Congressional Research Service
Informing the legislative debate since 1914

Social Security: The Windfall Elimination Provision (WEP)

Gary Sidor
Information Research Specialist

April 16, 2014

The House Ways and Means Committee is making available this version of this Congressional Research Service (CRS) report, with the cover date shown, for inclusion in its 2014 Green Book website. CRS works exclusively for the United States Congress, providing policy and legal analysis to Committees and Members of both the House and Senate, regardless of party affiliation.

Congressional Research Service
98-35

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The windfall elimination provision (WEP) reduces the Social Security benefits of workers who also have pension benefits from employment not covered by Social Security. Its purpose is to remove an advantage or "windfall" these workers would otherwise receive as a result of the interaction between the Social Security benefit formula and the workers' relatively small portion of their careers in Social Security-covered employment. Opponents contend the provision is basically imprecise and can be unfair.

Contents

Tables

Background

The Social Security benefit formula is designed so that workers with low average lifetime earnings in Social Security-covered employment receive a benefit that is a larger proportion of their earnings than do workers with high average lifetime earnings. The benefit formula does not distinguish, however, between workers who have low average earnings because they worked for many years at low wages in Social Security-covered employment and workers who have low average earnings because they worked briefly in Social Security-covered employment. The generous benefit that would be provided to workers with short careers in Social Security-covered employment—in particular, workers who have split their careers between Social Security-covered and non-covered employment—is sometimes referred to as a "windfall" that would exist in the absence of the windfall elimination provision (WEP). The WEP reduces the Social Security benefits of workers who also have pension benefits from employment not covered by Social Security.

A worker is eligible for Social Security after he or she works in Social Security-covered employment for 10 or more years (more specifically, 40 or more quarters for which the worker has covered earnings). The worker's earning history is indexed to wage growth to bring earlier years of his or her earnings up to a comparable, current basis. Average indexed earnings are found by totaling the highest 35 years of indexed wages and then dividing by 35. Next, a monthly average, known as Average Indexed Monthly Earnings (AIME), is found by dividing the annual average by 12.

The Social Security benefit formula is designed to provide a progressive benefit. The benefit formula applies three progressive factors—90%, 32%, and 15%—to three different levels, or brackets, of AIME.[1] The result is known as the "primary insurance amount" (PIA) and is rounded down to the nearest 10 cents. For persons who reach age the age of 62, die, or become disabled in 2014, the PIA is determined in **Table 1** as follows:

Table 1. Social Security Benefit Formula in 2014

Factor	Average Indexed Monthly Earnings
90%	of the first $816, plus
32%	of AIME over $816 and through $4,917, plus
15%	of AIME over $4,917

The averaging provision in the benefit formula tends to cause workers with short careers in Social Security-covered employment to have low AIMEs, similar to persons who worked for low wages 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 wage 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.

[1] Both the annual earnings amounts over the worker's lifetime and the bracket amounts are indexed to national wage growth so that the Social Security benefit replaces approximately the same proportion of wages for each generation.

Consequently, for a worker with a low AIME because he or she split their career between covered and non-covered employment, the benefit formula replaces more of covered earnings at the 90% rate than if this worker had spent his or her full 35-year career in covered employment at the same wage level. The higher replacement rate[2] for workers who have split their careers between Social Security-covered and non-covered jobs is sometimes referred to as a "windfall."[3]

A different Social Security benefit formula, referred to as the "windfall elimination provision," applies to many workers who are entitled to Social Security as well as to a pension from work not covered by Social Security (e.g., individuals who work for certain state and local governments, or under the Federal Civil Service Retirement System [CSRS]).[4] Under these rules, the 90% factor in the first bracket of the formula is replaced by a factor of 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 and WEP provisions work in 2014.

Table 2. Monthly PIA for a Worker With Average Indexed Monthly Earnings of $1,500 and Retiring in 2014

Regular Formula		Windfall Elimination Formula	
90% of first $816	$734.40	**40%** of first $816	$326.40
32% of earnings over $816 and through $4,917	$218.88	32% of earnings over $816 and through $4,917	$218.88
15% over $4,917	0.00	15% over $4,917	0.00
Total	$953.28	Total	$545.28

Source: Calculations were made by the Congressional Research Service (CRS).

Note: To simplify the example, rounding conventions that would normally apply are not used here.

Under the WEP formula, the monthly benefit for the worker is reduced by $408.00 ($953.28 - $545.28) relative to the regular benefit formula. Note that the WEP reduction is limited to the first bracket in the AIME formula (90% vs. 40% rates), while the 32% and 15% factors for the second and third brackets are the same as in the regular benefit formula. As a result, for AIME amounts that exceed the first formula threshold of $816, the amount of the WEP reduction remains a flat $408 per month. For example, if the worker had an AIME of $4,000 instead of $1,500, the WEP reduction would still be $408 per month. The WEP therefore causes a proportionally larger reduction in benefits for workers with lower AIMEs and monthly benefit amounts.[5]

[2] A worker's replacement rate is the ratio of his or her Social Security benefit to pre-retirement income.

