MainePERS
PUBLIC EMPLOYEES RETIREMENT SYSTEM

November 21, 2023

Senator Michael Tipping, Senate Chair
Representative Amy Roeder, House Chair
Members, Joint Standing Committee on Labor and Housing
100 State House Station
Augusta, ME 04333-0100

Re: Resolve 2023, c. 23

Dear Sen. Tipping, Rep. Roeder, and Members of the Labor and Housing Committee:

I am pleased to submit the enclosed report on the Creation of an Interstate Compact on the WEP and GPO, which is required by Resolve 2023, c. 23.

We look forward to assisting the Committee in its review of this report.

Sincerely,

Dr. Rebecca M. Wyke
Chief Executive Officer

Rmw/mg

Enclosure

www.mainepers.org

LOCATION
139 Capitol Street, Augusta, ME 04330

MAILING ADDRESS
P.O. Box 349, Augusta, ME 04332-0349

LOCAL
207-512-3100

TOLL-FREE
1-800-451-9800

FAX
207-512-3101

MAINE RELAY
711

MainePERS

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Creation of an Interstate Compact on the WEP and GPO

Resolve 2023, c. 23

November 2023

Prepared by the Maine Public Employees Retirement System

MainePERS
PUBLIC EMPLOYEES RETIREMENT SYSTEM

Table of Contents

APPENDICES:

A. Social Security Administration, Windfall Elimination Provision (Sept. 2023)

B. Social Security Administration, Government Pension Offset (May 2019)

C. Congressional Research Service, Social Security: The Windfall Elimination Provision (WEP) (Updated Feb. 13, 2023)

D. Congressional Research Service, The Windfall Elimination Provision (WEP) in Social Security: Proposals for a New Proportional Formula (Updated Sept. 19, 2023)

E. Congressional Research Service, Social Security: The Government Pension Offset (Updated Feb. 13, 2023)

I. INTRODUCTION

Resolve 2023, chapter 23 directs the Maine Public Employees Retirement System (MainePERS) to study and report on the creation and adoption of an interstate compact with other states affected by the Windfall Elimination Provision (WEP) and Government Pension Offset (GPO).

Chapter 23 includes provisions requiring MainePERS to:

- Study the creation and adoption of an interstate compact with other states affected by the WEP and GPO;
- Consult and collaborate with any applicable retirement associations as necessary;[1] and
- Submit a report with any recommendations to the Joint Standing Committee on Labor and Housing by December 6, 2023.

Following submission of information received from MainePERS, the Joint Standing Committee on Labor and Housing "may report out a bill based on the report and recommendations to the Second Regular Session of the 131st Legislature."

II. EXECUTIVE SUMMARY

Maine state employees, teachers, and some local governmental employees who are entitled to receive Social Security benefits may have those benefits reduced because they have spent part of the work lives in positions covered by a governmental pension instead of Social Security. MainePERS frequently hears concerns from members who have paid into both Social Security and a MainePERS-covered plan about the impact of the WEP on their retirement income, as well as from members whose spousal benefit has been reduced by the GPO.

The WEP reduces a worker's own Social Security benefits, while the GPO reduces or eliminates Social Security spousal benefits. Both mechanisms are intended to provide equivalent treatment between those whose entire career is covered by Social Security and those who work part of their career in a covered position and part in a non-covered position with a pension.

The application of the WEP and GPO to Maine governmental employees could be eliminated by either providing Social Security coverage or changing federal law.

[1] MainePERS has consulted with the National Association of State Retirement Administrators, the Coalition to Preserve Retirement Security, and the National Center for Interstate Compacts in preparing this report.

Providing Social Security coverage would require changes in state law and would only eliminate the WEP and GPO for future hires and some current employees, although other current employees may have the effects of the WEP and GPO reduced depending on their earnings history art retirement. There would be no effect on current retirees. If coverage is provided in addition to MainePERS membership, costs would increase for employers and employees; if coverage is provided instead of MainePERS membership, a valuable employee benefit and tool for recruiting and retention would be eliminated.

Four bills are pending in Congress that would repeal the WEP and GPO, and two bills are pending to improve the WEP formula. Prior federal legislation to eliminate or reform the WEP and GPO has been introduced over the years, but none of these initiatives have succeeded.

An interstate compact is a contract between two or more states for their mutual benefit. It involves each state enacting legislation and usually involves the creation of a commission to administer the compact. This process generally takes several years before a compact is in place.

MainePERS does not recommend pursuing an interstate compact concerning the WEP and GPO. Providing Social Security coverage would not require any action by other states. An interstate compact does not appear to be an appropriate vehicle for seeking a change in federal law. States could work together to influence federal lawmakers without going through the cumbersome and multi-year process of developing and enacting a compact.

If an interstate compact is pursued, MainePERS recommends attempting to engage the National Center for Interstate Compacts, part of the Council of State Governments, for development of the compact.

III. BACKGROUND

Social Security Coverage for State and Local Government Employees

The Social Security Act of 1935 created the Social Security program. The Federal Insurance Contribution Act (FICA) enabled collection of payroll taxes beginning in 1937.

The original Social Security Act of 1935 excluded state and local government employees from Social Security coverage because of unresolved legal questions regarding the federal government's authority to tax state and local governments.

An amendment to the Act allowed state and local governments beginning in 1951 to enter into voluntary agreements with the Federal government to provide Social Security coverage to their public employees. Section 218 of the Social Security Act authorized these "Section 218 Agreements."

In response, Maine enacted a statute in 1951 permitting employees of political subdivisions to participate in Social Security through a Section 218 Agreement, but did not extend this permission to members of the State Employee and Teacher Retirement Program (State/Teacher Plan).[2]

Maine then entered into a Section 218 Agreement with the Social Security Administration covering designated employment positions of 21 political subdivisions. The Agreement has since been modified 329 times and now covers more than 700 political subdivisions. Many of these entities participate in the MainePERS-administered Participating Local District Consolidated Retirement Plan (PLD Consolidated Plan). If a position is covered both by Maine's Section 218 Agreement and by the PLD Consolidated Plan, membership in the PLD Consolidated Plan is optional for the employee. If the employee elects membership, the employer and employee pay contributions to the Plan and pay the 12.4% FICA tax for Social Security (6.2% each for the employer and employee). If the employee declines membership, the employer and employee pay only the FICA tax.

All 50 states have entered into Section 218 Agreements providing Social Security coverage to at least some of their public employees.[3] Approximately one-fourth of state and local government employees (approximately six million) are not covered by Social Security. Most of these work at the local level as police officers, firefighters, and teachers.[4] States with high percentages of non-covered employees include Maine, Alaska, California, Colorado, Louisiana, Massachusetts, Nevada, Ohio, and Texas.[5]

A further amendment to the Social Security Act in 1991 mandated Social Security coverage for state and local government employees not covered under a Section 218 Agreement or by a qualified Social Security replacement plan.[6] The defined benefit plans administered by MainePERS are qualified Social Security replacement plans.[7]

The WEP

The regular Social Security benefit formula is weighted to help workers who spend their lives in low-paying jobs by providing a retirement income that is a higher portion of career-average earnings than is provided to workers with higher earnings.[8] However, this formula cannot distinguish between the workers it was intended to help and workers who appear to have low career-average earnings because

---

[2] P.L. 1951, ch. 395; 5 M.R.S. § 19001 (2023).
[3] IRS Publication 963, Federal State Reference Guide (July 2020) at 1.
[4] Publication 963 at 1.
[5] National Association of State Retirement Administrators (NASRA), https://www.nasra.org/socialsecurity (visited Oct. 26, 2023); Publication 963 at 1.
[6] Publication 963 at 2.
[7] *See* Publication 963 at 53, 101-106.
[8] Congressional Research Service, Social Security: The Windfall Elimination Provision (WEP) (Updated Feb. 13, 2023) at 1.

they have zero earnings in years when they were working in jobs not covered by Social Security.[9] Before the WEP was adopted, "people whose primary job wasn't covered by Social Security had their Social Security benefits calculated as if they were long-term, low-wage workers. They had the advantage of receiving a Social Security benefit representing a higher percentage of their earnings, plus a pension from a job for which they didn't pay Social Security taxes." (See Attachment 1)

Major amendments to the Social Security Act were enacted in 1983 "to shore up the financing of the Social Security program."[10] The amendments included the WEP, which was designed to make Social Security benefits equivalent between those who paid into Social Security for all their earnings and those who paid into Social Security for some, but not all of their earnings.[11] "The WEP is intended to place affected workers in approximately the same position they would have been in had *all* their earnings been covered by Social Security."[12]

The WEP reduces Social Security benefits by 10-60% depending on the worker's earning history. The reduction formula provides only a rough equivalency between those who worked their entire careers in positions covered by Social Security and those who worked part of their careers in non-covered employment.[13] At the time the WEP was adopted in 1983, the Social Security Administration had insufficient data on non-covered earnings to adopt a more accurate formula.[14] After 40 years, the Social Security Administration now has sufficient data to implement a more accurate reduction formula.[15]

Approximately 3% (two million people) of Social Security recipients are subject to the WEP.[16] The percentage of affected recipients in Maine is 5.6% (approximately 20,000).[17]

The GPO

The GPO is related to the WEP in that it reduces certain Social Security benefits because the recipient has worked part of their career in employment not covered by Social Security. However, the GPO does not reduce a worker's own Social Security benefit. It reduces "spousal benefits," benefits received as a

---

[9] CRS WEP Report at 1.
[10] CRS WEP Report at 7.
[11] CRS WEP Report at 7.
[12] CRS WEP Report at 7.
[13] Congressional Research Service, The Windfall Elimination Provision (WEP) in Social Security: Proposals for a New Proportional Formula (Updated Sept. 19, 2023) at 1.
[14] CRS Proportional Formula Report at 1.
[15] CRS Proportional Formula Report at 1.
[16] CRS WEP Report at 14-15.
[17] CRS WEP Report at 14-15.

spouse or surviving spouse of a Social Security participant. The reduction amount is two-thirds of any pension benefits the worker receives for governmental work not covered by Social Security.[18]

The spousal benefit was adopted in the 1930s "to compensate spouses who stayed home to raise a family and were financially dependent on the working spouse."[19] Where both spouses work and earn their own Social Security benefits, the "dual entitlement rule" prevents the worker from receiving both their own full benefits and full spousal benefits. Instead, the spousal benefit is reduced dollar-for-dollar by the worker's own Social Security benefit, effectively leading to the worker receiving the higher of the two benefits.[20]

The GPO was enacted in 1977 to create a comparable reduction to the Social Security spousal benefit for workers who are not covered by Social Security but receive a government pension. The GPO initially was a dollar-for-dollar reduction to the spousal benefit for the pension benefit, like the dual entitlement rule, but that was changed as part of the 1983 Social Security Act amendments to be a reduction of two-thirds of the government pension.[21] So, the GPO imposes a smaller benefit reduction than the dual entitlement rule imposes on workers covered by Social Security.[22]

Approximately 735,000 Social Security recipients are subject to the GPO, including approximately 8,100 in Maine.[23] These figures do not include people who did not apply for spousal benefits because they believed that the GPO would eliminate the benefits.[24]

IV. OPTIONS FOR ELIMINATING APPLICATION OF THE WEP AND GPO

There are two options for eliminating the application of the WEP and GPO to Maine governmental employees: (1) Provide Social Security coverage to these employees; or (2) Change federal law to eliminate the WEP and GPO.

Providing Social Security Coverage

There are two ways to provide Social Security coverage to state and local governmental employees.

[18] Congressional Research Service, Social Security: The Government Pension Offset (Updated Feb. 13, 2023) at 1.
[19] Social Security Administration, Government Pension Offset (May 2019) at 1.
[20] CRS GPO Report at 1.
[21] CRS GPO Report at 7.
[22] CRS GPO Report at 6.
[23] CRS GPO Report at 8.
[24] CRS GPO Report at 8.

The first way is by adding the employees' positions to Maine's Section 218 Agreement with the Social Security Administration. This method already is available for non-teacher employees of political subdivisions. Making it available to teachers and state employees would require an amendment to 5 M.R.S. § 19001 and completing the federally-required process for amending Maine's Section 218 Agreement, which would include holding a referendum in which a majority of eligible employees voted in favor of Social Security coverage. Providing Social Security coverage in addition to membership in the State/Teacher Plan would increase costs to employers and employees by subjecting them to the 12.4% FICA tax (6.2% each for employer and employee).

Two years ago in response to Resolve 2021, chapter 66, MainePERS led a working group of employer and employee representatives in studying new pension designs for public employees based on participation in Social Security. The resulting study report outlined two options that would provide Social Security coverage supplemented by a new defined pension plan or a cash balance plan.[25] These options would produce a benefit comparable to the current State/Teacher Plan, avoid prospective application of the WEP and GPO, and offer increased portability.[26] The cost of these options would be less than the cost of adding Social Security coverage to the existing State/Teacher Plan.[27]

The second way to provide Social Security coverage is to cease providing a qualified Social Security replacement plan (e.g., the State/Teacher Plan). Positions not covered by a qualified Social Security replacement plan are subject to mandatory Social Security coverage under federal law. Closing the State/Teacher Plan would require amendments to 5 M.R.S. §§ 17001-18101 and would eliminate a valuable employee benefit and tool for recruiting and retention.

Providing Social Security coverage would eliminate the WEP and GPO for employees hired in the future. There would be no effect on current retirees. Current employees may have the impact of the WEP and GPO reduced as their future employment will be covered by Social Security, but their past non-covered service may still subject them to these reductions depending upon their length of covered employment at the time of retirement.

<u>Changing Federal Law</u>

As the WEP and GPO are contained in federal law, federal legislation would be required to eliminate or change them.

---

[25] MainePERS, Pension Designs Based on Participation in Social Security (Feb. 10, 2022).
[26] MainePERS Pension Designs Report at 3-4.
[27] MainePERS Pension Designs Report at 14.

Several pieces of federal legislation to reduce the impact of the WEP and GPO have been introduced over the years, but none have been enacted.

There currently are four bills pending in Congress that would repeal the WEP and GPO: (1) The Social Security Fairness Act of 2023 (H.R. 82); (2) The Social Security Fairness Act (S. 597); (3) The Social Security 2100 Act (H.R. 4583); and (4) The Social Security 2100 Act (S. 2280).[28] The repeal in H.R. 4583 and S. 2280 is temporary, from 2025 through 2034. While a temporary or permanent repeal would have a negative impact on Social Security funding, H.R. 4583 and S. 2280 have offsetting provisions that would result in a net positive effect on funding.[29] Senators Collins and King have co-sponsored S. 597, Representatives Pingree and Golden have co-sponsored H.R. 82, and Representative Pingree has co-sponsored H.R. 4583.

Two other bills currently pending in Congress would leave the WEP and GPO in place but adopt a more-accurate, proportional WEP formula. These bills are the Public Servants Protection and Fairness Act of 2023 (H.R. 4260) and the Equal Treatment of Public Servants Act of 2023 (H.R. 5342). A proportional formula would result in a lower benefit reduction for some Social Security recipients, but would result in a greater reduction for others. To avoid negative impacts, both H.R. 4260 and H.R. 5342 contain provisions ensuring that recipients will be no worse off than under current law. The Social Security Administration's Office of the Chief Actuary estimates that these bills would cost an additional $23.9 billion (H.R. 5342) to $30.1 billion (H.R. 4260) from 2023 through 2032.[30] Representatives Pingree and Golden have co-sponsored H.R. 4260.

V. INTERSTATE COMPACTS

An interstate compact is a binding contractual agreement between two or more states for their mutual benefit. The Compacts Clause of the United States Constitution limits the ability of states to enter into interstate compacts without congressional approval.[31] The United States Supreme Court has interpreted this limitation as applying only where the compact would increase the political power of the states at the expense of federal sovereignty, in which case congressional consent to the compact is required.[32]

[28] United States Congress, www.congress.gov (visited 10/26/23)
[29] Social Security Administration, Chief Actuary Letter to Rep. Larson (July 12, 2023) at 1, 12.
[30] CRS Proportional Formula Report at 1-2.
[31] U.S. Const. art. I, § 10, cl. 3.
[32] *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893).

Interstate compacts have been used to resolve boundary disputes between states, manage interstate resources and infrastructure projects, facilitate interstate oversight of probationers and parolees, manage multi-state lotteries, and allow professionals licensed in one state to practice in others.[33]

Entering into an interstate compact involves each state enacting model legislation that imposes mutual obligations on the states and usually involves creation of a commission to administer the compact.[34] This process generally takes several years because it requires legislative action in multiple states.[35] The National Center for Interstate Compacts is available to assist in developing interstate compacts.[36] The Center is part of the Council of State Governments.[37]

There are over 250 interstate compacts in existence.[38] Maine has belonged to 37 interstate compacts over the past century.[39] Within the past 20 years, Maine has entered into three: (1) The Enhance Nursing License Compact; (2) The Interstate Compact on Educational Opportunity for Children; and (3) The Interstate Insurance Product Regulation Compact.[40]

VI. RECOMMENDATIONS

MainePERS does not recommend pursuing the creation and adoption of an interstate compact concerning the WEP and GPO. The effects of the WEP and GPO can only be eliminated by providing Social Security coverage to affected employees or by changing federal law.

