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Social Security: The Windfall Elimination Provision (WEP)

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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 imprecise and can be unfair.

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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. (In covered employment, earnings are subject to the Social Security payroll tax; Social Security benefits are based on covered 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 appear to have low average earnings because they worked in Social Security-covered employment for only part of their career. 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 have pension benefits from employment not covered by Social Security.

A worker qualifies for Social Security by working in Social Security-covered employment for 10 or more years (more specifically, by earning 40 or more "quarters of coverage"). The worker's earnings 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 people who reach age the age of 62, die, or become disabled in 2015, the PIA is determined in **Table 1** as follows:

Table 1. Social Security Benefit Formula in 2015

Factor	Average Indexed Monthly Earnings
90%	of the first $826, plus
32%	of AIME over $826 and through $4,980, plus
15%	of AIME over $4,980

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 people 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.

Consequently, for a worker whose AIME is low because a career was split between covered and non-covered employment, the benefit formula replaces more of covered earnings at the 90% rate than if this worker had spent a full 35-year career in covered employment at the same wage level.

[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.

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]

How the Windfall Elimination Provision Works

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 federal workers covered by the Federal Civil Service Retirement System [CSRS]).[4] Under these rules, 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 2015 for someone with a 40% factor.

Table 2. Monthly PIA for a Worker with Average Indexed Monthly Earnings of $1,500, Retiring in 2015 with 20 or Fewer Years of Covered Employment

Regular Formula		**Windfall Elimination Formula**	
90% of first $826	$743.40	**40%** of first $826	$330.40
32% of earnings over $826 and through $4,980	$215.68	32% of earnings over $826 and through $4,980	$215.68
15% over $4,980	0.00	15% over $4,980	0.00
Total	$959.08	Total	$546.08

Source: 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 is $413.00 ($959.08-$546.08) lower than under 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 unchanged. As a result, for AIME amounts that exceed the first formula threshold of $826, the WEP reduction remains a flat $413 per month. For example, if the worker had an AIME of $4,000 instead of $1,500, the WEP reduction would still be $413 per month. The WEP therefore causes a proportionally larger reduction in benefits for workers with lower AIMEs and monthly benefit amounts.[5]

A "guarantee" in the WEP ensures that the WEP reduction cannot exceed half of the government pension based on the worker's non-covered work. This guarantee is designed to help protect

[2] The replacement rate is the ratio of a Social Security benefit to a worker's 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 (name redacted)

[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 $959.08 under the regular benefit formula in 2015, the WEP reduction of $413.00 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 $1,759.08 under the 2015 regular benefit formula, and the same WEP reduction of $413 per month would represent a 23% reduction in this worker's monthly benefit amount.

workers with low pensions from non-covered work and also ensures that the WEP can never 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 2015:[a]										
$413.00	$371.70	$330.40	$289.10	$247.80	$206.50	$165.20	$123.90	$82.60	$41.30	$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 applies to retired and disabled worker beneficiaries and to dependent beneficiaries of affected worker beneficiaries. It does *not* apply to benefits for survivors.

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) workers who reached the age of 62, became disabled, or were first eligible for a pension from non-covered employment before 1986; (3) benefits from foreign Social Security systems that are based on a "totalization" agreement with the United States; and (4) 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 2014, about 1.6 million Social Security beneficiaries were affected by the WEP, as shown in **Table 4**. More than 1.4 million people (93%) affected by the WEP were retired workers. About 3% of all Social Security beneficiaries (including disabled and spouse beneficiaries) and about 4% of all retired worker beneficiaries were affected by the WEP in December 2014.[7] Of retired workers affected by the WEP, approximately 61% were men.[8]

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[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 2015, the "old-law" taxable wage base is equal to $88,200, therefore to earn credit for one year of "substantial" employment under the WEP a worker would have to earn at least $22,050 in Social Security-covered employment. For the thresholds for previous years, see Social Security Administration, "Windfall Elimination Provision," 2015, http://www.ssa.gov/pubs/EN-05-10045.pdf.

[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 2014," at http://www.socialsecurity.gov/policy/docs/ (continued...)

Table 4. Number of Beneficiaries in Current Payment Status with Benefits Affected by WEP, by State and Type of Benefit, December 2014

State	Total	Type of Benefit		
		Retired Workers	Disabled Workers	Spouses and Children
Total	**1,623,795**	**1,506,792**	**16,613**	**100,390**
Alabama	18,403	16,829	297	1,277
Alaska	9,027	8,544	100	383
Arizona	30,055	28,013	279	1,763
Arkansas	10,349	9,699	170	480
California	220,783	206,125	2,022	12,636
Colorado	51,459	48,447	728	2,284
Connecticut	16,667	15,927	139	601
Delaware	3,798	3,598	41	159
District of Columbia	7,853	7,526	106	221
Florida	90,015	83,719	819	5,477
Georgia	47,217	44,637	530	2,050
Hawaii	9,952	9,201	66	685
Idaho	6,875	6,377	73	425
Illinois	85,723	81,593	550	3,580
Indiana	15,642	14,656	190	796
Iowa	7,970	7,527	65	378
Kansas	8,879	8,328	110	441
Kentucky	21,279	19,963	276	1,040
Louisiana	35,555	32,660	688	2,207
Maine	15,501	14,714	133	654
Maryland	45,630	43,023	464	2,143
Massachusetts	62,035	59,068	653	2,314
Michigan	19,905	18,421	259	1,225
Minnesota	16,499	15,622	136	741
Mississippi	9,348	8,662	144	542
Missouri	34,584	33,002	366	1,216
Montana	5,731	5,338	46	347
Nebraska	5,136	4,856	50	230
Nevada	26,043	24,838	225	980
New Hampshire	7,235	6,813	107	315
New Jersey	21,997	20,359	311	1,327
New Mexico	12,652	11,559	164	929
New York	30,960	28,589	369	2,002

(...continued)

quickfacts/stat_snapshot/2014-12.html.

