

## **THE SOCIAL SECURITY WINDFALL ELIMINATION PROVISION**

The Windfall Elimination Provision (WEP) reduces the Social Security benefits of local, state and federal retirees who worked in Social Security-covered employment (e.g., private-sector jobs) and who also receive a government annuity from their non-Social Security covered government employment.

The WEP applies to federal retirees who began their federal employment prior to 1983, and are covered by the Civil Service Retirement System (CSRS). Under CSRS, federal employees pay a 7 percent payroll contribution toward their CSRS retirement annuities. They do not pay a 6.2 percent payroll tax toward Social Security, and therefore, do not earn any Social Security benefits based on their federal work. The WEP does not apply to federal employees covered by the Federal Employees Retirement System (FERS), as these federal employees pay the 6.2 percent payroll tax, in addition to their FERS retirement contributions, and therefore earn Social Security benefits based on their government work.

The WEP applies to state and local government retirees who likewise did not pay Social Security payroll taxes in connection with their government employment, similar to CSRS. It does not apply to those who paid Social Security payroll taxes in connection with their government employment, similar to FERS.

As of December of 2019, the WEP affects 1,912,706 beneficiaries, including 1,797,415 retired workers, 12,943 workers with disabilities, and 102,348 spouses and children.<sup>1</sup>

Normally, Social Security benefits are calculated using a progressive formula in which an individual's Average Indexed Monthly Earnings (AIME) are multiplied by three progressive factors – 90 percent, 32 percent and 15 percent – at different levels of AIME, resulting in a primary insurance amount (PIA) – the basic monthly benefit. In 2020, the first \$960 of AIME is multiplied by 90 percent, then added to AIME over \$960 through \$5,785, multiplied by 32 percent, then added to AIME over \$5,785, multiplied by 15 percent.

Under the WEP, the 90 percent factor is reduced to as low as 40 percent. For 2020, this would result in a monthly benefit that is \$480 lower than under the regular benefit formula. This unfair reduction causes a disproportionate reduction in benefits for workers with lower AIMEs and monthly benefit amounts than those with higher benefit amounts.

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<sup>1</sup> See "Social Security: The Windfall Elimination Provision (WEP)," Congressional Research Service, p. 5, available at: <https://crsreports.congress.gov/product/pdf/RS/98-35>.

## **Current Legislation**

NARFE is a leader in the effort to repeal or reform the Social Security Windfall Elimination Provision and the Government Pension Offset. There are several bills in the 116th Congress that would achieve significant relief for those impacted by the WEP and GPO.

### ***H.R. 141 and S. 521, the Social Security Fairness Act***

The Social Security Fairness Act, H.R. 141 and S. 521, introduced by Rep. Rodney Davis, R-IL, and Sen. Sherrod Brown, D-OH, would fully repeal both the WEP and GPO. NARFE fully supports the legislation and we will continue to work with our allies in the 116th Congress to advance WEP and GPO repeal legislation to provide meaningful relief to federal retirees affected by the unfair penalties.

### ***H.R. 3934 and S. 3401: the Equal Treatment of Public Servants Act***

The Equal Treatment of Public Servants Act, H.R. 3934 and S. 3401, would provide relief from WEP from both current and future retirees. These bills were introduced by the Ranking Member of the Ways and Means Committee, Kevin Brady, R-TX, and Sens. Ted Cruz, R-TX. While this legislation does not fully repeal the WEP, it represents a significant improvement over the status quo for CSRS retirees unfairly penalized for their public service—and for this reason NARFE supports the bills. Specifically, the bills would do the following:

- **For individuals who are first eligible for benefits before 2022 (turning age 62 before 2022):** Under the bills, individuals receiving WEP-reduced Social Security benefits based on their own work record would receive a rebate of \$100 per month. Meanwhile, individuals receiving a WEP-reduced Social Security benefit based on their spouse's employment would receive a rebate of \$50 each month.
- **For individuals who are first eligible for benefits from 2022 to 2060 (turning age 62 in 2022 through 2060):** These individuals' WEP penalty would be subject to either a new formula or the current formula, whichever is more beneficial. The new formula would calculate benefits based on the proportion of a worker's career earnings in Social Security-covered jobs to total earnings in covered and non-covered jobs.
- **For individuals who are eligible for benefits starting in 2061 (age 20 and under in 2019):** These individuals' WEP penalty would be calculated with the new formula only.

### ***H.R. 4540: The Public Servants Protection and Fairness Act***

The Public Servants Protection and Fairness Act, H.R. 4540, would provide relief from WEP from both current and future retirees. The bill was introduced by the Chairman of

the Ways and Means Committee, Richard Neal, D-MA. While this legislation does not fully repeal the WEP, it represents a significant improvement over the status quo for CSRS retirees unfairly penalized for their public service—and for this reason NARFE supports the bill. Specifically, the bill would do the following:

- **For individuals eligible for benefits before 2022 (turning age 62 before 2022):** Under the bill, individuals receiving WEP-reduced Social Security benefits based on their own work record would receive a rebate of \$150 per month.
- **For individuals first eligible for benefits in 2022 or later (turning age 62 in 2022 or later):** These individuals' WEP penalty would be subject to either a new formula or the current formula, whichever is more beneficial. The new formula would calculate benefits based on the proportion of a worker's career earnings in Social Security-covered jobs to total earnings in covered and non-covered jobs.

### ***Comparing H.R. 3934/S. 3401 & H.R. 4540***

H.R. 3934/S. 3401 and H.R. 4540 apply similar constructs. Each provides a rebate for those currently eligible for Social Security benefits, and the same, new formula for those becoming eligible in the future.

However, there are a few, notable differences. First, H.R. 4540 provides a slightly larger rebate than H.R. 3934/S. 3401 (\$150 vs. \$100 per month) for the primary worker, but does not provide any rebate for a spousal-based benefit (\$0 vs. \$50 per month). Second, H.R. 4540 always provides the greater of the new formula or the current one, whereas H.R. 3934/S. 3401 eventually only uses the new formula (for workers turning age 62 in 2061 or later).

As a result of the differences, H.R. 3934/S. 3401 does not increase costs for the Social Security Trust Fund over a 75-year window, whereas H.R. 4540 does.

NARFE supports both pieces of legislation, as they would both provide much-needed relief to individuals unfairly penalized by WEP. Recognizing the differences, we urge both sides of the political aisle to work together on a compromise that improves fairness, provides real relief for current retirees, and, importantly, passes into law.