

117TH CONGRESS
1ST SESSION

H. R. 5834

To amend title II of the Social Security Act to replace the windfall elimination provision with a formula equalizing benefits for certain individuals with noncovered employment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2021

Mr. BRADY (for himself, Mr. ARRINGTON, Mr. BABIN, Mr. BACON, Mrs. BICE of Oklahoma, Mr. BURGESS, Mr. CARTER of Texas, Mr. CRENSHAW, Mr. CUELLAR, Mr. FERGUSON, Mr. GOHMERT, Mr. TONY GONZALES of Texas, Mr. GONZALEZ of Ohio, Mr. VICENTE GONZALEZ of Texas, Mr. GOODEN of Texas, Ms. GRANGER, Mr. GUTHRIE, Mr. HERN, Mr. HICE of Georgia, Mr. JACKSON, Mr. LATTI, Mr. McCAUL, Mr. MURPHY of North Carolina, Mr. NUNES, Mr. PFLUGER, Mr. RICE of South Carolina, Mr. TAYLOR, Ms. VAN DUYNE, Mr. WEBER of Texas, Mr. WENSTRUP, and Mr. WILLIAMS of Texas) 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 replace the windfall elimination provision with a formula equalizing benefits for certain individuals with noncovered employment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Equal Treatment of
3 Public Servants Act of 2021”.

4 **SEC. 2. REPLACEMENT OF THE WINDFALL ELIMINATION**
5 **PROVISION WITH A FORMULA EQUALIZING**
6 **BENEFITS FOR CERTAIN INDIVIDUALS WITH**
7 **NONCOVERED EMPLOYMENT.**

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

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

14 “(i) who first becomes eligible for an old-age or
15 disability insurance benefit after 2061,

16 “(ii) who subsequently becomes entitled to such
17 benefit, and

18 “(iii) who has earnings derived from noncovered
19 service performed in a year after 1977,

20 the primary insurance amount of such individual shall be
21 the amount computed or recomputed under this para-
22 graph.

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

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

4 “(ii) a fraction—

5 “(I) the numerator of which is the individ-
6 ual’s average indexed monthly earnings (deter-
7 mined without regard to subparagraph (C)),
8 and

9 “(II) the denominator of which is an
10 amount equal to the individual’s average in-
11 dexed monthly earnings (as determined under
12 subparagraph (C)),

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

15 “(C)(i) For purposes of determining an individual’s
16 primary insurance amount pursuant to clauses (i) and
17 (ii)(II) of subparagraph (B), the individual’s average in-
18 dexed monthly earnings shall be determined by treating
19 all recorded noncovered earnings (as defined in clause
20 (ii)(I)) derived by the individual from noncovered service
21 performed in each year after 1977 as ‘wages’ (as defined
22 in section 209 for purposes of this title), which shall be
23 treated as included in the individual’s adjusted total cov-
24 ered earnings (as defined in clause (ii)(II)) for such cal-
25 endar year together with amounts consisting of ‘wages’ (as

1 so defined without regard to this subparagraph) paid dur-
2 ing such calendar year and self-employment income (as
3 defined in section 211(b)) for taxable years ending with
4 or during such calendar year.

5 “(ii) For purposes of this subparagraph:

6 “(I) The term ‘recorded noncovered earnings’
7 means earnings derived from noncovered service
8 (other than noncovered service as a member of a
9 uniformed service (as defined in section 210(m)) for
10 which satisfactory evidence is determined by the
11 Commissioner to be available in the records of the
12 Commissioner.

13 “(II) The term ‘adjusted total covered earnings’
14 means, in connection with an individual for any cal-
15 endar year, the sum of the wages paid to the indi-
16 vidual during such calendar year (as adjusted under
17 subsection (b)(3)) plus the self-employment income
18 derived by the individual during any taxable year
19 ending with or during such calendar year (as ad-
20 justed under subsection (b)(3)).

21 “(iii) The Commissioner of Social Security shall pro-
22 vide by regulation or other public guidance for methods
23 for determining whether satisfactory evidence is available
24 in the records of the Commissioner for earnings for non-
25 covered service (other than noncovered service as a mem-

1 ber of a uniformed service (as defined in section 210(m)))
2 to be treated as recorded noncovered earnings. Such meth-
3 ods shall provide for reliance on earnings information
4 which is provided to the Commissioner by employers and
5 which, as determined by the Commissioner, constitute a
6 reasonable basis for treatment of earnings for noncovered
7 service as recorded noncovered earnings. In making deter-
8 minations under this clause, the Commissioner shall also
9 take into account any documentary or other evidence of
10 earnings derived from noncovered service by an individual
11 which is provided by the individual to the Commissioner
12 and which the Commissioner considers appropriate as a
13 reasonable basis for treatment of such earnings as re-
14 corded noncovered earnings.

