

111TH CONGRESS  
1ST SESSION

# H. R. 1221

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2009

Mr. BRADY of Texas (for himself, Mr. CARTER, Mr. CONAWAY, Mr. CULBERSON, Mr. EDWARDS of Texas, Mr. GOHMERT, Ms. GRANGER, Mr. SAM JOHNSON of Texas, Mr. MARCHANT, Mr. McCAUL, Mr. MCGOVERN, Mr. McHUGH, Mr. NEUGEBAUER, Mr. PAUL, Mr. POE of Texas, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Ways and Means

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## 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 of 2009”.

1 **SEC. 2. REPEAL OF CURRENT WINDFALL ELIMINATION**  
 2 **PROVISION.**

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 4 rity Act (42 U.S.C. 415(a)(7)) is repealed.

5 **SEC. 3. REPLACEMENT OF THE WINDFALL ELIMINATION**  
 6 **PROVISION WITH A FORMULA EQUALIZING**  
 7 **BENEFITS FOR CERTAIN INDIVIDUALS WITH**  
 8 **NON-COVERED EMPLOYMENT.**

9 (a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR  
 10 FORMULA BASED ON COVERED PORTION OF PERIODIC  
 11 BENEFIT.—

12 (1) IN GENERAL.—Section 215(a) of the Social  
 13 Security Act (as amended by section 2 of this Act)  
 14 is amended further by inserting after paragraph (6)  
 15 the following new paragraph:

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

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

24 “(ii) would attain age 62 after 1985 and be-  
 25 comes eligible for a disability insurance benefit after  
 26 1985,

1 and who first becomes eligible after 1985 for a monthly  
2 periodic payment (including a payment determined under  
3 subparagraph (F), but excluding (I) a payment under the  
4 Railroad Retirement Act of 1974 or 1937, (II) a payment  
5 by a social security system of a foreign country based on  
6 an agreement concluded between the United States and  
7 such foreign country pursuant to section 233, and (III)  
8 a payment based wholly on service as a member of a uni-  
9 formed service (as defined in section 210(m)) which is  
10 based in whole or in part upon his or her earnings for  
11 service which did not constitute ‘employment’ as defined  
12 in section 210 for purposes of this title (hereafter in this  
13 paragraph and in subsection (d)(3) referred to as ‘non-  
14 covered service’), the primary insurance amount of that  
15 individual during his or her concurrent entitlement to such  
16 monthly periodic payment and to old-age or disability in-  
17 surance benefits shall be computed or recomputed under  
18 this paragraph.

19 “(B) The primary insurance amount of an individual  
20 described in subparagraph (A), as computed or recom-  
21 puted under this paragraph, shall be—

22 “(i) in the case of an individual who first per-  
23 forms noncovered service after the 12th calendar  
24 month following the date of the enactment of the  
25 Public Servant Retirement Protection Act of 2009,

1 the primary insurance amount determined under  
2 subparagraph (C), or

3 “(ii) in the case of an individual who has per-  
4 formed noncovered service during or before the 12th  
5 calendar month following the date of the enactment  
6 of the Public Servant Retirement Protection Act of  
7 2009, the larger of—

8 “(I) the primary insurance amount deter-  
9 mined under subparagraph (C), or

10 “(II) the primary insurance amount deter-  
11 mined under subparagraph (E).

12 “(C) An individual’s primary insurance amount de-  
13 termined under this subparagraph shall be the product de-  
14 rived by multiplying—

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

18 “(ii) a fraction—

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

23 “(II) the denominator of which is an  
24 amount equal to the individual’s average in-

1           dexed monthly earnings (as determined under  
2           subparagraph (D)),  
3 rounded, if not a multiple of \$0.10, to the next lower mul-  
4 tiple of \$0.10.

