

117TH CONGRESS
1ST SESSION

H. R. 2337

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

APRIL 1, 2021

Mr. NEAL (for himself, Mr. THOMPSON of California, Mr. LARSON of Connecticut, Mr. BLUMENAUER, Mr. PASCRELL, Mr. DANNY K. DAVIS of Illinois, Ms. SÁNCHEZ, Mr. HIGGINS of New York, Ms. SEWELL, Ms. DELBENE, Ms. CHU, Ms. MOORE of Wisconsin, Mr. KILDEE, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BEYER, Mr. EVANS, Mr. SCHNEIDER, Mr. SUOZZI, Mr. PANETTA, Mr. GOMEZ, Mr. HORSFORD, Ms. PLASKETT, Ms. SPANBERGER, Mr. SCHIFF, Mr. SMITH of Washington, Mr. ESPAILLAT, Mr. GREEN of Texas, Mr. LOWENTHAL, Mr. SIRES, Mr. HASTINGS, Ms. ADAMS, Mr. CARSON, Mr. KIM of New Jersey, Mr. LEVIN of Michigan, Ms. KUSTER, Ms. ESHOO, Mr. BROWN, Mr. DELGADO, Ms. PRESSLEY, Ms. LEE of California, Mr. THOMPSON of Mississippi, Ms. MCCOLLUM, Mr. FOSTER, Mr. KEATING, Mr. RUSH, Mrs. WATSON COLEMAN, Mr. SHERMAN, Mrs. CAROLYN B. MALONEY of New York, Mr. CRIST, Ms. PINGREE, Mr. PAPPAS, Mr. GARCÍA of Illinois, Mrs. AXNE, Mr. ALLRED, Mr. LAMB, Mr. SOTO, Mr. CICILLINE, Mr. TRONE, Mr. KILMER, Ms. DEGETTE, Ms. TITUS, Mr. PAYNE, Mr. RUPERSBERGER, Mr. PERLMUTTER, Ms. JOHNSON of Texas, Mrs. LURIA, Ms. NORTON, Ms. SLOTKIN, Mr. VELA, Ms. MENG, Mrs. NAPOLITANO, Mr. MEEKS, Mr. SABLAN, Mr. JEFFRIES, Mr. CUELLAR, Ms. SPEIER, Mrs. HAYES, Mr. AUCHINCLOSS, Mr. LANGEVIN, Mr. RASKIN, Ms. SCHKOWSKY, Mr. GOLDEN, Mr. HUFFMAN, Mr. MCNERNEY, Mr. NADLER, Mr. MCGOVERN, Mr. CASTRO of Texas, Mr. COURTNEY, Mr. NEGUSE, Mr. GARAMENDI, Mr. GOTTHEIMER, Mrs. BEATTY, Mr. VARGAS, Ms. BROWNLEY, Ms. CLARK of Massachusetts, Ms. CASTOR of Florida, Ms. SCHRIER, Ms. BLUNT ROCHESTER, Mrs. TRAHAN, Mr. CORREA, Ms. ROYBAL-ALLARD, Mrs. MCBATH, Ms. DEAN, Mr. VEASEY, Ms. KAPTUR, Mr. DESAULNIER, Mr. POCAN, Ms. SCANLON, Mr. CARTWRIGHT, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. LEVIN of California, Ms. SHERRILL, Ms. BARRAGÁN, Mrs. TORRES of California, Mr. TONKO, Mr. WELCH, Ms. JAYAPAL, Mr. KRISHNAMOORTHY, Ms. TLAIB, Mr. GRIJALVA, Mr. KHANNA, Ms. KELLY of Illinois, Mr. GALLEG0, Mr.

CARBAJAL, Mr. BISHOP of Georgia, Mr. PETERS, Mr. SEAN PATRICK MALONEY of New York, Mr. MOULTON, Mr. LYNCH, Mr. COHEN, Ms. BONAMICI, Ms. GARCIA of Texas, Mr. DEUTCH, Mr. RYAN, Mr. CÁRDENAS, Mrs. DEMINGS, Ms. ESCOBAR, Mr. VICENTE GONZALEZ of Texas, Ms. CLARKE of New York, and Ms. LOFGREN) 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 of 2021”.

