116TH CONGRESS  
1ST SESSION  

H. R. 4540

To amend title II of the Social Security Act to provide an equitable Social Security formula for individuals with non-covered employment and to provide relief for individuals currently affected by the Windfall Elimination Provision.

IN THE HOUSE OF REPRESENTATIVES

Mr. Neal introduced the following bill; which was referred to the Committee on

A BILL

To amend title II of the Social Security Act to provide an equitable Social Security formula for individuals with non-covered employment and to provide relief for individuals currently affected by the Windfall Elimination Provision.

1   Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2   SECTION 1. SHORT TITLE.

3   This Act may be cited as the “Public Servants Protection and Fairness Act”.

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SEC. 2. ALTERNATIVE FORMULA EQUALIZING BENEFITS
FOR CERTAIN INDIVIDUALS WITH NON-COVERED EMPLOYMENT.

(a) IN GENERAL.—Section 215(a) of the Social Security Act (42 U.S.C. 415(a)) is amended by inserting after paragraph (7) the following:

"(8)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection—

"(i) who first becomes eligible for an old-age or disability insurance benefit after 2021 and who subsequently becomes entitled to such benefit;

"(ii) who has earnings derived from nonecovered service performed in a year after 1977 and is entitled to a monthly periodic payment based on such earnings; and

"(iii) who has less than 30 years of coverage (as defined for purposes of paragraph (7)(D)), the primary insurance amount of such individual shall be the higher of the amount computed or recomputed under paragraph (7) without regard to this paragraph or the amount computed or recomputed under this paragraph.

"(B) The primary insurance amount of an individual described in subparagraph (A), as computed or recomputed under this paragraph, shall be the product derived by multiplying—
“(i) the individual’s primary insurance amount, as determined under paragraph (1) of this subsection and subparagraph (C) of this paragraph, by
“(ii) a fraction—
“(I) the numerator of which is the individual’s average indexed monthly earnings (determined without regard to subparagraph (C)), and
“(II) the denominator of which is an amount equal to the individual’s average indexed monthly earnings (as determined under subparagraph (C)), rounded, if not a multiple of $0.10, to the next lower multiple of $0.10.
“(C)(i) For purposes of determining an individual’s primary insurance amount and average indexed monthly earnings pursuant to clauses (i) and (ii)(II) of subparagraph (B), the individual’s average indexed monthly earnings shall be determined by treating all recorded non-covered earnings (as defined in clause (ii)(I)) derived by the individual from noncovered service performed in each year after 1977 as ‘wages’ (as defined in section 209 for purposes of this title), which shall be treated as included in the individual’s adjusted total covered earnings (as defined in clause (ii)(II)) for such calendar year together
with amounts consisting of 'wages' (as so defined without regard to this subparagraph) paid during such calendar year and self-employment income (as defined in section 211(b)) for taxable years ending with or during such calendar year.

(ii) For purposes of this subparagraph:

(I) The term 'recorded noncovered earnings' means earnings derived from noncovered service (other than noncovered service as a member of a uniformed service (as defined in section 210(m)) for which satisfactory evidence is determined by the Commissioner to be available in the records of the Commissioner.

(II) The term 'adjusted total covered earnings' means, in connection with an individual for any calendar year, the sum of the wages paid to the individual during such calendar year (as adjusted under subsection (b)(3)) plus the self-employment income derived by the individual during any taxable year ending with or during such calendar year (as adjusted under subsection (b)(3)).

(iii) The Commissioner of Social Security shall provide by regulation or other public guidance for methods for determining whether satisfactory evidence is available in the records of the Commissioner for earnings for non-
covered service (other than nonecovered service as a member of a uniformed service (as defined in section 210(m)) to be treated as recorded nonecovered earnings. Such methods shall provide for reliance on earnings information provided to the Commissioner by employers and which, as determined by the Commissioner, constitute a reasonable basis for treatment of earnings for nonecovered service as recorded nonecovered earnings. In making determinations under this clause, the Commissioner shall also take into account any documentary or other evidence of earnings derived from nonecovered service by an individual which is provided by the individual to the Commissioner and which the Commissioner considers appropriate as a reasonable basis for treatment of such earnings as recorded nonecovered earnings.

