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"Why Is My Social Security Reduced?" The Windfall Elimination Provision: Q & A

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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.

1. What is the Windfall Elimination Provision (WEP)?

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 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, the WEP was enacted to prevent government employees from receiving artificially inflated Social Security benefits. Social Security benefits are determined based on each 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 and some employment subject to Social Security appears to be a lower earnings worker eligible for the proportionately higher Social Security benefit.[3] Congress enacted the WEP as part of the 1983 Amendments to the Social Security Act to prevent that result.[4]

3. Who is affected by the WEP?

The WEP affects Social Security benefit recipients who also receive a pension for employment that was not subject to Social Security taxes. Most recipients affected were employed by a federal, state, or local government agency, but certain workers who were employed by a nonprofit organization or an employer in another country also may be affected.[5] Retired Ohio government employees are subject to the reduction because the state has chosen not to have its employees participate in Social Security for their government service. 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.[6]

4. Why do Ohio government employees not participate in Social Security?

The Social Security Act did not provide coverage for 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 some or all of its public employees. Ohio's agreement with the federal government, negotiated in the late 1950s, exempts members of the state's retirement systems from contributing to Social Security for service for which they contribute to a state retirement system.[7]

5. 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. Two bills to repeal the WEP were introduced in 2017 in Congress, H.R. 1205 and S. 915. Similar versions of these bills were introduced most recently in Congress in 2015 as H.R. 973 and S. 1651.[8]

6. Can Ohio extend Social Security coverage to its public employees?

It is possible, but unlikely. The process is extremely difficult and cannot be done on an individual basis. Federal law provides that for state retirement system members to become subject to Social Security, a referendum must be conducted to determine whether all of the employees want Social Security coverage. Social Security may be extended to the employees only if a majority of eligible employees vote in favor of coverage (not merely a majority of those casting votes). Extending coverage would be expensive, requiring employees *and employers* to pay FICA 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.[9]

7. Is any entity required to tell a government employee about the WEP?

Yes. Federal law requires a state or local government employer to inform a new worker before employment begins that the employment is not covered by Social Security, that the worker will not pay Social Security taxes on earnings from that employment, and that a pension the worker eventually receives for state or local employment may reduce any Social Security benefit the worker is entitled to based on other employment. The worker must sign a statement acknowledging that the employer met this requirement before the worker may begin work. The employer also must provide a copy of the signed statement to the state retirement system of which the worker is a member.[10]

A worker who has questions about the worker's Social Security benefit and the WEP can call the U.S. Social Security Administration at 1-800-772-1213 to receive automated services 24 hours a day, 7 days a week. People who are deaf or hard of hearing can access information using a TTY number at 1-800-325-0778. Personal service is available through those telephone numbers from 7 a.m. to 7 p.m., Monday through Friday. Social Security information, including information about the WEP, is also available online at www.socialsecurity.gov.

8. 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 pre-retirement earnings than that of a higher paid worker. This is accomplished through a two-step process. First, the U.S. Social Security Administration calculates the worker's average monthly earnings, adjusted for average wage growth.[11] 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%).[12] The monthly benefit for a worker who turns 62 in 2018 is determined as follows:

(first $895.00 of earnings x 90%) +
(next $4,502.00 of earnings x 32%) +
(earnings over $5,397.00 x 15%)[13]

As a result, workers with lower lifetime earnings receive a higher percentage of their former monthly income because the formula weights the lower earnings group most heavily. The following table illustrates the Social Security benefits that a lower paid worker and a higher paid worker might receive each month.[14]

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	$805.50 ($895.00 x 90%)	$805.50 ($895.00 x 90%)
Second earnings group	$673.60 ($2,105.00 x 32%)	$1,440.60 ($4,502.00 x 32%)
Third earnings group	$0 ($0 x 15%)	$390.40 ($2,603.00 x 15%)
Total benefit	$1,479.10	$2,636.50
Percentage of pre-retirement earnings	49%	32%

9. How is the WEP reduction determined?

Under the WEP, a modified benefit formula is used. This formula multiplies the first earnings group (the first $895.00 of average monthly earnings) by a reduced percentage based on the worker's number of years of Social Security participation. There is no reduction in the other earnings groups. The table below lists the percentages used in the WEP-modified formula.[15]