6 **SEC. 2. ALTERNATIVE FORMULA EQUALIZING BENEFITS**

7 **FOR CERTAIN INDIVIDUALS WITH NON-**
 8 **COVERED EMPLOYMENT.**

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

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

1 “(i) who first becomes eligible for an old-age or
2 disability insurance benefit after 2022 and who sub-
3 sequently becomes entitled to such benefit;

4 “(ii) who has earnings derived from noncovered
5 service performed in a year after 1977 and is enti-
6 tled to a monthly periodic payment based on such
7 earnings; and

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

10 the primary insurance amount of such individual shall be
11 the higher of the amount computed or recomputed under
12 paragraph (7) without regard to this paragraph or the
13 amount computed or recomputed under this paragraph.

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

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

21 “(ii) a fraction—

22 “(I) the numerator of which is the individ-
23 ual’s average indexed monthly earnings (deter-
24 mined without regard to subparagraph (C)),

25 and

1 “(II) the denominator of which is an
2 amount equal to the individual’s average in-
3 dexed monthly earnings (as determined under
4 subparagraph (C)),
5 rounded, if not a multiple of \$0.10, to the next lower mul-
6 tiple of \$0.10.

7 “(C)(i) For purposes of determining an individual’s
8 primary insurance amount and average indexed monthly
9 earnings pursuant to clauses (i) and (ii)(II) of subpara-
10 graph (B), the individual’s average indexed monthly earn-
11 ings shall be determined by treating all recorded non-
12 covered earnings (as defined in clause (ii)(I)) derived by
13 the individual from noncovered service performed in each
14 year after 1977 as ‘wages’ (as defined in section 209 for
15 purposes of this title), which shall be treated as included
16 in the individual’s adjusted total covered earnings (as de-
17 fined in clause (ii)(II)) for such calendar year together
18 with amounts consisting of ‘wages’ (as so defined without
19 regard to this subparagraph) paid during such calendar
20 year and self-employment income (as defined in section
21 211(b)) for taxable years ending with or during such cal-
22 endar year.

23 “(ii) For purposes of this subparagraph:

24 “(I) The term ‘recorded noncovered earnings’
25 means earnings derived from noncovered service

1 (other than noncovered service as a member of a
2 uniformed service (as defined in section 210(m))) for
3 which satisfactory evidence is determined by the
4 Commissioner to be available in the records of the
5 Commissioner.

6 “(II) The term ‘adjusted total covered earnings’
7 means, in connection with an individual for any cal-
8 endar year, the sum of the wages paid to the indi-
9 vidual during such calendar year (as adjusted under
10 subsection (b)(3)) plus the self-employment income
11 derived by the individual during any taxable year
12 ending with or during such calendar year (as ad-
13 justed under subsection (b)(3)).

14 “(iii) The Commissioner of Social Security shall pro-
15 vide by regulation or other public guidance for methods
16 for determining whether satisfactory evidence is available
17 in the records of the Commissioner for earnings for non-
18 covered service (other than noncovered service as a mem-
19 ber of a uniformed service (as defined in section 210(m)))
20 to be treated as recorded noncovered earnings. Such meth-
21 ods shall provide for reliance on earnings information pro-
22 vided to the Commissioner by employers and which, as de-
23 termined by the Commissioner, constitute a reasonable
24 basis for treatment of earnings for noncovered service as
25 recorded noncovered earnings. In making determinations

1 under this clause, the Commissioner shall also take into
2 account any documentary or other evidence of earnings de-
3 rived from noncovered service by an individual which is
4 provided by the individual to the Commissioner and which
5 the Commissioner considers appropriate as a reasonable
6 basis for treatment of such earnings as recorded non-
7 covered earnings.

8 “(iv) In the case of any individual who, at the time
9 of application for old-age or disability insurance benefits
10 under this title, has recorded noncovered earnings in an
11 amount the Commissioner of Social Security determines
12 may entitle the individual to a monthly periodic payment
13 based on such earnings (but whose application does not
14 report such a monthly periodic payment), the Commis-
15 sioner shall reconfirm with the individual whether such a
16 monthly periodic payment is being paid in order to ensure
17 the proper application of paragraph (7) and this para-
18 graph.

19 “(D) Upon the death of an individual whose primary
20 insurance amount is computed or recomputed under this
21 paragraph, such primary insurance amount shall be com-
22 puted or recomputed under paragraph (1) of this sub-
23 section.

