Who Will Be Affected by the Windfall Elimination Provision and/or Government Pension Offset: **An Explainer**

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ABOUT EQUABLE INSTITUTE

Equable Institute is a bipartisan nonprofit that works with public retirement system stakeholders to solve complex pension funding challenges with data-driven solutions.

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1. Introduction: Ways Your Social Security Might be Reduced

> *When Miriam first stepped foot into her Dallas classroom, she knew she'd made the right choice to leave finance and spend the rest of her career as a teacher. She didn't know that she'd also make the choice to give up thousands of dollars in future Social Security benefits because of something called the Windfall Elimination Provision.*
>
> *That's because while she'd spent more than a decade working in the private sector and contributing to Social Security though each of her paychecks, Dallas Independent School District does not enroll its employees in the federal retirement program.*
>
> *When Miriam took her last step out of the classroom into retirement she had earned a pension from the Texas Teachers Retirement System worth around $4,000 a month. But that pension meant she was not going to get all of the Social Security benefits she'd earned. Based on her years working in finance she would've been due a bit over $1,800 a month from the federal program, but the Windfall Elimination Provision dropped this to just $1,300 — a $512 a month loss that was nearly 10% of her retirement income.*

Public employees face several questions as they near retirement. In addition to questions about employer-provided benefits, like a pension, they may wonder about whether they qualify for Social Security and other benefits provided by the federal government.

Some state and municipal governments enroll their employees in Social Security, but others do not. In some cases, a public employee might discover that the federal government is reducing their Social Security benefits because they qualify for a pension from their government employer. But why that reduction exists and how it is calculated are often confusing.

This paper discusses the two federal rules that can affect Social Security benefits for public employees with careers in "non-covered employment"—i.e., careers for agencies that did not participate in Social Security.

- The first rule, the Windfall Elimination Provision or "WEP," affects employees who had both (a) non Social Security covered employment, and (b) work elsewhere for an employer that participated in Social Security.
- The second rule, the Government Pension Offset or "GPO," affects Social Security benefits paid to ex-spouses and widow(er)s who qualify for a pension from non-covered employment.

Although both provisions can affect some federal workers, this paper focuses only on state and local government employees. There are also other federal programs like disability benefits that could be affected by the WEP and GPO provisions, but this paper is only focused on retirement income benefits.

2. Who Does the Windfall Elimination Provision Affect?

The WEP affects workers who meet both of the following criteria.

The first criterion is having a "pension" without Social Security. Under this criterion, a person must work long enough for a government employer that does not enroll all of its employees in Social Security to earn a retirement benefit provided by that employer. Usually, this retirement benefit will be a defined benefit pension plan, but it can also be a defined contribution plan that is intended to be a primary source of retirement income.

The Reason Why: If a public worker's employer does not participate in Social Security, that means there are no taxes paid into the federal retirement program during their employment. Because the person does not pay the Social Security tax on their earnings from that employer, they do not earn Social Security benefits related to their time working in that position. Formally, the person's time at that employer is called "non-covered employment," and their wages are referred to as "non-covered earnings."

The second criterion is having separate Social Security "covered earnings." Under this criterion, a person must work long enough for a different employer or group of employers that *do* participate and enroll all their employees in Social Security. This could be before and/or after time spent working for a government employer that does not participate in Social Security.

The Reason Why: Because the Social Security tax applies to earnings, workers receive credit toward Social Security benefits each time they get a paycheck that has Social Security taxes withheld.[1] The person's time with these employers is called covered employment, and their wages there are referred to as covered earnings.

Special Note: "Pension" Can Mean Multiple Things

The Social Security Administration (SSA) defines a "pension" as any primary retirement plan where the employer and worker contribute. This means the term "pension" is a reference to the retirement income that someone receives from an employer-sponsored plan. That income could come from a defined benefit plan, defined contribution plan, hybrid plan, or any other employer-sponsored primary retirement plan. Throughout this paper, any reference to a "pension" is based on this SSA definition.