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

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

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

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

8 (1) in clause (i)—

9 (A) by striking “after 1985” and inserting
 10 “after 1985 and before 2062”; and

11 (B) by striking “or” at the end;

12 (2) in clause (ii)—

13 (A) by striking “after 1985” each place it
 14 appears and inserting “after 1985 and before
 15 2062”; and

16 (B) by adding “or” at the end;

17 (3) by inserting after clause (ii) the following:

18 “(iii) is an individual described in paragraph
 19 (8)(E),”; and

20 (4) by striking “hereafter in this paragraph and
 21 in subsection (d)(3)” and inserting “in this para-
 22 graph, paragraphs (8) and (9), and subsection
 23 (d)(3)”.

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

4 **SEC. 3. BENEFIT CALCULATION DURING TRANSITION PE-**
 5 **RIOD.**

6 (a) IN GENERAL.—Section 215(a) of the Social Secu-
 7 rity Act (42 U.S.C. 415(a)), as amended by section 2, is
 8 further amended by inserting after paragraph (8) the fol-
 9 lowing:

10 “(9) In the case of an individual whose primary in-
 11 surance amount would be computed under paragraph (1)
 12 of this subsection—

13 “(A) who first becomes eligible for an old-age
 14 or disability insurance benefit after 2022 and before
 15 2062,

16 “(B) who subsequently becomes entitled to such
 17 benefit, and

18 “(C) who has earnings derived from noncovered
 19 service performed in a year after 1977,

20 the primary insurance amount of such individual shall be
 21 the higher of the amount computed or recomputed under
 22 paragraph (7) without regard to this paragraph or the
 23 amount that would be computed or recomputed under
 24 paragraph (8) if the individual were an individual de-
 25 scribed in subparagraph (A) of such paragraph.”.

1 (b) CONFORMING AMENDMENT.—Section
 2 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)), as
 3 amended by section 2(b), is further amended by striking
 4 “shall be computed or recomputed” and inserting “shall,
 5 subject to paragraph (9), be computed or recomputed”.

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

9 **SEC. 4. ADDITIONAL MONTHLY PAYMENT FOR INDIVID-**
 10 **UALS WHOSE BENEFIT AMOUNT IS REDUCED**
 11 **BY THE WINDFALL ELIMINATION PROVISION.**

12 (a) IN GENERAL.—Section 215(a) of such Act (42
 13 U.S.C. 415(a)), as amended by sections 2 and 3, is further
 14 amended by adding at the end the following:

15 “(10)(A) For any month beginning at least 270 days
 16 after the date of enactment of the Equal Treatment of
 17 Public Servants Act of 2021, the Commissioner of Social
 18 Security shall, subject to subparagraphs (C) and (D),
 19 make an additional monthly payment of \$100 to each indi-
 20 vidual who is an eligible individual for such month, and
 21 an additional monthly payment of \$50 to each individual
 22 (other than an eligible individual) who is entitled to a ben-
 23 efit under section 202 for such month on the basis of the
 24 wages and self-employment income of such eligible indi-
 25 vidual.

1 “(B) For purposes of this paragraph, the term ‘eligi-
2 ble individual’ for a month means an individual who—

3 “(i)(I) first becomes eligible for an old-age or
4 disability insurance benefit under this title before
5 2023, or

6 “(II) is an individual described in paragraph
7 (8)(E), and

8 “(ii) is entitled to an old-age or disability insur-
9 ance benefit under this title for such month based
10 on a primary insurance amount that was computed
11 or recomputed under paragraph (7) (and not subse-
12 quently recomputed under any other paragraph of
13 this subsection).

14 “(C) In any case in which this title provides that no
15 monthly benefit under section 202 or 223 shall be paid
16 to an individual for a month, no additional monthly pay-
17 ment shall be paid to the individual for such month. This
18 subparagraph shall not apply in the case of an individual
19 whose monthly benefit under section 202 or 223 is re-
20 duced, regardless of the amount of the reduction, based
21 on the individual’s receipt of other income or benefits for
22 such month or the application of section 203(a) or due
23 to the adjustment or recovery of an overpayment under
24 section 204.

1 “(D)(i) An individual is not entitled to receive more
2 than one additional monthly payment for a month under
3 this paragraph.

4 “(ii) An eligible individual who is entitled to a benefit
5 under section 202 on the basis of the wages and self-em-
6 ployment income of another eligible individual for a month
7 shall receive an additional monthly payment under this
8 paragraph in the amount of \$100 for such month.

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

13 “(F) Whenever benefit amounts under this title are
14 increased by any percentage effective with any month as
15 a result of a determination made under subsection (i),
16 each of the dollar amounts in subparagraph (A) shall be
17 increased by the same percentage for months beginning
18 with such month.”.