5           “(D)(i) For purposes of determining an individual’s  
6 primary insurance amount pursuant to clauses (i) and  
7 (ii)(II) of subparagraph (C), the individual’s average in-  
8 dexed monthly earnings shall be determined, subject to  
9 clause (ii), by treating all recorded noncovered earnings  
10 (as defined in clause (iii)(I)) derived by the individual  
11 from noncovered service performed in each year after 1950  
12 as ‘wages’ (as defined in section 209 for purposes of this  
13 title), which shall be treated as included in the individual’s  
14 adjusted total covered earnings (as defined in clause  
15 (iii)(II)) for such calendar year together with amounts  
16 consisting of ‘wages’ (as so defined without regard to this  
17 subparagraph) paid during such calendar year and self-  
18 employment income (as defined in section 211(b)) for tax-  
19 able years ending with or during such calendar year.

20           “(ii) In any case in which some or all of the earnings  
21 derived from noncovered service performed by an indi-  
22 vidual during any calendar year after 1950 are not re-  
23 corded noncovered earnings (as defined in clause (iii)(I)),  
24 for purposes of determining the individual’s average in-  
25 dexed monthly earnings as described in clause (i), the

1 amount of the individual's adjusted total covered earnings  
 2 (as defined in clause (iii)(II)) for such calendar year shall  
 3 be deemed to be, in lieu of the amount determined without  
 4 regard to this clause, an amount equal to the quotient de-  
 5 rived by dividing—

6           “(I) the sum of all adjusted total covered earn-  
 7 ings (determined without regard to this clause) of  
 8 the individual for all calendar years after 1950, plus  
 9 all recorded noncovered earnings which are paid to  
 10 the individual during such calendar years (after ad-  
 11 justment under subsection (b)(3) as if such earnings  
 12 were wages), by

13           “(II) the number of calendar years after 1950  
 14 for which there are, with respect to the individual,  
 15 any earnings described in subclause (I).

16           “(iii) For purposes of this subparagraph—

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

24           “(II) The term ‘adjusted total covered earnings’  
 25 means, in connection with an individual for any cal-

1       endar year, the sum of the wages paid to the indi-  
2       vidual during such calendar year (as adjusted under  
3       subsection (b)(3)) plus the self-employment income  
4       derived by the individual during any taxable year  
5       ending with or during such calendar year (as ad-  
6       justed under subsection (b)(3)).

7       “(iv) The Commissioner of Social Security shall pro-  
8       vide by regulation for methods for determining whether  
9       satisfactory evidence is available in the records of the  
10      Commissioner for earnings for noncovered service (other  
11      than noncovered service as a member of a uniformed serv-  
12      ice (as defined in section 210(m)) to be treated as re-  
13      corded noncovered earnings. Such methods shall provide  
14      for reliance on earnings information which is provided to  
15      the Commissioner by employers and which, as determined  
16      by the Commissioner, constitute a reasonable basis for  
17      treatment of earnings for noncovered service as recorded  
18      noncovered earnings. In making determinations under this  
19      clause, the Commissioner shall also take into account any  
20      documentary evidence of earnings derived from non-  
21      covered service by an individual which is provided by the  
22      individual to the Commissioner and which the Commis-  
23      sioner considers appropriate as a reasonable basis for  
24      treatment of such earnings as recorded noncovered earn-  
25      ings, except that such evidence provided by the individual

1 shall be taken into account only to the extent that such  
2 evidence does not relate to earnings for service with re-  
3 spect to which information regarding earnings has already  
4 been obtained by the Commissioner from the employer and  
5 only to the extent that such evidence does not result in  
6 a reduction in the individual's primary insurance amount  
7 as calculated under subparagraph (C).

8       “(E)(i) For purposes of determining the primary in-  
9 surance amount under this subparagraph pursuant to sub-  
10 paragraph (B)(ii)(II)—

11               “(I) there shall first be computed an amount  
12 equal to the individual's primary insurance amount  
13 under paragraph (1) of this subsection, except that  
14 for purposes of such computation the percentage of  
15 the individual's average indexed monthly earnings  
16 established by subparagraph (A)(i) of paragraph (1)  
17 shall be the percent specified in clause (ii), and

18               “(II) there shall then be computed (without re-  
19 gard to this paragraph) a second amount, which  
20 shall be equal to the individual's primary insurance  
21 amount under paragraph (1) of this subsection, ex-  
22 cept that such second amount shall be reduced by an  
23 amount equal to one-half of the portion of the  
24 monthly periodic payment which is attributable to  
25 noncovered service performed after 1956 (with such



1 attribution being based on the proportionate number  
2 of years of such noncovered service) and to which  
3 the individual is entitled (or is deemed to be enti-  
4 tled) for the initial month of his or her concurrent  
5 entitlement to such monthly periodic payment and  
6 old-age or disability insurance benefits.