[1] Technically, the formal rule for earning Social Security credits is based on three-month cycles of work. Every three months of work an individual earns a "quarter" toward Social Security eligibility. In most cases, a person needs to earn 40 quarters, which adds up to 10 years of work, in order to meet the minimum standard for receiving Social Security benefits. These quarters, or years, do not have to be consecutive.

3. Who Is Most Likely to Have Their Social Security Benefits Reduced by the Windfall Elimination Provision?

The largest group affected by the WEP is state and local government employees who earn pensions from agencies that do not participate in Social Security (meeting the "pension" criterion), but that separately worked for more than 10 years at jobs with employers who did participate (meeting the "covered earnings" criterion).

STATE AND LOCAL WORKERS

There are a few million public employees who might be affected by the WEP. This group of individuals includes a range of public sector jobs, from teachers, to librarians, to police officers and firefighters. They are concentrated in just a few states, though, because most state and local governments do participate in Social Security. (See infographics on page 8 for which state and local governments do and do not participate in Social Security.)

A subset of individuals who are likely most negatively affected are those who just barely vest in their government employer-sponsored pension plan and have the minimum number of covered earnings credits to qualify for Social Security.

For example, imagine a person who (a) worked a small number of years prior to joining public service at a young age, then (b) worked a decade or less in public service (perhaps as a teacher) and qualify for a small pension, but then (c) left the workforce to take care of a family (perhaps to raise children or care for a relative). Such an individual might work just long enough over their lives to meet the covered earnings criteria, but the meager Social Security benefits they'd accrue would then be sharply reduced by the WEP because of the small pension benefit they'd have earned.

RULES FOR BENEFICIARIES AND SURVIVORS

The WEP applies to workers described above and the benefits for their eligible dependents. However, the WEP does not affect:

- Social Security spousal or widow(er) benefits.
- The Social Security benefits earned by a spouse from their own Social Security covered earnings.

This means that while the WEP might reduce a worker's Social Security benefits during their lifetime, should that person die and pass on federal survivor benefits then those survivor benefits would be calculated as if the WEP didn't exist.[2] However, a separate rule, called the Government Pension Offset may apply to survivor benefits instead. (See the next section.)

[2] See Social Security Administration, "Publication No. 05-10045," January 2022.

EXCEPTIONS TO THE WEP

The WEP does not apply to most workers, and there are several exceptions that allow individuals to avoid having their Social Security benefits reduced.

- The WEP does not apply to those with at least 30 years of covered earnings above a threshold the Social Security Administration deems "substantial" (see "How Does the WEP Work" for details on how "substantial" is defined). This means no matter how large your pension benefit is, if you have 30 or more years of Social Security covered earnings the WEP will not reduce your federal benefits.
- The WEP does not apply to individuals who were enrolled by their government employer in Social Security while also earning a pension benefit.
- The WEP does not affect federal employees hired after December 31, 1983, or workers whose sole pension is from railroad employment.

4. Who Does the Government Pension Offset Affect?

Like the WEP, the GPO reduces Social Security benefits, but only benefits that would be passed on to surviving widow(er)s or ex-spouses who qualify for a pension from their own non-covered employment. Specifically, the GPO applies to individuals who both:

