

108TH CONGRESS  
2D SESSION

# H. R. 4391

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

---

## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2004

Mr. BRADY of Texas (for himself, Mr. SHAW, Mr. BERMAN, Mr. McKEON, Mr. SAM JOHNSON of Texas, and Mr. MICHAUD) 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 repeal the windfall elimination provision and protect the retirement of public servants.

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 Servant Retire-  
5       ment Protection Act”.

6       **SEC. 2. REPEAL OF CURRENT WINDFALL ELIMINATION**  
7       **PROVISION.**

8       Paragraph (7) of section 215(a) of the Social Secu-  
9       rity Act (42 U.S.C. 415(a)(7)) is repealed.

1 **SEC. 3. REPLACEMENT OF THE WINDFALL ELIMINATION**  
2 **PROVISION WITH A FORMULA EQUALIZING**  
3 **BENEFITS FOR CERTAIN INDIVIDUALS WITH**  
4 **NON-COVERED EMPLOYMENT.**

5 (a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR  
6 FORMULA BASED ON COVERED PORTION OF PERIODIC  
7 BENEFIT.—

8 (1) IN GENERAL.—Section 215(a) of the Social  
9 Security Act (as amended by section 2 of this Act)  
10 is amended further by inserting after paragraph (6)  
11 the following new paragraph:

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

15 “(i) attains age 62 after 1985 (except where he  
16 or she became entitled to a disability insurance ben-  
17 efit before 1986 and remained so entitled in any of  
18 the 12 months immediately preceding his or her at-  
19 tainment of age 62), or

20 “(ii) would attain age 62 after 1985 and be-  
21 comes eligible for a disability insurance benefit after  
22 1985,

23 and who first becomes eligible after 1985 for a monthly  
24 periodic payment (including a payment determined under  
25 subparagraph (E), but excluding (I) a payment under the  
26 Railroad Retirement Act of 1974 or 1937, (II) a payment

1 by a social security system of a foreign country based on  
2 an agreement concluded between the United States and  
3 such foreign country pursuant to section 233, and (III)  
4 a payment based wholly on service as a member of a uni-  
5 formed service (as defined in section 210(m)) which is  
6 based in whole or in part upon his or her earnings for  
7 service which did not constitute ‘employment’ as defined  
8 in section 210 for purposes of this title (hereafter in this  
9 paragraph and in subsection (d)(3) referred to as ‘non-  
10 covered service’), the primary insurance amount of that  
11 individual during his or her concurrent entitlement to such  
12 monthly periodic payment and to old-age or disability in-  
13 surance benefits shall be computed or recomputed under  
14 subparagraph (B) or subparagraph (D) (as applicable).

15 “(B) In the case of an individual who first performs  
16 service described in subparagraph (A) after the 12th cal-  
17 endar month following the date of the enactment of the  
18 Public Servant Retirement Protection Act, if paragraph  
19 (1) of this subsection would apply to such individual (ex-  
20 cept for subparagraph (A) of this paragraph), the individ-  
21 ual’s primary insurance amount shall be the product de-  
22 rived by multiplying—

23 “(i) the individual’s primary insurance amount,  
24 as determined under paragraph (1) of this sub-

1 section and subparagraph (C)(i) of this paragraph,  
2 by

3 “(ii) a fraction—

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

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

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

14 “(C)(i) For purposes of determining an individual’s  
15 primary insurance amount pursuant to subparagraph  
16 (B)(i), the individual’s average indexed monthly earnings  
17 shall be determined by treating all service performed after  
18 1950 on which the individual’s monthly periodic payment  
19 referred to in subparagraph (A) is based (other than non-  
20 covered service as a member of a uniformed service (as  
21 defined in section 210(m))) as ‘employment’ as defined in  
22 section 210 for purposes of this title (together with all  
23 other service performed by such individual consisting of  
24 ‘employment’ as so defined).

1       “(ii) For purposes of determining average indexed  
2 monthly earnings as described in clause (i), the Commis-  
3 sioner of Social Security shall provide by regulation for  
4 a method for determining the amount of wages derived  
5 from service performed after 1950 on which the individ-  
6 ual’s periodic benefit is based and which is to be treated  
7 as ‘employment’ solely for purposes of clause (i). Such  
8 method shall provide for reliance on employment records  
9 which are provided to the Commissioner and which con-  
10 stitute a reasonable basis for treatment of service as ‘em-  
11 ployment’ for such purposes, together with such other in-  
12 formation received by the Commissioner as the Commis-  
13 sioner may consider appropriate as a reasonable basis for  
14 treatment of service as ‘employment’ for such purposes.

15       “(D)(i) In the case of an individual who has per-  
16 formed service described in subparagraph (A) during or  
17 before the 12th calendar month following the date of the  
18 enactment of the Public Servant Retirement Protection  
19 Act, if paragraph (1) of this subsection would apply to  
20 such individual (except for subparagraph (A) of this para-  
21 graph), there shall first be computed an amount equal to  
22 the individual’s primary insurance amount under para-  
23 graph (1) of this subsection, except that for purposes of  
24 such computation the percentage of the individual’s aver-  
25 age indexed monthly earnings established by subpara-

1 graph (A)(i) of paragraph (1) shall be the percent speci-  
2 fied in clause (ii). There shall then be computed (without  
3 regard to this paragraph) a second amount, which shall  
4 be equal to the individual's primary insurance amount  
5 under paragraph (1) of this subsection, except that such  
6 second amount shall be reduced by an amount equal to  
7 one-half of the portion of the monthly periodic payment  
8 which is attributable to noncovered service performed after  
9 1956 (with such attribution being based on the propor-  
10 tionate number of years of such noncovered service) and  
11 to which the individual is entitled (or is deemed to be enti-  
12 tled) for the initial month of his or her concurrent entitle-  
13 ment to such monthly periodic payment and old-age or dis-  
14 ability insurance benefits. There shall then be computed  
15 (without regard to this paragraph) a third amount, which  
16 shall be equal to the individual's primary insurance  
17 amount determined under subparagraph (B) as if sub-  
18 paragraph (B) applied in the case of such individual. The  
19 individual's primary insurance amount shall be the largest  
20 of the three amounts computed under this subparagraph  
21 (before the application of subsection (i)).