Providing Social Security coverage would not require any action by other states, so an interstate compact would not be necessary or useful to achieving that result.

An interstate compact also does not appear to be an appropriate vehicle for seeking a change in federal law. States could work together to influence federal lawmakers without going through the cumbersome and multi-year process of developing and enacting a compact. Furthermore, the mutual legal obligations that are the hallmark of interstate compacts do not appear to be necessary to work in

[33] United States Congress, Constitution Annotated, art. I, sec. 10, clause 3.3, www.constitution.congress.gov (visited 10/25/23); *e.g.*, 8 M.R.S. §§ 401-422 (2023); 32 M.R.S §§ 2171-2181 (2023).
[34] National Center for Interstate Compacts, www.compacts.csg.org/faq/ (visited 10/25/23)
[35] National Center for Interstate Compacts, www.compacts.csg.org/faq/ (visited 10/25/23)
[36] National Center for Interstate Compacts, www.compacts.csg.org/faq/ (visited 10/25/23)
[37] National Center for Interstate Compacts, www.compacts.csg.org/faq/ (visited 10/25/23)
[38] National Center for Interstate Compacts, www.compacts.csg.org/faq/ (visited 10/25/23)
[39] Ballotpedia, www.ballotpedia.org/Interstate_compacts_by_state#Maine (visited 9/28/23).
[40] Ballotpedia, www.ballotpedia.org/Interstate_compacts_by_state#Maine (visited 9/28/23).

concert to influence federal lawmakers. Use of an interstate compact for this purpose appears to be unprecedented.[41]

If an interstate compact is pursued, MainePERS recommends exploring an engagement with the National Center for Interstate Compacts for development of the compact, including drafting legislation.

MainePERS recommends that attempts to influence federal legislation on the WEP and GPO continue to be pursued by interested employee and retiree associations.

[41] None of the Maine interstate compacts listed on Ballotpedia appears to concern attempting to influence federal lawmakers, and the National Center for Interstate Compacts is unaware of any compact developed for that purpose. E-mail from Director, NCIC to MainePERS of 9/27/23.

Windfall Elimination Provision

Your Social Security retirement or disability benefits may be reduced

The Windfall Elimination Provision (WEP) can affect how Social Security calculates your retirement or disability benefit. If you work for an employer who doesn't withhold Social Security taxes from your salary, any retirement or disability pension you get from that work can reduce your Social Security benefits. Such an employer may be a government agency or an employer in another country.

When your benefits can be affected

The following provisions can affect you if both are true:

- You earn a retirement or disability pension from an employer who didn't withhold Social Security taxes.
- You qualify for Social Security retirement or disability benefits from work in other jobs for which you did pay taxes.

The WEP can apply if one of the following is true:

- You reached age 62 after 1985.
- You developed a qualifying disability after 1985.

If the latter applies, you must first have become eligible for a monthly pension based on work where you didn't pay Social Security taxes after 1985. This rule applies even if you're still working.

This provision also affects Social Security benefits for people who performed federal service under the Civil Service Retirement System (CSRS) after 1956. We won't reduce your Social Security benefit amount if you only performed federal service under a system such as the Federal Employees' Retirement System (FERS). Social Security taxes are withheld for workers under FERS.

How it works

Social Security benefits are intended to replace only some of a worker's pre-retirement earnings.

We base your Social Security benefit on your average monthly earnings adjusted for average wage growth. We separate your average earnings into 3 amounts and multiply the amounts using 3 factors to compute your full Primary Insurance Amount (PIA). For example, for a worker who turns 62 in 2023: the first $1,115 of average monthly earnings is multiplied by 90%; earnings between $1,115 and $6,721 are multiplied by 32%; and the balance is multiplied by 15%. The sum of the 3 amounts equals the PIA, which is then decreased or increased depending on whether the worker starts benefits before or after full retirement age (FRA). This formula produces the monthly payment amount.

When we apply this formula, the percentage of career average earnings paid to lower-paid workers is greater than higher-paid workers. For example, consider workers age 62 in 2023, with average earnings of $3,000 per month. They could receive a benefit at FRA of $1,606 (approximately 53%) of their pre-retirement earnings increased by applicable cost of living adjustments (COLAs). For a worker with average earnings of $8,000 per month, the benefit starting at FRA could be $2,989 (approximately 37%) plus COLAs. However, if either of these workers starts benefits earlier than their FRA, we'll reduce their monthly benefit.

Why we use a different formula

Before 1983, people whose primary job wasn't covered by Social Security had their Social Security benefits calculated as if they were long-term, low-wage workers. They had the advantage of receiving a Social Security benefit that represented a higher percentage of their earnings. They also had a pension from a job for which they didn't pay Social Security taxes. Congress passed the WEP to remove that advantage.

Under the provision, we reduce the 90% factor in our formula and phase it in for workers who reached age 62 or developed a disability between 1986 and 1989. For people who reach 62 or developed a disability in 1990 or later, we reduce the 90% factor to as little as 40%.

Some exceptions

The WEP doesn't apply if:

- You're a federal worker first hired after December 31, 1983.
- You're an employee of a non-profit organization who was exempt from Social Security coverage on December 31,1983. This does not apply if the non-profit organization waived exemption and did pay Social Security taxes, but then the waiver was terminated prior to December 31, 1983.
- Your only pension is for railroad employment.
- The only work you performed for which you didn't pay Social Security taxes was before 1957.
- You have 30 or more years of substantial earnings under Social Security.

The WEP doesn't apply to survivors benefits. We may reduce spouses or surviving spouses benefits because of another law. For more information, read *Government Pension Offset* (Publication No. 05-10007).

Social Security years of substantial earnings

If you have 30 or more years of substantial earnings, we don't reduce the standard 90% factor in our formula. See the first table that lists substantial earnings for each year.

The second table shows the percentage used to reduce the 90% factor depending on the number of years of substantial earnings. If you have 21 to 29 years of substantial earnings, we reduce the 90% factor to between 45% and 85%. To see the maximum amount we could reduce your benefit, visit ***www.ssa.gov/benefits/retirement/planner/wep.html***.

A guarantee

If you receive a relatively low pension, and that pension is fully or partially based on earnings after 1956 where you did not pay Social Security taxes, there's a law that might help you. In most cases, we won't reduce your Social Security full retirement age benefit by more than half of your pension amount.

For a more detailed estimate of how the WEP Guarantee may affect your Social Security benefit, please visit ***www.ssa.gov/benefits/retirement/planner/wep.html*** to access the WEP Online Calculator.

Contacting Us

The most convenient way to do business with us is to visit ***www.ssa.gov*** to get information and use our online services. There are several things you can do online: apply for benefits; start or complete your request for an original or replacement Social Security card; get useful information; find publications; and get answers to frequently asked questions.

Or, you can call us toll-free at **1-800-772-1213** or at **1-800-325-0778** (TTY) if you're deaf or hard of hearing. We can answer your call from 8 a.m. to 7 p.m., weekdays. We provide free interpreter services upon request. For quicker access to a representative, try calling early in the day (between 8 a.m. and 10 a.m. local time) or later in the day. **We are less busy later in the week (Wednesday to Friday) and later in the month.** You can also use our automated services via telephone, 24 hours a day, so you do not need to speak with a representative.

Year	Substantial earnings
1937–1954	$900
1955–1958	$1,050
1959–1965	$1,200
1966–1967	$1,650
1968–1971	$1,950
1972	$2,250
1973	$2,700
1974	$3,300
1975	$3,525
1976	$3,825
1977	$4,125
1978	$4,425
1979	$4,725
1980	$5,100
1981	$5,550
1982	$6,075
1983	$6,675
1984	$7,050
1985	$7,425
1986	$7,875
1987	$8,175
1988	$8,400
1989	$8,925

Year	Substantial earnings
1990	$9,525
1991	$9,900
1992	$10,350
1993	$10,725
1994	$11,250
1995	$11,325
1996	$11,625
1997	$12,150
1998	$12,675
1999	$13,425
2000	$14,175
2001	$14,925
2002	$15,750
2003	$16,125
2004	$16,275
2005	$16,725
2006	$17,475
2007	$18,150
2008	$18,975
2009–2011	$19,800
2012	$20,475
2013	$21,075
2014	$21,750

Year	Substantial earnings
2015–2016	$22,050
2017	$23,625
2018	$23,850
2019	$24,675
2020	$25,575
2021	$26,550
2022	$27,300
2023	$29,700

Years of substantial earnings	Percentage
30 or more	90 %
29	85 %
28	80 %
27	75 %
26	70 %
25	65 %
24	60 %
23	55 %
22	50 %
21	45 %
20 or less	40 %

Securing today and tomorrow

Social Security Administration
Publication No. 05-10045
September 2023 (Recycle prior editions)
Windfall Elimination Provision
Produced and published at U.S. taxpayer expense

Government Pension Offset

A law that affects spouses and widows or widowers

If you receive a retirement or disability pension from a federal, state, or local government based on your own work for which you didn't pay Social Security taxes, we may reduce your Social Security spouses or widows or widowers benefits. This fact sheet provides answers to questions you may have about the reduction.

How much will my Social Security benefits be reduced?

We'll reduce your Social Security benefits by two-thirds of your government pension. In other words, if you get a monthly civil service pension of $600, two-thirds of that, or $400, must be deducted from your Social Security benefits. For example, if you're eligible for a $500 spouses, widows, or widowers benefit from Social Security, you'll get $100 a month from Social Security ($500 – $400 = $100). If two-thirds of your government pension is more than your Social Security benefit, your benefit could be reduced to zero.

If you take your government pension annuity in a lump sum, Social Security will calculate the reduction as if you chose to get monthly benefit payments from your government work.

Why will my Social Security benefits be reduced?

Benefits we pay to spouses, widows, and widowers are "dependent" benefits. Set up in the 1930s, these benefits were to compensate spouses who stayed home to raise a family and were financially dependent on the working spouse. It's now common for both spouses to work, each earning their own Social Security retirement benefit. The law requires a person's spouse, widow, or widower benefit to be offset by the dollar amount of their own retirement benefit.

For example, if a woman worked and earned her own $800 monthly Social Security benefit, but was also due a $500 spouse's benefit on her husband's record, we couldn't pay that spouse's benefit because her own benefit offsets it. Before enactment of the Government Pension Offset law, if that same woman was a government employee who didn't pay into Social Security and earned an $800 government pension, there was no offset. We had to pay her a full spouse's benefit and her full government pension.

If this person's government work had been subject to Social Security taxes, we would reduce any spouse, widow, or widower benefit because of their own Social Security retirement benefit. The Government Pension Offset ensures that we calculate the benefits of government employees who don't pay Social Security taxes the same as workers in the private sector who pay Social Security taxes.

When won't my Social Security benefits be reduced?

Generally, we won't reduce your Social Security benefits as a spouse, widow, or widower if you:

- Receive a government pension that's not based on your earnings; or
- Are a federal (including Civil Service Offset), state, or local government employee and your government pension is from a job for which you paid Social Security taxes; and:
  - —Your last day of employment (that your pension is based on) is before July 1, 2004; or
  - —You filed for and were entitled to spouses, widows, or widowers benefits before April 1, 2004 (you may work your last day in Social Security covered employment at any time); or
  - —You paid Social Security taxes on your earnings during the last 60 months of government service. (Under certain

conditions, we require fewer than 60 months for people whose last day of employment falls after June 30, 2004, and before March 2, 2009.)

There are other situations for which we won't reduce your Social Security benefits as a spouse, widow, or widower; for example, if you:

- Are a federal employee who switched from the Civil Service Retirement System (CSRS) to the Federal Employees' Retirement System (FERS) after December 31, 1987; and:
  - —Your last day of service (that your pension is based on) is before July 1, 2004;
  - —You paid Social Security taxes on your earnings for 60 months or more during the period beginning January 1988 and ending with the first month of entitlement to benefits; or
  - —You filed for and were entitled to spouses, widows, or widowers benefits before April 1, 2004 (you may work your last day in Social Security covered employment at any time).
- Received, or were eligible to receive, a government pension before December 1982 and meet all the requirements for Social Security spouse's benefits in effect in January 1977; or
- Received, or were eligible to receive, a federal, state, or local government pension before July 1, 1983, and were receiving one-half support from your spouse.

Note: *A Civil Service Offset employee is a federal employee, rehired after December 31, 1983, following a break in service of more than 365 days, with five years of prior CSRS coverage.*

What about Medicare?

Even if you don't get benefit payments from your spouse's work, you can still get Medicare at age 65 on your spouse's record if you aren't eligible for it on your own record.

Can I still get Social Security benefits from my own work?

The offset applies only to Social Security benefits as a spouse, or widow, or widower. However, we may reduce your own benefits because of another provision. For more information, go online to read *Windfall Elimination Provision* (Publication No. 05-10045).

Contacting Social Security

The most convenient way to contact us anytime, anywhere is to visit ***www.socialsecurity.gov***. There, you can: apply for benefits; open a *my* Social Security account, which you can use to review your *Social Security Statement*, verify your earnings, print a benefit verification letter, change your direct deposit information, request a replacement Medicare card, and get a replacement SSA-1099/1042S; obtain valuable information; find publications; get answers to frequently asked questions; and much more.

If you don't have access to the internet, we offer many automated services by telephone, 24 hours a day, 7 days a week. Call us toll-free at **1-800-772-1213** or at our TTY number, **1-800-325-0778**, if you're deaf or hard of hearing.

If you need to speak to a person, we can answer your calls from 7 a.m. to 7 p.m., Monday through Friday. We ask for your patience during busy periods since you may experience higher than usual rate of busy signals and longer hold times to speak to us. We look forward to serving you.

Securing today
and tomorrow

Social Security Administration
Publication No. 05-10007 | ICN 451453 | Unit of Issue — HD (one hundred)
May 2019 (Recycle prior editions)
Government Pension Offset
Produced and published at U.S. taxpayer expense

APPENDIX C

Congressional Research Service
Informing the legislative debate since 1914

Social Security: The Windfall Elimination Provision (WEP)

Updated February 13, 2023

Congressional Research Service
https://crsreports.congress.gov
98-35

Summary

Social Security is a work-based, federal insurance program that provides cash benefits to workers and their eligible family members in the event of the worker's retirement, disability, or death. A worker's employment or self-employment is considered covered by Social Security if the services performed in that job result in earnings that are taxable and creditable for program purposes. Although participation in Social Security is compulsory for most workers, about 6% of all workers in paid employment or self-employment are not covered by Social Security.

The *windfall elimination provision* (WEP) is a modified benefit formula that reduces the Social Security benefits of certain retired or disabled workers who are also entitled to pension benefits based on earnings from jobs that were not covered by Social Security and thus not subject to the Social Security payroll tax. Its purpose is to remove an unintended advantage or "windfall" that these workers would otherwise receive as a result of the interaction between the regular Social Security benefit formula and the workers' relatively short careers in Social Security–covered employment.

In December 2022, about 2.0 million people (or about 3% of all Social Security beneficiaries) were affected by the WEP. Those workers mainly include state and local government employees covered by alternative staff-retirement systems as well as most permanent civilian federal employees hired before January 1, 1984, who are covered by the Civil Service Retirement System (CSRS).

WEP's supporters argue that the formula is a reasonable means to prevent overgenerous payments and unintended benefits to people who have earnings not covered by Social Security and receive pensions from noncovered work. Opponents argue that the provision substantially reduces a benefit that workers may have included in their retirement plans, and it reduces benefits disproportionately for lower-earning households. Others criticize the current WEP formula as an imprecise way to determine the actual windfall when applied to individual cases.

Recent legislation has generally proposed either to eliminate the provision for all or some affected beneficiaries, or replace the current-law provision with a new proportional formula based on past earnings from both covered and noncovered employment.

Contents

Figures

Tables

Appendixes

Contacts

Introduction

Social Security provides insured workers and their eligible family members with a measure of protection against the loss of income due to the worker's retirement, disability, or death. The amount of the monthly benefit payable to workers and their family members is based on the worker's career-average earnings from jobs covered by Social Security (i.e., jobs in which the worker's earnings were subject to the Social Security payroll tax).[1] The Social Security benefit formula is weighted to replace a greater share of career-average earnings for low-paid workers than for high-paid workers. This means that low-paid workers receive relatively high benefits in relation to their payroll tax contributions, although the dollar amount of their benefits is lower than that provided to high-paid workers.