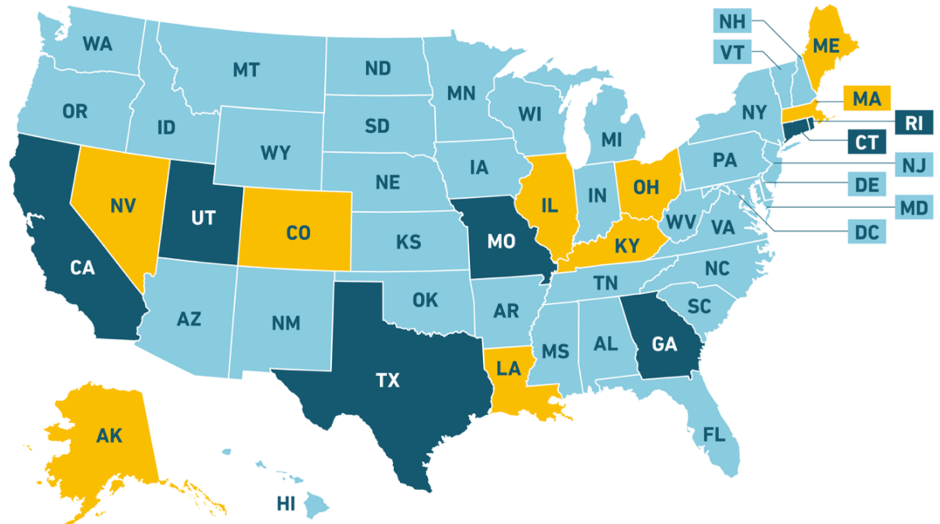
- Qualify for a pension from their own non-covered employment, and
- Quality for a Social Security survivor benefit via a former spouse.

The GPO does not affect survivors' Social Security benefits based on their own covered earnings.

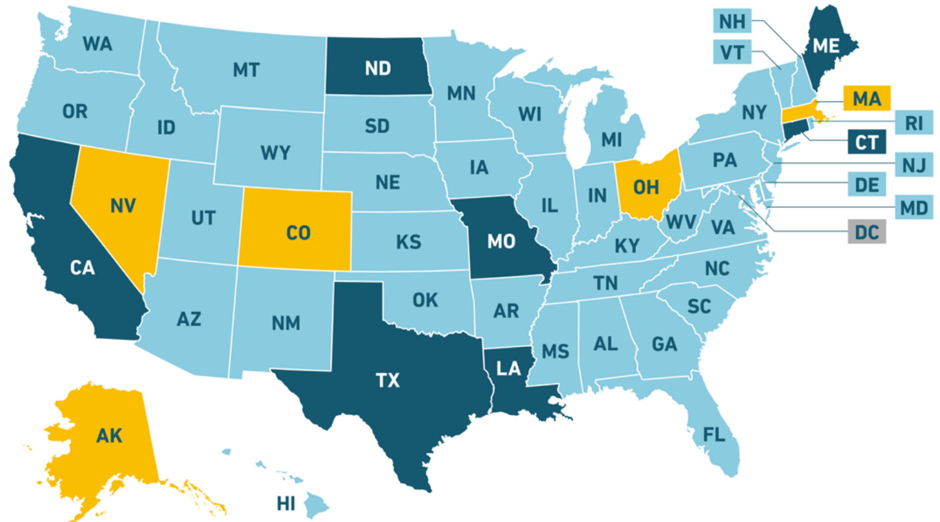
There are also caveats to the GPO. The GPO does not apply to workers who retired before July 1, 2004; those who were covered by Social Security for the last five years of their employment; or those who earned a pension from military reserve service.

