

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 noncovered employment and to provide relief for individuals currently affected by the Windfall Elimination Provision.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2019

Mr. NEAL introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Servants Pro-
5 tection and Fairness Act”.

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

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

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

10 “(i) who first becomes eligible for an old-age or
11 disability insurance benefit after 2021 and who sub-
12 sequently becomes entitled to such benefit;

13 “(ii) who has earnings derived from noncovered
14 service performed in a year after 1977 and is enti-
15 tled to a monthly periodic payment based on such
16 earnings; and

17 “(iii) who has less than 30 years of coverage
18 (as defined for purposes of paragraph (7)(D)),

19 the primary insurance amount of such individual shall be
20 the higher of the amount computed or recomputed under
21 paragraph (7) without regard to this paragraph or the
22 amount computed or recomputed under this paragraph.

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

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

4 “(ii) a fraction—

5 “(I) the numerator of which is the individ-
6 ual’s average indexed monthly earnings (deter-
7 mined without regard to subparagraph (C)),
8 and

9 “(II) the denominator of which is an
10 amount equal to the individual’s average in-
11 dexed monthly earnings (as determined under
12 subparagraph (C)),

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

15 “(C)(i) For purposes of determining an individual’s
16 primary insurance amount and average indexed monthly
17 earnings pursuant to clauses (i) and (ii)(II) of subpara-
18 graph (B), the individual’s average indexed monthly earn-
19 ings shall be determined by treating all recorded non-
20 covered earnings (as defined in clause (ii)(I)) derived by
21 the individual from noncovered service performed in each
22 year after 1977 as ‘wages’ (as defined in section 209 for
23 purposes of this title), which shall be treated as included
24 in the individual’s adjusted total covered earnings (as de-
25 fined in clause (ii)(II)) for such calendar year together

1 with amounts consisting of ‘wages’ (as so defined without
2 regard to this subparagraph) paid during such calendar
3 year and self-employment income (as defined in section
4 211(b)) for taxable years ending with or during such cal-
5 endar year.

6 “(ii) For purposes of this subparagraph:

7 “(I) The term ‘recorded noncovered earnings’
8 means earnings derived from noncovered service
9 (other than noncovered service as a member of a
10 uniformed service (as defined in section 210(m))) for
11 which satisfactory evidence is determined by the
12 Commissioner to be available in the records of the
13 Commissioner.

14 “(II) The term ‘adjusted total covered earnings’
15 means, in connection with an individual for any cal-
16 endar year, the sum of the wages paid to the indi-
17 vidual during such calendar year (as adjusted under
18 subsection (b)(3)) plus the self-employment income
19 derived by the individual during any taxable year
20 ending with or during such calendar year (as ad-
21 justed under subsection (b)(3)).

22 “(iii) The Commissioner of Social Security shall pro-
23 vide by regulation or other public guidance for methods
24 for determining whether satisfactory evidence is available
25 in the records of the Commissioner for earnings for non-

1 covered service (other than noncovered service as a mem-
2 ber of a uniformed service (as defined in section 210(m)))
3 to be treated as recorded noncovered earnings. Such meth-
4 ods shall provide for reliance on earnings information pro-
5 vided to the Commissioner by employers and which, as de-
6 termined by the Commissioner, constitute a reasonable
7 basis for treatment of earnings for noncovered service as
8 recorded noncovered earnings. In making determinations
9 under this clause, the Commissioner shall also take into
10 account any documentary or other evidence of earnings de-
11 rived from noncovered service by an individual which is
12 provided by the individual to the Commissioner and which
13 the Commissioner considers appropriate as a reasonable
14 basis for treatment of such earnings as recorded non-
15 covered earnings.

16 “(iv) In the case of any individual who, at the time
17 of application for old-age or disability insurance benefits
18 under this title, has recorded noncovered earnings in an
19 amount the Commissioner of Social Security determines
20 may entitle the individual to a monthly periodic payment
21 based on such earnings (but whose application does not
22 report such a monthly periodic payment), the Commis-
23 sioner shall reconfirm with the individual whether such a
24 monthly periodic payment is being paid in order to ensure

1 the proper application of paragraph (7) and this para-
2 graph.

3 “(D) Upon the death of an individual whose primary
4 insurance amount is computed or recomputed under this
5 paragraph, such primary insurance amount shall be com-
6 puted or recomputed under paragraph (1) of this sub-
7 section.

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

18 (b) CONFORMING AMENDMENTS.—Section
19 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is
20 amended—

21 (1) by striking “hereafter in this paragraph and
22 in subsection (d)(3)” and inserting “in this para-
23 graph, paragraph (8), and subsection (d)(3)”; and

1 (2) by striking “shall be computed or recom-
2 puted” and inserting “shall, subject to paragraph
3 (8), be computed or recomputed”.

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

7 **SEC. 3. ADDITIONAL MONTHLY PAYMENT FOR CERTAIN IN-**
8 **DIVIDUALS WHOSE BENEFIT AMOUNT IS RE-**
9 **DUCE** **BY THE WINDFALL ELIMINATION**
10 **PROVISION.**

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

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

22 “(B) For purposes of this paragraph, the term ‘eligi-
23 ble individual’ for a month means an individual (other
24 than an individual described in paragraph (8)(E)) who—

1 “(i) first becomes eligible for an old-age or dis-
2 ability insurance benefit under this title before 2022;
3 and

4 “(ii) is entitled to an old-age or disability insur-
5 ance benefit under this title for such month based
6 on a primary insurance amount that was computed
7 or recomputed under paragraph (7) (and not subse-
8 quently recomputed under any other paragraph of
9 this subsection).