The benefit formula, however, cannot distinguish between workers who have low career-average earnings because they worked for many years at low earnings in Social Security–covered employment and workers who appear to have low career-average earnings because they worked for many years in jobs not covered by Social Security. (Those years show up as zeros in their Social Security earnings records, which, when averaged, lower their career earnings from covered work.) Consequently, workers who split their careers between covered and noncovered employment—even highly paid ones—may also receive the advantage of the weighted formula.

The *windfall elimination provision* (WEP) is a modified benefit formula designed to remove the unintended advantage, or "windfall," of the regular benefit formula for certain retired or disabled workers who spent less than full careers in covered employment and who are also entitled to pension benefits based on earnings from jobs not covered by Social Security. The reduction in initial benefits caused by the WEP is designed to place affected workers in approximately the same position they would have been in had *all* their earnings been covered by Social Security.

Background on the Social Security Benefit Formula

Workers qualify for Social Security benefits if they worked and paid Social Security payroll taxes for a sufficient amount of time in covered employment.[2] Retired workers need at least 40 earnings credits (or about 10 years of covered work), whereas disabled workers generally need fewer earnings credits.[3] Initial benefits are based on a worker's career-average earnings from jobs covered by Social Security. In computing the initial benefit amount, a worker's annual taxable earnings are indexed (i.e., adjusted) to average wage growth in the national economy.[4] This is done to bring earlier years of earnings up to a comparable, current basis. Next, a summarized measure of a worker's career-average earnings is found by totaling the highest 35 years of

[1] For the purposes of this report, the term *payroll tax* includes the Social Security self-employment tax.

[2] Unless otherwise noted, the term *covered employment* includes self-employment covered by Social Security.

[3] A worker may earn up to four earnings credits per calendar year. In 2023, a worker earns one credit for each $1,640 of covered earnings, up to a maximum of four credits for covered earnings of $6,560 or more. Earnings credits are also called *quarters of coverage*. See Social Security Administration (SSA), *How You Earn Credits*, Publication No. 05-10072, 2023, https://best.ssa.gov/pubs/EN-05-10072.pdf.

[4] Years of earnings are indexed up to the second calendar year before the year of earliest eligibility (i.e., the year in which the worker first attains aged 62, becomes disabled, or dies). Years of earnings after the last indexing year are counted in nominal (i.e., unadjusted) dollars.

covered earnings and then dividing by 35.[5] After that, a monthly average, known as *average indexed monthly earnings* (AIME), is found by dividing the annual average by 12.

Once the worker's AIME has been derived, it is then entered into the Social Security benefit formula to produce the worker's initial benefit amount. The benefit formula is progressive, replacing a greater share of career-average earnings for low-paid workers than for high-paid workers. The benefit formula applies three factors—90%, 32%, and 15%—to three different levels, or *brackets*, of AIME. The result is known as the *primary insurance amount* (PIA) and is rounded down to the nearest 10 cents. The PIA is the worker's basic benefit before any adjustments are applied.[6] The benefit formula applicable to a given worker is based on the individual's earliest *eligibility year* (ELY), that is, the year in which the worker first attains age 62, becomes disabled, or dies.[7] For workers whose ELY is 2023, the PIA is determined as follows in **Table 1**.

Table 1. Social Security Benefit Formula for Workers Who First Become Eligible in 2023

Factor	Average Indexed Monthly Earnings (AIME)
90%	of the first $1,115, plus
32%	of AIME over $1,115 and through $6,721 (if any), plus
15%	of AIME over $6,721 (if any)

Source: CRS, based on Social Security Administration (SSA), Office of the Chief Actuary (OCACT), "Benefit Formula Bend Points," https://www.ssa.gov/oact/cola/bendpoints.html.

The averaging provision in the benefit formula tends to cause workers with short careers in Social Security–covered employment to have low AIMEs, even if they had high earnings in their noncovered career. This results in these workers having AIMEs that are similar to those of people who worked for low earnings in covered employment throughout their careers. This is because years of zero covered earnings are entered as zeros into the formula that averages the worker's earnings history over 35 years. For example, a person with 10 years in Social Security–covered employment would have an AIME that reflects 25 years of zero earnings, even if that person worked for 25 years in a high-paying, noncovered career.

Consequently, for a worker whose AIME is low because his or her career was split between covered and noncovered employment, the benefit formula replaces more of covered earnings at the 90% rate than if the worker had spent a full 35-year career in covered employment at the same earnings level. The higher replacement rate[8] for workers who have split their careers between Social Security–covered and noncovered jobs is sometimes referred to as a "windfall."[9]

[5] The number of benefit computation years for disabled or deceased workers may be fewer than 35 years.

[6] The worker's primary insurance amount (PIA) is subsequently adjusted to account for inflation through cost-of-living adjustments (COLAs). Additional adjustments may be made to the PIA to account for early retirement, delayed retirement, or certain other factors.

[7] Although the factors in the formula are fixed in law, the dollar amounts defining the brackets, also known as *bend points*, are adjusted annually for average earnings growth in the national economy. Because the bend points change each year, the benefit formula for a worker with an earliest eligibility year (ELY) in 2023 is different from the benefit formula for a worker with an ELY in any other year. For bend point amount for years prior to 2023, see SSA, Office of the Chief Actuary (OCACT), "Benefit Formula Bend Points," https://www.ssa.gov/oact/cola/bendpoints.html.

[8] The *replacement rate* is the ratio of the program benefit to a worker's prior earnings.

[9] The windfall elimination provision (WEP) is sometimes confused with the government pension offset (GPO), which

How the Windfall Elimination Provision Works

A different Social Security benefit formula, known informally as the *windfall elimination provision*, applies to certain workers who are entitled to Social Security benefits as well as to pension benefits from employment not covered by Social Security.[10] Under the WEP, the 90% factor in the first bracket of the formula is reduced to as low as 40%. The effect is to lower the proportion of earnings in the first bracket that are converted to benefits. **Table 2** illustrates how the regular benefit formula and the WEP work in 2023 for someone with a 40% factor.

Table 2. Hypothetical Scenario: PIA for a Worker with AIME of $1,800 Who Becomes Eligible in 2023 and Has 20 Years of Substantial Coverage

Regular Formula		WEP Formula	
90% of first $1,115	$1,003.50	40% of first $1,115	$446.00
32% of earnings over $1,115 and through $6,721	219.20	32% of earnings over $1,115 and through $6,721	219.20
15% over $6,721	0.00	15% over $6,721	0.00
Total after rounding	**$1,222.70**	**Total after rounding**	**$665.20**

Source: CRS.

Note: PIA = Primary Insurance Amount. AIME = Average Indexed Monthly Earnings. By law, the PIA is rounded down to nearest 10 cents.

In this scenario, the monthly benefit is $557.50 lower under the WEP than under the regular benefit formula ($1,222.70 *minus* $665.20). Note that the WEP reduction is limited to the first bracket in the AIME formula (90% vs. 40%), while the 32% and 15% factors for the second and third brackets are unchanged. As a result, for AIME amounts that exceed the first formula threshold of $1,115, the WEP reduction remains a flat $557.50 per month. For example, if the worker had an AIME of $4,000 instead of $1,800, the WEP reduction would still be $557.50 per month. The WEP therefore causes a proportionally larger reduction in benefits for workers with lower AIMEs and monthly benefit amounts.[11]

A *guarantee* in the WEP ensures that the WEP reduction cannot exceed half of the noncovered pension based on the worker's noncovered work. This guarantee is designed to help protect workers with low pensions from noncovered work. The WEP does not apply to workers who have 30 or more years of substantial employment covered under Social Security, with an adjusted

reduces Social Security benefits paid to spouses and widow(er)s of insured workers if the spouse or widow(er) also receives a pension based on government employment not covered by Social Security. See CRS Report RL32453, *Social Security: The Government Pension Offset (GPO)*.

[10] Section 215(a)(7) and (d)(3) of the Social Security Act; 42 U.S.C. §415(a)(7) and (d)(3). See also 20 C.F.R. §§404.213 and 404.243. Moreover, see SSA, Program Operations Manual System, "RS 00605.360 WEP Applicability," June 24, 2013, https://secure.ssa.gov/apps10/poms.nsf/lnx/0300605360. The term *windfall elimination provision* is not specified in statute or in SSA's regulations.

[11] For the worker shown in **Table 2**, with an AIME of $1,800 and a monthly benefit of $1,222.70 under the regular benefit formula in 2023, the WEP reduction of $557.50 represents a cut of approximately 46% to the regular formula monthly benefit amount. By comparison, a worker with an AIME of $4,000 would be entitled to a PIA of $1,926.70 under the 2023 regular benefit formula, and the same WEP reduction of $557.50 per month would represent a 29% reduction in this worker's monthly benefit amount.

formula for workers with 21 to 29 years of substantial covered employment, as shown in **Table 3**.[12]

Table 3. Maximum WEP Reduction for Workers Who Become Eligible in 2023, by Years of Substantial Coverage

Years of Social Security Coverage										
20 or fewer	21	22	23	24	25	26	27	28	29	30+
First factor in formula:										
40%	45%	50%	55%	60%	65%	70%	75%	80%	85%	90%
Maximum dollar amount of monthly WEP reduction for workers who first become eligible for Social Security in 2023[a] ($):										
557.5	501.8	446.0	390.3	334.5	278.8	223.0	167.3	111.5	55.8	0.0

Source: CRS analysis.

Notes: The WEP reduction may be lower than the amount shown because the reduction is limited to one-half of the worker's pension from noncovered employment. In addition, because the WEP reduces the initial benefit amount *before* it is reduced or increased due to early retirement, delayed retirement credits (DRCs), cost-of-living adjustments (COLAs), or other factors, the difference between the final benefit with the WEP and the final benefit without the WEP may be less than or greater than the amounts shown.

a. The maximum dollar amount of the monthly WEP reduction is based on a worker's ELY. Because the dollar amounts defining the brackets in the benefit formula change each year, the maximum dollar amount of the WEP reduction for a worker with an ELY of 2023 is different from the maximum deduction for a worker with an ELY of any other year. For maximum WEP reduction amounts for workers with ELYs prior to 2023, see SSA, "Windfall Elimination Provision (WEP) Chart," https://www.ssa.gov/planners/retire/wep-chart.html.

Types of Workers Affected by the WEP

The WEP applies to benefits payable to retired or disabled workers who meet the criteria above and to their eligible dependents; however, it does *not* apply to benefits payable to survivors of deceased insured workers. Groups of workers likely to be affected by the WEP include certain state and local government employees who are covered by alternative pension plans through their employers[13] and most permanent civilian federal employees hired before January 1, 1984, who are covered by the Civil Service Retirement System (CSRS).[14] The WEP does *not* apply to

[12] For determining years of coverage after 1978 for individuals with pensions from noncovered employment, *substantial coverage* is defined as 25% of the "old law" Social Security maximum taxable earnings base for each year in question. The old law maximum taxable earnings base refers to the earnings base that would have been in effect had the Social Security Amendments of 1977 (P.L. 95-216) not been enacted. In 2023, the old law taxable earnings base is equal to $118,800. Therefore, to earn credit for one year of substantial employment under the WEP, a worker would have to earn at least $29,700 in Social Security–covered employment. For the thresholds for previous years, see SSA, OCACT, "Old-Law Base and Year of Coverage," https://www.ssa.gov/oact/cola/yoc.html.

[13] See Department of the Treasury, Internal Revenue Service (IRS), *Federal-State Reference Guide*, IRS Publication 963 (Rev. 7-2020), https://www.irs.gov/pub/irs-pdf/p963.pdf.

[14] See CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

- federal employees performing service on January 1, 1984, to which coverage was extended on that date by reason of the Social Security Amendments of 1983 (P.L. 98-21);
- employees of a nonprofit organization who were exempt from Social Security coverage on December 31, 1983, and who became covered for the first time on January 1, 1984, under P.L. 98-21;
- workers who attained age 62, became disabled, or were first eligible for a pension from noncovered employment before 1986;
- workers who receive foreign pension payments after 1994 that are based on a totalization agreement with the United States;[15]
- workers whose only noncovered pension is based on earnings from noncovered domestic or foreign employment before 1957;[16] and
- railroad workers whose only noncovered pension is based on earnings from employment covered by the Railroad Retirement Act.[17]

The Number of People Affected by the WEP

According to the Social Security Administration (SSA), as of December 2022, about 2.0 million Social Security beneficiaries were affected by the WEP (**Table 4**). The overwhelming majority of those affected (about 95%) were retired workers. Approximately 3% of all Social Security beneficiaries (including disabled workers and dependent beneficiaries) and 4% of all retired-worker beneficiaries were affected by the WEP in December 2022.[18] Of retired workers affected by the WEP, approximately 54% were men (**Table 5**).

Table 4. Number of Social Security Beneficiaries in Current Payment Status with Benefits Affected by WEP, by State and Type of Beneficiary: December 2022

		Type of Beneficiary		
State	**Total**	**Retired Workers**	**Disabled Workers**	**Spouses and Children**
Total	**2,013,310**	**1,910,130**	**11,870**	**91,310**
Alabama	17,594	16,688	154	752
Alaska	13,221	12,729	59	433
Arizona	39,074	37,314	189	1,571
Arkansas	10,694	10,246	111	337
California	283,270	269,673	1,556	12,041
Colorado	73,103	70,403	736	1,964
Connecticut	21,790	21,134	97	559

[15] *Totalization agreements* are bilateral agreements that provide limited coordination of the U.S. Social Security program with comparable social insurance programs of other countries. The agreements are intended primarily to eliminate dual Social Security taxation based on the same work and provide benefit protection for workers who divide their careers between the United States and a foreign country.

[16] The WEP does not apply in cases where the pension is based, in part, on noncovered military reserve duty before 1988 but after 1956.

[17] SSA, POMS, "RS 00605.362 Windfall Elimination Provision (WEP) Exceptions," November 10, 2022, https://secure.ssa.gov/poms.nsf/lnx/0300605362.

[18] Data on the total Social Security beneficiary and retired-worker populations used in these calculations are from SSA, OCACT, "Benefits Paid By Type Of Beneficiary," https://www.ssa.gov/oact/ProgData/icp.html.

State	Total	Type of Beneficiary		
		Retired Workers	Disabled Workers	Spouses and Children
Delaware	4,586	4,425	26	135
District of Columbia	6,932	6,743	36	153
Florida	109,737	104,171	541	5,025
Georgia	57,854	55,901	347	1,606
Hawaii	11,671	11,023	37	611
Idaho	9,737	9,265	60	412
Illinois	102,391	99,068	356	2,967
Indiana	17,848	17,058	134	656
Iowa	8,319	8,022	52	245
Kansas	9,552	9,170	77	305
Kentucky	25,601	24,735	181	685
Louisiana	52,155	49,704	566	1,885
Maine	20,498	19,909	81	508
Maryland	45,942	44,195	195	1,552
Massachusetts	88,974	86,282	573	2,119
Michigan	22,966	21,810	181	975
Minnesota	16,349	15,826	70	453
Mississippi	9,535	9,121	70	344
Missouri	41,904	40,826	212	866
Montana	6,688	6,409	30	249
Nebraska	5,643	5,425	39	179
Nevada	37,905	36,670	209	1,026
New Hampshire	9,364	9,017	80	267
New Jersey	22,793	21,477	187	1,129
New Mexico	14,067	13,331	111	625
New York	32,062	30,056	212	1,794
North Carolina	31,736	30,489	157	1,090
North Dakota	2,339	2,252	10	77
Ohio	161,739	155,906	1,388	4,445
Oklahoma	17,166	16,389	147	630
Oregon	18,805	18,008	69	728
Pennsylvania	35,955	34,215	252	1,488
Rhode Island	6,305	6,114	52	139
South Carolina	19,597	18,796	98	703
South Dakota	3,959	3,836	14	109
Tennessee	22,626	21,674	134	818
Texas	208,368	199,750	1,115	7,503
Utah	14,373	13,507	74	792
Vermont	2,722	2,607	10	105
Virginia	47,152	44,985	122	2,045
Washington	35,150	33,231	138	1,781

State	Total	Type of Beneficiary: Retired Workers	Disabled Workers	Spouses and Children
West Virginia	6,120	5,756	57	307
Wisconsin	12,790	12,306	59	425
Wyoming	2,727	2,633	17	77
Outlying Areas and Foreign Countries	113,862	89,850	392	23,620

Source: CRS, based on unpublished data from Social Security Administration (SSA), Office of Research, Evaluation, and Statistics (ORES), Table B, January 2023.