“(iv) In the case of any individual who, at the time of application for old-age or disability insurance benefits under this title, has recorded nonecovered earnings in an amount the Commissioner of Social Security determines may entitle the individual to a monthly periodic payment based on such earnings (but whose application does not report such a monthly periodic payment), the Commissioner shall reconfirm with the individual whether such a monthly periodic payment is being paid in order to ensure
the proper application of paragraph (7) and this paragraph.

"(D) Upon the death of an individual whose primary insurance amount is computed or recomputed under this paragraph, such primary insurance amount shall be computed or recomputed under paragraph (1) of this subsection.

"(E) In the case of any individual whose primary insurance amount would be computed under this paragraph who first becomes entitled after 1985 to a monthly periodic payment made by a foreign employer or foreign country that is based in whole or in part upon noncovered service, the primary insurance amount of such individual shall be computed or recomputed under paragraph (7) or paragraph (1), as applicable, for months beginning with the first month of the individual's initial entitlement to such monthly periodic payment."

(b) Conforming Amendments.—Section 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is amended—

(1) by striking "hereafter in this paragraph and in subsection (d)(3)" and inserting "in this paragraph, paragraph (8), and subsection (d)(3)"; and
(2) by striking "shall be computed or recomputed" and inserting "shall, subject to paragraph (8), be computed or recomputed".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to monthly insurance benefits payable on or after January 1, 2022.

SEC. 3. ADDITIONAL MONTHLY PAYMENT FOR CERTAIN INDIVIDUALS WHOSE BENEFIT AMOUNT IS REDUCED BY THE WINDFALL ELIMINATION PROVISION.

(a) IN GENERAL.—Section 215(a) of such Act (42 U.S.C. 415(a)), as amended by section 2(a), is further amended by adding at the end the following:

"(9)(A) For any month beginning at least 270 days after the date of the enactment of the Public Servants Protection and Fairness Act, the Commissioner of Social Security shall, subject to subparagraphs (D) and (E), make an additional monthly payment to each individual who is an eligible individual for such month, in an amount equal to the amount determined under subparagraph (C) with respect to such eligible individual.

"(B) For purposes of this paragraph, the term 'eligible individual' for a month means an individual (other than an individual described in paragraph (8)(E)) who—
“(i) first becomes eligible for an old-age or disability insurance benefit under this title before 2022; and

“(ii) is entitled to an old-age or disability insurance benefit under this title for such month based on a primary insurance amount that was computed or recomputed under paragraph (7) (and not subsequently recomputed under any other paragraph of this subsection).

For purposes of clause (i), an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, the individual would be entitled to such benefit for such month.

“(C)(i) The amount determined under this paragraph with respect to an eligible individual is $150, except that in any case in which the amount by which the primary insurance amount of such eligible individual that would be computed for the individual’s initial computation month under paragraph (1) of this subsection without regard to paragraph (7) exceeds the amount of such primary insurance amount computed or recomputed for such month under paragraph (7) is less than $150, the amount determined under this paragraph shall equal the amount of such excess.
“(ii) For purposes of this subparagraph, the term 'initial computation month' means, with respect to an individual, the later of—

“(I) the 1st month beginning at least 270 days after the date of the enactment of the Public Servants Protection and Fairness Act; or

“(II) the 1st month for which the individual's primary insurance amount is computed or recomputed under paragraph (7).

“(D) In any case in which this title provides that no monthly benefit under section 202 or 223 shall be paid to an individual for a month, no additional monthly payment shall be paid to the individual for such month. This subparagraph shall not apply in the case of an individual whose monthly benefit under section 202 or 223 is reduced, regardless of the amount of the reduction, based on—

“(i) the individual's receipt of other income or benefits for such month;

“(ii) the adjustment or recovery of an overpayment under section 204.

