

Amendment offered by Mr. Brady

The amendment would strike and replace the text of H.R. 82 with the text from H.R. 5834, the Equal Treatment of Public Servants Act which would replace the Windfall Elimination Provision (WEP) with a proportional formula that adjusts an individual's total lifetime earnings based on the proportion of those earnings subject to Social Security payroll taxes, provides relief payments to beneficiaries currently subject to the WEP, requires the Social Security Administration (SSA) to include earnings from Social Security substitutes in annual Social Security Statements, and requires the SSA to conduct a study on the feasibility of improving data sharing with Social Security substitute systems.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 82
OFFERED BY MR Brady**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Equal Treatment of
3 Public Servants Act of 2022”.

**4 SEC. 2. REPLACEMENT OF THE WINDFALL ELIMINATION
5 PROVISION WITH A FORMULA EQUALIZING
6 BENEFITS FOR CERTAIN INDIVIDUALS WITH
7 NONCOVERED EMPLOYMENT.**

8 (a) IN GENERAL.—Section 215(a) of the Social Secu-
9 rity Act (42 U.S.C. 415(a)) is amended by inserting after
10 paragraph (7) the following:

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

14 “(i) who first becomes eligible for an old-age or
15 disability insurance benefit after 2061,

16 “(ii) who subsequently becomes entitled to such
17 benefit, and

1 “(iii) who has earnings derived from noncovered
2 service performed in a year after 1977,
3 the primary insurance amount of such individual shall be
4 the amount computed or recomputed under this para-
5 graph.

6 “(B) The primary insurance amount of an individual
7 described in subparagraph (A), as computed or recom-
8 puted under this paragraph, shall be the product derived
9 by multiplying—

10 “(i) the individual’s primary insurance amount,
11 as determined under paragraph (1) of this sub-
12 section and subparagraph (C) of this paragraph, by

13 “(ii) a fraction—

14 “(I) the numerator of which is the individ-
15 ual’s average indexed monthly earnings (deter-
16 mined without regard to subparagraph (C)),
17 and

18 “(II) the denominator of which is an
19 amount equal to the individual’s average in-
20 dexed monthly earnings (as determined under
21 subparagraph (C)),

22 rounded, if not a multiple of \$0.10, to the next lower mul-
23 tiple of \$0.10.

24 “(C)(i) For purposes of determining an individual’s
25 primary insurance amount pursuant to clauses (i) and

1 (ii)(II) of subparagraph (B), the individual's average in-
2 dexed monthly earnings shall be determined by treating
3 all recorded noncovered earnings (as defined in clause
4 (ii)(I)) derived by the individual from noncovered service
5 performed in each year after 1977 as 'wages' (as defined
6 in section 209 for purposes of this title), which shall be
7 treated as included in the individual's adjusted total cov-
8 ered earnings (as defined in clause (ii)(II)) for such cal-
9 endar year together with amounts consisting of 'wages' (as
10 so defined without regard to this subparagraph) paid dur-
11 ing such calendar year and self-employment income (as
12 defined in section 211(b)) for taxable years ending with
13 or during such calendar year.

14 “(ii) For purposes of this subparagraph:

15 “(I) The term ‘recorded noncovered earnings’
16 means earnings derived from noncovered service
17 (other than noncovered service as a member of a
18 uniformed service (as defined in section 210(m)) for
19 which satisfactory evidence is determined by the
20 Commissioner to be available in the records of the
21 Commissioner.

22 “(II) The term ‘adjusted total covered earnings’
23 means, in connection with an individual for any cal-
24 endar year, the sum of the wages paid to the indi-
25 vidual during such calendar year (as adjusted under

1 subsection (b)(3)) plus the self-employment income
2 derived by the individual during any taxable year
3 ending with or during such calendar year (as ad-
4 justed under subsection (b)(3)).

5 “(iii) The Commissioner of Social Security shall pro-
6 vide by regulation or other public guidance for methods
7 for determining whether satisfactory evidence is available
8 in the records of the Commissioner for earnings for non-
9 covered service (other than noncovered service as a mem-
10 ber of a uniformed service (as defined in section 210(m)))
11 to be treated as recorded noncovered earnings. Such meth-
12 ods shall provide for reliance on earnings information
13 which is provided to the Commissioner by employers and
14 which, as determined by the Commissioner, constitute a
15 reasonable basis for treatment of earnings for noncovered
16 service as recorded noncovered earnings. In making deter-
17 minations under this clause, the Commissioner shall also
18 take into account any documentary or other evidence of
19 earnings derived from noncovered service by an individual
20 which is provided by the individual to the Commissioner
21 and which the Commissioner considers appropriate as a
22 reasonable basis for treatment of such earnings as re-
23 corded noncovered earnings.