SOCIAL SECURITY COVERAGE MAPS

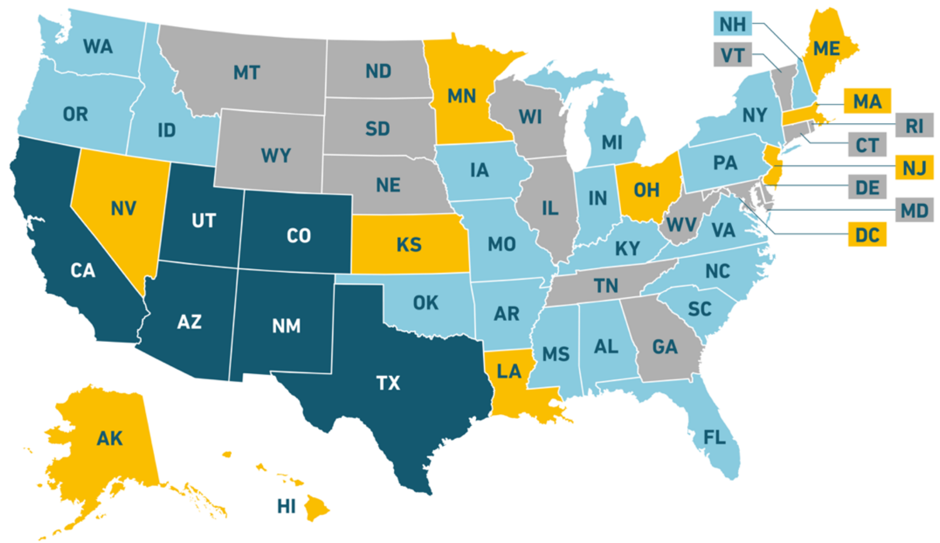
TEACHERS AND PUBLIC SCHOOL EMPLOYEES



CIVILIAN STATE AND LOCAL WORKERS



POLICE OFFICERS AND FIREFIGHTERS



YES NO MIXED N/A*

*N/A indicates there is no plan specific to this profession offered in the state.

5. How Does the WEP Work?

The WEP reduces but does not eliminate some worker's Social Security benefits. As of 2022, the maximum amount that a person might see their Social Security benefits reduced by because of the WEP is $512 per month.

SOCIAL SECURITY BENEFIT RULES

Calculating the size of the WEP reduction for any specific person requires an understanding of how the government calculates a worker's monthly Social Security retirement benefit. Generally speaking, Social Security benefits were designed to provide retirement income that replaces some, but not all, of a person's earnings from their working years.

By design, the Social Security Administration's formula is progressive: it replaces a higher share of earnings for low-income workers and a lower share of earnings for high-income workers. Social Security applies a formula to a worker's average monthly "covered earnings." This formula separates those covered earnings into three groups: a minimum level, a middle level, and a high-end level.[3] (These groups change annually based on growth in the cost of living.) The objective of this formula is to replace a different percentage of the workers average earnings from each of the three groups.

The standard formula for most workers is:

2022 MONTHLY SOCIAL SECURITY RETIREMENT BENEFIT FORMULA

Replacement Rates →	90% of earnings below	+	32% of earnings between	+	15% of earnings above
Earnings Groups →	$1,024		$1,024 and $6,172		$6,172

It relatively easy to apply this formula. For a hypothetical worker with average monthly covered earnings of $3,000, the monthly benefit is:[4]

- 90% of the first $1,024 in earnings, which is $921.60, plus
- 32% of the remaining $1,976 in earnings, which is $632.32

That totals a $1,553.92 monthly Social Security benefit.

The worker's actual benefit would be lower if they retired before the normal retirement age (based on their birth year), and the benefit would be higher if they delayed retirement past the age that they can technically start claiming benefits.

[3] Formally, the three earnings groups are separated by what Social Security calls "bend points."
[4] Note: these earnings levels are determined on a pre-tax basis.

WEP BENEFIT RULES

The WEP modifies the Social Security benefit formula for workers who meet the pension and covered earnings criteria. It reduces the initial 90% replacement rate for the first "earnings group," (i.e., the minimum level of earnings, which in 2022 is up to $1,024). The reduction amount ranges depending on the years an individual has worked, changing the replacement rate factor in that first earnings group to as much as 85% or as little as 40%.

Specifically, the exact replacement rate for the minimum level of earnings under the WEP depends on how many years of "substantial earnings" the worker received from covered employment. The more years the worker has accumulated while in covered employment with wages above that substantial earnings threshold, the less the replacement rate will be reduced.

If a worker has 30 or more years, there is no reduction, and the standard Social Security benefit formula applies. For other workers, there is a sliding scale, shown in Table 1.

TABLE 1: HOW MUCH THE WEP WILL REDUCE THE FIRST BENEFIT FACTOR DEPENDS ON HOW MANY YEARS A WORKER SPENT CONTRIBUTING TO SOCIAL SECURITY

Number of Years of Substantial Earnings	Replacement Rate Percentage Used for First Benefit Factor
30 or more	90%
29	85%
28	80%
27	75%
26	70%
25	65%
24	60%
23	55%
22	50%
21	45%
20 or fewer	40%

Note: The amount of covered earnings that is deemed "substantial" varies by year but is generally a small amount relative to what most might consider to be substantial.. For example, in 2022 the "substantial" earnings threshold is $27,300,. See Appendix 1.

