

The Social Security Government Pension Offset And Windfall Elimination Provision

There are two Social Security Offsets that have plagued federal, state and local government retirees for many years. They are the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP). Both are addressed in this pamphlet.

GOVERNMENT PENSION OFFSET

The Social Security Act does not allow a person to receive both his/her own earned benefit plus a full spousal benefit. This is called the “dual entitlement” rule. For example, if a woman is eligible for her own Social Security retirement benefit, then that amount offsets dollar for dollar what she could get as a spouse from her husband’s Social Security. In short, she can opt to receive the larger, but not both.

The GPO, enacted as part of the 1977 Social Security Amendments, treated government pensions and annuities as though they were Social Security benefits, applying the dual entitlement rule. Spousal benefits were to be offset dollar for dollar, beginning December 1982, but women who were eligible for their government annuities before December 1982 were exempted from the GPO. Congress provided this five-year transition period so women could plan for their financial future.

Men, however, could only be exempt if they were eligible for their government annuity before December 1982 **and** the wife had provided one-half of the husband’s support. Divorced spouses who were eligible for their annuities before December 1982 could not be exempt unless they had been married 20 years, instead of the 10 years currently required. This was accomplished by specifying that men and divorced spouses had to meet the requirements of the law that were in effect in January 1977, thus evading a March 1977 Supreme Court decision (*Goldfarb v. Califano*) that had removed the one-half support requirement for men.

At the time, NARFE strongly criticized the dollar-for-dollar reduction, arguing that a Social Security retiree, who also received a pension from private employment, did not have the dual entitlement rule applied to the private pension income. In response, Congress amended the GPO law in 1983 by reducing the dollar-for-dollar offset to an “arbitrary” two-thirds offset.

In 1986, a new Federal Employees Retirement System (FERS) was enacted, with Social Security coverage as part of the plan. During an open season in the last six months of 1987, Civil Service Retirement System (CSRS) employees were given a chance to switch to FERS and thereafter be exempt from the GPO. Unfortunately, many CSRS employees were unaware of this GPO exemption and remained in the CSRS. As a result, they lost valuable future Social Security spousal benefits.

The Social Security Government Pension Offset (GPO) has already affected approximately 350,000 retired federal, state and local government employees. Thousands more stand to be affected in the future because that number grows by about 15,000 annually.

Who Is Affected by the GPO?

Federal, state and local government retirees first eligible to retire December 1982 or later from a job not covered by Social Security.

Who Is Exempt From the GPO?

- Anyone eligible for a government annuity before December 1982 and who meets the 1977 law requirements (divorced woman’s marriage must have lasted 20 years; husband or widower must have been receiving one-half support from the wife).
- Anyone who is a federal survivor annuitant (not a federal retiree). Neither the survivor annuitant’s own Social Security nor the widow’s benefit from the husband’s Social Security is affected.
- Anyone eligible for a government annuity before July 1, 1983, and who received one-half support from the spouse.
- Federal Employees Retirement System (FERS) employees and annuitants, and Civil Service Retirement System (CSRS) employees and annuitants who transferred to FERS.
- Former CSRS employees rehired on or after

January 1, 1984, following a separation of one year or more.

- Any CSRS employee over the age of 65 still working for the federal government. The GPO will not become effective until the person retires and begins to receive an annuity.

How the GPO Reduces Spouse Benefits

The GPO affects CSRS employees retiring December 1982 and later. It reduces or eliminates the Social Security spouse or survivor benefit to which the federal retiree may be eligible, based on the Social Security record of his/her wife or husband. The Social Security benefit is reduced by an amount equal to two-thirds of the retiree’s CSRS annuity.

Example: Mary, a widow, retires from her government job with a gross monthly annuity of \$600. She is eligible for a Social Security widow’s benefit of \$900. She has not worked under Social Security long enough to qualify on her own account. The \$900 widow’s benefit is reduced by two-thirds of the \$600 annuity (\$400). Her Social Security widow’s benefit is therefore \$500, instead of \$900.

Example: June, a federal retiree, has a monthly annuity of \$900. Her husband retired from a private sector company and receives a Social Security benefit of \$1,100. June, who has no Social Security coverage, should receive a wife’s benefit equal to one-half of her husband’s or \$550. Because of the GPO she will receive no wife’s benefit because two-thirds of her annuity (\$600) totally offsets the \$550.

Windfall Elimination Provision

The WEP was enacted as part of the 1983 Social Security Amendments. The amendments stemmed from the recommendations of a bipartisan commission selected to find ways of improving the long-range financial picture of the Social Security Trust Fund.

