Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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"Why is my Social Security Reduced?" The Windfall Elimination Provision: Q & A

Members of the General Assembly periodically receive questions from retired citizens who have been told their Social Security benefits are being reduced because they receive an Ohio public employees' pension. The reduction is the result of a federal Social Security law known as the Windfall Elimination Provision.

Contents

1. What is the Windfall Elimination Provision?

The Windfall Elimination Provision (WEP) is a federal law that reduces the Social Security benefit of a worker who also receives a pension for government service that was not subject to Social Security taxes.[1] Under the WEP, a modified benefit formula is used to determine the Social

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[1] 42 United States Code (U.S.C.) 415(a)(7). The Social Security system uses "credits" to determine eligibility for retirement benefits, requiring a minimum of 40 credits to receive benefits. A worker earns credits based on yearly earnings.

Security benefit amount. The effect on a particular worker depends on a number of factors, including lifetime earnings and years of Social Security-covered employment.[2]

2. What is the purpose of the WEP?

According to the U.S. Social Security Administration (SSA), the WEP was enacted in 1983 to prevent government employees from receiving artificially inflated Social Security benefits. Social Security benefits are calculated based on a worker's lifetime earnings for which Social Security taxes were paid. The benefits are proportionately higher for workers with lower lifetime earnings. Since earnings for which no Social Security taxes were paid are not included in the calculation, a worker with substantial government service not subject to Social Security and some employment subject to Social Security appears, for benefit calculation purposes, to be a lower earnings worker eligible for the proportionately higher Social Security benefit.[3]

3. Do Ohio government employees participate in Social Security?

No. The Social Security Act did not cover state and local government employees when it was enacted in 1935. Congress amended the Act in 1950 to allow each state to elect coverage for its public employees. Ohio's 1962 agreement with the federal government exempts members of the state's retirement systems from contributing to Social Security for service covered by a state retirement system.[4] Most or all government employees in seven states – Ohio, Alaska, Colorado, Louisiana, Maine, Massachusetts, and Nevada – do not participate in Social Security for their government service.[5]

4. Can the General Assembly modify or repeal the WEP?

No. Since the WEP is a federal law the General Assembly is unable to modify or repeal it. Bills to repeal the WEP were introduced in Congress in 2021 as H.R. 82 and S. 1302.

5. Can Ohio extend Social Security coverage to public employees?

It is possible, but unlikely. The process is extremely difficult and cannot be done on an individual basis. Extending coverage also would be expensive, requiring employees and employers to pay Social Security taxes in addition to retirement system contributions. Furthermore, many employees who already have government service for which they did not contribute to Social Security might still be subject to the WEP. Therefore, it could take decades for the WEP's effects to phase out.[6]

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[2] Social Security Administration, "Windfall Elimination Provision," Pub. No. 05-10045, January 2021, available here.

[3] "Windfall Elimination Provision" and Social Security Amendments of 1983 (Public Law 98-21).

[4] 42 U.S.C. 418 and Internal Revenue Service, "Social Security and Government Employers," Federal-State Reference Guide, Publication 963, July 2020, available here.

[5] National Association of State Retirement Administrators, "Social Security Coverage," available here.

[6] 42 U.S.C. 418 and "Social Security and Medicare Coverage," Federal-State Reference Guide.

6. How does a government employee learn about the WEP?

Federal law requires a state or local government employer to notify a new worker who begins employment on or after January 1, 2005, that the employment is not covered by Social Security and that a pension the worker eventually receives for the employment may reduce any Social Security benefit to which the worker is entitled based on other employment. The worker must sign a statement acknowledging receipt of the notice before the worker may begin work. The employer must provide a copy of the signed statement to the worker's state retirement system.[7]

A worker who has questions about the worker's Social Security benefit and the WEP can call the SSA at 1-800-772-1213 to receive automated services 24 hours a day, seven days a week. Social Security information, including information about the WEP, is also available online at www.socialsecurity.gov.