[3] The WEP is sometimes confused with the Government Pension Offset (GPO), which reduces Social Security *spousal* benefits of a worker who also has a government pension based on work that was not covered by Social Security. For more information on the GPO, please refer to CRS Report RL32453, *Social Security: The Government Pension Offset (GPO)*, by Christine Scott.

[4] Social Security Act §215(a)(7). Federal service where Social Security taxes are withheld (Federal Employees' Retirement System or CSRS Offset) is not affected by the WEP.

[5] For the worker shown in **Table 2,** with an AIME of $1,500 and a monthly benefit of $953.28 under the regular benefit formula in 2014, the WEP reduction of $408.00 represents a cut of approximately 43% to the regular formula monthly benefit amount. By comparison, a worker with an AIME of $4,000 would be entitled to a PIA of $1,753.28 under the 2014 regular benefit formula, and the same WEP reduction of $408 per month would represent a 23% reduction in this worker's monthly benefit amount (CRS calculations).

A “guarantee” in the WEP provision ensures that a worker’s WEP reduction cannot exceed half of the government pension based on the worker’s non-covered work. This “guarantee” is designed to help protect workers with low non-covered pensions and also ensures that the WEP can never completely eliminate a worker’s Social Security benefit. The WEP does not apply to workers who have 30 or more years of “substantial” employment covered under Social Security, with an adjusted formula for workers with 21 through 29 years of substantial covered employment, as shown in **Table 3**.[6]

Table 3. WEP Reduction Falls with Years of Substantial Coverage

	Years of Social Security Coverage										
	20	**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 in 2014:[a]											
	$408.00	$367.20	$326.40	$285.60	$244.80	$204.00	$163.20	$122.40	$81.60	$40.80	$0.00

Source: Social Security Administration, *How the Windfall Elimination Provision Can Affect Your Social Security Benefit*, Washington, DC, http://www.socialsecurity.gov/retire2/wep-chart.htm.

a. WEP reduction may be lower than the amount shown because the reduction is limited to one-half of the worker’s pension from non-covered employment. Also, the reduction is greatest when the AIME is equal to or exceeds the first bend point in the computation formula. When the AIME is less than the first bend point, the effect of the WEP formula is reduced.

The WEP also does *not* apply to (1) an individual who on January 1, 1984, was an employee of a government or nonprofit organization and to whom Social Security coverage was mandatorily extended by the 1983 amendments to the Social Security Act (e.g., the President, Members of Congress in office on December 31, 1983); (2) benefits for survivors; (3) workers who reached the age of 62, became disabled, or were first eligible for a pension from non-covered employment before 1986; (4) benefits from foreign Social Security systems that are based on a “totalization” agreement with the United States; and (5) people whose only non-covered employment that resulted in a pension was in military service before 1957 or is based on railroad employment.

Who Is Affected by the WEP?

According to the Social Security Administration (SSA), as of December 2013, about 1.5 million Social Security beneficiaries were affected by the WEP, as shown in **Table 4**. About 1.4 million people (92.5%) affected by the WEP were retired workers. About 2.7% of all Social Security beneficiaries (including disabled and spouse beneficiaries) and about 3.8% of all retired worker

[6] For determining years of coverage after 1978 for individuals with pensions from non-covered employment, “substantial coverage” is defined as 25% of the “old law” (i.e., if the 1977 Social Security Amendments had not been enacted) Social Security maximum taxable wage base for each year in question. In 2014, the “old-law” taxable wage base is equal to $87,000, therefore to earn credit for one year of “substantial” employment under the WEP a worker would have to earn at least $21,750 in Social Security-covered employment.

beneficiaries were affected by the WEP in December 2013.[7] Of retired workers affected by the WEP, approximately 61% were men.[8]

Table 4. Number of Beneficiaries in Current Payment Status with Benefits Affected by Windfall Elimination Provision (WEP), by State and Type of Benefit, December 2013

