

113TH CONGRESS
2D SESSION

H. R. 5697

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

NOVEMBER 13, 2014

Mr. BRADY of Texas (for himself and Mr. NEAL) 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 “Equal Treatment of
5 Public Servants Act of 2014”.

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

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

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

11 “(i) who becomes eligible for old-age insurance
12 benefits after 2016 or would attain age 62 after
13 2016 and becomes eligible for disability insurance
14 benefits after 2016,

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

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

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

21 “(B) The primary insurance amount of an individual
22 described in subparagraph (A), as computed or recom-
23 puted under this paragraph, shall be the product derived
24 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 for methods for determining whether
23 satisfactory evidence is available in the records of the
24 Commissioner for earnings for noncovered service (other
25 than noncovered service as a member of a uniformed serv-

1 ice (as defined in section 210(m))) to be treated as re-
2 corded noncovered earnings. Such methods shall provide
3 for reliance on earnings information which is provided to
4 the Commissioner by employers and which, as determined
5 by the Commissioner, constitute a reasonable basis for
6 treatment of earnings for noncovered service as recorded
7 noncovered earnings. In making determinations under this
8 clause, the Commissioner shall also take into account any
9 documentary evidence of earnings derived from non-
10 covered service by an individual which is provided by the
11 individual to the Commissioner and which the Commis-
12 sioner considers appropriate as a reasonable basis for
13 treatment of such earnings as recorded noncovered earn-
14 ings, except that such evidence provided by the individual
15 shall be taken into account only to the extent that such
16 evidence does not relate to earnings for service with re-
17 spect to which information regarding earnings has already
18 been obtained by the Commissioner from the employer and
19 only to the extent that such evidence does not result in
20 a reduction in the individual's primary insurance amount
21 as calculated under subparagraph (B).

22 “(D) Upon the death of an individual whose primary
23 insurance amount is computed or recomputed under this
24 paragraph, such primary insurance amount shall be com-

1 puted or recomputed under paragraph (1) of this sub-
2 section.”.

3 (b) MODIFICATION OF WINDFALL ELIMINATION
4 PROVISION FOR CURRENT BENEFICIARIES; RECOVERY OF
5 CERTAIN OVERPAYMENTS.—Section 215(a)(7) of such
6 Act (42 U.S.C. 415(a)(7)) is amended by adding at the
7 end the following:

8 “(F)(i) Notwithstanding subparagraph (A), for pur-
9 poses of determining the amount of monthly insurance
10 benefits for months after December 2016, the primary in-
11 surance amount of an individual described in subpara-
12 graph (A), or an individual described in subparagraph (G)
13 whose primary insurance amount was calculated or recal-
14 culated under subparagraph (B), shall be deemed to be
15 equal to the sum of—

16 “(I) the primary insurance amount of such indi-
17 vidual computed or recomputed under subparagraph
18 (B); plus

19 “(II) the applicable percentage (determined
20 under clause (ii)) of the amount by which the pri-
21 mary insurance amount of such individual computed
22 or recomputed under subparagraph (B) is exceeded
23 by the primary insurance amount of such individual
24 that would be determined without regard to this
25 paragraph.

1 “(ii) The applicable percentage determined under this
2 clause shall be a percentage (but not more than 50 per-
3 cent) which shall be determined by the Commissioner on
4 the basis of the amount of the savings generated as a re-
5 sult of the enactment of the Equal Treatment of Public
6 Servants Act of 2014. The Commissioner shall determine
7 and promulgate the applicable percentage determined
8 under this clause on or before November 1, 2016, based
9 upon the most recent actuarial estimates then available.

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

13 “(i) attains age 62 after 1985 and before 2017
14 (except where he or she became entitled to a dis-
15 ability insurance benefit before 1986 and remained
16 so entitled in any of the 12 months immediately pre-
17 ceding his or her attainment of age 62), or

18 “(ii) would attain age 62 after 1985 and before
19 2017 and becomes eligible for a disability insurance
20 benefit after 1985 and before 2017, and

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

23 “(iv) has recorded noncovered earnings (as de-
24 fined in paragraph (8)(C)(ii)), and

1 “(v) has less than 30 years of coverage (as de-
2 fined in subparagraph (D)),
3 the primary insurance amount of such individual shall be
4 computed or recomputed under this paragraph unless such
5 individual provides to the Commissioner evidence deter-
6 mined to be satisfactory by the Commissioner that such
7 individual has not received any periodic payment attrib-
8 utable to noncovered service. The Commissioner shall, in
9 accordance with section 204, recover from such individual
10 described in subparagraph (A), and any other individual
11 receiving benefits under this title on the basis of the wages
12 and self-employment income of such individual described
13 in subparagraph (A), any excess of the total amount of
14 benefits under this title paid to each such individual prior
15 to 2017 over the amount computed on the basis of the
16 primary insurance amount computed or recomputed under
17 this paragraph without regard to subparagraph (F).”.

18 (c) CONFORMING AMENDMENTS.—Section
19 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is
20 amended—

21 (1) by striking “after 1985” each place it ap-
22 pears and inserting “after 1985 and before 2017”;
23 and

1 (2) by striking “hereafter in this paragraph and
2 in subsection (d)(3)” and inserting “in this para-
3 graph, paragraph (8), and subsection (d)(3)”.

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