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

14 “(C)(i) The amount determined under this paragraph
15 with respect to an eligible individual is \$150, except that
16 in any case in which the amount by which the primary
17 insurance amount of such eligible individual that would
18 be computed for the individual’s initial computation month
19 under paragraph (1) of this subsection without regard to
20 paragraph (7) exceeds the amount of such primary insur-
21 ance amount computed or recomputed for such month
22 under paragraph (7) is less than \$150, the amount deter-
23 mined under this paragraph shall equal the amount of
24 such excess.

1 “(ii) For purposes of this subparagraph, the term
2 ‘initial computation month’ means, with respect to an indi-
3 vidual, the later of—

4 “(I) the 1st month beginning at least 270 days
5 after the date of the enactment of the Public Serv-
6 ants Protection and Fairness Act; or

7 “(II) the 1st month for which the individual’s
8 primary insurance amount is computed or recom-
9 puted under paragraph (7).

10 “(D) In any case in which this title provides that no
11 monthly benefit under section 202 or 223 shall be paid
12 to an individual for a month, no additional monthly pay-
13 ment shall be paid to the individual for such month. This
14 subparagraph shall not apply in the case of an individual
15 whose monthly benefit under section 202 or 223 is re-
16 duced, regardless of the amount of the reduction, based
17 on—

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

20 “(ii) the adjustment or recovery of an overpay-
21 ment under section 204.

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

1 “(F) Whenever benefit amounts under this title are
2 increased by any percentage effective with any month as
3 a result of a determination made under subsection (i),
4 each additional monthly payment amount payable to an
5 eligible individual under this paragraph shall be increased
6 by the same percentage for months beginning with such
7 month.

8 “(G) The amount of any additional monthly payment
9 under this paragraph shall be disregarded for purposes of
10 determining the eligibility or benefit amount of an indi-
11 vidual for supplemental security income benefits payable
12 under title XVI of the Social Security Act, but only if such
13 individual—

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

19 “(ii) is an individual described in section
20 1619(b) for such month; or

21 “(iii) is eligible for a State supplementary pay-
22 ment for such month of the type referred to in sec-
23 tion 1616(a) (or payments of the type described in
24 section 212(a) of Public Law 93–66) which are paid
25 by the Commissioner under an agreement referred to

1 in section 1616(a) (or section 212(a) of Public Law
2 93–66).”.

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

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

9 (a) **IN GENERAL.**—Section 1143(a) of the Social Se-
10 curity Act (42 U.S.C. 1320b–13(a)) is amended—

11 (1) in paragraph (2)—

12 (A) by redesignating subparagraphs (B)
13 through (E) as subparagraphs (C) through (F);

14 (B) by inserting after subparagraph (A)
15 the following:

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

24 (C) in subparagraph (E) (as redesignated
25 by subparagraph (A)), by inserting “(in the

1 case of an eligible individual described in para-
2 graph (3)(C)(ii), calculated using a primary in-
3 surance amount estimated pursuant to para-
4 graph (8) of section 215(a) and including a no-
5 tation indicating the use of such method of cal-
6 culation)” after “account”.

7 (2) in paragraph (3)(C)(ii)—

8 (A) by striking “wages or self-employment
9 income” and inserting “wages, self-employment
10 income, and earnings derived from noncovered
11 service (within the meaning of section
12 215(a)(7))”; and

13 (B) by striking “of noncovered employ-
14 ment” and inserting “that the individual’s pri-
15 mary insurance amount will be computed under
16 paragraph (7) or (8) of section 215(a)”.

17 (b) CONFORMING AMENDMENTS.—Section 1143 of
18 the Social Security Act (42 U.S.C. 1320b–13) is amend-
19 ed—

20 (1) in subsection (a)(2)(F) (as redesignated by
21 subsection (a)(1)(A) of this section), by striking
22 “sections 202(k)(5) and 215(a)(7)” and all that fol-
23 lows through “auxiliary benefits” and inserting “sec-
24 tions 202(k)(5), 215(a)(7), and 215(a)(8)”; and

25 (2) in subsection (d)(1)—

1 (A) by striking “maximum”; and

2 (B) by striking “section 215(a)(7)” and in-
3 serting “sections 215(a)(7) and 215(a)(8)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to Social Security ac-
6 count statements issued on or after January 1, 2022.

7 **SEC. 5. STUDY ON AVAILABILITY OF INFORMATION RELAT-**
8 **ING TO RETIREMENT PLANS.**

9 (a) IN GENERAL.—The Comptroller General shall
10 conduct a study to determine the extent to which State
11 and local governments (or their designees) that maintain
12 retirement plans for their employees possess or otherwise
13 have access to information sufficient to determine what
14 amount of a participant’s benefits under such plan are
15 based on noncovered service (within the meaning of section
16 215(a)(7) of the Social Security Act (42 U.S.C.
17 415(a)(7))).

18 (b) REPORT.—Not later than 2 years after the date
19 of the enactment of this Act, the Comptroller General shall
20 submit a report to the Committee on Ways and Means
21 of the House of Representatives and the Committee on
22 Finance of the Senate on the results of the study described
23 in subsection (a).

1 **SEC. 6. HOLD HARMLESS FOR THE SOCIAL SECURITY**
2 **TRUST FUNDS.**

3 There are appropriated, out of any moneys in the
4 Treasury not otherwise appropriated, to each of the Fed-
5 eral Old-Age and Survivors Insurance Trust Fund and the
6 Federal Disability Insurance Trust Fund for each fiscal
7 year such amounts as the chief actuary of the Social Secu-
8 rity Administration shall certify are necessary to place
9 each such Trust Fund in the same position at the end
10 of such fiscal year as it would have been in if the amend-
11 ments made by this Act had not been enacted.

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