24 “(D) Upon the death of an individual whose primary
25 insurance amount is computed or recomputed under this

1 paragraph, such primary insurance amount shall be com-
2 puted or recomputed under paragraph (1) of this sub-
3 section.

4 “(E) In the case of any individual whose primary in-
5 surance amount would be computed under this paragraph
6 who first becomes entitled after 1985 to a monthly peri-
7 odic payment made by a foreign employer or foreign coun-
8 try that is based in whole or in part upon noncovered serv-
9 ice, the primary insurance amount of such individual shall
10 be computed or recomputed under paragraph (7) or para-
11 graph (1), as applicable, for months beginning with the
12 first month of the individual’s initial entitlement to such
13 monthly periodic payment.”.

14 (b) CONFORMING AMENDMENTS.—Section
15 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is
16 amended—

17 (1) in clause (i)—

18 (A) by striking “after 1985” and inserting
19 “after 1985 and before 2062”; and

20 (B) by striking “or” at the end;

21 (2) in clause (ii)—

22 (A) by striking “after 1985” each place it
23 appears and inserting “after 1985 and before
24 2062”; and

25 (B) by adding “or” at the end;

1 (3) by inserting after clause (ii) the following:

2 “(iii) is an individual described in paragraph
3 (8)(E),”; and

4 (4) by striking “hereafter in this paragraph and
5 in subsection (d)(3)” and inserting “in this para-
6 graph, paragraphs (8) and (9), and subsection
7 (d)(3)”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to monthly insurance
10 benefits payable on or after January 1, 2023.

11 **SEC. 3. BENEFIT CALCULATION DURING TRANSITION PE-**
12 **RIOD.**

13 (a) IN GENERAL.—Section 215(a) of the Social Secu-
14 rity Act (42 U.S.C. 415(a)), as amended by section 2, is
15 further amended by inserting after paragraph (8) the fol-
16 lowing:

17 “(9) In the case of an individual whose primary in-
18 surance amount would be computed under paragraph (1)
19 of this subsection—

20 “(A) who first becomes eligible for an old-age
21 or disability insurance benefit after 2022 and before
22 2062,

23 “(B) who subsequently becomes entitled to such
24 benefit, and

1 Security shall, subject to subparagraphs (C) and (D),
2 make an additional monthly payment of \$100 to each indi-
3 vidual who is an eligible individual for such month, and
4 an additional monthly payment of \$50 to each individual
5 (other than an eligible individual) who is entitled to a ben-
6 efit under section 202 for such month on the basis of the
7 wages and self-employment income of such eligible indi-
8 vidual.

9 “(B) For purposes of this paragraph, the term ‘eligi-
10 ble individual’ for a month means an individual who—

11 “(i)(I) first becomes eligible for an old-age or
12 disability insurance benefit under this title before
13 2023, or

14 “(II) is an individual described in paragraph
15 (8)(E), and

16 “(ii) is entitled to an old-age or disability insur-
17 ance benefit under this title for such month based
18 on a primary insurance amount that was computed
19 or recomputed under paragraph (7) (and not subse-
20 quently recomputed under any other paragraph of
21 this subsection).

22 “(C) In any case in which this title provides that no
23 monthly benefit under section 202 or 223 shall be paid
24 to an individual for a month, no additional monthly pay-
25 ment shall be paid to the individual for such month. This

1 subparagraph shall not apply in the case of an individual
2 whose monthly benefit under section 202 or 223 is re-
3 duced, regardless of the amount of the reduction, based
4 on the individual's receipt of other income or benefits for
5 such month or the application of section 203(a) or due
6 to the adjustment or recovery of an overpayment under
7 section 204.

8 “(D)(i) An individual is not entitled to receive more
9 than one additional monthly payment for a month under
10 this paragraph.

11 “(ii) An eligible individual who is entitled to a benefit
12 under section 202 on the basis of the wages and self-em-
13 ployment income of another eligible individual for a month
14 shall receive an additional monthly payment under this
15 paragraph in the amount of \$100 for such month.

16 “(E) Except for purposes of adjustment or recovery
17 of an overpayment under section 204, an additional
18 monthly payment under this paragraph shall not be sub-
19 ject to any reduction or deduction under this title.

20 “(F) Whenever benefit amounts under this title are
21 increased by any percentage effective with any month as
22 a result of a determination made under subsection (i),
23 each of the dollar amounts in subparagraph (A) shall be
24 increased by the same percentage for months beginning
25 with such month.”.