The formula for workers affected by the WEP is:

MONTHLY SOCIAL SECURITY RETIREMENT BENEFIT FORMULA UNDER WEP

40% to 85%		32%		15%
of earnings below $1,024	+	of earnings between $1,024 and $6,172	+	of earnings above $6,172

Again, the specific replacement rate number included in the first earnings group ranges between 40% and 85% and is dependent on how many years a work has earned substantial earnings (see Table 1).

The reason that Congress has taken this approach to adjusting benefits is based on the idea that the more a worker has contributed into Social Security through their tax contributions and the more time they have spent in a job with a participating employer, the less those benefits should be reduced.

WEP BENEFIT REDUCTION EXAMPLES

To understand how the WEP alters Social Security benefits, consider a hypothetical public school teacher.

Example 1: A teacher earned a pension from a school district that did not participate in Social Security. Thus, she meets the pension criteria. This teacher also worked in the private sector for twelve years, with some years before and after her teaching career. The average monthly "covered earnings" from her private sector work is $2,000. Thus, the teacher qualifies for Social Security and meets the covered earnings criteria. The WEP applies to her Social Security benefits.

Example 2: A worker starts her career teaching at a school district that did not participate in Social Security but leaves the classroom after four years, before vesting in any pension benefit. Thus, she does not meet the first criteria and the WEP will not apply. She spends the rest of her career in the private sector (not necessarily always related to the education field) and the average monthly "covered earnings" from that work is $2,000.

TABLE 2: COMPARING SOCIAL SECURITY BENEFITS MODIFIED OR NOT BY THE WEP

Example 1: Teacher with Pension & WEP	Example 2: Worker without Pension or WEP
• 40% of the first $1,024 earnings = $409.60, plus • 32% of the remaining $976 average lifetime earnings = $312.32 • Social Security total = $721.92 / month • + Value of the pension benefit earned	• 90% of the first $1,024 earnings = $921.60, plus • 32% of the remaining $976 average lifetime earnings = $312.32 • Social Security total = $1,233.92 / month • + No pension benefit earned

The worker in Example 2 has $512 more per month than the teacher, even though they had the same average monthly covered earnings.

- The argument for this WEP policy is that the teacher will also have their pension benefit, so they don't need as much from the Social Security program. The worker will also have spent more years contributing money into Social Security than the teacher.

- The argument against the WEP policy is that the teacher paid into Social Security and earned their benefit. The pension benefit may or may not be large enough to cover the $512 per month reduction in Social Security checks.

As a practical matter, a teacher who spends their full career in education and earns a pension with 30 years or more of service, will almost certainly have a larger pension benefit than $512.[5] But the Social Security WEP formula does not take into account the actual amount that a pension benefit provides, so the specifics on whether the WEP's logic are unreasonable will vary from person to person.

[5] A typical pension benefit has a 2% multiplier. If a teacher had a final average salary of $65,000 after 30 years of service, they'd earn a $39,000 a year benefit, or $3,250 a month.

6. How Does the GPO Work?

Like the WEP, the Government Pension Offset reduces Social Security benefits. However, unlike the WEP, the GPO only changes Social Security "survivor benefits" that a widow(er) or ex-spouse qualifies for. Specifically, if an individual is receiving a pension earned from their days working in non-covered employment — i.e., if they meet both criteria — then the GPO will change survivor benefits.

How much is the reduction because of the GPO? The rule is straightforward:

- Any Social Security *survivor benefits* that would be paid to a widow(er) or ex-spouse will be reduced by two-thirds of the value of the widow(er) or ex-spouse's own pension benefit (if that pension was earned while in non-covered employment).

