



SOCIAL SECURITY

Office of the Chief Actuary

April 25, 2016

The Honorable Sam Johnson, Chairman
Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Chairman Johnson:

On April 11, I received your question related to the hearing of the subcommittee on March 22, 2016 on “Social Security and Public Servants: Ensuring Equal Treatment.” Thank you for this question and for the opportunity to engage on this topic at the hearing last month.

The question you raised is:

How would the President’s proposal to replace the Government Pension Offset (GPO) affect the benefits received by public servants?

First, let me mention the letter sent to Office of Management and Budget Director Sean Donovan on February 10, 2016 where we provided analysis and estimates for the President’s proposal to change the Windfall Elimination Provision (WEP) as well as the GPO that was included in the President’s Fiscal Year 2017 Budget. This letter is available at https://www.ssa.gov/OACT/solvency/FY2017Budget_20160210.pdf . This letter provided a brief but hopefully complete description of the changes intended at that time for the President’s proposal.

The President proposed to require State and local governments who have had employees (public servants) working in positions not covered under Social Security to report to the Social Security Administration any payments made from a disability or retirement plan based on that non-covered employment. The receipt of these reports would allow for more complete application of the WEP and GPO provisions in current law for individuals becoming eligible for Social Security monthly benefits before January 1, 2027. We have estimated that based on this reporting application of the present law GPO provision will result in benefit reductions for approximately 100,000 former public servants with monthly benefit reductions averaging \$400 to \$450. Benefit reductions based on the pension data obtained would be applied for both past and future benefits for those affected.

The President’s proposal further specified that for those individuals becoming eligible for Social Security monthly benefits after December 31, 2026, a new formula would be applied for the GPO. The new GPO would be applied for all spouse and widow(er) beneficiaries who are age 62 and older or entitled as a disabled worker, disabled widow, or disabled adult child, and have received earnings that were not covered under Social Security, as included in the Social Security

earnings records. For such individuals, we would calculate a primary insurance amount (PIA) based on their Social Security covered earnings only, and another PIA (super PIA) based on treating all past earnings in SSA records as if they had been covered. The individual's auxiliary benefit would then be reduced by the difference, if any, between the super PIA and the PIA, multiplied by the appropriate age-reduction factor.

To assess and illustrate the effects of the new GPO formula on public servants becoming eligible for Social Security benefits starting in 2027, we look at the effect the new formula would have on current beneficiaries in 2016, as if the new formula had been fully in effect for all past years, compared to the actual effect of the current GPO formula in that year. This comparison gives us a good sense of the ultimate effect the new GPO formula will have on the generations of beneficiaries becoming eligible in 2027 and later.

Currently about 650,000 Social Security beneficiaries have their benefits reduced by the GPO. We estimate that 46 percent of these beneficiaries would have no change in their benefits using the new formula as their auxiliary benefit would still be completely offset. We estimate that about 37 percent would have a smaller offset under the new formula increasing their benefits by roughly \$300 per month on average compared to current law. Finally, we estimate that about 18 percent would have a larger offset reducing their monthly benefit by about \$160 per month on average compared to current law.

In addition, we estimate that there are currently over 6 million auxiliary beneficiaries who have some non-covered earnings in SSA records, but are not reduced by the GPO. Of this number we estimate that about 12 percent would have no change in their benefit with the application of the new formula because their non-covered earnings are minimal and would in fact not affect the computation of the super PIA. The remaining 88 percent would have their monthly Social Security auxiliary benefit reduced by about \$56 on average, for an average reduction of about 4 percent in their total monthly Social Security benefit. For the half of the roughly 6 million beneficiaries in this group reduced the least (including those with no reduction), their average reduction in monthly Social Security benefit would be about \$10. For the half most reduced, the average reduction in their monthly benefit would average about \$88.

Please keep in mind that these illustrations of the effects of the new GPO formula reflect what the "mature" effect of the new formula would be on current beneficiaries assuming this formula had always been in effect, as compared to the actual effects of the current law GPO on these beneficiaries. For the beneficiaries who would become eligible after December 31, 2016, the numbers affected would differ somewhat and the dollar reductions or increases in benefits will be larger reflecting the growth in benefit levels generally from 2016 levels.

We hope this analysis will be helpful. Please let me know if we can be helpful in any other way.

Sincerely,

A handwritten signature in black ink that reads "Stephen C. Goss". The signature is written in a cursive, flowing style.

