To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Equal Treatment of Public Servants Act of 2015”.

FEBRUARY 4, 2015

Mr. Brady of Texas (for himself and Mr. Neal) introduced the following bill; which was referred to the Committee on Ways and Means
SEC. 2. REPLACEMENT OF THE WINDFALL ELIMINATION PROVISION WITH A FORMULA EQUALIZING BENEFITS FOR CERTAIN INDIVIDUALS WITH NON-COVERED EMPLOYMENT.

(a) In general.—Section 215(a) of the Social Security Act (42 U.S.C. 415(a)) is amended by inserting after paragraph (7) the following:

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

“(i) who becomes eligible for old-age insurance benefits after 2016 or would attain age 62 after 2016 and becomes eligible for disability insurance benefits after 2016,

“(ii) who subsequently becomes entitled to such benefits, and

“(iii) who has earnings derived from nonecovered service performed in a year after 1977;

the primary insurance amount of such individual shall be computed or recomputed under this paragraph.

“(B) The primary insurance amount of an individual described in subparagraph (A), as computed or recomputed under this paragraph, shall be the product derived by multiplying—
“(i) the individual’s primary insurance amount, as determined under paragraph (1) of this subsection and subparagraph (C) of this paragraph, by

“(ii) a fraction—

“(I) the numerator of which is the individual’s average indexed monthly earnings (determined without regard to subparagraph (C)), and

“(II) the denominator of which is an amount equal to the individual’s average indexed monthly earnings (as determined under subparagraph (C)), rounded, if not a multiple of $0.10, to the next lower multiple of $0.10.

“(C)(i) For purposes of determining an individual’s primary insurance amount pursuant to clauses (i) and (ii)(II) of subparagraph (B), the individual’s average indexed monthly earnings shall be determined by treating all recorded noncovered earnings (as defined in clause (ii)(I)) derived by the individual from noncovered service performed in each year after 1977 as ‘wages’ (as defined in section 209 for purposes of this title), which shall be treated as included in the individual’s adjusted total covered earnings (as defined in clause (ii)(II)) for such calendar year together with amounts consisting of ‘wages’ (as
so defined without regard to this subparagraph) paid during such calendar year and self-employment income (as defined in section 211(b)) for taxable years ending with or during such calendar year.

“(ii) For purposes of this subparagraph—

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

“(II) The term ‘adjusted total covered earnings’ means, in connection with an individual for any calendar year, the sum of the wages paid to the individual during such calendar year (as adjusted under subsection (b)(3)) plus the self-employment income derived by the individual during any taxable year ending with or during such calendar year (as adjusted under subsection (b)(3)).

“(iii) The Commissioner of Social Security shall provide by regulation for methods for determining whether satisfactory evidence is available in the records of the Commissioner for earnings for noncovered service (other than noncovered service as a member of a uniformed serv-
ice (as defined in section 210(m))) to be treated as recorded nonecovered earnings. Such methods shall provide for reliance on earnings information which is provided to the Commissioner by employers and which, as determined by the Commissioner, constitute a reasonable basis for treatment of earnings for nonecovered service as recorded nonecovered earnings. In making determinations under this clause, the Commissioner shall also take into account any documentary evidence of earnings derived from nonecovered service by an individual which is provided by the individual to the Commissioner and which the Commissioner considers appropriate as a reasonable basis for treatment of such earnings as recorded nonecovered earnings, except that such evidence provided by the individual shall be taken into account only to the extent that such evidence does not relate to earnings for service with respect to which information regarding earnings has already been obtained by the Commissioner from the employer and only to the extent that such evidence does not result in a reduction in the individual’s primary insurance amount as calculated under subparagraph (B).

“(D) Upon the death of an individual whose primary insurance amount is computed or recomputed under this paragraph, such primary insurance amount shall be com-
(b) Modification of Windfall Elimination Provision for Current Beneficiaries; Recovery of Certain Overpayments.—Section 215(a)(7) of such Act (42 U.S.C. 415(a)(7)) is amended by adding at the end the following:

“(F)(i) Notwithstanding subparagraph (A), for purposes of determining the amount of monthly insurance benefits for months after December 2016, the primary insurance amount of an individual described in subparagraph (A), or an individual described in subparagraph (G) whose primary insurance amount was calculated or recomputed under subparagraph (B), shall be deemed to be equal to the sum of—

“(I) the primary insurance amount of such individual computed or recomputed under subparagraph (B); plus

“(II) the applicable percentage (determined under clause (ii)) of the amount by which the primary insurance amount of such individual computed or recomputed under subparagraph (B) is exceeded by the primary insurance amount of such individual that would be determined without regard to this paragraph.
“(ii) The applicable percentage determined under this clause shall be a percentage (but not more than 50 percent) which shall be determined by the Commissioner on the basis of the amount of the savings generated as a result of the enactment of the Equal Treatment of Public Servants Act of 2015. The Commissioner shall determine and promulgate the applicable percentage determined under this clause on or before November 1, 2016, based upon the most recent actuarial estimates then available.

“(G) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection who—

“(i) attains age 62 after 1985 and before 2017 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

“(ii) would attain age 62 after 1985 and before 2017 and becomes eligible for a disability insurance benefit after 1985 and before 2017, and

“(iii) is eligible for old-age insurance benefits or disability insurance benefits for December 2016,

“(iv) has recorded noncovered earnings (as defined in paragraph (8)(C)(ii)), and
“(v) has less than 30 years of coverage (as defined in subparagraph (D)),

the primary insurance amount of such individual shall be computed or recomputed under this paragraph unless such individual provides to the Commissioner evidence determined to be satisfactory by the Commissioner that such individual has not received any periodic payment attributable to noncovered service. The Commissioner shall, in accordance with section 204, recover from such individual described in subparagraph (A), and any other individual receiving benefits under this title on the basis of the wages and self-employment income of such individual described in subparagraph (A), any excess of the total amount of benefits under this title paid to each such individual prior to 2017 over the amount computed on the basis of the primary insurance amount computed or recomputed under this paragraph without regard to subparagraph (F).”.

(c) Conforming Amendments.—Section 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is amended—

(1) by striking “after 1985” each place it appears and inserting “after 1985 and before 2017”; and
(2) by striking “hereafter in this paragraph and in subsection (d)(3)” and inserting “in this para-
graph, paragraph (8), and subsection (d)(3)”.

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