For example, consider a former public school teacher whose husband recently died. He was receiving Social Security benefits, and she is entitled to a portion of these payments as survivor benefits. If this were a normal circumstance, then the value of those survivor benefits would be $2,000 a month. However, this retired teacher worked in a school district that did not participate in Social Security, and she is receiving a monthly pension for her time teaching that is worth $2,700 a month.

Here is how the GPO would change her survivor benefits: Because the teacher earned a pension from non-covered employment, she cannot collect a full widower benefit from Social Security. In her case, the GPO reduces the widower benefit by two-thirds of $2,700, which is $1,800. The widow would therefore receive a Social Security survivor benefit of $200 a month (which is $2,000 minus $1,800).

Unlike the WEP, the GPO has no limit to the reduction. The GPO can eliminate the spousal or widow(er) Social Security survivor benefit outright.

7. Does the Federal Government Consider a Defined Contribution Plan a Pension?

The Social Security Administration's definition of a "pension" benefit is a broad term that is focused more on the retirement income being received than the technical benefit design provisions. That means the WEP could affect more people than just those public employees enrolled in traditional defined benefit plans.

In 25 states plus the District of Columbia there are public employees who are automatically enrolled in or have the option to join a primary defined contribution plan, guaranteed return plan, or a hybrid retirement plan. Workers enrolled in any of these may be subject to the WEP if their employer does not participate in Social Security.

The government classifies any primary retirement plan as a "pension" for WEP purposes if:

- The retirement plan receives contributions from both the employer and the employee, or
- The retirement plan is considered the employer's primary retirement plan, whether or not the only contributions into the plan are from the employee or employer alone.

If an employee is enrolled in a supplemental defined contribution plan to which the employer does not contribute, such as a 457 deferred compensation plan, it is not considered a pension.

Importantly, neither the WEP nor GPO applies until the employee withdrawals money from the plan. The amount used to calculate the maximum WEP is pro-rated based on the employee's age and the date of the withdrawal.[6]

[6] Social Security counts any primary defined contribution plan or primary cash balance plan as a "pension" for the purposes of the WEP and GPO. The monthly income that they use to calculate any reduction under the GPO is complicated, but, in effect, translates the lump sum balance of the individual account (whether defined contribution or cash balance) and uses an actuarial table (considering retirement age) to determine an equivalent monthly annuitized rate. The specific form that you take distributions does not matter, though a lump sum withdrawal (a taxable event) to reduce the overall balance may influence the GPO reduction amount. See Social Security Administration, "RS 00605.364 Determining Pension Applicability, Eligibility Date, and Monthly Amount," Effective Date November 12, 2020.

8. What Options Are There to Change the Status Quo?

Many critics of the WEP point out that it is regressive, meaning that it harms more low-income workers than high-income workers.[7] That's partly because higher-income workers are more likely to have more years of earnings that exceed the substantial earnings threshold, and that, in turn, makes it easier to avoid the WEP. It's also because the reduced replacement rates imposed by the WEP only apply to the minimum level of average covered earnings (formally known as earnings below the first bend point).

Policymakers could address that by raising the substantial earnings thresholds for future workers (since retroactive changes would create administrative difficulties). They could also adjust the WEP formula to keep the 90% replacement rate for lower incomes and apply a lower replacement rate for middle and higher incomes. That change would reduce the burden on lower-income workers, and would be consistent with the Social Security formula's progressive intent.

Perhaps the most straightforward reform is an outright elimination of the WEP, GPO, or both. Congress has the power to do so, and in recent years, policymakers have proposed multiple bills that would repeal or substantially alter both provisions. But none were enacted.

Cost is one factor working against repeal. According to the Congressional Research Service, the Social Security Administration estimated in 2007 that repealing the GPO alone would cost just over $4 billion per year.[8] As an alternative to eliminating the provisions, Congress could instead institute a rule that applies only one or the other to qualifying workers, but not both.

