

118TH CONGRESS
1ST SESSION

H. R. 4260

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

JUNE 21, 2023

Mr. NEAL (for himself, Mr. ALLRED, Mr. AUCHINCLOSS, Ms. BARRAGÁN, Mrs. BEATTY, Mr. BEYER, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BOYLE of Pennsylvania, Ms. BROWNLEY, Mr. CARSON, Ms. CLARKE of New York, Ms. CHU, Mr. CONNOLLY, Mr. COURTNEY, Mr. CUELLAR, Mr. DAVIS of Illinois, Ms. DEAN of Pennsylvania, Ms. DELBENE, Mr. DOGGETT, Mr. EVANS, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOLDEN of Maine, Mr. GOMEZ, Mr. GRIJALVA, Mrs. HAYES, Mr. HIGGINS of New York, Mr. HORSFORD, Mr. HUFFMAN, Mr. JOHNSON of Georgia, Ms. KAPTUR, Mr. KHANNA, Mr. KEATING, Ms. KELLY of Illinois, Mr. KILDEE, Mr. KILMER, Mr. KIM of New Jersey, Mr. KRISHNAMOORTHY, Mr. LARSON of Connecticut, Ms. LEE of California, Ms. LEGER FERNANDEZ, Ms. LOFGREN, Mr. LYNCH, Ms. MATSUI, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. MENENDEZ, Mr. MFUME, Ms. MOORE of Wisconsin, Mr. MOULTON, Mrs. NAPOLITANO, Mr. NEGUSE, Ms. NORTON, Mr. PALLONE, Mr. PANETTA, Mr. PASCRELL, Mr. PAYNE, Ms. PETTERSEN, Mr. PHILLIPS, Ms. PINGREE, Mr. POCAN, Ms. PRESSLEY, Ms. ROSS, Mr. RUIZ, Mr. RUPPERSBERGER, Mr. SARBANES, Ms. SÁNCHEZ, Ms. SCHAKOWSKY, Mr. SCHNEIDER, Ms. SEWELL, Mr. SHERMAN, Ms. SHERRILL, Ms. SLOTKIN, Mr. SMITH of Washington, Ms. STRICKLAND, Mr. TAKANO, Mr. THOMPSON of California, Ms. TITUS, Ms. TLAIB, Ms. TOKUDA, Mr. TONKO, Mrs. TRAHAN, Ms. UNDERWOOD, Mr. VARGAS, Mr. VEASEY, Ms. VELÁZQUEZ, Mrs. WATSON COLEMAN, Ms. WEXTON, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, and Ms. PLASKETT) 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 2023”.

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—

15 “(i) who first becomes eligible for an old-age or
 16 disability insurance benefit after 2024 and who sub-
 17 sequently becomes entitled to such benefit;

18 “(ii) who has earnings derived from noncovered
 19 service performed in a year after 1977 and is enti-

1 tled to a monthly periodic payment based on such
2 earnings; and

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

5 the primary insurance amount of such individual shall be
6 the higher of the amount computed or recomputed under
7 paragraph (7) without regard to this paragraph or the
8 amount computed or recomputed under this paragraph.

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

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

16 “(ii) a fraction—

17 “(I) the numerator of which is the individ-
18 ual’s average indexed monthly earnings (deter-
19 mined without regard to subparagraph (C)),
20 and

21 “(II) the denominator of which is an
22 amount equal to the individual’s average in-
23 dexed monthly earnings (as determined under
24 subparagraph (C)),

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

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

19 “(ii) For purposes of this subparagraph:

20 “(I) The term ‘recorded noncovered earnings’
21 means earnings derived from noncovered service
22 (other than noncovered service as a member of a
23 uniformed service (as defined in section 210(m))) for
24 which satisfactory evidence is determined by the

1 Commissioner to be available in the records of the
2 Commissioner.

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

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

1 provided by the individual to the Commissioner and which
2 the Commissioner considers appropriate as a reasonable
3 basis for treatment of such earnings as recorded non-
4 covered earnings.

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

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

21 “(E) In the case of any individual whose primary in-
22 surance amount would be computed under this paragraph
23 who first becomes entitled after 1985 to a monthly peri-
24 odic payment made by a foreign employer or foreign coun-
25 try that is based in whole or in part upon noncovered serv-

1 ice, the primary insurance amount of such individual shall
 2 be computed or recomputed under paragraph (7) or para-
 3 graph (1), as applicable, for months beginning with the
 4 first month of the individual’s initial entitlement to such
 5 monthly periodic payment.”.

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

9 (1) by striking “hereafter in this paragraph and
 10 in subsection (d)(3)” and inserting “in this para-
 11 graph, paragraph (8), and subsection (d)(3)”; and

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

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply with respect to monthly insurance
 17 benefits payable on or after January 1, 2025.

18 **SEC. 3. ADDITIONAL MONTHLY PAYMENT FOR CERTAIN IN-**
 19 **DIVIDUALS WHOSE BENEFIT AMOUNT IS RE-**
 20 **DUCED BY THE WINDFALL ELIMINATION**
 21 **PROVISION.**

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

1 “(9)(A) For any month beginning at least 270 days
2 after the date of the enactment of the Public Servants
3 Protection and Fairness Act of 2023, the Commissioner
4 of Social Security shall, subject to subparagraphs (D) and
5 (E), make an additional monthly payment to each indi-
6 vidual who is an eligible individual for such month, in an
7 amount equal to the amount determined under subpara-
8 graph (C) with respect to such eligible individual.

