social Security benefits.

Q25: *Is there any impact to Medicare if a vote fails?*

For most people, no. Participation in Medicare became mandatory for all workers on April 1, 1986. Medicare will not be affected for anyone hired on or after April 1, 1986. For the people who were hired before April 1, 1986 Medicare could be impacted by a failed vote.

Q26: *Can a failed vote impact my VTA-provided retiree medical benefits?*

For most people, no. But since your Medicare benefits could be impacted by a failed vote (see FAQ Q25 above), then it is possible your retiree medical benefits could also be affected.

Q27: Does a failed vote impact my VTA-provided pension benefits?

A failed vote does not have any impact on your pension under the VTA/ATU pension plan. If you are a classic CalPERS member your pension benefits will remain unchanged. If you became a CalPERS member on or after January 1, 2013 your pension benefits could be impacted.

Q28: What are “open tax years”?

In this context, an “open tax year” is a tax year for which someone can file an amended tax return to seek a refund. The law generally lets people file an amended return up to three (3) years after the tax return was originally due. However, there are exceptions, so you should talk to a tax professional about which tax years remain open for you.

EXAMPLE

An individual worked at VTA for 20 years and retires the day before the vote in March 2021. The vote for their pension group fails. Given this, any Social Security tax payments they made during any “open tax years” would be subject to a refund.

For most people, the “open tax years” in March 2021 will be:

- **2017 (returns due April 15, 2018 and set to be closed April 15, 2021)**
- **2018 (returns due April 15, 2019 and set to be closed April 15, 2022)**
- **2019 (returns due April 15, 2020 and set to be closed April 15, 2023)**
- **2020 (returns not due until April 15, 2021 and set to be closed April 15, 2024)**

Incidentally, the open tax years would be the same for most people if they retired the day after the election—the only difference is retiring after the election means you get to vote as an active employee to protect your benefits.

Q29: How does the refund for open tax years work?

Refunds for open tax years may work differently for different people based on their particular circumstances. In general, if a vote fails, the people in that pension group can request a refund of any Social Security contributions they paid during any open tax years. Even if someone does not request a refund, however, the IRS likely will exclude those contributions when calculating someone’s eligibility for benefits. This will reduce the amount of your total Social Security benefits at the time of retirement.

Also understand that this impacts your Social Security disability and death benefits, not just the retirement benefit. Those are important benefits that can help to take care of you and your family if something happens and you are unable to work.

Q30: What then happens to all the money that we have paid into Social Security if the vote fails?

If the vote fails, your payments into Social Security during any “open tax year” are subject to refund. You will lose any credit toward Social Security benefits you would have earned during those years. Under the federal Social Security Administration’s current practice, any contributions you made before any open tax years will remain “on file” with the Social Security Administration. This practice means Social Security will continue to honor any contributions you made before any open tax years. But there is nothing legally requiring the Social Security Administration to continue this practice.

Q31: If we are refunded money from Social Security due to an unsuccessful outcome, will that money be taxed?

Any refunds will likely be considered income and would be subject to normal tax rules. VTA does not provide tax advice and you should consult your tax professional to determine whether this will result in an increased tax liability.

PROJECTED TIMELINE

Q32: When will the Board decide on authorizing employees to vote on retaining SOCIAL security participation? If authorized, when would the vote likely occur?

At the October Board Meeting the Board of Directors took the first big step moving toward a **YES** vote (see action: [October 5, 2020 VTA Board of Directors Meeting, Item #7.3](#)). Their action approved the process for a Section 218 Agreement for the VTA/ATU Pension Plan and the CalPERS Pension Plan Coverage Groups. The vote will likely occur in early March 2021.

ADDITIONAL INFORMATION

Q33: How can I get more information?

All communications regarding this issue will be posted to <https://www.vta.org/section-218> and VTA’s internal website, The Hub. You can also email SocialSecurity.Section218@vta.org for more information. If you are a represented employee, you may also contact your union or your supervisor. Non-represented employees can also contact their managers.

Q34: How much can someone expect to receive from Social Security?

Each person is unique when it comes to receiving Social Security benefits once they retire. Please visit the SSA website, <https://www.ssa.gov/>, and use the tool available to calculate your benefit.

Q35: Where can I find additional information?

- Union leadership and management available
- Email: SocialSecurity.Section218@vta.org
- The Hub: <https://sccvta.sharepoint.com/>
- VTA website: <https://www.vta.org/section-218>
- VTA Section 218 Agreement telephone hotline: (408) 546-7400
- CalPERS website: <http://bit.ly/CalPERSSection218Agreement>