7 An individual's primary insurance amount determined  
8 under this subparagraph shall be the larger of the two  
9 amounts computed under this clause (before the applica-  
10 tion of subsection (i)).

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

13 “(I) 80.0 percent with respect to individuals  
14 who become eligible (as defined in paragraph (3)(B))  
15 for old-age insurance benefits (or became eligible as  
16 so defined for disability insurance benefits before at-  
17 taining age 62) in 1986;

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

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

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

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

1       “(F)(i) Any periodic payment which otherwise meets  
2 the requirements of subparagraph (A), but which is paid  
3 on other than a monthly basis, shall be allocated on a basis  
4 equivalent to a monthly payment (as determined by the  
5 Commissioner of Social Security), and such equivalent  
6 monthly payment shall constitute a monthly periodic pay-  
7 ment for purposes of this paragraph.

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

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

18       “(G)(i) In any case in which the primary insurance  
19 amount would otherwise be calculated under subparagraph  
20 (E)—

21               “(I) this paragraph shall not apply in the case  
22 of an individual who has 30 years or more of cov-  
23 erage; and

24               “(II) in the case of an individual who has more  
25 than 20 years of coverage but less than 30 years of

1 coverage (as so defined), the percent specified in the  
 2 applicable subdivision of subparagraph (E)(ii) shall  
 3 (if such percent is smaller than the applicable per-  
 4 cent specified in the following table) be deemed to be  
 5 the applicable percent specified in the following  
 6 table:

<b>“If the number of the individual’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.

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

11 “(H) An individual’s primary insurance amount de-  
 12 termined under this paragraph shall be deemed to be com-  
 13 puted under paragraph (1) of this subsection for the pur-  
 14 pose of applying other provisions of this title.

15 “(I) This paragraph shall not apply in the case of  
 16 an individual whose eligibility for old-age or disability in-  
 17 surance benefits is based on an agreement concluded pur-  
 18 suant to section 233 or an individual who on January 1,  
 19 1984—

1           “(i) is an employee performing service to which  
 2           social security coverage is extended on that date  
 3           solely by reason of the amendments made by section  
 4           101 of the Social Security Amendments of 1983; or

5           “(ii) is an employee of a nonprofit organization  
 6           which (on December 31, 1983) did not have in effect  
 7           a waiver certificate under section 3121(k) of the In-  
 8           ternal Revenue Code of 1954 and to the employees  
 9           of which social security coverage is extended on that  
 10          date solely by reason of the amendments made by  
 11          section 102 of the Social Security Amendments of  
 12          1983, unless social security coverage had previously  
 13          extended to service performed by such individual as  
 14          an employee of that organization under a waiver cer-  
 15          tificate which was subsequently (prior to December  
 16          31, 1983) terminated.”.

17           (2) CONFORMING AMENDMENTS.—

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

20                   (i) by striking “subsection (a)(7)(C)”  
 21                   each place it appears and inserting “sub-  
 22                   section (a)(7)(F)”;

23                   (ii) by striking “subparagraph (E)”  
 24                   and inserting “subparagraph (I)”; and

1 (iii) by striking “subparagraph (D)”  
2 and inserting “subparagraph (G)(i)”.

3 (B) Section 215(f)(9)(A) of such Act (42  
4 U.S.C. 415(f)(9)(A)) is amended by striking  
5 “(a)(7)(C)” and inserting “(a)(7)(F)”.

6 **SEC. 4. EFFECTIVE DATE.**

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

○