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

5 **SEC. 5. REPORTING OF NONCOVERED EARNINGS ON SO-**
6 **CIAL SECURITY ACCOUNT STATEMENTS.**

7 (a) IN GENERAL.—Section 1143(a)(2) of the Social
8 Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—
9 (1) by redesignating subparagraphs (B)
10 through (E) as subparagraphs (C) through (F); and
11 (2) by inserting after subparagraph (A) the fol-
12 lowing:

13 “(B) the amount of earnings derived by
14 the eligible individual from service performed
15 after 1977 which did not constitute employment
16 (as defined in section 210), not including serv-
17 ice as a member of a uniformed service (as de-
18 fined in section 210(m)), as shown by the
19 records of the Commissioner at the date of the
20 request;”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply with respect to Social Security ac-
23 count statements issued on or after January 1, 2023.

1 **SEC. 6. STUDY ON PARTNERING WITH STATE AND LOCAL**
2 **PENSION SYSTEMS.**

3 (a) STUDY.—

4 (1) IN GENERAL.—The Commissioner of Social
5 Security shall study and test the administrative fea-
6 sibility of partnering with State and local pension
7 systems, or other governmental entities, to improve
8 the collection and sharing of information relating to
9 State and local noncovered pensions.

10 (2) COORDINATION WITH STATE AND LOCAL
11 PENSION SYSTEMS.—In conducting the study de-
12 scribed in paragraph (1), the Commissioner shall co-
13 ordinate with State and local pension systems that
14 reflect the diversity of systems and individual experi-
15 ences to explore the development of automated data
16 exchange agreements that facilitate reporting of in-
17 formation relating to noncovered pensions.

18 (b) REPORT.—The Commissioner of Social Security
19 shall conclude the study described in subsection (a) not
20 later than 4 years after the date of enactment of this Act.
21 As soon as possible after conclusion of the study and not
22 later than 4½ years after the date of enactment of this
23 Act, the Commissioner shall submit to the Committee on
24 Ways and Means of the House of Representatives and the
25 Committee on Finance of the Senate a report on the re-
26 sults of the study. Such report shall include the following:

1 (1) A discussion of how the automated data ex-
2 change agreements could be implemented to cover
3 noncovered pensions nationally, including the range
4 of implementation timelines across State and local
5 pension systems, or with other governmental entities.

6 (2) An analysis of the barriers to developing
7 automated data exchange agreements and lessons
8 learned that can help address these barriers.

9 (3) A description of alternative methods for ob-
10 taining information related to noncovered pensions,
11 and an analysis of the barriers to obtaining non-
12 covered pension data through such methods.

13 (4) An explanation of how coverage information
14 is obtained by the Social Security Administration
15 when an individual purchases service credits to apply
16 to a new covered or noncovered pension after moving
17 from another covered or noncovered pension within
18 the State or in another State.

19 (5) An estimate of the total amount, as of the
20 date of the enactment of this Act, of noncovered
21 pensions not reported to the Social Security Admin-
22 istration as a result of noncompliance with voluntary
23 reporting policies.

24 (c) STATE AND LOCAL PENSION INFORMATION TO
25 BE REQUESTED BY THE COMMISSIONER.—Section 202 of

1 the Social Security Act (42 U.S.C. 402) is amended by
2 inserting after subsection (l) the following:

3 “(m) STATE AND LOCAL PENSION INFORMATION TO
4 BE REQUESTED BY THE COMMISSIONER.—

5 “(1) The Commissioner may partner with
6 States to request information, including the informa-
7 tion specified in paragraph (2), with respect to any
8 designated distribution (as defined in section
9 3405(e)(1) of the Internal Revenue Code of 1986)
10 from an employer deferred compensation plan (as
11 defined in section 3405(e)(5) of such Code) of the
12 State (or political subdivision thereof) to a partici-
13 pant of such plan in any case in which any portion
14 of such participant’s earnings for service under such
15 plan did not constitute ‘employment’ as defined in
16 section 210 for purposes of this title.

17 “(2) The information specified in this para-
18 graph is the following:

19 “(A) The name and Social Security ac-
20 count number of the participant receiving the
21 designated distribution.

22 “(B) The dollar amount of the designated
23 distribution and the date paid.

24 “(C) The date on which the participant
25 initially became eligible for a designated dis-

1 tribution under the plan and, if different, the
2 date of payment of the initial designated dis-
3 tribution.

4 “(D) The dates of each period of service
5 under the plan that did not constitute ‘employ-
6 ment’ as defined in section 210 for purposes of
7 this title, and the dates of any other period of
8 service under the plan.”.

9 (d) DEFINITIONS.—In this section—

10 (1) the term “noncovered pension” means a
11 pension any part of which is based on noncovered
12 service (within the meaning of section 215(a)(7) of
13 the Social Security Act (42 U.S.C. 415(a)(7))); and

14 (2) the term “covered pension” means any
15 other pension.