Table 5. Number of Social Security Worker Beneficiaries in Current Payment Status with Benefits Affected by WEP, by Gender and Type of Beneficiary, December 2022

Gender	All Workers	Retired Workers	Disabled Workers
All Beneficiaries	**1,922,000**	**1,910,130**	**11,870**
Women	883,225	877,473	5,752
Men	1,038,775	1,032,657	6,118

Source: CRS, based on unpublished data from SSA, ORES, Table W01, January 2023. For data on the share of Social Security beneficiaries affected by the WEP in December 2021, by state, see **Table A-1** and **Table A-2** in the **Appendix**.

Legislative History and Rationale

The WEP was enacted in 1983 as part of major amendments (P.L. 98-21) designed to shore up the financing of the Social Security program. The 40% WEP formula factor was the result of a compromise between a House bill that would have substituted a 61% factor for the regular 90% factor and a Senate proposal that would have substituted a 32% factor.[19]

The purpose of the 1983 provision was to remove an unintended advantage that the regular Social Security benefit formula provided to certain retired or disabled worker-beneficiaries who were also entitled to pension benefits based on earnings from jobs not subject to the Social Security payroll tax. The regular formula was intended to help workers who spent their lifetimes in low-paying jobs, by providing them with a benefit that replaces a higher proportion of their career-average earnings than the benefit provided to workers with high career-average earnings. However, the formula does not differentiate between those who worked in low-paid jobs throughout their careers and other workers who appear to have been low paid because they worked many years in jobs not covered by Social Security and few years in covered jobs. Under the old law, workers who were employed for only a portion of their careers in jobs covered by Social Security—even highly paid ones—also received the advantage of the weighted formula, because their few years of covered earnings were averaged over their entire working career to determine the average covered earnings on which their Social Security benefits were based. The WEP is intended to place affected workers in approximately the same position they would have been in had *all* their earnings been covered by Social Security.

[19] U.S. Congress, Committee of Conference, *Social Security Amendments of 1983*, conference report to accompany H.R. 1900, 98th Cong., 1st sess., March 24, 1983, H.Rept. 98-47 (Washington: GPO, 1983), pp. 120-121, http://www.finance.senate.gov/imo/media/doc/Conf-98-47.pdf.

Arguments for the WEP

Proponents of the measure say that it is a reasonable means to prevent payment of overgenerous and unintended benefits to certain workers who otherwise would profit from happenstance (i.e., the mechanics of the Social Security benefit formula). Furthermore, they maintain that the provision rarely causes hardship because by and large the people affected are reasonably well off because by definition they also receive pensions from noncovered work. The guarantee provision ensures that the reduction in Social Security benefits cannot exceed half of the pension from noncovered work, which protects people with small pensions from noncovered work. In addition, the impact of the WEP is reduced for workers who spend 21 to 29 years in Social Security–covered work and is eliminated for people who spend 30 years or more in Social Security–covered work.

Arguments Against the WEP

Some opponents of the WEP believe the provision is unfair because it substantially reduces a benefit that certain workers may have included in their retirement plans. Others criticize how the provision works. They say the arbitrary 40% factor in the windfall elimination formula is an imprecise way to determine the actual windfall when applied to individual cases.[20]

The WEP's Impact on Low-Income Workers

The impact of the WEP on low-income workers has been the subject of debate. Jeffrey Brown and Scott Weisbenner (hereinafter "Brown and Weisbenner") point out two reasons why the WEP can be regressive.[21] First, because the WEP adjustment is confined to the first bracket of career-average earnings in the benefit formula ($1,115 in 2023), it causes a proportionally larger reduction in benefits for workers with lower AIMEs and benefit amounts than for others. Second, a high earner is more likely than a low earner to cross the "substantial work" threshold for accumulating years of covered earnings (in 2023 this threshold is $29,700 in Social Security–covered earnings); therefore, high earners are more likely to benefit from the provision that phases out the WEP for people with between 21 and 29 years of covered employment.

Brown and Weisbenner found that the WEP does reduce benefits disproportionately for lower-earning households.[22] For some high-income households, applying the WEP to covered earnings even provides a higher replacement rate than if the WEP were applied proportionately to all earnings, covered and noncovered. Brown and Weisbenner found that the WEP can also lead to large changes in Social Security replacement rates based on small changes in covered earnings, particularly when a small increase in covered earnings carries a person over the threshold for an additional year of substantial covered earnings, leading to an adjustment in the WEP formula applied to the AIME.

---

[20] See, for example, the Social Security Advisory Board, *The Windfall Elimination Provision: It's Time to Correct the Math*, October 1, 2015, http://www.ssab.gov/Portals/0/OUR_WORK/REPORTS/WEP_Position_Paper_2015.pdf.

[21] Jeffrey R. Brown and Scott Weisbenner, "The Distributional Effects of the Social Security Windfall Elimination Provision," *Journal of Pension Economics and Finance*, vol. 12, iss. 04 (October 2013), pp. 415-434, http://business.illinois.edu/weisbenn/RESEARCH/PAPERS/JPEF_Brown_Weisbenner.pdf.

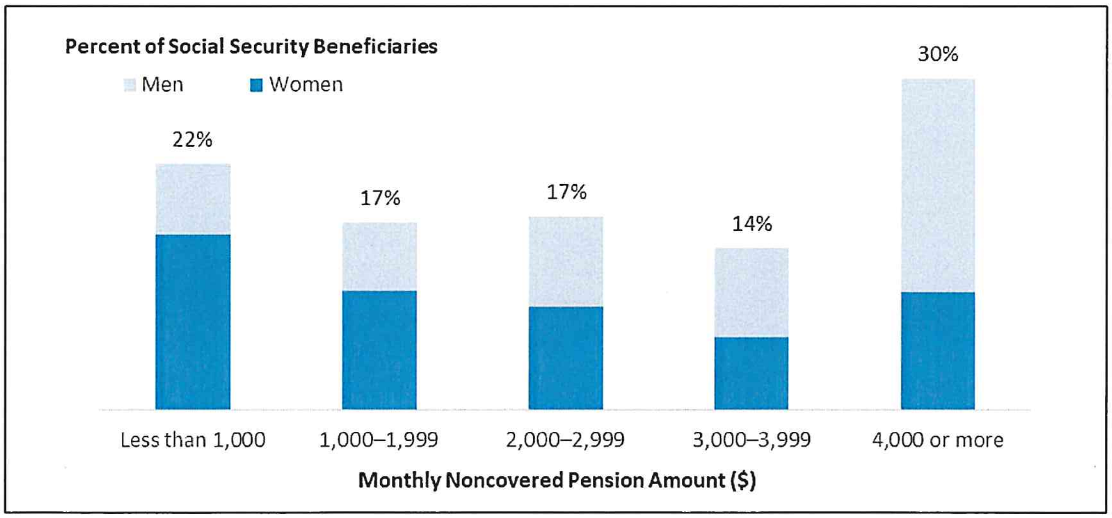
[22] For more information, see CRS Report R46194, *The Windfall Elimination Provision (WEP) in Social Security: Comparing Current Law with Proposed Proportional Formulas*.

Noncovered Pensions for Beneficiaries Affected by the WEP

The WEP applies to Social Security beneficiaries who are entitled to (i.e., receiving) a pension based on earnings that were not covered by Social Security. SSA periodically provides data on those noncovered pension amounts for Social Security beneficiaries affected by the WEP. **Figure 1** shows the distribution of Social Security WEP-affected beneficiaries who first became eligible for benefits in 2019, by noncovered pension amount and gender. As of December 2022, about 22% of those beneficiaries received a noncovered pension amount of less than $1,000 per month, approximately 48% received a monthly amount between $1,000 and $3,999, and 30% received a monthly amount of $4,000 or more. Among those WEP-affected beneficiaries, women tended to have a lower noncovered pension amount than men on average.

Figure 1. Distribution of WEP-Affected Social Security Beneficiaries by Monthly Noncovered Pension Amount and Gender, December 2022

Among Social Security beneficiaries with first eligibility in 2019



Source: CRS, based on unpublished data from SSA's ORES, Table W12, January 2023.

Notes: Data reflects beneficiaries for whom noncovered pension amounts are available. The monthly pension amount represents the noncovered government pension amount at the time of initial filing for Social Security benefits.

A worker who split his or her career between Social Security–covered and noncovered jobs may receive both Social Security retired-worker benefits (subject to the WEP) and a noncovered pension. In December 2022, among all Social Security worker beneficiaries who were affected by the WEP, about 82% had 20 or fewer YOCs (substantial covered earnings under Social Security).[23] Usually, the longer the individual worked in noncovered employment, the shorter the employment in covered jobs (provided that the number of working years a person can work is relatively stable). In this case, the worker would be likely to receive a relatively larger noncovered pension amount and a smaller Social Security benefit. In December 2022, among WEP-affected beneficiaries who first became eligible for Social Security in 2019, about 31% of

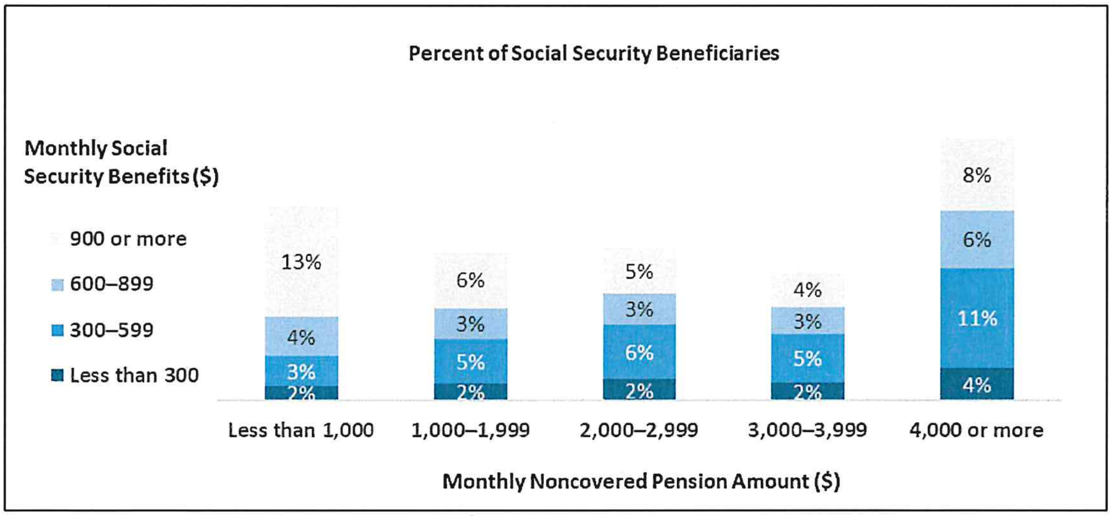
[23] CRS, based on unpublished data from Social Security Administration (SSA), Office of Research, Evaluation, and Statistics (ORES), Tables W01 and W06, January 2023.

them received a monthly noncovered pension amount of $2,000 or more and a monthly Social Security benefit below $600 after the effect of the WEP (see **Figure 2**).

However, some workers may work a relatively short career or at relatively low earnings in both Social Security–covered and noncovered jobs, thus resulting in relatively low combined Social Security and noncovered pension benefits. In December 2022, among WEP-affected beneficiaries who became eligible for Social Security in 2019, about 9% of those beneficiaries received less than $1,000 per month in noncovered pensions and less than $900 per month in Social Security benefits (for a combined total below $1,900 per month). Another 7% received between $1,000-1,999 per month in noncovered pensions and less than $600 per month in Social Security (for a combined total greater than $1,000 and below $2,599 per month). This monthly benefit amount does not include retirement income received from other sources (such as need-based benefits and other government transfers, earnings, retirement savings, and asset income).

Figure 2. Distribution of WEP-Affected Social Security Beneficiaries by Monthly Noncovered Pension Amount and Monthly Social Security Benefits, December 2022

Among Social Security beneficiaries with first eligibility in 2019



Source: CRS, based on unpublished data from SSA's ORES, Table W16, January 2023.

Notes: Data reflects beneficiaries for whom noncovered pension amounts are available. The monthly pension amount represents the noncovered government pension amount at the time of initial filing. Social Security benefits are measured by the primary insurance amount after the effect of the WEP.

Legislative Activity on the WEP in the 117th Congress

In the 117th Congress, several proposals were introduced that would have repealed, replaced, or amended the WEP. These proposals are briefly described below.

The Social Security Fairness Act of 2021 was introduced by Representative Rodney Davis on January 4, 2021 (H.R. 82), and the Social Security Fairness Act was introduced by Senator Sherrod Brown on April 22, 2021 (S. 1302). The legislation would have repealed the WEP and the *government pension offset* (GPO), which reduces the Social Security benefits paid to spouses and widow(er)s of insured workers if the spouse or widow(er) also receives a pension based on government employment not covered by Social Security.[24] The elimination of the WEP and GPO would have applied to benefits payable for months after December 2021. The Congressional Budget Office projected that eliminating only the WEP would have cost $88 billion over the period 2022-2032 and that eliminating both the WEP and the GPO would have cost $183 billion over the period 2022-2032.[25] SSA's Office of the Chief Actuary (OCACT) projected that eliminating both the WEP and the GPO would have reduced the long-range actuarial balance (i.e., would have increased the net long-term cost) of the combined Social Security trust funds by 0.12% of taxable payroll and would have changed the projected year of reserve depletion for the combined Social Security trust funds from 2035 under current law to 2034 under the proposal.[26] On September 20, 2022, the House Committee on Ways and Means held a markup for H.R. 82, and the bill reported without recommendation.[27]

The bills titled Social Security 2100: A Sacred Trust were introduced by Representative John B. Larson (H.R. 5723) and Senator Richard Blumenthal (S. 3071), respectively, on October 26, 2021. Among other provisions, the bills would have repealed the WEP and the GPO for benefits payable during 2022-2026. OCACT estimated that enactment of this provision alone would have increased the net long-term cost by 0.01% of taxable payroll.[28]

Since 2004, introduced legislation has reflected a different approach that would replace the WEP formula under current law with a new proportional formula for new beneficiaries. Under this approach, the proportional formula would apply the regular Social Security benefit formula to all past earnings from covered and noncovered employment. The resulting benefit would then be reduced by the ratio of career-average earnings from covered employment to career-average earnings from both covered and noncovered employment (i.e., combined earnings). Based on the estimate from OCACT, among all current beneficiaries in 2018, about 69% of those affected by the WEP would receive an increase in Social Security benefits using the proportional formula, and the remaining 31% would receive a lower benefit. In addition, 13.5 million beneficiaries who are not affected by the current WEP would receive a lower benefit using the proportional formula.[29] Most workers who are not affected by the current WEP but would be affected by the proportional formula are those with noncovered employment who have 30 or more years of substantial covered earnings, or those with noncovered employment who are not receiving noncovered pension benefits; both groups are exempt from the WEP under current law. To protect future beneficiaries from further benefit reduction compared with the current law, the recent

---

[24] See CRS Report RL32453, *Social Security: The Government Pension Offset (GPO)*. See also CRS In Focus IF10203, *Social Security: The Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO)*.

[25] U.S. Congressional Budget Office, *Cost Estimate: H.R. 82, Social Security Fairness Act of 2021*, September 20, 2022, https://www.cbo.gov/publication/58488.

[26] Letter from Stephen C. Goss, Chief Actuary, SSA, to the Honorable Rodney Davis and the Honorable Abigail Spanberger, U.S. House of Representatives, July 20, 2022, https://www.ssa.gov/OACT/solvency/DavisSpanberger_20220720.pdf. The projection was based on the intermediate assumptions of the 2022 Social Security trustees report. *Taxable payroll* is the total amount of earnings in the economy that is subject to Social Security payroll and self-employment taxes (with some adjustments). In the short term, SSA's Office of the Chief Actuary projected that the legislation repealing the WEP and the GPO would have increased program costs by $146 billion over the period 2022-2031.

[27] U.S. House of Representatives, H.Rept. 117-482 - *Social Security Fairness Act of 2021*, September 20, 2022, https://www.congress.gov/congressional-report/117th-congress/house-report/482.

[28] Letter from Stephen C. Goss, Chief Actuary, SSA, to the Honorable John Larson, U.S. House of Representatives, October 26, 2021, https://www.ssa.gov/OACT/solvency/JLarson_20211026.pdf. The projection was based on the intermediate assumptions of the 2021 Social Security trustees report.

[29] Letter from Stephen C. Goss, Chief Actuary, SSA, to the Honorable Kevin Brady, U.S. House, July 24, 2019, https://www.ssa.gov/oact/solvency/KBrady_20190724.pdf. The projections are based on the intermediate assumptions of the 2019 Social Security trustees report.

legislation based on the proportional formula would generally attempt to hold beneficiaries harmless to a certain degree by providing the higher benefit of the current-law WEP or the proportional formula. This approach was reflected in the Public Servants Protection and Fairness Act of 2021 (H.R. 2337) and the Equal Treatment of Public Servants Act of 2021 (H.R. 5834), as described below in this section.