“(E) Except for purposes of adjustment or recovery of an overpayment under section 204, an additional monthly payment under this paragraph shall not be subject to any reduction or deduction under this title.
"(F) Whenever benefit amounts under this title are increased by any percentage effective with any month as a result of a determination made under subsection (i), each additional monthly payment amount payable to an eligible individual under this paragraph shall be increased by the same percentage for months beginning with such month.

"(G) The amount of any additional monthly payment under this paragraph shall be disregarded for purposes of determining the eligibility or benefit amount of an individual for supplemental security income benefits payable under title XVI of the Social Security Act, but only if such individual—

"(i) is eligible for a cash benefit payable under section 1611, section 1619(a), or section 1631(a)(7) for the 1st month beginning at least 270 days after the date of the enactment of the Public Servants Protection and Fairness Act;

"(ii) is an individual described in section 1619(b) for such month; or

"(iii) is eligible for a State supplementary payment for such month of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Commissioner under an agreement referred to
in section 1616(a) (or section 212(a) of Public Law 93-66).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to monthly insurance benefits payable for months beginning at least 270 days after the date of the enactment of this Act.

SEC. 4. IMPROVEMENT IN SOCIAL SECURITY ACCOUNT STATEMENTS FOR PUBLIC SERVANTS.

(a) IN GENERAL.—Section 1143(a) of the Social Security Act (42 U.S.C. 1320b-13(a)) is amended—

(1) in paragraph (2)—

(A) by redesignating sub paragraphs (B) through (E) as subparagraphs (C) through (F); and

(B) by inserting after subparagraph (A)

the following:

“(B) the amount of earnings derived by the eligible individual from service performed after 1977 which did not constitute employment (as defined in section 210), not including service as a member of a uniformed service (as defined in section 210(m)), as shown by the records of the Commissioner at the date of the request,”; and
(C) in subparagraph (E) (as redesignated by subparagraph (A)), by inserting "(in the case of an eligible individual described in paragraph (3)(C)(ii), calculated using a primary insurance amount estimated pursuant to paragraph (8) of section 215(a) and including a notation indicating the use of such method of calculation)" after "account".

(2) in paragraph (3)(C)(ii)—

(A) by striking "wages or self-employment income" and inserting "wages, self-employment income, and earnings derived from noncovered service (within the meaning of section 215(a)(7))"; and

(B) by striking "of noncovered employment" and inserting "that the individual's primary insurance amount will be computed under paragraph (7) or (8) of section 215(a)".

(b) CONFORMING AMENDMENTS.—Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) in subsection (a)(2)(F) (as redesignated by subsection (a)(1)(A) of this section), by striking "sections 202(k)(5) and 215(a)(7)" and all that fol-
laws through “auxiliary benefits” and inserting “sections 202(k)(5), 215(a)(7), and 215(a)(8)”; and
(2) in subsection (d)(1)—

(A) by striking “maximum”; and
(B) by striking “section 215(a)(7)” and inserting “sections 215(a)(7) and 215(a)(8)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to Social Security account statements issued on or after January 1, 2022.

SEC. 5. STUDY ON AVAILABILITY OF INFORMATION RELATING TO RETIREMENT PLANS.

(a) IN GENERAL.—The Comptroller General shall conduct a study to determine the extent to which State and local governments (or their designees) that maintain retirement plans for their employees possess or otherwise have access to information sufficient to determine what amount of a participant’s benefits under such plan are based on nonecovered service (within the meaning of section 215(a)(7) of the Social Security Act (42 U.S.C. 415(a)(7))).

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on
SEC. 6. HOLD HARMLESS FOR THE SOCIAL SECURITY TRUST FUNDS.

There are appropriated, out of any moneys in the Treasury not otherwise appropriated, to each of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for each fiscal year such amounts as the chief actuary of the Social Security Administration shall certify are necessary to place each such Trust Fund in the same position at the end of such fiscal year as it would have been in if the amendments made by this Act had not been enacted.