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

12 “(i) first becomes eligible for an old-age or dis-
13 ability insurance benefit under this title before 2025;
14 and

15 “(ii) is entitled to an old-age or disability insur-
16 ance benefit under this title for such month based
17 on a primary insurance amount that was computed
18 or recomputed under paragraph (7) (and not subse-
19 quently recomputed under any other paragraph of
20 this subsection).

21 For purposes of clause (i), an individual shall be deemed
22 eligible for a benefit for a month if, upon filing application
23 therefor in such month, the individual would be entitled
24 to such benefit for such month. For purposes of clause
25 (ii), an individual shall be deemed entitled to a benefit

1 based on a primary insurance amount that was computed
2 or recomputed under paragraph (7) if such benefit would
3 be based on such a primary insurance amount but for the
4 application of paragraph (1)(C).

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

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

19 “(I) the 1st month beginning at least 270 days
20 after the date of the enactment of the Public Serv-
21 ants Protection and Fairness Act of 2023; or

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

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

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

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

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

17 “(F) Whenever benefit amounts under this title are
18 increased by any percentage effective with any month as
19 a result of a determination made under subsection (i),
20 each additional monthly payment amount payable to an
21 eligible individual under this paragraph shall be increased
22 by the same percentage for months beginning with such
23 month.

24 “(G) The amount of any additional monthly payment
25 under this paragraph shall be disregarded for purposes of

1 determining the eligibility or benefit amount of an indi-
2 vidual for supplemental security income benefits payable
3 under title XVI of the Social Security Act, but only if such
4 individual—

5 “(i) is eligible for a cash benefit payable under
6 section 1611, section 1619(a), or section 1631(a)(7)
7 for the 1st month beginning at least 270 days after
8 the date of the enactment of the Public Servants
9 Protection and Fairness Act of 2023;

10 “(ii) is an individual described in section
11 1619(b) for such month; or

12 “(iii) is eligible for a State supplementary pay-
13 ment for such month of the type referred to in sec-
14 tion 1616(a) (or payments of the type described in
15 section 212(a) of Public Law 93–66) which are paid
16 by the Commissioner under an agreement referred to
17 in section 1616(a) (or section 212(a) of Public Law
18 93–66).”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to monthly insurance
21 benefits payable for months beginning at least 270 days
22 after the date of the enactment of this Act.

1 **SEC. 4. IMPROVEMENT IN SOCIAL SECURITY ACCOUNT**
2 **STATEMENTS FOR PUBLIC SERVANTS.**

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

5 (1) in paragraph (2)—

6 (A) by redesignating subparagraphs (B)
7 through (E) as subparagraphs (C) through (F);

8 (B) by inserting after subparagraph (A)
9 the following:

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

18 (C) in subparagraph (E) (as redesignated
19 by subparagraph (A)), by inserting “(in the
20 case of an eligible individual described in para-
21 graph (3)(C)(ii), calculated using a primary in-
22 surance amount estimated pursuant to para-
23 graph (8) of section 215(a) and including a no-
24 tation indicating the use of such method of cal-
25 culation)” after “account”; and

26 (2) in paragraph (3)(C)(ii)—

1 (A) by striking “wages or self-employment
2 income” and inserting “wages, self-employment
3 income, and earnings derived from noncovered
4 service (within the meaning of section
5 215(a)(7))”; and

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

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

13 (1) in subsection (a)(2)(F) (as redesignated by
14 subsection (a)(1)(A) of this section), by striking
15 “sections 202(k)(5) and 215(a)(7)” and all that fol-
16 lows through “auxiliary benefits” and inserting “sec-
17 tions 202(k)(5), 215(a)(7), and 215(a)(8)”; and

18 (2) in subsection (d)(1)—

19 (A) by striking “maximum”; and

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

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply with respect to Social Security ac-
24 count statements issued on or after January 1, 2025.

1 **SEC. 5. STUDY ON AVAILABILITY OF INFORMATION RELAT-**
2 **ING TO RETIREMENT PLANS.**

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

12 (b) REPORT.—Not later than 2 years after the date
13 of the enactment of this Act, the Comptroller General shall
14 submit a report to the Committee on Ways and Means
15 of the House of Representatives and the Committee on
16 Finance of the Senate on the results of the study described
17 in subsection (a).

18 **SEC. 6. HOLD HARMLESS FOR THE SOCIAL SECURITY**
19 **TRUST FUNDS.**

20 There are appropriated, out of any moneys in the
21 Treasury not otherwise appropriated, to each of the Fed-
22 eral Old-Age and Survivors Insurance Trust Fund and the
23 Federal Disability Insurance Trust Fund for each fiscal
24 year such amounts as the chief actuary of the Social Secu-
25 rity Administration shall certify are necessary to place
26 each such Trust Fund in the same position at the end

1 of such fiscal year as it would have been in if the amend-
2 ments made by this Act had not been enacted.