The Public Servants Protection and Fairness Act of 2021 (H.R. 2337) was introduced by Representative Richard E. Neal on April 1, 2021. The legislation would have replaced the WEP with a new proportional formula for individuals who become eligible for Social Security benefits in 2023 or later. The bill included a benefit guarantee provision that would have allowed individuals to receive the higher of their benefit under the current-law WEP or the proportional formula. The proposal would have also provided a rebate payment starting nine months after enactment for retired-worker and disabled-worker beneficiaries affected by the current WEP (up to $150 per month); the rebate payments would have increased with cost-of-living adjustments. In 2021, OCACT estimated that the legislation would have increased program expenditures by about $30.6 billion (mainly from the rebate) between 2021 and 2030. The change in net cash flow of $29.0 billion (net of the revenue from income taxation on benefits) would have been reimbursed from the General Fund of the U.S. Treasury. In the long run (75 years), the projected program cost would have increased by an amount equal to 0.02% of taxable payroll, and the projected program income would have increased by the same amount with transfers from the General Fund, thus having no significant effect on the combined trust funds' actuarial balance.[30]

The Equal Treatment of Public Servants Act of 2021 (H.R. 5834) was introduced by Representative Kevin Brady on November 3, 2021. Similar to H.R. 2337, the legislation would have replaced the WEP with the new proportional formula for individuals who become eligible for Social Security benefits in 2023 or later. Individuals becoming eligible during the transitional period between 2023 and 2061 would have received the higher of their benefit under the current-law WEP or the proportional formula. For those who become eligible in 2062 and later, benefits would have been based solely on the proportional formula. The proposal would have also provided a rebate payment starting nine months after enactment for workers (up to $100 per month) and their dependents (up to $50 per month) affected by the current WEP. The rebate payments would have increased with cost-of-living adjustments. In 2021, OCACT estimated that the legislation would have increased program costs by about $27.7 billion (or $26.3 billion net of the revenue from the income taxation on benefits) over the period 2022 through 2031. According to OCACT's estimates, over the 75-year projection period, future savings from the proportional formula would have offset the cost of the monthly rebate payments and the protection provision during the transitional period, so the bill would have had no significant effect on Social Security's long-term financial outlook.[31]

The Wellbeing for Every Public Servant Act of 2021 (H.R. 4788) was introduced by Representative Julia Letlow on July 29, 2021. Under the legislation, individuals whose combined monthly benefits from Social Security and noncovered public pensions were below a wage-indexed amount of $5,500 would have been exempt from the WEP. Beneficiaries whose combined monthly benefits from Social Security and noncovered public pensions were between

[30] Letter from Stephen C. Goss, Chief Actuary, SSA, to the Honorable Richard Neal, U.S. House, April 1, 2021, https://www.ssa.gov/oact/solvency/RNeal_20210401.pdf. The estimates are based on the updated baseline of the 2020 Social Security trustees report intermediate projections, reflecting pandemic and recession effects, available at https://www.ssa.gov/oact/solvency/UpdatedBaseline_20201124.pdf.

[31] Letter from Stephen C. Goss, Chief Actuary, SSA, to the Honorable Kevin Brady, U.S. House, November 3, 2021, https://www.ssa.gov/OACT/solvency/KBrady_20211103.pdf. The estimates are based on the intermediate assumptions of the 2021 Social Security trustees report.

$5,500 and $6,333 would have been subject to a partial WEP reduction. The legislation would have applied to benefits payable for months after the enactment of this act.

Legislative Activity on the WEP in the 118th Congress[32]

On January 9, 2023, Representative Garret Graves introduced the Social Security Fairness Act of 2023 (H.R. 82). The legislation would repeal the WEP and the GPO for benefits payable for months after December 2023. For related information, see H.R. 82 in the 117th Congress, described above.

[32] As of February 6, 2023.

Appendix. WEP-Affected Beneficiaries, by State

Table A-1. Number of Social Security Beneficiaries in Current Payment Status with Benefits Affected by WEP, by State and Type of Beneficiary: December 2021

State	Total	Type of Beneficiary: Retired Workers	Disabled Workers	Spouses and Children
Total	**1,971,102**	**1,863,933**	**12,245**	**94,924**
Alabama	17,831	16,849	157	825
Alaska	12,907	12,402	63	442
Arizona	38,573	36,692	202	1,679
Arkansas	10,652	10,184	105	363
California	276,358	262,076	1,616	12,666
Colorado	70,611	67,665	803	2,143
Connecticut	21,094	20,383	97	614
Delaware	4,562	4,384	31	147
District of Columbia	7,114	6,923	42	149
Florida	108,272	102,507	561	5,204
Georgia	56,893	54,803	360	1,730
Hawaii	11,626	10,922	40	664
Idaho	9,425	8,938	58	429
Illinois	99,946	96,375	373	3,198
Indiana	17,767	16,911	134	722
Iowa	8,315	8,003	60	252
Kansas	9,480	9,084	69	327
Kentucky	25,292	24,365	180	747
Louisiana	49,787	47,264	577	1,946
Maine	19,935	19,318	79	538
Maryland	46,498	44,566	223	1,709
Massachusetts	85,431	82,572	567	2,292
Michigan	22,645	21,437	179	1,029
Minnesota	16,484	15,894	74	516
Mississippi	9,571	9,120	78	373
Missouri	41,134	39,972	226	936
Montana	6,598	6,289	33	276
Nebraska	5,657	5,421	40	196
Nevada	36,716	35,425	222	1,069
New Hampshire	9,097	8,719	79	299
New Jersey	22,767	21,368	187	1,212
New Mexico	13,978	13,174	116	688
New York	32,400	30,289	222	1,889
North Carolina	31,636	30,269	182	1,185
North Dakota	2,302	2,212	8	82

State	Total	Type of Beneficiary: Retired Workers	Disabled Workers	Spouses and Children
Ohio	156,412	150,313	1,372	4,727
Oklahoma	17,254	16,443	135	676
Oregon	18,659	17,802	76	781
Pennsylvania	36,141	34,288	261	1,592
Rhode Island	6,130	5,928	48	154
South Carolina	19,429	18,584	104	741
South Dakota	3,970	3,836	18	116
Tennessee	22,298	21,287	144	867
Texas	200,309	191,331	1,145	7,833
Utah	14,298	13,379	79	840
Vermont	2,704	2,574	8	122
Virginia	47,723	45,358	127	2,238
Washington	34,905	32,804	157	1,944
West Virginia	6,246	5,854	61	331
Wisconsin	12,686	12,184	56	446
Wyoming	2,673	2,565	22	86
Outlying Areas and Foreign Countries	109,911	86,628	389	22,894

Source: CRS, based on unpublished data from SSA, ORES, Table B, February 2022.

Table A-2. Percentage of Social Security Beneficiaries in Current Payment Status Affected by the WEP, by State and Type of Beneficiary, December 2021

State	All Beneficiaries	Type of Beneficiary: Retired Workers	Disabled Workers	Spouses and Children
Total	3.0%	3.9%	0.2%	2.3%
Alabama	1.5%	2.2%	0.1%	1.1%
Alaska	11.7%	15.2%	0.6%	6.3%
Arizona	2.7%	3.3%	0.1%	2.0%
Arkansas	1.5%	2.2%	0.1%	0.8%
California	4.5%	5.7%	0.3%	2.8%
Colorado	7.6%	9.5%	0.9%	4.0%
Connecticut	3.0%	3.8%	0.1%	1.6%
Delaware	2.0%	2.5%	0.1%	1.4%
District of Columbia	8.5%	11.5%	0.3%	3.8%
Florida	2.2%	2.8%	0.1%	1.9%
Georgia	3.0%	4.0%	0.1%	1.5%
Hawaii	4.1%	4.7%	0.2%	4.2%
Idaho	2.5%	3.2%	0.1%	1.8%
Illinois	4.4%	5.7%	0.1%	2.3%
Indiana	1.3%	1.7%	0.1%	0.9%

		Type of Beneficiary		
State	All Beneficiaries	Retired Workers	Disabled Workers	Spouses and Children
Iowa	1.2%	1.6%	0.1%	0.7%
Kansas	1.7%	2.1%	0.1%	1.0%
Kentucky	2.5%	3.8%	0.1%	1.1%
Louisiana	5.4%	8.1%	0.4%	2.6%
Maine	5.6%	7.5%	0.2%	2.5%
Maryland	4.5%	5.7%	0.2%	3.0%
Massachusetts	6.6%	8.8%	0.3%	2.8%
Michigan	1.0%	1.3%	0.1%	0.7%
Minnesota	1.5%	1.9%	0.1%	0.9%
Mississippi	1.4%	2.0%	0.1%	0.8%
Missouri	3.1%	4.3%	0.1%	1.3%
Montana	2.7%	3.3%	0.1%	2.1%
Nebraska	1.6%	2.0%	0.1%	1.0%
Nevada	6.4%	8.1%	0.4%	3.6%
New Hampshire	2.8%	3.7%	0.2%	1.5%
New Jersey	1.4%	1.7%	0.1%	1.2%
New Mexico	3.1%	4.0%	0.2%	2.4%
New York	0.9%	1.1%	0.0%	0.7%
North Carolina	1.4%	1.9%	0.1%	1.1%
North Dakota	1.6%	2.1%	0.1%	1.1%
Ohio	6.5%	8.9%	0.4%	3.2%
Oklahoma	2.1%	2.9%	0.1%	1.4%
Oregon	2.1%	2.6%	0.1%	1.6%
Pennsylvania	1.3%	1.6%	0.1%	1.0%
Rhode Island	2.7%	3.5%	0.1%	1.2%
South Carolina	1.6%	2.1%	0.1%	1.2%
South Dakota	2.1%	2.6%	0.1%	1.3%
Tennessee	1.5%	2.0%	0.1%	1.0%
Texas	4.5%	6.1%	0.2%	2.3%
Utah	3.3%	4.2%	0.2%	2.5%
Vermont	1.7%	2.2%	0.0%	1.3%
Virginia	3.0%	3.9%	0.1%	2.4%
Washington	2.5%	3.1%	0.1%	2.2%
West Virginia	1.3%	1.9%	0.1%	0.8%
Wisconsin	1.0%	1.2%	0.0%	0.7%
Wyoming	2.2%	2.8%	0.2%	1.4%
Outlying Areas and Foreign Countries	7.0%	8.9%	0.3%	10.0%

Source: CRS analysis of data from the following sources: SSA, ORES, Table B, February 2022 (unpublished); and SSA, ORES, *Annual Statistical Supplement, 2022*, Table 5.J2, https://www.ssa.gov/policy/docs/statcomps/supplement/2022/5j.html#table5.j2.

Notes: The column "All Beneficiaries" includes survivor beneficiaries who are not subject to the WEP. The row "Outlying Areas and Foreign Countries" includes a small number of Social Security beneficiaries whose state or area is unknown.

Author Information

Zhe Li
Analyst in Social Policy

Acknowledgments

This report was previously authored by multiple former CRS analysts. SSA's Office of Research, Evaluation, and Statistics provided unpublished data on beneficiaries affected by the WEP. CRS Research Assistant Paul Romero assisted in updating the report.

Disclaimer

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated September 19, 2023

The Windfall Elimination Provision (WEP) in Social Security: Proposals for a New Proportional Formula

Background

Social Security is a work-based federal insurance program that provides monthly cash benefits to workers and their eligible family members in the event of a worker's retirement, disability, or death. Although participation in Social Security is compulsory for most workers, about 6% of workers in paid employment or self-employment are not covered by Social Security (i.e., earnings are not taxable or creditable for program purposes).

The regular Social Security benefit formula is progressive, replacing a greater share of career-average earnings for low-paid workers than for high-paid workers. Career-average earnings in Social Security are calculated as *average indexed monthly earnings* (AIME), which is the monthly average of the highest 35 years of covered earnings after indexing for wage growth. If a person has earnings not covered by Social Security, those noncovered earnings are shown as zeros in their Social Security earnings records. As a result, the regular formula cannot distinguish workers who have low career-average earnings because they worked for many years at low earnings in covered employment from workers who appear to have low career-average earnings because they worked for many years in jobs not covered by Social Security. Therefore, based on the regular formula, a worker who worked in both covered and noncovered employment might receive a higher replacement rate of career-average earnings than a worker with the same earnings who spent an entire career in covered employment (see **Table 1**, column [1]). The windfall elimination provision (WEP) is designed to remove such an unintended advantage, or *windfall*, for certain beneficiaries with earnings not covered by Social Security.

The Current WEP Formula

The regular Social Security benefit formula applies three factors—90%, 32%, and 15%—to three different brackets of a worker's AIME. The result is the *primary insurance amount* (PIA), which is the worker's basic monthly benefit at the full retirement age before any adjustments. Under current law, the WEP reduction is based on years of coverage (YOCs). The amount of substantial covered earnings needed for a YOC is $29,700 in 2023. For people with 20 or fewer YOCs, the WEP reduces the first factor from 90% to 40%. For each year of substantial covered earnings in excess of 20, the first factor increases by 5%. The WEP factor reaches 90% for those with 30 or more YOCs, and at that point it is phased out. In addition, the WEP reduction cannot exceed one-half of the pension benefit based on the worker's noncovered employment, and it does not apply to those who do not receive such a pension.

The Proportional Formula

Shortly before the WEP was enacted in 1983 (P.L. 98-21), the bipartisan National Commission on Social Security Reform (the Greenspan Commission) described two different methods of eliminating the *windfall* benefits: (1) the current-law method of adjusting the first replacement factor (90%) as discussed above; and (2) a proportional formula. The proportional formula for WEP purposes would apply the regular Social Security benefit formula to all past earnings from both covered *and* noncovered employment. The resulting benefit would then be multiplied by the ratio of career-average earnings (AIME) from covered employment only to career-average earnings (AIME) from both covered and noncovered employment.

The proportional formula better reflects the Greenspan Commission's recommendation for people with some earnings from noncovered employment to receive the same replacement rate as those workers who spent their entire careers in covered employment (see **Table 1**, column [3]), whereas the current-law WEP can only *approximately* achieve that goal (see **Table 1**, column [2]). However, in 1983, the Social Security Administration (SSA) lacked the data on noncovered earnings needed to make the benefit adjustment under the proportional formula, so Congress adopted the current WEP formula instead. As of 2017, SSA has 35 years of data on earnings from both covered and noncovered employment. This data's availability means that the proportional formula is now an option for Congress to consider.

Table 1. Illustrative Examples: Replacement Rates (Benefits as a Share of AIME) Under Alternative Formulas

Employment	Regular Formula (w/o WEP) (1)	Current-Law WEP (2)	Proportional Formula (3)
Covered: 35 years; Noncovered: 0 years	49%	49%	49%
Covered: 15 years; Noncovered: 20 years	72%	38%	49%

Source: Congressional Research Service.

Notes: The worker is assumed to earn $45,000 (indexed by average wage growth) per year and becomes eligible for benefits in 2023.

Comparing the Current WEP and the Proportional Formula

If the proportional formula had applied to current beneficiaries in 2018, SSA's Office of the Chief Actuary

(OCACT) estimates that about 1.1 million beneficiaries affected by the current WEP (or 69%) would have received a *higher* benefit and about 0.5 million (or 31%) would have received a *lower* benefit. In addition, 13.5 million beneficiaries with some noncovered earnings who were not affected by the current WEP would have received a *lower* benefit. Therefore, if the proportional formula were applied to new beneficiaries, it would generate program savings.

Below are two examples in which beneficiaries affected by the current WEP would receive lower benefits under the proportional formula:

- *Beneficiaries with YOCs near 30.* Certain beneficiaries with YOCs near 30 would have a relatively high replacement factor (e.g., 85% for 29 YOCs) under current law. Therefore, those beneficiaries' benefit reduction under the current WEP might be smaller than under the proportional formula.
- *Beneficiaries with relatively high career-average earnings.* Since the current WEP reduction is limited to the first bracket in the PIA formula, it might under-adjust the benefit for some high earners with noncovered employment, resulting in a smaller benefit reduction under current law than under the proportional formula.

Current beneficiaries who had noncovered earnings and are exempt from the current-law WEP but would receive a lower benefit using the proportional formula might include (1) beneficiaries with 30 or more years of substantial covered earning; (2) beneficiaries who do not receive a pension based on noncovered work; and (3) beneficiaries who fit both categories.

Legislation in 118th Congress

Two bills introduced in 2023 would replace the current-law WEP approach with a proportional formula for certain individuals who would become eligible for Social Security benefits in 2025 or later: (1) H.R. 4260 (the Public Servants Protection and Fairness Act of 2023), introduced by Representative Richard E. Neal; and (2) H.R. 5342 (the Equal Treatment of Public Servants Act of 2023), introduced by Representative Jodey Arrington.