22       “(ii) For purposes of clause (i), the percent specified  
23 in this clause is—

24               “(I) 80.0 percent with respect to individuals  
25       who become eligible (as defined in paragraph (3)(B))

1 for old-age insurance benefits (or became eligible as  
2 so defined for disability insurance benefits before at-  
3 taining age 62) in 1986;

4 “(II) 70.0 percent with respect to individuals  
5 who so become eligible in 1987;

6 “(III) 60.0 percent with respect to individuals  
7 who so become eligible in 1988;

8 “(IV) 50.0 percent with respect to individuals  
9 who so become eligible in 1989; and

10 “(V) 40.0 percent with respect to individuals  
11 who so become eligible in 1990 or thereafter.

12 “(E)(i) Any periodic payment which otherwise meets  
13 the requirements of subparagraph (A), but which is paid  
14 on other than a monthly basis, shall be allocated on a basis  
15 equivalent to a monthly payment (as determined by the  
16 Commissioner of Social Security), and such equivalent  
17 monthly payment shall constitute a monthly periodic pay-  
18 ment for purposes of this paragraph.

19 “(ii) In the case of an individual who has elected to  
20 receive a periodic payment that has been reduced so as  
21 to provide a survivor’s benefit to any other individual, the  
22 payment shall be deemed to be increased (for purposes of  
23 any computation under this paragraph or subsection  
24 (d)(3) by the amount of such reduction.

1       “(iii) For purposes of this paragraph, the term ‘peri-  
2       odic payment’ includes a payment payable in a lump sum  
3       if it is a commutation of, or a substitute for, periodic pay-  
4       ments.

5       “(F)(i) Subparagraph (D) shall not apply in the case  
6       of an individual who has 30 years or more of coverage.  
7       In the case of an individual who has more than 20 years  
8       of coverage but less than 30 years of coverage (as so de-  
9       fined), the percent specified in the applicable subdivision  
10      of subparagraph (D)(ii) shall (if such percent is smaller  
11      than the applicable percent specified in the following table)  
12      be deemed to be the applicable percent specified in the  
13      following table:

<b>“If the number of such individ- ual’s years of coverage (as so defined) is:</b>	<b>The applicable percent is:</b>
29 .....	85
28 .....	80
27 .....	75
26 .....	70
25 .....	65
24 .....	60
23 .....	55
22 .....	50
21 .....	45

14      “(ii) For purposes of clause (i), the term ‘year of cov-  
15      erage’ shall have the meaning provided in paragraph  
16      (1)(C)(ii), except that the reference to ‘15 percent’ therein  
17      shall be deemed to be a reference to ‘25 percent’.

18      “(G) An individual’s primary insurance amount de-  
19      termined under this paragraph shall be deemed to be com-



1 puted under paragraph (1) of this subsection for the pur-  
2 pose of applying other provisions of this title.

3 “(H) This paragraph shall not apply in the case of  
4 an individual whose eligibility for old-age or disability in-  
5 surance benefits is based on an agreement concluded pur-  
6 suant to section 233 or an individual who on January 1,  
7 1984—

8 “(i) is an employee performing service to which  
9 social security coverage is extended on that date  
10 solely by reason of the amendments made by section  
11 101 of the Social Security Amendments of 1983; or

12 “(ii) is an employee of a nonprofit organization  
13 which (on December 31, 1983) did not have in effect  
14 a waiver certificate under section 3121(k) of the In-  
15 ternal Revenue Code of 1954 and to the employees  
16 of which social security coverage is extended on that  
17 date solely by reason of the amendments made by  
18 section 102 of that Act, unless social security cov-  
19 erage had previously extended to service performed  
20 by such individual as an employee of that organiza-  
21 tion under a waiver certificate which was subse-  
22 quently (prior to December 31, 1983) terminated.”.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 215(d)(3) of such Act (42  
25 U.S.C. 415(d)(3)) is amended—

1 (i) by striking “subsection (a)(7)(C)”  
2 each place it appears and inserting “sub-  
3 section (a)(7)(E)”;

4 (ii) by striking “subparagraph (E)”  
5 and inserting “subparagraph (H)”;

6 (iii) by striking “subparagraph (D)”  
7 and inserting “subparagraph (F)(i)”.

8 (B) Section 215(f)(9)(A) of such Act (42  
9 U.S.C. 415(f)(9)(A)) is amended by striking  
10 “(a)(7)(C)” and inserting “(a)(7)(E)”.

11 **SEC. 4. EFFECTIVE DATE.**

12 The amendments made by this Act shall apply with  
13 respect to monthly insurance benefits for months com-  
14 mencing with or after the 12th calendar month following  
15 the date of the enactment of this Act. Notwithstanding  
16 section 215(f) of the Social Security Act, the Commis-  
17 sioner of Social Security shall recompute primary insur-  
18 ance amounts to the extent necessary to carry out the  
19 amendments made by this Act.

○