Many federal employees, who later became eligible for an annuity, had worked just long enough under Social Security to be qualified for a Social Security retirement benefit at age 62. Congress had long felt that a Social Security benefit in addition to a full career government annuity was a “windfall” because of the way the Social Security benefit is figured.

The Social Security computation formula is

designed to give greater advantage to low wage earners by giving them a higher benefit. A low wage earner receives a benefit that replaces approximately 56 percent of pre-retirement earnings, while the replacement rate for the average worker is 42 percent, and for the higher income worker, about 35 percent.

Government employees who had worked only 10 years under Social Security (less for older workers) were treated in the computation as low wage earners. This occurred because the average computation period covers 35 years of earnings. Earnings from 10 years of work, averaged over 35 years, look like the earnings of a low wage earner and compute to the highest replacement rate.

The Social Security Windfall Elimination Provision (WEP) has already affected over 695,000 retired federal, state and local government employees. Thousands more will be affected in the future because that number grows about 60,000 annually.

Who Is Affected by the WEP

Federal, state and local government retirees who receive an annuity or pension from a job not covered by Social Security are affected by the WEP if they are first eligible for that annuity/pension after 1985 and become age 62 or disabled (for Social Security) after 1985.

Who Is Exempt From the WEP?

- Anyone eligible to retire before January 1, 1986, or who became 62 or disabled before 1986.
- Anyone who has 30 years of **substantial** earnings under Social Security.
- Anyone who is only a federal survivor annuitant. The survivor annuitant’s own Social Security is not affected.
- Anyone whose only pension from non-covered employment is based on Railroad Retirement covered work.
- Any federal worker first hired after December 31, 1983, or a federal worker performing service January 1, 1984, who became mandatorily covered under Social Security January 1, 1984.*
- Anyone employed December 31, 1983, by a nonprofit organization that became manda-

torily covered under Social Security on that date.

● Effective January 1, 1995, military reserve pensions are exempt.

* CSRS employees who transferred into FERS are not exempt from the WEP.

How the WEP Reduces Benefits

The Social Security formula for computing benefits is based on a worker's Average Indexed Monthly Earnings (AIME). This is a 35-year average of actual earnings that have been indexed, or adjusted, to put them in proportion to the earnings level of all workers during those years.

A specific formula, figured in three steps, is then applied to the AIME. For someone becoming age 62 in 2005, the formula is: 90 percent of the first \$627 of the AIME; 32 percent of the amount from \$627 to \$3,779; and, 15 percent of the amount over \$3,779.

The WEP formula applies 40 percent to the first \$627, instead of 90 percent.

Example: John, an annuitant with 30 years of federal service, has an AIME of \$450. If the regular Social Security formula were used, his benefit would be \$405. Using the WEP formula, his benefit at age 65 would be \$180 per month. Should John take his Social Security at age 62, he would get \$144 (a 20 percent reduction).

Example: Judy, who worked 15 years in the private sector and 15 years for the federal government, has an AIME of \$800. The WEP formula provides 40 percent of the first \$627, which is \$250. The difference between \$627 and \$800 is \$174. 32 percent of the \$174 is \$55, which is added to the \$250 for a WEP-reduced, age 65, benefit of \$305. If the regular Social Security formula had been used, Judy's monthly benefit would have been \$619.

Note: The formula is applied as of age 62 and then increased by subsequent cost-of-living adjustments (COLAs) if the individual files for his or her benefits after age 62. The monetary values in the formula increase each year. **In addition, even though an individual's own Social Security benefit may be reduced by the WEP, when that person dies, his/her survivor will be entitled to the unreduced benefit.**

Unfair Law

Mixed in with the fact that the GPO has been the law of the land for more than 20 years, and the WEP for more than 18 years, are a number of factors contributing to the general unwillingness of Congress to make any changes. At the top of the list, of course, is the cost of making any changes, as well as budget laws that prevent Congress from increasing costs in one area without offsetting cuts in another.

The workers with the lowest Social Security earnings seem to suffer the greatest reductions. In the private sector, a pension from an employer, no matter how large, does not cause the Social Security benefit to be reduced. Because a person chose to work for the government, long before the advent of the GPO and/or the WEP formula, should not be a reason to reduce his/her earned Social Security benefits. Other factors that should also be considered:

● Federal employees under the CSRS have historically paid a higher contribution rate than private sector employees have paid into Social Security. These higher contributions should translate into more retirement income for federal retirees.

● In the private sector, 97 percent of the employers who provide pension plans do not require employee contributions. Therefore, federal annuities include a much higher portion of a retiree's personal contributions than do pensions in the private sector.