No Benefit Cuts Relative to Current Law

Because the proportional formula could reduce Social Security benefits for some future beneficiaries with noncovered employment compared to current law, both bills provide a protection provision, wherein individuals would receive a benefit based on the higher of the current WEP formula or the proportional formula. H.R. 4260 would apply the protection provision to all future beneficiaries, and as with current law, the proportional formula would not apply to workers who do not receive a noncovered pension or who have 30 or more years of substantial covered earnings. In contrast, H.R. 5342 would apply the protection provision during the transitional period for new beneficiaries who become eligible for benefits during 2025 through 2067. For those who become eligible in 2068 and later, benefits would be based solely on the proportional formula.

Additional Monthly Payments to Current Beneficiaries

As discussed earlier, the proportional formula could provide a higher benefit to certain beneficiaries compared to current law, so both bills would provide additional monthly payments to current WEP-affected beneficiaries who are first eligible for benefits *before* 2025. H.R. 4260 would provide worker beneficiaries (but not dependents) an additional monthly payment equal to the lesser of $150 or the current WEP reduction amount. H.R. 5342 would provide an additional monthly payment of $100 to workers and $50 to dependents. The additional monthly payments would begin nine months after enactment of the respective bill, would increase with cost-of-living adjustments, and would be exempt from most benefit adjustments under Social Security. The additional monthly payment under H.R. 4260 would be excluded in determining eligibility and the benefit amount under the Supplemental Security Income program.

Cost Estimates and Funding Rules

The OCACT estimates that H.R. 4260 would cost about $30.1 billion from 2023 through 2032, net of additional revenue from income taxation, including $1.5 billion for the new proportional formula and $28.7 billion for the additional monthly payments. Over the 75-year projection period, the present value of the overall net cost would be about $110.1 billion. The bill would provide transfers from the General Fund of the Treasury to the Social Security trust funds in amounts needed to fully offset the bill's costs, so it would have no effect on Social Security's long-term financial outlook.

The OCACT estimates that H.R. 5342 would cost about $23.9 billion from 2023 through 2032, net of additional revenue from income taxation, including $1.5 billion for the new proportional formula and $22.4 billion for the additional monthly payments. Over the 75-year projection period, future savings from the proportional formula would offset the cost of the additional monthly payments and the protection provision during the transitional period, so the bill would have no significant effect on Social Security's long-term financial outlook.

Other Provisions

The annual Social Security statements that SSA makes available to all eligible workers provide benefit estimates based only on covered employment, with no estimates of the WEP adjustment. Because of this limitation, beneficiaries have argued that they were not given sufficient notice of how much their benefits would be reduced by the WEP. To address this issue, both bills would require SSA to show noncovered as well as covered earnings records on the statements. Moreover, H.R. 4260 would require the statements to include projected benefits using the proportional formula for those workers who would likely be subject to the WEP.

In addition, both bills would require studies on ways to facilitate data exchanges between SSA and state and local governments for purposes of improving WEP administration.

Zhe Li, Analyst in Social Policy

IF11355

Disclaimer

APPENDIX E

Congressional Research Service
Informing the legislative debate since 1914

Social Security: The Government Pension Offset (GPO)

Updated February 13, 2023

Congressional Research Service
https://crsreports.congress.gov
RL32453

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Social Security spousal benefits were established in the 1930s to help support wives who are financially dependent on their husbands. It has since become more common for both spouses in a couple to work, leading to more cases in which both members of a couple are entitled to Social Security or other government pensions based on their own work records. Social Security does not provide both a full retired-worker and a full spousal benefit to the same individual.

Two provisions are designed to reduce the Social Security spousal benefits of individuals who are not financially dependent on their spouses because they receive benefits based on their own work records. These are

- the *dual entitlement* rule, which applies to spouses who qualify for both (1) Social Security spousal benefits based on their spouses' work histories in Social Security–covered employment and (2) their own Social Security retired- or disabled-worker benefits, based on their own work histories in Social Security–covered employment; and
- the Government Pension Offset (GPO), which applies to spouses who qualify for both (1) Social Security spousal benefits based on their spouses' work histories in Social Security–covered employment and (2) their own retirement or disability government pensions, based on their own work in government employment that was not covered by Social Security.

The dual entitlement rule requires that 100% of a Social Security retirement or disability benefit as a covered worker is subtracted from any Social Security spousal or widow(er)'s benefit an individual is eligible to receive. The GPO reduces Social Security spousal or widow(er)'s benefits by two-thirds of the retirement or disability pension from noncovered government employment. The GPO does not reduce the benefits of the spouse who was covered by Social Security. In December 2022, 734,601 Social Security beneficiaries (about 1% of all beneficiaries) had spousal or widow(er)'s benefits reduced by the GPO.

Opponents contend that the GPO is imprecise and can be unfair. Defenders argue it is the best method currently available for preserving the spousal benefit's original intent of supporting financially dependent spouses and for eliminating an unfair advantage for spouses working in non–Social Security–covered employment compared with spouses working in Social Security–covered jobs (who are subject to the dual entitlement rule).

Contents

Tables

Contacts

Background

In general, Social Security spousal and survivor benefits are paid to the spouses of retired, disabled, or deceased workers covered by Social Security. The spousal benefit equals 50% of a retired or disabled worker's benefit and the survivor benefit equals 100% of a deceased worker's benefit.

Spousal and widow(er)'s benefits, which Congress created in 1939 and 1950,[1] are intended for individuals who are financially dependent on a working spouse. For this reason, but also because of the costs, Social Security does not provide both full worker and full spousal benefits to the same individual. For persons who qualify for both a Social Security worker benefit (retirement or disability) based on their own work history and a Social Security spousal benefit based on a spouse's work history, the *dual entitlement* rule effectively caps total benefits at the higher of the worker's own benefit or the spousal benefit. The dual entitlement rule has been in law since 1939, when Congress created benefits for eligible wives and widows. The Government Pension Offset (GPO) is analogous in purpose to the dual entitlement provision and applies to individuals who qualify for both a retirement or disability pension based on their own *non–Social* Security–covered government work and a Social Security spousal benefit based on a spouse's work in Social Security–covered employment.[2] The GPO was originally established in 1977. It replaced an earlier dependency test for spousal benefits that had been in law since 1950. The dual entitlement rule and the GPO share the same intent—to reduce the Social Security spousal benefits of individuals who are not financially dependent on their spouses because they receive their own retired-worker or disabled-worker Social Security benefits, or their own non–Social Security pension benefits.

Social Security Covered and Noncovered Work

A worker is *covered* by Social Security if he or she works in *covered* employment and pays into Social Security through the Federal Insurance Contributions Act (FICA) payroll tax. To be eligible for a Social Security retired-worker benefit, a worker generally needs 40 earnings credits (10 years of Social Security–covered employment).[3] Disabled workers are generally required to have worked fewer years, depending on the age at which the worker became disabled.[4] Approximately 94% of workers are covered by Social Security in 2023.[5] The majority of noncovered positions are held by government employees: most federal employees hired before 1984 and some state and local government employees. Nationwide, approximately 72% of state

[1] Wife's and widow's benefits were created in 1939, while husband's and widower's benefits were enacted in 1950. As a result of the Supreme Court's decision in *Obergefell v. Hodges*, the Social Security Administration is now able to recognize same-sex marriages and certain nonmarital legal relationships in all states, territories, and the District of Columbia. See CRS Report R41479, *Social Security: Revisiting Benefits for Spouses and Survivors*.

[2] The Government Pension Offset (GPO) is often confused with the Windfall Elimination Provision (WEP), which reduces Social Security benefits that a person receives *as a worker* if he or she also has a government pension based on *work that was not covered by Social Security*. For additional information on the Windfall Elimination Provision (WEP), please refer to CRS Report 98-35, *Social Security: The Windfall Elimination Provision (WEP)*.

[3] A worker may earn up to four earnings credits per calendar year. In 2023, a worker earns one credit for each $1,640 of covered earnings, up to a maximum of four credits for covered earnings of $6,560 or more. Earnings credits are also called *quarters of coverage*.

[4] Social Security Administration (SSA), *How You Earn Credits*, 2023, https://best.ssa.gov/pubs/EN-05-10072.pdf.

[5] SSA, Office of Chief Actuary, *Social Security Program Fact Sheet*, January 2023, https://www.ssa.gov/OACT/FACTS/fs2022_12.pdf.

and local government employees were covered by Social Security in 2019.[6] However, coverage varied from state to state. For example, approximately 95% of state and local employees in New York were covered by Social Security, whereas less than 3% of state and local employees in Ohio, and about 3% in Massachusetts, were covered.[7]

The Dual Entitlement Rule and the GPO

The GPO is intended to approximate Social Security's dual entitlement rule. Both provisions are intended to reduce the Social Security benefits of spouses or widow(er)s who are not financially dependent on their spouses because they receive retirement or disability benefits based on their own work records.

Dual Entitlement Rule

Without the dual entitlement rule, a couple with two earners covered by Social Security would receive two full primary benefits as well as two full spousal or widow(er)'s benefits. The Social Security dual entitlement rule requires that a beneficiary effectively receive the *higher* of the Social Security worker's benefit or the spousal or widow(er)'s benefit, but not both. The total benefit received by a worker consists of his or her own worker benefit plus the excess of the spousal or widow(er)'s benefit (if any) over his or her own benefit—not the sum of the two benefits. So, in cases where the spousal or widow(er)'s benefit is higher than the worker's own benefit, the worker receives his or her own worker benefit plus the reduced spousal or widow(er)'s benefit, which is the difference between the spousal or widow(er)'s benefit and the worker's own benefit (100% reduction). In cases where the worker's own benefit is higher than the spousal or widow(er)'s benefit, the worker receives only his or her own benefit (i.e., the spousal or widow[er]'s benefit is reduced to zero).

Table 1 demonstrates how the Social Security dual entitlement rule is applied to spouses.

Table 1. Dual Entitlement Formula Applied to Spouses

	John	Mary
Social Security monthly **worker** benefit (based on *worker's* earnings record)	$2,000	$900
Maximum Social Security monthly **spousal** benefit (based on *spouse's* earnings record, equal to 50% of the spouse's Social Security worker benefit)	$450	$1,000
Actual Social Security **spousal** monthly benefit paid (subtract worker benefit from spousal benefit; $0 if worker benefit is larger)	**$0**	**$100**
Total (*worker* and *spousal*) Social Security monthly benefits paid to John and Mary	**$2,000**	**$1,000**

Source: Illustrative example provided by the Congressional Research Service (CRS).

[6] SSA, Office of Research Evaluation and Statistics (ORES), unpublished table, "Social Security and Medicare Coverage of Workers from their State and Local Government Employment in 2019."

[7] SSA, ORES, unpublished table, "Social Security and Medicare Coverage of Workers from their State and Local Government Employment in 2019." The disparity in coverage among states occurs because, while Social Security originally did not cover any state and local government workers, over time the law has changed. Most state and local government employees became covered by Social Security through voluntary agreements between the Social Security Administration (SSA) and individual states, known as *Section 218 Agreements* because they are authorized by §218 of the Social Security Act. Beginning in July 1991, state and local employees who were not members of a public retirement system or covered by a Section 218 agreement were mandatorily covered by Social Security.

In this example, both John and Mary have worked enough years in Social Security–covered positions (i.e., paid into Social Security) to qualify for Social Security retirement benefits. John has earned a monthly Social Security worker benefit of $2,000. His wife Mary has earned a monthly Social Security worker benefit of $900. Both John and Mary are also eligible for spousal benefits based on the other's earnings: John is eligible for a $450 monthly spousal benefit, and Mary is eligible for a $1,000 monthly spousal benefit. Under the dual entitlement rule, John will not be paid a spousal benefit because his $2,000 worker benefit based on his own earnings is higher than and more than offsets the potential $450 spousal benefit. Mary's worker benefit of $900 must be subtracted from her potential $1,000 spousal benefit, and only the difference of $100 is paid as a spousal benefit. In total, Mary will receive $1,000 monthly—$900 as a Social Security worker benefit and $100 as a Social Security spousal benefit. The Social Security benefits received by the couple would total $3,000 per month.

If John were to predecease Mary, Mary would then be entitled to a monthly widow's benefit of up to 100% of John's monthly amount.[8] Mary would continue to collect her own benefit of $900 monthly, and that amount would offset the potential $2,000 monthly widow's benefit based on John's work history. Thus, Mary would receive a Social Security worker benefit of $900 and a Social Security widow's benefit of $1,100 (or $2,000-$900), for a total monthly benefit of $2,000.

Because most workers are in Social Security–covered employment, the dual entitlement scenario is more common than the GPO among two-earner couples. In 2021, approximately 7.4 million out of 47.3 million Social Security retired worker beneficiaries, or about 16%, were dually entitled.[9]

Government Pension Offset Formula

The Social Security spousal or widow(er)'s benefit of a person who also receives a pension from government employment (federal, state, or local) that was based on work *not covered* by Social Security is reduced by a provision known as the Government Pension Offset (GPO).[10] The GPO reduction to Social Security spousal and widow(er)'s benefits equals *two-thirds* of the pension from noncovered government employment. If the pension from noncovered work is sufficiently large in comparison to a person's Social Security spousal or widow(er)'s benefit, the GPO may eliminate the entire Social Security spousal or widow(er)'s benefit.

In December 2022, 734,601 Social Security beneficiaries (about 1% of all beneficiaries) had spousal or widow(er)'s benefits reduced fully or partially by the GPO (this figure does not include persons who were eligible for spousal or widow(er)'s benefits but were deterred from

[8] Technically, a widow(er)'s benefit is equal to up to 100% of the worker's Primary Insurance Amount (PIA). The worker's PIA is the benefit payable to the worker at full retirement age before any applicable reductions. The terminology used here is intended for ease of reference. For more information, see CRS Report R42035, *Social Security Primer*.

[9] SSA, *Annual Statistical Supplement 2022*, Table 5.G1, https://www.ssa.gov/policy/docs/statcomps/supplement/2022/5g.html#table5.g1 and Table 5.A1, https://www.ssa.gov/policy/docs/statcomps/supplement/2022/5a.html#table5.a1. The term *dually entitled* applies only to those who receive spousal or widow(er)'s benefits. If an individual's own worker benefit is greater than his or her spousal or widow(er)'s benefit, that person receives the higher worker benefit and is not considered dually entitled. Administrative data do not provide the number of people in this latter category.

[10] A pension in this setting is referred to as a periodic or lump-sum payment received from an employer's retirement or disability plan based upon the individual's noncovered earnings while in the service of a federal, state, or local government. The payment can be from either a defined benefit or defined contribution plan—for example, 401(k), 403(b), or 457. For more information, see SSA, Program Operations Manual System (POMS), "GN 02608.100 Government Pension Offset (GPO) Provision," at https://secure.ssa.gov/apps10/poms.nsf/lnx/0202608100.

filing for them because of the GPO).[11] The GPO does not affect the amount of the Social Security benefit a worker may receive based on his or her own work in Social Security–covered employment, but it does limit the amount that can be paid to his or her spouse or widow(er) who has worked in non–Social Security–covered employment.

Table 2 provides an example of how the GPO is applied, assuming that John worked in Social Security–covered employment while Mary spent her full career in state or local government employment that was not covered by Social Security.

Table 2. GPO Formula for Spouses

	John	Mary
Social Security **retired- or disabled-worker** monthly benefit (based on *worker's* earnings record)	$2,000	—
Non-Social Security–covered (government) monthly retirement or disability **pension**	—	$900
Maximum Social Security **spousal** monthly benefit eligible to receive (based on *spouse's* earnings record, equal to 50% of the spouse's Social Security retired worker benefit)	—	$1,000
Reduction in Social Security spousal monthly benefit due to **GPO** (equals 2/3 of the non–Social Security–covered pension: $900*2/3=$600)	—	$600
Actual Social Security **spousal** monthly benefit paid (subtract 2/3 of non–Social Security–covered worker's pension from Social Security spousal benefit: $1,000-$600=$400)	**—**	**$400**
Total monthly retirement benefits paid to John (Social Security only) and Mary (Social Security plus pension from noncovered employment)	**$2,000**	**$1,300**

Source: Illustrative example provided by CRS.

Note: Dashes means not applicable.

In this example, John worked enough years in Social Security–covered employment to qualify for a monthly Social Security retired-worker benefit of $2,000. His wife, Mary, is *not* eligible for a Social Security retired-worker benefit because she worked in a non–Social Security–covered government position and did not contribute to Social Security. Instead, Mary is eligible for a $900 government pension based on her work in a non–Social Security–covered position. Mary is also eligible for a Social Security *spousal* benefit of up to $1,000 based on John's work history. Under the GPO, Mary's potential Social Security spousal benefit is reduced by an amount equal to two-thirds of her non–Social Security–covered government pension (or a reduction of $600), and the difference of $400 ($1,000-$600) is paid to her as a Social Security spousal benefit. In total, Mary will receive retirement benefits of $1,300 per month: $900 from her noncovered pension and $400 from her Social Security spousal benefit.[12]

If John predeceased Mary, then two-thirds of her $900 noncovered pension ($600) would be used to partially offset the $2,000 Social Security benefit she would be eligible for as a widow based on John's work history. She would receive a $1,400 monthly widow's benefit from Social Security (in addition to her $900 monthly noncovered pension benefit).