State	Total	Type of Benefit		
		Retired Workers	Disabled Workers	Spouses and Children
Total	1,549,544	1,433,475	17,561	98,508
Alabama	18,077	16,426	322	1,329
Alaska	8,523	8,043	107	373
Arizona	28,603	26,603	304	1,696
Arkansas	10,178	9,496	190	492
California	208,941	194,557	2,100	12,284
Colorado	48,596	45,636	683	2,277
Connecticut	15,784	15,033	150	601
Delaware	3,595	3,395	39	161
District of Columbia	7,747	7,403	117	227
Florida	85,783	79,527	884	5,372
Georgia	45,048	42,475	548	2,025
Hawaii	9,463	8,742	76	645
Idaho	6,661	6,145	75	441
Illinois	81,684	77,571	614	3,499
Indiana	15,009	14,023	202	784
Iowa	7,789	7,334	61	394
Kansas	8,595	8,039	118	438
Kentucky	20,168	18,820	323	1,025
Louisiana	33,094	30,200	691	2,203
Maine	14,708	13,895	145	668
Maryland	44,218	41,591	484	2,143
Massachusetts	57,930	55,072	687	2,171
Michigan	19,157	17,678	274	1,205
Minnesota	16,166	15,248	162	756
Mississippi	9,169	8,464	149	556
Missouri	33,033	31,436	385	1,212
Montana	5,525	5,133	53	339
Nebraska	5,038	4,762	45	231
Nevada	24,289	23,110	240	939

[7] Social Security data on the total Social Security beneficiary and retired worker populations used in calculations are available from the *Monthly Statistical Snapshot, December 2013*, at http://www.socialsecurity.gov/policy/docs/quickfacts/stat_snapshot/2013-12.html.

[8] Social Security Administration, Office of Research, Evaluation and Statistics, January 2014, unpublished table W01.

State	Total	Type of Benefit		
		Retired Workers	Disabled Workers	Spouses and Children
New Hampshire	6,887	6,471	115	301
New Jersey	21,518	19,882	337	1,299
New Mexico	12,357	11,246	170	941
New York	30,194	27,802	423	1,969
North Carolina	27,168	25,466	305	1,397
North Dakota	2,249	2,113	12	124
Ohio	114,396	107,466	1,287	5,643
Oklahoma	16,883	15,521	283	1,079
Oregon	15,025	13,982	129	914
Pennsylvania	34,129	31,595	525	2,009
Rhode Island	4,995	4,722	68	205
South Carolina	16,685	15,514	216	955
South Dakota	3,663	3,466	34	163
Tennessee	18,684	17,362	221	1,101
Texas	140,144	130,435	1,507	8,202
Utah	12,483	11,374	137	972
Vermont	2,445	2,280	21	144
Virginia	45,905	42,547	390	2,968
Washington	28,803	26,329	281	2,193
West Virginia	5,943	5,363	120	460
Wisconsin	11,482	10,793	95	594
Wyoming	2,248	2,111	24	113
Outlying areas and foreign countries	82,687	63,778	633	18,276

Source: Social Security Administration, Office of Research, Evaluation and Statistics, January 2014, unpublished Table B.

Legislative History and Rationale

The windfall elimination provision was enacted in 1983 as part of major amendments 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.[9]

The purpose of the 1983 provision was to remove an unintended advantage that the regular Social Security benefit formula provided to persons who also had pensions from non-Social Security-covered employment. 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 earnings than the benefit that is provided to workers with high earnings. However, to the present

[9] *Conference Report to Accompany H.R. 1900*, 98th Cong., March 24, 1983 (Washington: GPO, 1983), p. 120.

day 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. 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. The windfall elimination formula intends to remove this advantage for these workers.

Arguments for the Windfall Elimination Provision

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 government pensions from non-covered work. The guarantee provision ensures that the reduction in Social Security benefits cannot exceed half of the pension from non-covered work, which protects persons with small pensions from non-covered 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 persons who spend 30 years or more in Social Security-covered work.

Arguments Against the Windfall Elimination Provision

Some opponents believe the provision is unfair because it substantially reduces a benefit that 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.

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 referred to as "Brown and Weisbenner") point out two reasons why the WEP can be regressive.[10] First, because the WEP adjustment is confined to the first bracket of the benefit formula ($816 in 2014), it causes a proportionally larger reduction in benefits for workers with lower AIMEs and benefit amounts. Second, a high earner is more likely than a low earner to cross the "substantial work" threshold for accumulating years of covered earnings (in 2014 this threshold is $21,750 in Social Security-covered earnings); therefore, high earners are more likely to benefit from the provision that phases out of the WEP for persons with between 21 and 30 years of covered employment.

Brown and Weisbenner found that the WEP does reduce benefits disproportionately for lower-earning households. 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 non-covered. Brown and Weisbenner found that the WEP can also lead to

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

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.

SSA estimated that in 2000, 3.5% of recipients affected by the WEP had incomes below the poverty line. For comparison purposes, at that time 8.5% of all Social Security beneficiaries aged 65 and older had incomes below the poverty line and 11.3% of the general population had incomes below the poverty line.[11] This comparison implies that persons who are subject to the WEP, who by definition also have pensions from non-covered employment, face a somewhat reduced risk of poverty compared with other Social Security beneficiaries.

[11] These are the most recent estimates available. Poverty rates were calculated by David Weaver of the Social Security Administration'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 size for the WEP poverty rate is relatively small (230 cases) and only includes persons for whom SSA administrative records could be matched.