● Income replacement rates for civil service retirees are lower than in the private sector. The General Accounting Office (GAO) reported in 1995 that the replacement rates for retirees at age 62 with 30 years service were 65.1 percent to 70.3 percent for private sector retirees, while the replacement rate for federal retirees was 56.25 percent. This indicates, in general, that replacement rates for the federal sector are much lower. Sources of retirement incomes included in the study originated from pension plans plus Social Security.

Class Action Suit or Legislative Change?

Many people affected by the GPO and/or the WEP have asked, "Why not file a class action suit?" They claim discrimination and say the "offsets" are unconstitutional. After seeking legal advice, NARFE has concluded there is little like-

lihood that a court would declare the provision unconstitutional. Also, the challenge would be very expensive. The alternative to a class action suit is to change the law. A change of law to repeal or modify the GPO and the WEP has been a part of NARFE's official legislative agenda for a number of years. It is to that goal that NARFE is working with other concerned organizations in the Coalition to Assure Retirement Equity (CARE).

Legislation

Representative Howard "Buck" McKeon (R-CA), and Senator Diane Feinstein (D-CA) have introduced their GPO/WEP repeal companion bills, H.R.147 and S.619, in the 109th Congress. These bills have been assigned to their respective committees, the House Ways and Means Subcommittee on Social Security and the Senate Finance Committee.

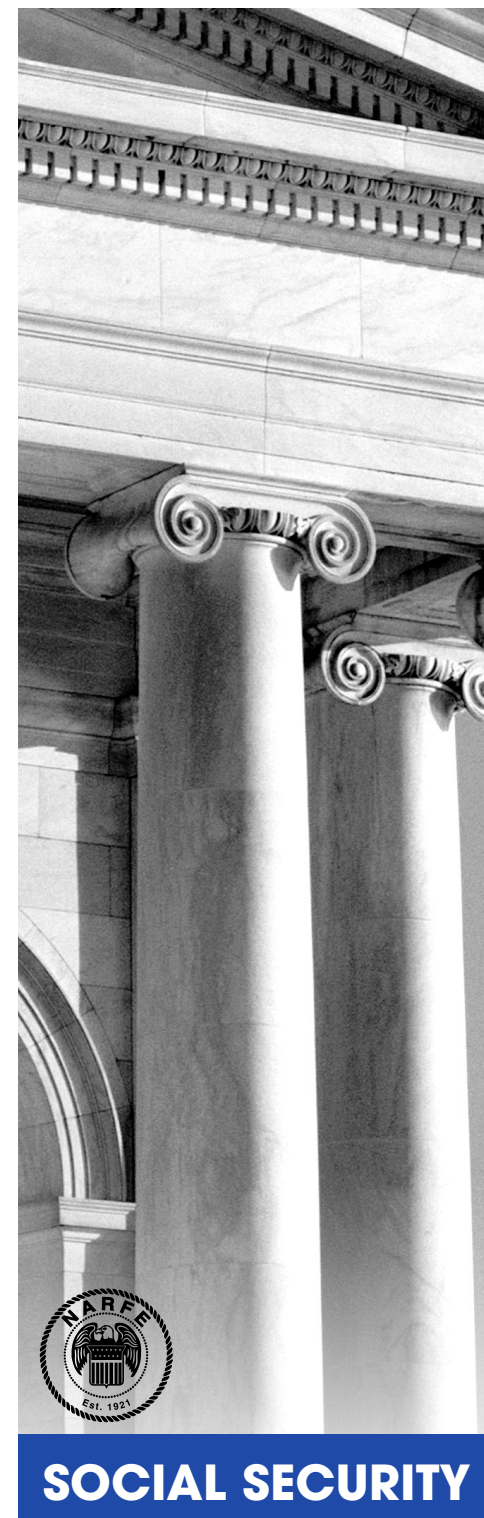
Bills proposing a form of "WEP repeal" have been introduced by Representative Kevin Brady (R-TX), H.R.1714, and Senator Kay Bailey Hutchison (R-TX), S.866, in the 109th Congress. In addition, a comprehensive Social Security Reform bill H.R.750, by Representative E. Clay Shaw Jr. (R-FL), includes a plan to reduce the GPO from two-thirds to one-third. These bills have also been assigned to the committees referenced above.

Social Security actuaries have determined that repeal of the GPO/WEP proposal would increase the Old Age, Survivors, and Disability Insurance (OASDI) long-range actuarial deficit by an amount that is estimated to be less than 0.11 percent of taxable payroll. The cost of the "WEP repeal" has been estimated by the Social Security Administration to total approximately \$7 billion dollars over 10 years.



606 North Washington Street
Alexandria, Virginia 22314-1914
(703) 838-7760 • Fax (703) 838-7782

E-mail: leg@narfe.org
Web site: www.narfe.org



SOCIAL SECURITY

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