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 enactment of this Act.

1 **SEC. 5. REPORTING OF NONCOVERED EARNINGS ON SO-**
2 **CIAL SECURITY ACCOUNT STATEMENTS.**

3 (a) IN GENERAL.—Section 1143(a)(2) of the Social
4 Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—

5 (1) by redesignating subparagraphs (B)
6 through (E) as subparagraphs (C) through (F); and

7 (2) by inserting after subparagraph (A) the fol-
8 lowing:

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

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply with respect to Social Security ac-
19 count statements issued on or after January 1, 2023.

20 **SEC. 6. STUDY ON PARTNERING WITH STATE AND LOCAL**
21 **PENSION SYSTEMS.**

22 (a) STUDY.—

23 (1) IN GENERAL.—The Commissioner of Social
24 Security shall study and test the administrative fea-
25 sibility of partnering with State and local pension
26 systems, or other governmental entities, to improve

1 the collection and sharing of information relating to
2 State and local noncovered pensions.

3 (2) COORDINATION WITH STATE AND LOCAL
4 PENSION SYSTEMS.—In conducting the study de-
5 scribed in paragraph (1), the Commissioner shall co-
6 ordinate with State and local pension systems that
7 reflect the diversity of systems and individual experi-
8 ences to explore the development of automated data
9 exchange agreements that facilitate reporting of in-
10 formation relating to noncovered pensions.

11 (b) REPORT.—The Commissioner of Social Security
12 shall conclude the study described in subsection (a) not
13 later than 4 years after the date of enactment of this Act.
14 As soon as possible after conclusion of the study and not
15 later than 4½ years after the date of enactment of this
16 Act, the Commissioner shall submit to the Committee on
17 Ways and Means of the House of Representatives and the
18 Committee on Finance of the Senate a report on the re-
19 sults of the study. Such report shall include the following:

20 (1) A discussion of how the automated data ex-
21 change agreements could be implemented to cover
22 noncovered pensions nationally, including the range
23 of implementation timelines across State and local
24 pension systems, or with other governmental entities.

1 (2) An analysis of the barriers to developing
2 automated data exchange agreements and lessons
3 learned that can help address these barriers.

4 (3) A description of alternative methods for ob-
5 taining information related to noncovered pensions,
6 and an analysis of the barriers to obtaining non-
7 covered pension data through such methods.

8 (4) An explanation of how coverage information
9 is obtained by the Social Security Administration
10 when an individual purchases service credits to apply
11 to a new covered or noncovered pension after moving
12 from another covered or noncovered pension within
13 the State or in another State.

14 (5) An estimate of the total amount, as of the
15 date of the enactment of this Act, of noncovered
16 pensions not reported to the Social Security Admin-
17 istration as a result of noncompliance with voluntary
18 reporting policies.

19 (c) STATE AND LOCAL PENSION INFORMATION TO
20 BE REQUESTED BY THE COMMISSIONER.—Section 202 of
21 the Social Security Act (42 U.S.C. 402) is amended by
22 inserting after subsection (l) the following:

23 “(m) STATE AND LOCAL PENSION INFORMATION TO
24 BE REQUESTED BY THE COMMISSIONER.—

1 “(1) The Commissioner may partner with
2 States to request information, including the informa-
3 tion specified in paragraph (2), with respect to any
4 designated distribution (as defined in section
5 3405(e)(1) of the Internal Revenue Code of 1986)
6 from an employer deferred compensation plan (as
7 defined in section 3405(e)(5) of such Code) of the
8 State (or political subdivision thereof) to a partici-
9 pant of such plan in any case in which any portion
10 of such participant’s earnings for service under such
11 plan did not constitute ‘employment’ as defined in
12 section 210 for purposes of this title.

13 “(2) The information specified in this para-
14 graph is the following:

15 “(A) The name and Social Security ac-
16 count number of the participant receiving the
17 designated distribution.

18 “(B) The dollar amount of the designated
19 distribution and the date paid.

20 “(C) The date on which the participant
21 initially became eligible for a designated dis-
22 tribution under the plan and, if different, the
23 date of payment of the initial designated dis-
24 tribution.

1 “(D) The dates of each period of service
2 under the plan that did not constitute ‘employ-
3 ment’ as defined in section 210 for purposes of
4 this title, and the dates of any other period of
5 service under the plan.”.

6 (d) DEFINITIONS.—In this section—

7 (1) the term “noncovered pension” means a
8 pension any part of which is based on noncovered
9 service (within the meaning of section 215(a)(7) of
10 the Social Security Act (42 U.S.C. 415(a)(7))); and

11 (2) the term “covered pension” means any
12 other pension.

○