Table 3 highlights the differences between the dual entitlement rule and the GPO.

[11] SSA, ORES, unpublished Government Pension Offset Table A, received by CRS in January 2023.

[12] In this example, John is not eligible for a Social Security spousal benefit because Mary's employment was not covered by Social Security.

Table 3. Dual Entitlement Rule Compared with Government Pension Offset

Dual Entitlement Rule	Government Pension Offset
Applies to individuals who qualify for both (a) a Social Security worker benefit (retirement or disability) based on their own work history in Social Security–covered employment and (b) a Social Security spousal or widow(er)'s benefit based on their spouse's work history in Social Security–covered employment. Dually entitled beneficiaries effectively receive the higher of the worker benefit or the spousal or widow(er)'s benefit. Specifically, the Social Security dual entitlement rule requires that 100% of a Social Security retirement or disability benefit earned as a worker be subtracted from any Social Security spousal or widow(er)'s benefit one is eligible to receive. Only the difference, if any, is paid as a spousal or widow(er)'s benefit and is added to the beneficiary's own worker benefit. Under the dual entitlement rule, a Social Security spousal or widow(er)'s benefit may be reduced to zero.	Applies to individuals who qualify for both (a) a government pension based on *non–Social Security–covered* government employment and (b) a Social Security spousal or widow(er)'s benefit based on a spouse's Social Security–covered employment The GPO reduces Social Security benefits that a person receives *as a spouse or widow(er)* if he or she also has a federal, state or local government pension based on work that was *not* covered by Social Security. The GPO reduction to Social Security spousal or widow(er)'s benefits is equal to two-thirds of the noncovered retirement or disability government pension. Under the GPO, a Social Security spousal or widow(er)'s benefit may be reduced to zero.

Source: Table compiled by CRS.

Rationale and Legislative History

Spouses' Financial Dependence

The policy rationale for Social Security spousal benefits has been, since the creation of spousal benefits in the 1930s, to support spouses who are financially dependent on the working spouse. The dual entitlement rule has operated since 1939 as a gauge of financial dependence.

Parity Between Spouses Subject to the Dual Entitlement Rule and the GPO

The GPO is intended to place spouses and widow(er)s whose government employment *was not covered* by Social Security in approximately the same position as spouses whose jobs *were covered* by Social Security. Before the GPO was enacted in 1977, workers who received pensions from a government job not covered by Social Security could also receive full Social Security spousal or widow(er)'s benefits even though they were not financially dependent on their spouses. The scenarios below demonstrate why the law was changed.

Table 4 shows how the spousal benefit of the same individual, Mary, would vary under three scenarios: (1) as a dually entitled recipient of Social Security retirement and spousal benefits; (2) as the recipient of a noncovered government pension and Social Security spousal benefits *before* the GPO was enacted; and (3) as the recipient of a noncovered government pension and Social Security spousal benefits *after* the GPO was enacted. In all three examples, it is assumed that Mary is potentially eligible for a Social Security spousal benefit of $1,000 per month, computed as 50% of her husband's monthly Social Security benefit of $2,000.

As a dually entitled retiree, under the first scenario, Mary's $1,000 Social Security spousal benefit is reduced by her own Social Security retired-worker benefit of $900, leaving her with a net spousal benefit of $100 and a total (combined) Social Security benefit of $1,000. Under the second scenario (where Mary receives a noncovered government pension instead of a Social Security retirement benefit), *before* the GPO takes effect, Mary's Social Security spousal benefits are not reduced at all and she receives a full Social Security spousal benefit of $1,000, plus the noncovered pension of $900, for total monthly pension benefits of $1,900. Under the third scenario (after the GPO was enacted in 1977), Mary's Social Security spousal benefit is reduced by two-thirds of her $900 noncovered government pension, leaving her with a net Social Security spousal benefit of $400 ($1,000-$900*2/3) and a total monthly pension benefit of $1,300 ($900 from the noncovered pension + $400 from the Social Security spousal benefit).

Note that *the reduction to Social Security spousal benefits is smaller under the GPO than it is under the dual entitlement rule*: Mary receives monthly Social Security spousal benefits of $100 under the dual entitlement rule, compared with $400 under the GPO. Her total monthly retirement benefits are $1,000 under the dual entitlement rule, compared with $1,300 under the GPO. For those under the dual entitlement rule, the Social Security spousal benefit is reduced by one dollar for every dollar of Social Security retirement benefits based on their own work histories in Social Security–covered employment. For those under the GPO, however, the Social Security spousal benefit is reduced by approximately 67 cents for every dollar of a pension from noncovered government employment.

Table 4. Mary's Spousal Benefit Under Three Scenarios: Dual Entitlement Rule, Before GPO Enactment, and After GPO Enactment

	Mary works in Social Security–Covered Position	**Mary works in Non-Social Security–Covered Position**	
	Dually Entitled	**Before GPO Enactment**	**After GPO Enactment**
Social Security **retired-worker** monthly benefit (based on own earnings record)	$900	$0	$0
Non-Social Security–covered monthly pension	$0	$900	$900
Maximum Social Security **spousal** monthly benefit eligible to receive (based on spouse's earnings record), equal to 50% of the spouse's Social Security retirement benefit	$1,000	$1,000	$1,000
Reduction in spousal monthly benefit due **to dual entitlement rule** (equal to worker's Social Security retired-worker benefit)	$900	—	—
Reduction in Social Security **spousal** monthly benefit due to **GPO** (equals 2/3 of non–Social Security–covered pension)	—	—	$600
Actual Social Security **spousal** monthly benefit paid	**$100**	**$1,000**	**$400**
Total monthly retirement benefits paid to Mary (Social Security spousal benefit plus either (a) Social Security retired-worker benefit or (b) noncovered pension)	**$1,000**	**$1,900**	**$1,300**

Source: Illustrative example provided by CRS.

Notes: Dashes are used to represent scenarios in which either the dual entitlement rule or the GPO are not applicable. For example, in the dual entitlement scenario, Mary does not receive a noncovered government pension and, thus, the GPO does not apply.

Why a Two-Thirds Reduction?

The GPO was originally established in 1977 (P.L. 95-216) and replaced an earlier *dependency test* for spousal benefits that had been in law since 1950.[13] The 1977 law provided that 100% of the noncovered government pension be subtracted from the Social Security spousal or widow(er)'s benefit. If the original legislation had been left intact, individuals affected by the dual entitlement rule and the GPO would have been treated identically because, in both cases, the Social Security spousal or widow(er)'s benefit would have been reduced by 100% of the pension from noncovered employment.

The GPO's two-thirds offset rule was established by the Social Security Amendments of 1983 (P.L. 98-21), which made a number of amendments to Social Security. One section of the House version of this law proposed that the amount used in calculating the offset be one-third of the noncovered government pension. The Senate version contained no such provision and would therefore have left standing the 100% offset that existed at the time. The conferees adopted the House bill except that the offset was fixed at two-thirds of the noncovered government pension.[14]

Who Is Affected by the GPO?

In 2019, approximately 6.5 million state and local government workers (28% of all state and local government workers) were in non–Social Security–covered positions.[15] A government worker who does not pay into Social Security may potentially be affected by the GPO if he or she is entitled to a Social Security spousal or widow(er)'s benefit based on a spouse's or ex-spouse's work in Social Security–covered employment.

Generally, federal government employees hired before 1984 are covered by the Civil Service Retirement System (CSRS) and are not covered by Social Security; therefore, they may be subject to the GPO.[16] Most federal workers first hired into federal service after 1983 are covered by the Federal Employees' Retirement System (FERS), which includes Social Security coverage. Thus, although FERS retirees are not subject to the GPO, they, like all covered workers, may be subject to the Social Security dual entitlement rule.

As of December 2022, 734,601 Social Security beneficiaries, or about 1% of all beneficiaries, had spousal or widow(er)'s benefits reduced by the GPO (not counting those who were potentially eligible for spousal or widow(er)'s benefits but were deterred from filing for them because of their expectation that the GPO would eliminate the spousal or widow(er)'s benefit). Of these persons subject to the GPO, 52% were spouses and 48% were widows and widowers. About 83% of all affected persons were women.[17] **Table 5** provides a breakdown of the affected beneficiaries by state and type of benefit.

[13] The dual entitlement rule has been in law since 1939, when spousal benefits were introduced.

[14] Effectively, the GPO offset formula assumes that two-thirds of the government pension is roughly equivalent to the Social Security retirement (or disability) benefit the spouse would have earned as a worker if his or her job had been covered by Social Security.

[15] SSA, ORES, unpublished table, "Social Security and Medicare Coverage of Workers from their State and Local Government Employment in 2019."

[16] Workers who switch from the Civil Service Retirement System (CSRS) to the Federal Employees' Retirement System (FERS) must work for five years under FERS to be exempt from the GPO.

[17] SSA, ORES, unpublished Government Pension Offset Table DE01, January 2023.

Table 5. Number of Social Security Beneficiaries Affected by GPO, by State, Type of Benefit, and Offset Status, December 2022

		Type of Beneficiary		Offset Status	
State	Total	Spouses	Widow(er)s	Fully Offset[a]	Partially Offset[b]
Total	**734,601**	**378,677**	**355,924**	**511,487**	**223,114**
Alabama	4,564	1,833	2,731	3,376	1,188
Alaska	3,516	1,911	1,605	2,493	1,023
Arizona	10,099	5,059	5,040	7,392	2,707
Arkansas	3,165	1,423	1,742	2,305	860
California	102,344	54,313	48,031	81,631	20,713
Colorado	27,790	15,163	12,627	15,322	12,468
Connecticut	9,840	5,577	4,263	8,501	1,339
Delaware	778	296	482	579	199
District of Columbia	1,996	446	1,550	1,645	351
Florida	29,417	14,996	14,421	22,070	7,347
Georgia	21,415	10,176	11,239	15,189	6,226
Hawaii	1,978	1,019	959	1,511	467
Idaho	2,411	1,304	1,107	1,819	592
Illinois	47,484	25,330	22,154	39,311	8,173
Indiana	4,917	2,255	2,662	3,597	1,320
Iowa	1,899	904	995	1,433	466
Kansas	2,341	1,044	1,297	1,574	767
Kentucky	12,996	6,931	6,065	10,499	2,497
Louisiana	40,144	19,791	20,353	23,581	16,563
Maine	8,102	4,419	3,683	5,357	2,745
Maryland	8,951	2,808	6,143	7,165	1,786
Massachusetts	41,638	22,549	19,089	28,970	12,668
Michigan	6,238	3,078	3,160	4,653	1,585
Minnesota	4,816	2,350	2,466	3,894	922
Mississippi	3,241	1,382	1,859	2,414	827
Missouri	16,770	9,371	7,399	13,455	3,315
Montana	1,372	670	702	975	397
Nebraska	1,283	588	695	918	365
Nevada	11,927	6,072	5,855	9,039	2,888
New Hampshire	2,766	1,474	1,292	2,006	760
New Jersey	4,153	1,639	2,514	3,461	692
New Mexico	3,396	1,640	1,756	2,578	818

		Type of Beneficiary		Offset Status	
State	Total	Spouses	Widow(er)s	Fully Offset[a]	Partially Offset[b]
New York	6,785	2,943	3,842	5,428	1,357
North Carolina	8,329	3,724	4,605	6,149	2,180
North Dakota	491	187	304	315	176
Ohio	101,947	55,587	46,360	61,522	40,425
Oklahoma	3,974	1,494	2,480	2,594	1,380
Oregon	4,901	2,534	2,367	3,577	1,324
Pennsylvania	7,494	3,142	4,352	5,655	1,839
Rhode Island	2,125	1,151	974	1,770	355
South Carolina	5,671	2,755	2,916	4,177	1,494
South Dakota	824	424	400	600	224
Tennessee	6,815	3,081	3,734	5,053	1,762
Texas	99,749	51,699	48,050	54,886	44,863
Utah	2,862	1,363	1,499	1,781	1,081
Vermont	682	323	359	510	172
Virginia	7,857	2,909	4,948	5,813	2,044
Washington	7,006	3,529	3,477	5,089	1,917
West Virginia	1,618	682	936	1,024	594
Wisconsin	3,523	1,765	1,758	2,809	714
Wyoming	632	326	306	417	215
Outlying areas and foreign countries	17,569	11,248	6,321	13,605	3,964

Source: Social Security Administration, Office of Research, Evaluation and Statistics, January 2023, unpublished data.

Notes: Includes persons entitled to spousal/widow(er)'s benefits only and those dually entitled to spousal/widow(er)'s and worker benefits.

a. Individual received no Social Security spousal or widow(er)'s benefit because the reduction in the Social Security spousal or widow(er)'s benefit (a reduction equal to two-thirds of the pension from noncovered government employment) was greater than the Social Security benefit itself. Either the noncovered pension was large, or the potential Social Security benefit was small (or both).

b. Individual received partial Social Security spousal or widow(er)'s benefits because the reduction in the Social Security benefit (a reduction equal to two-thirds of the pension from noncovered government employment) was less than the Social Security benefit itself.

In December 2022, the average noncovered government pension amount for persons affected by the GPO was $2,690 per month ($2,453 per month for women and $3,798 per month for men).[18] The average pre-offset Social Security spousal benefit at that time was $1,058 per month ($1,136

[18] SSA, ORES, unpublished Government Pension Offset Table G209, January 2023. Data are limited to those beneficiaries for whom the offset amount is available.

per month for women and $691 per month for men).[19] The average reduction caused by the GPO was $808 per month ($839 per month for women and $665 per month for men).[20] The average Social Security spousal benefit component after applying the GPO was $249 per month ($297 per month for women and $26 per month for men).[21] Among beneficiaries who were affected by the GPO in December 2022, 70% had their potential Social Security spousal or widow(er)'s benefit fully offset by the GPO reduction; that is, their potential Social Security spousal or widow(er)'s benefit was reduced to zero.[22] Among those whose Social Security spousal or widow(er)'s benefit was partially offset by the GPO reduction, on average, the reduced Social Security benefit comprised about 43% of the total payment received (noncovered government pension plus reduced Social Security benefit).[23]

In comparison to the 723,970 beneficiaries affected by the GPO in December 2021,[24] the dual entitlement rule affected approximately 7.4 million retired worker beneficiaries. About 7.1 million (96%) of all affected beneficiaries were women.[25] Wives made up 41% of all dually entitled retired workers, and widows made up 55%. Among dually entitled workers, the average Social Security total benefit (retired worker plus spouse or widow(er)'s benefit) received was $1,493.[26] Of this amount, $851 was the retired worker component of the benefit. The spousal or widow(er)'s benefit component was $642 (after reduction for dual entitlement).[27] On average, among dually entitled retired workers, therefore, the spousal or widow(er)'s benefit comprised about 43% of the total Social Security benefit received.

Issues

Opponents argue that the GPO is not well understood and that it harms lower-wage workers. The GPO's defenders maintain that it helps ensure that only financially dependent spouses receive the Social Security spousal or widow(er)'s benefit, while curtailing what otherwise would be an unfair advantage for government workers who are not covered by Social Security.

[19] SSA, ORES, unpublished Government Pension Offset Table G309, January 2023. Data are limited to those beneficiaries for whom the offset amount is available. Includes persons entitled to spousal/widow(er)'s benefits only and those dually entitled to spousal/widow(er)'s and worker benefits. For a dually entitled beneficiary, the pre-offset Social Security benefit is the difference between the larger spousal/widow(er)'s benefit and the smaller worker benefit.

[20] SSA, ORES, unpublished Government Pension Offset, Table G609, January 2023. Data are limited to those beneficiaries for whom the offset amount is available.

[21] SSA, ORES, unpublished Government Pension Offset Table G509, January 2023. Data are limited to those beneficiaries for whom the offset amount is available. Amounts may not add due to rounding.

[22] SSA, ORES, unpublished Government Pension Offset Table G105, January 2023. Data are limited to those beneficiaries for whom the offset amount is available.

[23] SSA, ORES, unpublished Government Pension Offset Tables G209 and G509, January 2023. Data are limited to those beneficiaries for whom the offset amount is available.

[24] SSA, ORES, unpublished Government Pension Offset Table DE01, February 2022.

[25] SSA, *Annual Statistical Supplement, 2022*, Table 5.G2, available at https://www.ssa.gov/policy/docs/statcomps/supplement/2022/5g.html#table5.g2. The term *dually entitled* applies only to those who receive spousal or widow(er)'s benefits. If an individual's own worker benefit is greater than his or her spousal or widow(er)'s benefit, that person receives the higher worker benefit and is not considered dually entitled. Administrative data do not provide the number of people in this latter category.