WEP-Modified Benefit Formula	
Years of Social Security Participation	**Percentage Multiplier on First $895.00 of Earnings**
30 or more years	90%
29 years	85%
28 years	80%
27 years	75%
26 years	70%
25 years	65%
24 years	60%
23 years	55%
22 years	50%
21 years	45%
20 or fewer years	40%

10. Can the WEP outright 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 number of years of Social Security participation the worker has. The U.S. Social Security Administration has a chart that shows the maximum WEP reduction amount per month resulting from the reduced percentage multiplier on the first earnings group. For 2018, the maximum possible reduction is $447.50 per month, or the difference between the unreduced percentage on the first earnings group ($895.00 x 90%) and the reduced percentage for a worker with 20 or fewer years of Social Security participation ($895.00 x 40%).[16] However, that maximum is subject to the WEP guarantee. Under the guarantee, the WEP reduction cannot exceed 50% of the pension earned from non-Social Security employment.[17]

The following example compares the effect of the WEP on two workers with different lengths of Social Security participation. Worker A contributed to Social Security for 15 years (60 credits) and Worker B contributed for 25 years (100 credits). Both turn 62 in 2018 and have average monthly earnings of $1,500.00 under Social Security. Each has a state pension of $1,700.00 a month. The WEP guarantee limiting the reduction to 50% of the state pension does not affect Workers A and B because 50% of each workers' government pension is $850.00, which is more than the $447.50 maximum possible WEP reduction. The Social Security benefit calculation is shown in the following table.

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	$999.10[18]	$999.10
First percentage multiplier under WEP	40%	65%
Reduction under WEP-modified formula	$447.50	$223.80
Monthly SS benefit under WEP-modified formula	$551.60[19]	$775.30[20]

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 2018 and have 15 years (60 credits) 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. The following table shows how the WEP guarantee limits the amount of the reduction for Worker C but does not affect the reduction for Worker D.

Effect of WEP Guarantee		
	Worker C	**Worker D**
Years of Social Security coverage	15	15
Monthly SS benefit if not subject to WEP	$1,159.10[21]	$1,159.10
First percentage multiplier under WEP	40%	40%
Reduction under WEP-modified formula	$447.50	$447.50
Monthly SS benefit under WEP-modified formula	$711.60[22]	$711.60
Monthly government pension	$800.00	$2,000.00
WEP maximum reduction[23]	$447.50	$447.50
WEP guarantee ($^1/_2$ government pension)	$400.00	$1,000.00
Actual WEP reduction	$400.00	$447.50
Actual Social Security benefit	$759.10	$711.60

11. How is the WEP applied if a worker retires early or delays retirement?

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, or increased if the worker delays drawing the benefit until later.[24] The U.S. Social Security Administration applies the WEP reduction to a worker's benefit *before* calculating any further adjustment for early or late retirement.[25] The full retirement age is 66 years and 4 months for a worker who turns 62 in 2018. The following table 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.

Social Security Benefit Affected by WEP and Early or Delayed Retirement			
	Benefit Begins at Age 62[26]	**Benefit Begins at Full Retirement Age (66 Years and 4 Months)**	**Benefit Begins at Age 70**[27]
Benefit without WEP reduction or adjustment for early or late retirement	$1,479.00	$1,479.00	$1,479.00
Benefit with WEP reduction	$1,255.00	$1,255.00	$1,255.00
Percentage adjustment for early or late retirement	-26.67%	0%	+29.3%
Adjustment for early or late retirement	-$334.00	$0	+$367.00
Social Security benefit after WEP reduction and adjustment for early or late retirement	$921.00	$1,255.00	$1,622.00
Total of WEP reduction and adjustment for early or late retirement	-$558.00	-$224.00	+$143.00
Percentage of total change	-37.7%	-15.1%	+9.7%

12. Is it possible to avoid the WEP reduction while being a government employee?

No. In Ohio, with a few exceptions, participation in a retirement system is mandatory for government employees. If a worker ceases to be a government employee due to termination of employment, the worker may apply for a refund of the worker's contributions to the retirement system. The refund makes the worker ineligible for a state retirement system pension. However, the WEP ceases to apply only if the worker receives the refund *before* becoming eligible for retirement under the state retirement system. It does apply if the worker receives the refund *after* having attained retirement eligibility, even though the refund makes the worker ineligible for a pension. The U.S. Social Security Administration considers a worker eligible for a state retirement system pension "the first month he or she meets all requirements for payment except for stopping work and applying for the payment."[28]

Endnotes

[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, receiving one credit for a specified amount of earnings, up to a maximum of four credits per year. For 2018, the amount is $1,320.00. ("How You Earn Credits," Social Security Administration Pub. No. 05-10072, January 2018, www.ssa.gov/pubs/EN-05-10072.pdf.)