Stephen C. Goss
Chief Actuary

Q1. In your testimony, you discuss how the Social Security Administration (SSA) had limited data on noncovered earnings when the Windfall Elimination Provision (WEP) formula was established and point out that more data is now available. Please describe this new data set that includes information on noncovered earnings.

Every year, employers and the Internal Revenue Service (IRS) send us information on the earnings of U.S. workers. We store this information and use it to calculate benefit amounts under the Old-Age, Survivors, and Disability Insurance (OASDI) program.

Since 1978¹, employers have sent us earnings information using IRS Form W-2, which includes information regarding earnings on which neither the worker nor his or her employer contributed the Social Security payroll tax (“non-covered earnings”). Although State and local entities were required to report non-covered earnings beginning in 1978, their compliance was generally inconsistent from 1978 to 1981.² As a result, our non-covered earnings information from that period contains some inconsistent or duplicative records.

We calculate retirement benefits using a person's highest 35 years of earnings, indexed for inflation. When WEP was enacted in 1983, we had only five years of non-covered earnings data in our records. However, starting in 2017, we will have 35 years of reliable non-covered earnings data in our records. The President's Budget for Fiscal Year 2017 recommends an effective date of 2027 for replacing WEP with a formula that considers both covered and non-covered earnings. By then, our non-covered earnings information would be more complete for people who worked longer than 35 years.

Q.2 The SSA gives beneficiaries with overpayments the option to apply for a waiver of repayment. What are the criteria for granting a waiver and how does a person receive one?

We will waive recovery of an overpayment when a person is both without fault in causing it and recovery of that overpayment would either:

- a. defeat the purpose of the program involved; or

¹ The Social Security Financing Amendments of 1978 (P.L. 95-216) required employers to report earnings annually to Social Security.

² See Testimony of Martin H. Gerry before the House Ways and Means Subcommittee on Social Security, July 20, 2004.
https://www.ssa.gov/legislation/testimony_072004.html

- b. be against equity and good conscience; or,
- c. (for the Supplemental Security Income (SSI) program only)
impede efficient or effective administration of the program because
of the small amount involved.³

What constitutes "*fault*" depends upon whether the facts show that the incorrect payment resulted from an incorrect statement made by the individual that he or she should have known was incorrect; failure to furnish information which he or she knew or should have known to be material; or acceptance of a payment which he or she either knew or could have been expected to know was incorrect.⁴ We could, for example, find an individual who did not disclose that he or she was in receipt of a pension to be "*at fault*" and not approve his or her request for waiver.

"*Defeats the purpose*" means that recovery of the overpayment would deprive a person of income or resources he or she needs to pay for ordinary and necessary living expenses, such as rent, mortgage, utilities, and medical expenses.⁵ And, in general, recovery is "*against equity and good conscience*" when a person changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that payment would be made or because of the incorrect payment itself.⁶

Whenever we determine that we have made an overpayment, we notify the person and inform him or her of the ways in which we will seek recovery, unless the overpayment is immediately repaid. That notice also instructs the person to contact us promptly if he or she wishes to appeal the fact of the overpayment, request that we waive recovery or accept a lesser rate of withholding, or repay through installments.⁷

³ 42 U.S.C. § 404(b) and § 1383(b)(1)(B);

⁴ 20 CFR § 404.507

⁵ 20 CFR § 404.508 and § 416.553

⁶ 20 CFR § 404.509 and § 416.554

⁷ 20 CFR § 404.502a

A person can request a waiver at any time and in several ways, including by completing a form⁸ or by making a verbal request to one of our field office or debt management branch employees.

Q.3 Beneficiaries with overpayments may also request a change in the terms of their repayment plan. What is the minimum monthly repayment amount? How long can a repayment plan last?

If an overpaid person receives Old-Age, Survivors, and Disability Insurance (OASDI) benefits then we will recover an overpayment by withholding his or her full monthly benefit. However, if we determine that withholding the full monthly amount would defeat the purpose of the OASDI program, then we will recover a lesser amount. But in no case will we recover less than \$10 per month.

The recovery period varies depending on the beneficiary's income and assets, but, in general, we set the withholding rate at an amount that would collect the full overpayment within 36 months.

The President's Budget for 2017 includes a legislative proposal that would increase the minimum collection of overpayments in the OASDI program to 10 percent of the monthly payment. This proposal would conform the minimum monthly collection for OASDI payments with the statutory standard that already exists for the means-tested SSI program, which already uses this 10 percent rule.⁹

⁸ SSA-632-BK, Request for Waiver and Recovery Questionnaire

⁹ 42 U.S.C. § 1381(b)(1)(B)