

BILL NUMBER: [SJR 1](#) (Cortese) as introduced December 5, 2022

SUMMARY

SJR 1 requests the U.S. President and Congress to enact legislation that would repeal the Government Pension Offset (GPO) and Windfall Elimination Provision (WEP) from the Social Security Act.

BOARD POSITION

Support. The board's policy is to support legislation that seeks to repeal or reform in a prudent manner the Social Security benefit offsets as a means of addressing concerns about their impact on educators. Staff also recommend considering efforts to make appropriate adjustments to the GPO and WEP as a potential alternative to complete repeal, which could be included in more comprehensive Social Security reform legislation.

REASON FOR THE BILL

California educators, having earned pension benefits from employment not covered by Social Security, are often subject to the GPO and WEP of the Social Security Act. The GPO and WEP reduce or eliminate Social Security benefits that California educators may have earned through other employment or are eligible for through their spouses. CalSTRS members represent the largest single group of state and local government employees in the country who do not participate in Social Security.

ANALYSIS

Existing Law:

CalSTRS members are not covered by Social Security for any CalSTRS-covered employment.

Government Pension Offset

Social Security provides benefits to spouses of retired, disabled and deceased workers. Spouses can receive as much as 50% of a retired or disabled worker's benefit and 100% of a deceased worker's benefit. Because spousal benefits are intended to be provided to individuals who are financially dependent on their spouses, the two following provisions reduce spousal benefits of individuals who are *not* financially dependent on a Social Security covered worker:

- Under the *dual entitlement rule*, 100% of a worker's Social Security retirement or disability benefit derived from their own covered employment is subtracted from any spousal benefit they may otherwise receive.
- Under the *Government Pension Offset*, two-thirds of any retirement or disability benefit provided as a result of employment that is not covered by Social Security, such as a CalSTRS benefit, is subtracted from any spousal benefit provided by Social Security.

Windfall Elimination Provision

Social Security retirement benefits are designed to provide a greater proportional benefit to workers with lower average lifetime earnings than to workers with higher average lifetime earnings. For example, a retirement benefit for a Social Security-covered worker turning age 62 in 2022 is determined as follows:

- 90% of the first \$1,024 in average indexed monthly earnings; plus
- 32% of average indexed monthly earnings over \$1,024 through \$6,172; plus
- 15% of average indexed monthly earnings over \$6,172.

Under the Social Security benefit formula, work performed in a position not covered by Social Security is given a zero value when averaging an individual's lifetime earnings. In effect, the formula cannot distinguish between individuals with low or no earnings and individuals with additional non-covered earnings. As a result, without the WEP, the formula produces a higher wage replacement ratio than would have otherwise been received if all employment had been covered by Social Security.

The WEP was intended to address the resulting perceived "windfall" for public employees by reducing the first-tier percentage used to calculate the Social Security benefit from 90% to 40%. The remaining two calculation tiers were not altered.

The reduction under the WEP may be no more than one-half of the non-covered pension to which the individual is entitled. This benefit reduction is less for individuals who have between 21 and 30 years of earnings under Social Security, and there is no offset if the individual has 30 or more years of Social Security-covered earnings.

This Bill:

SJR 1 communicates the California Legislature's direct support of and requests that the U.S. President and Congress enact legislation to repeal the GPO and WEP from the Social Security Act.

Discussion

Since 2001, a bill repealing or reforming the GPO and WEP has been introduced in almost every session of Congress. The bills generally receive widespread bipartisan support in states with public employees that do not participate in Social Security, but none of them have received a vote on the floor. They have been stymied by the direct cost of repeal, which the Social Security Administration estimated in 2022 would increase the long-term cost of the program by 0.12% of payroll, and by the uncertainty surrounding Social Security's overall financial future.

Full repeal of the GPO and WEP presents political and financial risks to schools and CalSTRS members. The offsets were established to address perceived inequities around Social Security benefits for covered employment versus non-covered employment. Full repeal could resurrect these perceived inequities and, with them, the most obvious alternative to mandate Social Security participation for all government employees, including CalSTRS members.

The board has opposed mandatory Social Security participation for CalSTRS members, citing studies that show the move would increase costs or reduce total retirement benefits. Additionally, there are potential costs associated with the overlap of CalSTRS' disability and survivor benefits and comparable Social Security benefits.

Efforts to reform the GPO and WEP are distinct from repeal efforts, focusing on the inequitable application of the offsets rather than seeking outright repeal. A focus on eliminating the inequities of the offsets, rather than full repeal, may result in a successful outcome and lower the likelihood that policymakers pursue mandatory Social Security coverage for all government employees.

LEGISLATIVE HISTORY

H.R. 5834 (Brady-TX, 2021) would have replaced the WEP with a new formula for individuals who become eligible for Social Security benefits in 2023 or later. H.R. 5834 was held in the House Subcommittee on Social Security.

H.R. 2337 (Neal-MA, 2021) would have replaced the WEP with a new formula for individuals who become eligible for Social Security benefits in 2023 or later. H.R. 2337 was held in the House Subcommittee on Social Security.