[8] Social Security Administration, Office of Research, Evaluation and Statistics, January 2015, unpublished table W01.

State	Total	Type of Benefit		
		Retired Workers	Disabled Workers	Spouses and Children
North Carolina	28,158	26,459	282	1,417
North Dakota	2,274	2,139	16	119
Ohio	120,859	113,918	1,294	5,647
Oklahoma	17,171	15,874	260	1,037
Oregon	15,752	14,711	119	922
Pennsylvania	35,084	32,593	491	2,000
Rhode Island	5,138	4,871	63	204
South Carolina	17,348	16,202	183	963
South Dakota	3,741	3,558	31	152
Tennessee	19,383	18,078	212	1,093
Texas	148,925	139,073	1,421	8,431
Utah	12,887	11,795	134	958
Vermont	2,527	2,360	21	146
Virginia	47,349	43,977	340	3,032
Washington	29,949	27,511	246	2,192
West Virginia	6,064	5,497	111	456
Wisconsin	11,729	11,049	87	593
Wyoming	2,273	2,154	19	100
Outlying areas and foreign countries	86,427	66,740	607	19,080

Source: Social Security Administration, Office of Research, Evaluation and Statistics, January 2015, 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 people 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, 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.

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

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 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 people 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 people who spend 30 years or more in Social Security-covered work.

Arguments Against the WEP

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.

Current Legislation Affecting the WEP

Legislative proposals to alter the WEP have fallen into three general categories: (1) those that would entirely repeal the provision; (2) those that would phase in a WEP reduction only for beneficiaries whose income from a monthly Social Security benefit and a monthly pension from non-covered work total to a combined threshold amount, and (3) those that would replace the current WEP formula with an alternative computation.

As of June 15, 2015, two bills have been introduced in the 114th Congress, which would alter the WEP. H.R. 973, introduced by Representative Rodney Davis, would repeal the WEP. Repeal proposals have been repeatedly introduced over the past two decades but have not advanced. In 2008, SSA estimated that repealing the WEP would increase benefit outlays by around $20 billion over 5 years and $40 billion over 10 years.[10]

H.R. 711, introduced by Representative Kevin Brady, would replace the WEP with a new formula for those who become eligible for Social Security retirement or disability benefits after 2016. For such workers who had both covered and non-covered earnings, a new "proportional" computation would be used. First, the regular Social Security formula would be applied to all earnings, whether covered or non-covered. As a result, the progressivity of the benefit would be based on the worker's total lifetime earnings. Second, the resulting benefit would be multiplied by the share of the AIME that came from covered earnings, so that the benefit would be proportional to the amount of Social Security taxes paid.

This proposal is expected to yield a smaller reduction than occurs under the WEP for workers with lower average total career wages and a greater reduction for workers with higher average total career wages.

[10] Testimony of David A. Rust, acting deputy commissioner for Disability and Income Security Programs to the U.S. House of Representatives' Committee on Ways and Means, Social Security Subcommittee, January 16, 2008, at http://www.socialsecurity.gov/legislation/testimony_011608.html. That estimate has not been updated.

Under H.R. 711, workers eligible for Social Security benefits in 2016 and earlier (including current beneficiaries) would be subject to the current WEP but would receive a rebate to offset the WEP formula's impact. The savings from the application of the new formula on future retirees addressed above, combined with WEP application to a larger pool of beneficiaries due to enhanced reporting accountability, would be redirected to current beneficiaries. The Office of the Chief Actuary at SSA has estimated that H.R. 5697, a proposal similar to H.R. 711 introduced by Representative Brady in the 113th Congress, would remain cost neutral by providing a 32% rebate to pre-2017 eligible workers. Thus, a beneficiary with a monthly benefit reduced by $413 per month by the current WEP formula would have the WEP reduction softened by $132 (32% of $413), lessening the WEP monthly impact to $281.[11]

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.[12] First, because the WEP adjustment is confined to the first bracket of the benefit formula ($826 in 2015), 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 2015 this threshold is $22,050 in Social Security-covered earnings); therefore, high earners are more likely to benefit from the provision that phases out of the WEP for people 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 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 beneficiaries affected by the WEP had incomes below the poverty line. For comparison purposes, at that time 8.5% of 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.[13] This comparison implies that people 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.

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[11] Actuarial memorandum to Rep. Kevin Brady on H.R. 5697 (114th Congress), U.S. Social Security Administration, Office of the Chief Actuary, November 13, 2014, at http://www.socialsecurity.gov/oact/solvency/index.html.

[12] 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, at http://business.illinois.edu/weisbenn/RESEARCH/PAPERS/JPEF_Brown_Weisbenner.pdf.

[13] 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 people for whom SSA administrative records could be matched.

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