7. How is a worker's Social Security benefit determined?

The Social Security benefit formula is designed to replace a greater percentage of a lower paid worker's preretirement earnings than that of a higher paid worker. This is accomplished through a two-step process. First, the SSA calculates the worker's average monthly earnings, adjusted for average wage growth. Second, the worker's average monthly earnings are divided into three earnings groups, and each earnings group is multiplied by a different percentage (the first earnings group is multiplied by 90%, the second by 32%, and the third by 15%).[8] The monthly benefit for a worker who turns 62 in 2021 is determined as follows:

(first $996.00 of earnings x 90%) +
(next $5,006.00 of earnings x 32%) +
(earnings over $6,002.00 x 15%).[9]

As a result, workers with lower lifetime earnings receive a higher percentage of their former monthly income because the formula weighs the lower earnings group most heavily. Table 1 illustrates the Social Security benefits that a lower paid worker (Worker A) and a higher paid worker (Worker B) might receive each month.[10]

[7] 42 U.S.C. 1320b-13(d) and Social Security Administration, "Statement Concerning Your Employment in a Job Not Covered by Social Security," Form SSA-1945, January 2013, available here.

[8] 42 U.S.C. 415(a).

[9] $6,002.00 - $996.00 = $5,006.00. These amounts annually are adjusted upward for inflation. (42 U.S.C. 415(a)(1) and Social Security Administration, Benefit Formula Bend Points, available here.)

[10] "Windfall Elimination Provision." The calculations are rounded down to the nearest 10¢ (42 U.S.C. 415(a)(1)).

Table 1. Comparison of Social Security Benefits for a Lower Paid and Higher Paid Worker		
	Worker A	**Worker B**
Average monthly earnings	$3,000.00	$8,000.00
First earnings group	$896.40 ($996.00 x 90%)	$896.40 ($996.00 x 90%)
Second earnings group	$641.20 ($2,004.00 x 32%)	$1,601.90 ($5,006.00 x 32%)
Third earnings group	$0 ($0 x 15%)	$299.70 ($1,998.00 x 15%)
Total benefit	$1,537.60	$2,798.00
Percentage of preretirement earnings	51.2%	34.9%

8. How is the WEP reduction determined?

Under the WEP, a modified benefit formula multiplies the first earnings group (the first $996.00 of average monthly earnings) by a reduced percentage based on the worker's years of Social Security participation. The other earnings groups are not reduced. Table 2 lists the percentages used in the WEP-modified formula.[11]

Table 2. WEP – Modified Benefit Formula											
Years of Social Security Participation	30 or more	29	28	27	26	25	24	23	22	21	20 or fewer
Percentage Multiplier on First Earnings Group	90%	85%	80%	75%	70%	65%	60%	55%	50%	45%	40%

9. Can the WEP eliminate a worker's Social Security benefit?

No. The amount that the WEP can reduce a worker's monthly Social Security benefit is limited based on the year the worker reaches age 62 and the worker's years of Social Security participation. The SSA has a chart that shows the maximum reduction amount based on years of service. For 2021, the maximum possible reduction is $498.00 per month, or the difference between the unreduced percentage on the first earnings group ($996.00 x 90%) and the reduced percentage for a worker with 20 or fewer years of Social Security participation ($996.00 x 40%).[12]

[11] 42 U.S.C. 415(a)(7) and "Windfall Elimination Provision."

[12] ($996.00 x 90% = $896.40) - ($996.00 x 40% = $398.40) = $498.00 (Social Security Administration, WEP Chart, available here).

However, that maximum is subject to the WEP guarantee, under which the WEP reduction cannot exceed 50% of the pension earned from non-Social Security employment.[13]

The examples in Table 3 compare the WEP's effect on two workers with different lengths of Social Security participation. Worker A contributed to Social Security for 15 years and Worker B contributed for 25 years. Both turn 62 in 2021 and have average monthly earnings of $1,500.00 under Social Security. Each has a government pension of $1,700.00 a month. The WEP guarantee limiting the reduction to 50% of the government pension does not affect Workers A and B because 50% of each workers' government pension is $850.00, which is more than the $498.00 maximum possible WEP reduction in 2021. The Social Security benefit calculation is shown in the following table.

Table 3. WEP Effect on Workers with Varying Social Security Participation

	Worker A	Worker B
Years of Social Security coverage	15	25
Monthly SS benefit if not subject to WEP	$1,057.60[14]	$1,057.60
First percentage multiplier under WEP	40%	65%
Reduction under WEP-modified formula	$498.00	$249.00
Monthly SS benefit under WEP-modified formula	$559.60[15]	$808.60[16]

In the next example, Workers C and D have the same years of Social Security participation and earnings under Social Security, but have different government pensions. Both workers turn 62 in 2021 and have 15 years of Social Security participation and average monthly earnings under Social Security of $2,000.00. Worker C has an $800.00 monthly government pension and Worker D has a $2,000.00 monthly government pension. Table 4 shows how the WEP guarantee limits the amount of the reduction for Worker C but not for Worker D.