24 “(E) In the case of any individual whose primary in-
25 surance amount would be computed under this paragraph

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

9 (b) CONFORMING AMENDMENTS.—Section
10 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is
11 amended—

12 (1) by striking “hereafter in this paragraph and
13 in subsection (d)(3)” and inserting “in this para-
14 graph, paragraph (8), and subsection (d)(3)”; and

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

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

1 **SEC. 3. ADDITIONAL MONTHLY PAYMENT FOR CERTAIN IN-**
2 **DIVIDUALS WHOSE BENEFIT AMOUNT IS RE-**
3 **DUCTION BY THE WINDFALL ELIMINATION**
4 **PROVISION.**

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

8 “(9)(A) For any month beginning at least 270 days
9 after the date of the enactment of the Public Servants
10 Protection and Fairness Act of 2021, the Commissioner
11 of Social Security shall, subject to subparagraphs (D) and
12 (E), make an additional monthly payment to each indi-
13 vidual who is an eligible individual for such month, in an
14 amount equal to the amount determined under subpara-
15 graph (C) with respect to such eligible individual.

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

19 “(i) first becomes eligible for an old-age or dis-
20 ability insurance benefit under this title before 2023;
21 and

22 “(ii) is entitled to an old-age or disability insur-
23 ance benefit under this title for such month based
24 on a primary insurance amount that was computed
25 or recomputed under paragraph (7) (and not subse-

1 quently recomputed under any other paragraph of
2 this subsection).

3 For purposes of clause (i), an individual shall be deemed
4 eligible for a benefit for a month if, upon filing application
5 therefor in such month, the individual would be entitled
6 to such benefit for such month. For purposes of clause
7 (ii), an individual shall be deemed entitled to a benefit
8 based on a primary insurance amount that was computed
9 or recomputed under paragraph (7) if such benefit would
10 be based on such a primary insurance amount but for the
11 application of paragraph (1)(C).

12 “(C)(i) The amount determined under this paragraph
13 with respect to an eligible individual is \$150, except that
14 in any case in which the amount by which the primary
15 insurance amount of such eligible individual that would
16 be computed for the individual’s initial computation month
17 under this subsection without regard to paragraph (7) ex-
18 ceeds the primary insurance amount of such eligible indi-
19 vidual computed for such month under this subsection
20 (taking paragraph (7) into account) is less than \$150, the
21 amount determined under this paragraph shall equal the
22 amount of such excess.

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

1 “(I) the 1st month beginning at least 270 days
2 after the date of the enactment of the Public Serv-
3 ants Protection and Fairness Act of 2021; or

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

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

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

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

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

23 “(F) Whenever benefit amounts under this title are
24 increased by any percentage effective with any month as
25 a result of a determination made under subsection (i),

1 each additional monthly payment amount payable to an
2 eligible individual under this paragraph shall be increased
3 by the same percentage for months beginning with such
4 month.

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

11 “(i) is eligible for a cash benefit payable under
12 section 1611, section 1619(a), or section 1631(a)(7)
13 for the 1st month beginning at least 270 days after
14 the date of the enactment of the Public Servants
15 Protection and Fairness Act of 2021;

16 “(ii) is an individual described in section
17 1619(b) for such month; or

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

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 the enactment of this Act.

5 **SEC. 4. IMPROVEMENT IN SOCIAL SECURITY ACCOUNT**
6 **STATEMENTS FOR PUBLIC SERVANTS.**

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

9 (1) in paragraph (2)—

10 (A) by redesignating subparagraphs (B)
11 through (E) as subparagraphs (C) through (F);

12 (B) by inserting after subparagraph (A)
13 the following:

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

22 (C) in subparagraph (E) (as redesignated
23 by subparagraph (A)), by inserting “(in the
24 case of an eligible individual described in para-
25 graph (3)(C)(ii), calculated using a primary in-

1 insurance amount estimated pursuant to para-
2 graph (8) of section 215(a) and including a no-
3 tation indicating the use of such method of cal-
4 culation)” after “account”; and

5 (2) in paragraph (3)(C)(ii)—

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

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

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

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

23 (2) in subsection (d)(1)—

24 (A) by striking “maximum”; and

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

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to Social Security ac-
5 count statements issued on or after January 1, 2023.

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

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

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