[2] "Windfall Elimination Provision," Social Security Administration Pub. No. 05-10045, January 2018, https://www.ssa.gov/pubs/EN-05-10045.pdf.

[3] "Windfall Elimination Provision."

[4] Social Security Amendments of 1983 (Public Law 98-21).

[5] Employees employed by a nonprofit organization on December 31, 1983, that began withholding Social Security taxes from employees' pay and federal government employees first hired after December 31, 1983, participate in the Social Security system and are not subject to the WEP ("Windfall Elimination Provision").

[6] National Association of State Retirement Administrators, *Social Security Coverage*, http://www.nasra.org/socialsecurity.

[7] 42 U.S.C. 418 and "Social Security and Government Employers," *Federal-State Reference Guide*, IRS Publication 963, November 2014, https://www.irs.gov/pub/irs-pdf/p963.pdf.

[8] H.R. 1205 has been referred to the House Committee on Ways and Means (Social Security Subcommittee) and S. 915 to the Senate Committee on Finance (Library of Congress, available at https://www.congress.gov/).

[9] "Social Security and Medicare Coverage," *Federal-State Reference Guide*.

[10] 42 U.S.C. 1320b-13(d) and "Statement Concerning Your Employment in a Job Not Covered by Social Security," Social Security Administration Form SSA-1945, January 2013, https://www.ssa.gov/forms/ssa-1945.pdf.

[11] This calculation is known as the average indexed monthly earnings (AIME).

[12] 42 U.S.C. 415(a).

[13] $895.00 + $4,502.00 = $5,397.00. These amounts are adjusted upward for inflation. (42 U.S.C. 415(a)(1) and Social Security Administration, "Your Retirement Benefit: How It's Figured," Social Security Administration Pub. No. 05-10070, January 2018, https://www.ssa.gov/pubs/EN-05-10070.pdf.)

[14] "Windfall Elimination Provision."

[15] "Windfall Elimination Provision."

[16] ($895.00 x 90% = $805.50) - ($895.00 x 40% = $358.00) = $447.50 (Social Security Administration, *Windfall Elimination Provision (WEP) Chart*, https://www.ssa.gov/planners/retire/wep-chart.html).

[17] "Windfall Elimination Provision."

[18] ($895.00 x 90% = $805.50) + ($605.00 x 32% = $193.60) = $999.10.

[19] ($895.00 x 40% = $358.00) + ($605.00 x 32% = $193.60) = $551.60.

[20] ($895.00 x 65% = $581.70) + ($605.00 x 32% = $193.60) = $775.30.

[21] ($895.00 x 90% = $805.50) + ($1,105.00 x 32% = $353.60) = $1,159.10.

[22] ($895.00 x 40% = $358.00) + ($1,105.00 x 32% = $353.60) = $711.60.

[23] *Windfall Elimination Provision (WEP) Chart*.

[24] "Full retirement age" is 65 for people born before 1938. The age gradually increases until it reaches, for those born in 1960 or later, age 67. ("Full Retirement Age," *Retirement Benefits*, Social Security Administration Pub. No. 05-10035, January 2018, https://www.ssa.gov/pubs/EN-05-10035.pdf.)

[25] Social Security Administration, "WEP Examples," *Benefits Planner: Retirement*, https://www.ssa.gov/planners/retire/wep.html.

[26] A copy of a chart published by the U.S. Social Security Administration that provides the reduction amounts for early retirement can be found here: https://www.ssa.gov/planners/retire/agereduction.html.

[27] A copy of a chart published by the U.S. Social Security Administration that provides the percentage increases for delayed retirement can be found here: https://www.ssa.gov/planners/retire/delayret.html.

[28] Social Security Administration, "RS 00605.364: Determining Pension Applicability, Eligibility Date, and Monthly Amount," Program Operations Manual System (POMS), effective October 12, 2017, https://secure.ssa.gov/apps10/poms.nsf/lnx/0300605364.

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