Table 4. Effect of WEP Guarantee

	Worker C	Worker D
Years of Social Security coverage	15	15

[13] "Windfall Elimination Provision."

[14] ($996.00 x 90% = $896.40) + ($504.00 x 32% = $161.20) = $1,057.60.

[15] ($996.00 x 40% = $398.40) + ($504.00 x 32% = $161.20) = $559.60.

[16] ($996.00 x 65% = $647.40) + ($504.00 x 32% = $161.20) = $808.60.

Table 4. Effect of WEP Guarantee		
	Worker C	Worker D
Monthly SS benefit if not subject to WEP	$1,217.60[17]	$1,217.60
First percentage multiplier under WEP	40%	40%
Reduction under WEP-modified formula	$498.00	$498.00
Monthly SS benefit under WEP-modified formula	$719.60[18]	$719.60
Monthly government pension	$800.00	$2,000.00
WEP maximum reduction	$498.00	$498.00
WEP guarantee (½ government pension)	$400.00	$1,000.00
Actual WEP reduction	$400.00	$498.00
Actual Social Security benefit	$817.60	$719.60

10. Is the WEP applied to a worker's early or delayed retirement?

Yes. Apart from the WEP reduction, a worker's Social Security benefit may be reduced further if the worker draws the benefit before reaching full retirement age (ages 66 to 67, depending on birth year), or increased if the worker delays drawing the benefit.[19] SSA applies the WEP reduction to a worker's benefit *before* further adjusting for early or late retirement.[20] The full retirement age is 66 years and ten months for a worker who turns 62 in 2021. Table 5 compares this worker's potential Social Security benefit at age 62, at full retirement age, and at age 70 if the worker has $3,000.00 average monthly earnings and 25 years of Social Security participation.

[17] ($996.00 x 90% = $896.40) + ($1,004.00 x 32% = $321.20) = $1,217.60.

[18] ($996.00 x 40% = $398.40) + ($1,004.00 x 32% = $321.20) = $719.60.

[19] Social Security Administration, "Full Retirement Age," Retirement Benefits, Pub. No. 05-10035, January 2021, available here.

[20] Social Security Administration, "WEP Examples," Retirement Benefits, available here.

Table 5. Social Security Benefit Affected by WEP and Early or Delayed Retirement			
	Benefit Begins at Age 62[21]	Benefit Begins at Full Retirement Age (66 Years and 10 Months)	Benefit Begins at Age 70[22]
Benefit without WEP reduction or adjustment for early or late retirement	$1,537.60	$1,537.60	$1,537.60
Benefit with WEP reduction	$1,288.60	$1,288.60	$1,288.60
Percentage adjustment for early or late retirement	-29.17%	0%	+25.3%
Adjustment for early or late retirement	-$375.80	$0	+$326.00
Social Security benefit after WEP reduction and adjustment for early or late retirement	$912.80	$1,288.60	$1,614.60
Total of WEP reduction and adjustment for early or late retirement	-$624.80	$249.00	+$77.00
Percentage of total change	-40.6%	-16.2%	+5.0%

11. Can a government employee avoid the WEP reduction?

No. In Ohio, with a few exceptions, government employees must participate in a retirement system. If a worker ceases to be a government employee due to separation from employment, the worker may apply for a refund of the worker's retirement system contributions. The refund makes the worker ineligible for a state retirement system pension. However, the WEP does not apply if the worker receives the refund *before* becoming eligible for retirement under the state retirement system. It applies if the worker receives the refund *after* having attained retirement eligibility, even though the refund makes the worker ineligible for a pension. The SSA considers a worker eligible for a state retirement system pension "the first month he or she meets all requirements for payment except stopping work and applying for the payment."[23]

[21] Social Security Administration, "Starting Your Retirement Benefits Early," Retirement Benefits, available here.

[22] Social Security Administration, "Increase for Delayed Retirement," Retirement Benefits, available here.

[23] Social Security Administration, "RS 00605.364: Determining Pension Applicability, Eligibility Date, and Monthly Amount," Program Operations Manual System, effective November 12, 2020, available here.