[26] SSA, *Annual Statistical Supplement, 2022*, Table 5.G3.

[27] SSA, *Annual Statistical Supplement, 2022*, Table 5.G3.

Awareness of the GPO and Retirement Preparedness

The GPO's critics say that it is not well understood and that many affected by it are unprepared for a smaller Social Security benefit than they had assumed in making retirement plans. The provision's supporters say it has been law for more than 40 years (it was enacted in 1977); therefore, people have had ample time to adjust their retirement plans. P.L. 108-203, passed in 2004, included a provision that sought to ensure that SSA and government employers notify potentially affected individuals about the effect of the GPO and the Windfall Elimination Provision (WEP).[28]

Section 1143 of the Social Security Act (as amended) requires SSA to provide Social Security number holders with annual statements that contain certain information from their Social Security records.[29] The annual statement is now referred to as the Social Security Statement or, more simply, as the Statement. In accordance with the law, the Statement advises the individual that participation in a retirement plan or receipt of a pension based on earnings for which he or she did not pay Social Security payroll taxes could result in lower Social Security benefits. The Statement provides a link to related information about the WEP and the GPO on SSA's website. Under current policy, annual Statements are available online for any individual who creates a "my Social Security Account" on SSA's web portal. SSA sends an email each year to "my Social Security Account" holders reminding them to check their annual Statements online. SSA automatically mails paper Statements annually to any individual who (1) is aged 60 or older, (2) has not yet claimed benefits, and (3) has not created a "my Social Security Account." A Statement is mailed three months before an individual's birthday. Individuals can also request a mailed paper Statement at any time.[30]

GPO Reduction Smaller Than Dual Entitlement Reduction

The reduction to Social Security spousal or widow(er)'s benefits is smaller under the GPO than it is under the dual entitlement rule. Those under dual entitlement face a 100% offset to spousal or widow(er)'s benefits for every dollar received from a Social Security retired-worker benefit, whereas those under the GPO face an offset to spousal and widow(er)'s benefits equal to two-thirds of a non–Social Security–covered pension. In the example shown in **Table 4**, in which comparable spouses each receive a $900 retirement benefit based on their own work histories, applying the dual entitlement provision's 100% offset results in a $100 monthly Social Security spousal benefit for Mary. Comparatively, Mary qualifies for a $400 monthly Social Security spousal benefit under the GPO's two-thirds offset.

Parity Among Social Security–Covered Workers and Noncovered Workers

The majority of state and local government workers, and federal employees hired since 1984, are covered by Social Security. Some argue that eliminating the GPO would be unfair to government employees in Social Security–covered positions, who would continue to be subject to the dual entitlement provision. As discussed above, for those under dual entitlement, the Social Security

[28] The WEP reduces Social Security benefits that a person receives as a worker if he or she also has a government pension based on work that was not covered by Social Security.

[29] See Section 1143 of the Social Security Act (Social Security Account Statements) at https://www.ssa.gov/OP_Home/ssact/title11/1143.htm.

[30] See CRS Report R47183, *The Social Security Statement*.

spousal or widow(er)'s benefit is reduced by one dollar for every dollar of Social Security retirement benefits based on their own work history in Social Security–covered employment. For those under the GPO, however, the Social Security spousal or widow(er)'s benefit is reduced by approximately 67 cents for every dollar of a pension from noncovered government employment.

Impact on Low-Wage Workers

There is disagreement about the original intention of the GPO, which was enacted in 1977. Some argue that the original purpose was to prevent higher-paid workers from reaping overly generous spousal or widow(er)'s benefits. Others contest this, saying that the GPO was never targeted to a particular income group.

The GPO's opponents argue that the provision hurts lower- and middle-wage workers, such as teachers, and in some circumstances throws these workers into poverty. Opponents also say that the GPO is especially disadvantageous for surviving spouses.

Evidence of the GPO's effect on low earners comes from SSA data on the program.[31] While 70% of those affected by the GPO in December 2022 had their benefits fully offset, about 15% of those with noncovered pensions of less than $1,000 per month had their benefits fully offset, compared with 55% of those with monthly noncovered pensions between $1,000 and $1,999, 85% of those between $2,000 and $2,999, and nearly 100% of individuals with noncovered pensions over $3,000 per month.[32] Among the group of individuals whose benefits were completely eliminated by the GPO, about 5% of this group had a noncovered pension amount lower than $1,000 per month.[33] And among the beneficiaries who received some Social Security spousal or widow(er)'s benefit after GPO reduction (partially offset), about 58% of them had a noncovered government pension amount less than $1,000 per month, and almost 100% of them had a noncovered government pension amount less than $3,000 per month.[34] Thus, if the noncovered pension amount is a reflection of the approximate earnings levels of individuals affected by the GPO, a greater percentage of those with lower earnings receive at least a partial Social Security benefit relative to the overall GPO-affected population.

---

[31] How an individual would be affected by the GPO versus the dual entitlement rule is determined by several key variables, including the relative earnings level of the individual, the timing of the worker's noncovered employment during his or her career, and the number of years in noncovered employment. The primary difference between outcomes among high and low earners is driven by the fact that a worker's Social Security benefit (the basis for the dual entitlement offset, which reduces the spousal benefit by 100% of this amount) is progressive, while pensions from noncovered government employment (the basis for the GPO reduction, which reduces spousal benefits by two-thirds of this amount) generally provide a pension that is the same fixed percentage of earnings regardless of the earnings level. As earnings rise, if the earnings are from noncovered employment then the pension from this employment rises proportionately; if the earnings are from covered employment, then the Social Security benefit, which is progressive, rises less than proportionately. Hence for high earners, the GPO offset to spousal benefits, which is two-thirds of noncovered pensions and which rises proportionately as income rises, becomes more significant than the dual-entitlement offset to spousal benefits, which involves a 100% offset to the Social Security benefit and which rises more slowly as income rises. In general, any combination of variables (such as earnings level, timing of noncovered employment, or number of years in noncovered employment) that increases the size of the noncovered government pension more than it increases the size of the Social Security benefit (assuming the same earnings were covered by Social Security) would make the dual entitlement rule more advantageous to an individual than the GPO.

[32] CRS calculations based on data provided by SSA's ORES, unpublished Table I, January 2023. The sample is limited to those beneficiaries for which the offset amount is available.

[33] CRS calculations based on data provided by SSA's ORES, unpublished Table I, January 2023. The sample is limited to those beneficiaries for which the offset amount is available.

[34] CRS calculations based on data provided by SSA's ORES, unpublished Table I, January 2023. The sample is limited to those beneficiaries for which the offset amount is available.

Regarding concerns about pushing those affected by the GPO into poverty, in 2001, the poverty rate among those affected by the GPO was approximately 6.0%, whereas the poverty rate for those affected by the dual entitlement rule was approximately 8.9%.[35] The poverty rate for all Social Security beneficiaries aged 65 and older was about 8.5%. For comparison purposes, the poverty rate for the general population at that time was approximately 11.3%.

Imprecision of the Two-Thirds Offset to Noncovered Government Pensions

Opponents point out that whatever the rationale for the GPO, reducing everyone's spousal or widow(er)'s benefit by two-thirds of their government pension is an imprecise way to estimate what the spousal benefit would have been if the government job had been covered by Social Security. If two-thirds of the government pension were in fact a good proxy for Social Security retirement benefits, there would be no significant difference in outcomes between the dual entitlement rule and the GPO. As noted above (see the previous section, "Impact on Low-Wage Workers"), however, there is great variation in outcomes. The GPO may lead to a smaller offset relative to the dual entitlement rule for low earners than for high earners.

Ideally, opponents argue, the way to compute the offset is to replicate the dual entitlement rule. Under the dual entitlement rule, the reduction to the spousal or widow(er)'s benefit is Social Security worker's benefit, that is, applying Social Security benefit formula to the spouse's all Social Security–covered earnings. To mimic that approach, in cases that the spouse's entire career was not covered by Social Security, the GPO reduction would be an amount equivalent to applying the Social Security benefit formula to all those noncovered earnings.[36] All covered and noncovered earnings have been reported to SSA on Form W-2 since 1978.[37] Although some initial records were incomplete or duplicative, sufficient earnings records over a worker's entire working life are now available to SSA. This data's availability means that the offset based on both spouses' covered and noncovered earnings is now an option for Congress to consider.[38]

[35] Poverty rates were calculated by David Weaver, SSA's Office of Retirement Policy, using the March 2001 Current Population Survey (CPS). Poverty status is taken directly from the CPS and is thus subject to errors in the reporting of income. The sample for the GPO and dually entitled poverty rates only includes persons for whom SSA administrative records could be matched. The sample size for the GPO poverty rate is relatively small (130 cases). Poverty rates for the Social Security beneficiary population aged 65 and over and for the general population do not require matched data and are based completely on CPS data. Updated data for this comparison are not available.

[36] In cases that the spouse's career is split between covered and noncovered jobs, the GPO reduction would be the Social Security benefit based on total earnings subtracting the Social Security benefit based on covered earnings—that is, the part of Social Security benefits based on total earnings that are attributable to noncovered earnings. In this situation, the person might be entitled to both Social Security worker's benefits and spousal or widow(er)'s benefits (i.e., dully entitled), and the person might be affected by both the Windfall Elimination Provision (WEP) and the GPO. The person's Social Security worker's benefit might be reduced by the WEP, and the person's Social Security spousal or widow(er)'s benefit might be reduced by both Social Security worker's benefit (affected by the WEP) and the GPO reduction. For more information, see CRS Report R45845, *Social Security: Beneficiaries Affected by Both the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO)*.

[37] Anya Olsen and Russell Hudson, "Social Security Administration's Master Earnings File: Background Information," 2009, *Social Security Bulletin*, vol. 69, no. 3, at https://www.ssa.gov/policy/docs/ssb/v69n3/v69n3p29.html.

[38] The President's Budget for FY2017 included a proposal to modify the GPO based on both spouses' covered and noncovered earnings. For more information, see https://www.ssa.gov/legislation/testimony_032216.html.

Applying the GPO to Government Versus Private Pensions

Some question why the GPO does not apply to the spousal or widow(er)'s benefits received by private-sector workers' spouses, who may receive private, employer-sponsored pensions (defined benefit or defined contribution) in addition to Social Security benefits. Generally, the private-sector employment on which the private pension is based would be covered by Social Security. Therefore, the dual entitlement rule (which the GPO is meant to replicate) would instead reduce any Social Security spousal or widow(er)'s benefits for which a beneficiary might be eligible. As noted earlier, in many cases the dual entitlement rule would produce a larger reduction in spousal or widow(er)'s benefits than does the GPO.

Cost of Eliminating the GPO

Some argue that weakening or eliminating the GPO would be costly at a time when neither Social Security nor the federal budget is in sound financial condition. In 2022, the Congressional Budget Office (CBO) projected that eliminating the GPO would cost $107 billion over the period 2022-2032.[39] Such a move could also lead to demands for repeal of the dual entitlement rule to ensure parallel treatment for those working in Social Security–covered employment. In 2003, SSA estimated that eliminating the dual entitlement rule would cost approximately $500 billion over a five-year period.[40]

Last Legislative Change: The GPO *Last-Day* Rule

A burgeoning controversy arose in the 108th Congress with the revelation that a growing number of state and local government workers had been making use of a little-known provision of the law that allowed them to escape the application of the GPO if they switched jobs at the very end of their government careers. That provision granted an exception to the GPO if, on the last day of one's government service, he or she worked in a Social Security–covered position. On August 15, 2002, the Government Accountability Office (GAO) released a report that found that, as of June 2002, 4,819 individuals in Texas and Georgia had switched to Social Security–covered positions to avoid having the GPO applied to their Social Security spousal benefits. The GAO projected that the cost to the program for these cases could be about $450 million.[41]

[39] CBO also estimated that, accounting for the interaction among Social Security provisions and other federal programs, eliminating the WEP and the GPO would cost $183 billion over the period 2022-2032. See CBO, *Cost Estimate: H.R. 82, Social Security Fairness Act of 2021*, September 20, 2022, https://www.cbo.gov/publication/58488. SSA's Office of the Chief Actuary projected that repealing the WEP and the GPO would have increased program costs by $146 billion over the period including 2022-2031. The estimates also show that the bill would have reduced the long-range actuarial balance (i.e., increase the net long-term cost) of the combined Social Security trust funds by 0.12% of taxable payroll and would have changed the projected year of reserve depletion for the combined Social Security trust funds from 2035 under current law to 2034 under the proposal. See letter from Stephen C. Goss, Chief Actuary, SSA, to the Hon. Rodney Davis and the Hon. Abigail Spanberger, U.S. House of Representatives, July 20, 2022, https://www.ssa.gov/OACT/solvency/DavisSpanberger_20220720.pdf. The projection was based on the intermediate assumptions of the 2022 Social Security trustees report. *Taxable payroll* is the total amount of earnings in the economy that is subject to Social Security payroll and self-employment taxes (with some adjustments).

[40] SSA, Memorandum from Bert Kestenbaum of the Office of the Chief Actuary, "Estimated Additional OASDI Benefit Payments from Proposals to Eliminate or Change the Dual-Entitlement Offset Provision—INFORMATION," April 17, 2003. SSA has not published a more recent estimate.

[41] U.S. General Accounting Office (now called Government Accountability Office), Report GAO-02-950, *Revision to the Government Pension Offset Exemption Should Be Reconsidered*, August 15, 2002.

On February 11, 2004, the House of Representatives agreed to Senate amendments and passed H.R. 743, the Social Security Protection Act of 2003, which became P.L. 108-203.[42] As discussed below, P.L. 108-203 eliminated the last-day exception clause by requiring those workers switching from noncovered positions to Social Security–covered positions to work in the covered position for at least 60 months (five years) before being exempt from the GPO.[43] The new GPO provision became effective for Social Security spousal benefit applications filed after March 31, 2004.

How Does the Last-Day Rule Affect Exemption from the GPO?

Current Social Security beneficiaries who are receiving spousal benefits and are exempt from the GPO because they retired from their noncovered positions in government under the last-day rule would continue to be exempt from the GPO. Individuals may still be exempt from the GPO under the following conditions:

- *They applied for Social Security spousal benefits before April 1, 2004, and work their last day in a Social Security–covered position within the same retirement system.* In this case, an individual who received a Social Security spousal benefit before April 1, 2004, could continue to work in a noncovered position and still make use of the last-day rule when he or she retires from government employment, regardless of when the retirement occurs.
- *Their last day of government service occurred before July 1, 2004,* and *they worked their last day in a Social Security–covered position within the same retirement system.* In other words, if a worker switched from noncovered government work to Social Security–covered work for his or her last day of work within the same retirement system, he or she is exempt from the GPO, even if the worker files for Social Security benefits at a later date. However, if a worker returns to work in a noncovered position in the same retirement system that he or she previously retired from and new contributions are made by either the employee or employer to the noncovered pension system, the worker's last-day exemption from the GPO will be revoked and he or she will be subject to the new 60-month requirement for exemption from the GPO.

[42] For more information on H.R. 743, see SSA's legislative bulletin on P.L. 108-203, http://www.socialsecurity.gov/legislation/legis_bulletin_030404.html.

[43] This five-year period for GPO exemption is consistent with that required of federal employees converting from CSRS to FERS.

- *Their last day of government service occurs on or after July 1, 2004, and before March 2, 2009, and they work a total of 60 months in a Social Security–covered position within the same retirement system.* The required 60-month period of Social Security–covered employment would be reduced by the number of months the worker performed in Social Security–covered employment under the same retirement system prior to March 2, 2004. However, in no case can the 60-month requirement be reduced to less than one month. For example, a teacher who is currently working in a noncovered position but who previously worked for 12 months in a Social Security–covered position under the same retirement system would have the 60-month requirement reduced to 48 months. The remaining months to be worked (in this case 48 months), must be worked consecutively and after March 2, 2004. Thus, if the worker switched to a covered position *in the same retirement system* as his or her prior government work for at least the final 48-month period of his or her employment *and* his or her last day of employment was before March 2, 2009, the worker would be exempt from the GPO.
- *Their last day of government service occurs after March 3, 2009,* and *they work their last 60 months in a Social Security–covered position within the same retirement system.*

All other individuals receiving government pensions based on noncovered employment would be subject to reductions in Social Security spousal or widow(er)'s benefits under the GPO.

Author Information

Zhe Li
Analyst in Social Policy

Acknowledgments

SSA's Office of Research, Evaluation, and Statistics provided unpublished data on beneficiaries affected by the GPO. CRS Research Assistant Paul Romero assisted updating the report.

Disclaimer