AJR 9 (Cooper, Resolution Chapter 78, Statutes of 2021) requested Congress pass and the President sign legislation to repeal the GPO and WEP.

H.R. 82 (Davis-IL, 2021)/S. 1302 (Brown-OH, 2021) would have repealed the GPO and WEP. H.R. 82 obtained enough cosponsors to be eligible for the House Consensus Calendar but was ultimately reported out of the House Ways and Means Committee without recommendation; the bill did not receive further consideration on the House Floor. S.1302 was held in the Senate Finance Committee.

SJR 3 (Wilk, Resolution Chapter 129, Statutes of 2019) requested Congress pass and the President sign legislation to repeal the GPO and WEP.

H.R. 141 (Davis-IL, 2019) would have repealed the GPO and WEP. H.R. 141 was held in the House Subcommittee on Social Security.

AJR 41 (Thurmond, Resolution Chapter 41, Statutes of 2018) requested Congress pass and the President sign legislation to repeal the GPO and WEP.

H.R. 1205 (Davis-IL, 2017)/S. 915 (Brown-OH, 2017) would have repealed the GPO and WEP. H.R. 1205 and S. 915 were held in the House Subcommittee on Social Security and the Senate Finance Committee, respectively.

SJR 1 (Beall, Resolution Chapter 92, Statutes of 2015) requested Congress pass and the President sign legislation to repeal the GPO and WEP.

H.R. 711 (Brady-TX, 2015) would have replaced the WEP with a new formula for individuals who turn age 62 after 2016. H.R. 711 was held in the House Subcommittee on Social Security.

H.R. 973 (Davis-IL, 2015)/S. 1651 (Brown-OH, 2015) would have repealed the GPO and WEP. H.R. 973 and S. 1651 were held in the House Ways and Means Committee and the Senate Finance Committee, respectively.

H.R. 1795 (Davis-IL, 2013)/S. 896 (Begich-AK, 2013) would have repealed the GPO and WEP. H.R. 1795 and S. 896 were held in the House Ways and Means Committee and the Senate Finance Committee, respectively.

PROGRAM BACKGROUND

The Social Security Act of 1935 excluded state and local government employees from coverage. In 1954, those employees were given the opportunity to elect to participate in Social Security. In 1956, as part of an overall study of survivor benefits, the California Teachers Association surveyed its membership to gauge interest in either pursuing legislation to establish survivor benefits

through CalSTRS or joining Social Security. Members voted 4 to 1 in support of seeking the establishment of a survivor benefits program through CalSTRS rather than joining Social Security.

In 1977, the U.S. Supreme Court ruled that a requirement for husbands and widowers to prove they were financially dependent upon their wife to receive Social Security spousal benefits was unconstitutional sex discrimination because wives and widows were not similarly required to prove dependency. In order to avoid the cost of providing the husband and widower benefits, the GPO was introduced in the Social Security Amendments of 1977 to treat all spouses and widow(er)s with government employment not covered by Social Security in a manner similar to those with Social Security benefits who were, therefore, subject to the dual entitlement rule, which has been in place since survivor benefits were first provided in 1939. As enacted in 1977, the GPO produced an identical result to the dual entitlement rule by reducing the spousal benefit by 100% of the pension earned from non-covered employment.

The Social Security Amendments of 1983 reduced the GPO offset to two-thirds of the pension earned from non-covered employment and enacted the WEP to remove a perceived advantage for individuals with employment not covered by Social Security. These changes were made partly based on the recommendations of the National Commission on Social Security Reform (informally known as the Greenspan Commission after its Chairman, Alan Greenspan). In 1981, when the commission was formed, the Social Security trust fund was estimated to run out of money by 1983, and pressures were mounting to identify all potential savings. The commission recommended the WEP in order to address its concerns that “relatively large [Social Security] benefits can accrue to individuals who spend most of their working careers in noncovered employment from which they derive pension rights, but who also become eligible for [Social Security] benefits as a result of relatively short periods of in covered employment with other employers.”¹

FISCAL IMPACT

Program Costs/Savings – None identified.

Administrative Costs/Savings – The repeal of the GPO and WEP may result in minor costs associated with updating member-facing communications and staff training. Temporarily, staff may spend more time answering member questions related to repeal, but these costs should decrease over time.

SUPPORT

California Retired Teachers Association (Sponsor)
California Federation of Teachers
CalSTRS

OPPOSITION

None known.

ARGUMENTS

Pro: CalSTRS members eligible for Social Security benefits would no longer have their Social Security benefits reduced or eliminated if the GPO and WEP are repealed.

¹ Appendix C of the 1983 Greenspan Commission on Social Security Reform, Chapter 2 Findings and Recommendations. <https://www.ssa.gov/history/reports/gspan5.html>.

A teaching career would be more attractive to individuals considering a mid-career change because previously earned Social Security benefits would retain their full value if the GPO and WEP are repealed.

Con: Future mandatory Social Security participation may be considered to offset GPO and WEP repeal costs or as an alternative to repealing the GPO and WEP.

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