Expanding covered employment is another straightforward reform. If states and/or public agencies that do not currently participate in Social Security joined the federal retirement system, the WEP and GPO would affect fewer public employees. It would also expand the reach of Social Security benefits and create a safety net for more people. On the flip side, expansion would subject newly-covered employees to the Social Security tax, which would reduce their take-home pay. It would also increase labor costs for public agencies because they would also have to pay the employer share of Social Security taxes.

[7] See the academic analyses from Lipman & Smith (2012) and Brown & Weisbenner (2012).
[8] See Li Zhe, "Social Security: The Government Pension Offset," Congressional Research Service, 2021.

Appendices

Appendix I: How Did We Get Here?

Both the GPO and WEP trace to 1977. That year, Congress implemented the GPO as a way to modernize the Social Security system for a changing society. When the program was created in 1935, most households had one earner, typically a male. Providing benefits to widows following the male's death was viewed as a fair way to provide income security to women who had not worked outside of the home. But as more women entered the workforce, and the number of two-earner households rose, some policymakers felt it was unfair to leave survivor benefits intact. Thus, the GPO reduced the Social Security benefit surviving spouse could receive if they had a pension of their own.

Some members of Congress argued the same year for a comprehensive review of Social Security that would identify ways to improve the system's long-term funding. They noted that society had undergone significant changes since Social Security's creation over 40 years earlier and that piecemeal approaches to keeping it afloat no longer worked. In response, Congress authorized the National Commission on Social Security, a bipartisan group charged with examining the system's finances and making recommendations for reform. Their 1981 report was the first to identify issues with benefits paid to workers with covered and non-covered employment. It explicitly recommended eliminating "benefits arising from periods of non-covered government employment."[9]

Congress did not act on that advice immediately. But it kept reviewing the matter.

A second bipartisan group formed after the report's publication, the National Commission on Social Security Reform, also recommended addressing benefits earned by workers with covered and non-covered employment. In particular, their report noted that the Commission was "concerned about the relatively large ... benefits that can accrue to individuals who spend most of their working careers in non-covered employment from which they derive pension rights, but who also become eligible for ... benefits as a result of relatively short periods in covered employment with other employers."[10] To address the "relatively large" benefits—the "windfall" in what would become the Windfall Elimination Provision—the report urged Congress to alter the formula used to calculate Social Security benefits.

That time, Congress listened. The Social Security reform law signed by President Ronald Reagan in 1983 incorporated a modified benefit formula designed to reduce the windfall paid to workers with covered and non-covered employment. But that new formula received relatively little attention because the law also implemented far more significant changes to Social Security, including payroll tax increases and a higher retirement age.

ADDITIONAL RESOURCES

- Windfall Elimination Provision Calculator
- Government Pension Offset Information and Calculator

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[9] National Commission on Social Security. (1981). Social Security in America's Future: Final Report of the National Commission on Social Security. Washington DC.

[10] National Commission on Social Security Reform. (1983). Report of the National Commission on Social Security Reform. Washington DC.

Appendix II: Substantial Earnings Threshold For Use In Applying the WEP,1972-2022

Year	Threshold	Year	Threshold
1972	$2,250	1996	$11,625
1973	$2,700	1997	$12,150
1974	$3,300	1998	$12,675
1975	$3,525	1999	$13,425
1976	$3,825	2000	$14,175
1977	$4,125	2001	$14,925
1978	$4,425	2002	$15,750
1979	$4,725	2003	$16,125
1980	$5,100	2004	$16,275
1981	$5,550	2005	$16,725
1982	$6,075	2006	$17,475
1983	$6,675	2007	$18,150
1984	$7,050	2008	$18,975
1985	$7,425	2009-2011	$19,800
1986	$7,875	2012	$20,475
1987	$8,175	2013	$21,075
1988	$8,400	2014	$21,750
1989	$8,925	2015-2016	$22,050
1990	$9,525	2017	$23,625
1991	$9,900	2018	$23,850
1992	$10,350	2019	$24,675
1993	$10,725	2020	$25,575
1994	$11,250	2021	$26,550
1995	$11,325	2022	$27,300