



FRATERNAL ORDER OF POLICE

Testimony of
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on “Social Security’s Disservice to Public Servants:
How the Windfall Elimination Provision and Government Pension Offset
Mistreat Government Workers”

before the Subcommittee on Social Security
House Committee on Ways and Means



Good afternoon, Chairman Smith, Chairman Ferguson, Ranking Member Neal, and distinguished Members of the House Committee on Ways and Means. My name is Patrick Yoes, National President of the Fraternal Order of Police, and I represent more than 373,000 rank-and-file police officers. The FOP is the oldest and largest law enforcement labor organization in the United States.

Mr. Chairman, I am grateful that you are holding this hearing to examine the impact of the Windfall Elimination Provision, or WEP, and the Government Pension Offset, or GPO, on hard-working Americans who were in public service. Approximately 1.9 million retired-worker beneficiaries, or 4% of the eligible population, are impacted by the WEP. According to a 2020 study, it is estimated that 60% of law enforcement officers in our country are impacted by the WEP.

The GPO impacts about 1% of all beneficiaries—about 735,000 people. According to the Social Security Administration, of those directly affected by the GPO, 52% were spouses and 48% were widow(er)s. About 70% of all GPO-affected beneficiaries had their benefits fully offset—which is a very high percentage.

The manifest unfairness of the WEP/GPO provisions are well-documented, but it has been 15 years since Congress has examined this issue despite the fact that the “Social Security Fairness Act” has gotten more than 300 cosponsors in this and the previous Congress. In fact, this bill—which is a top legislative priority for the FOP—has routinely gotten support from a majority of House Members going back for years no matter which party was in control.

Between 2000 and 2008, the House and Senate held a combined seven hearings on the WEP and GPO. But there has been no action or consideration of the bill since that time—apart from the Committee’s mark-up last year to prevent the legislation from moving off the Consensus Calendar under the rules of the House.

So, while I welcome the opportunity to be here with you today to talk about how the WEP/GPO hurts our nation’s retired law enforcement officers, I am also here to express the deep frustration of my members. Simply put, law enforcement officers who served in an agency outside the Social Security system may lose up to sixty percent (60%) of the Social Security benefit to which they are entitled by virtue of secondary or post-retirement employment which requires them to pay into the Social Security system. This sixty percent (60%) is a lot of money, especially when you consider that the officer and his or her family were likely counting on that benefit when they planned for retirement.

The FOP contends that this provision has a disparate impact on law enforcement officers. An old study from 2010 suggested that of the impacted retired-worker beneficiaries, 75% were law enforcement or other public safety workers. Law enforcement officers retire earlier than other public employees because of the physical demands of the job. Law enforcement officers may be eligible to retire between the ages of 45 and 60, and many agencies enforce mandatory retirement at a certain age.

After 20 or 25 years on the job, many law enforcement officers who retire begin second careers and work in jobs that do pay into the Social Security system. Even more officers are likely to “moonlight,” that is, hold second or even third jobs throughout their law enforcement career in order to augment their income. This creates an unjust situation that too many of our members find themselves in—they are entitled to a State or local retirement benefit because they worked 20 or more years keeping their streets and neighborhoods safe, but also worked at a job or jobs in which they paid into Social Security, entitling them to that benefit as well. However, because of the WEP, if their second career resulted in less than twenty (20) years of substantial earnings, upon reaching the age they are eligible to collect Social Security, they will discover that they lose sixty percent (60%) of the benefit for which they were taxed! Actuarially speaking, I doubt many officers will live long enough to “break even”—that is collect the money they paid into the system, let alone receive any “windfall.” These men and women earned their State or local retirement benefit as public employees and they paid Social Security taxes while employed in the private sector. How is this a windfall?

I do not believe Congress intended to reduce the benefits of hard-working Americans who chose to serve their States and communities as public employees and then went on to earn a Social Security benefit from covered employment. After all, when Social Security was established in 1935, it intentionally excluded State and local employees. And though most public employees are now in the Social Security system, all States have “pockets” of State and local employees that are not covered by Social Security. In many States—including here in Louisiana—significant percentages of State and local employees are outside the Social Security system. It is these public employees that need Congress to pass H.R. 82/S. 597, the “Social Security Fairness Act.”

When the WEP was enacted in 1983, it was part of a large reform package designed to shore up the financing of the Social Security system. Its ostensible purpose was to remove a “windfall” for persons who spent some time in jobs not covered by Social Security (like public employees) and also worked other jobs where they paid Social Security taxes long enough to qualify for retirement benefits. However, we can now clearly see that the WEP was a benefit cut designed to squeeze a few more dollars out of a system facing fiscal crisis. The fallout of this effort has had a profoundly negative impact on low-paid public employees outside the Social Security system, like law enforcement officers.

To the FOP, which represents these rank-and-file officers, this is a matter of fairness. The WEP substantially reduces a benefit that employees had included and counted on when planning their retirement. The arbitrary formula in current law, when applied, does not eliminate “windfalls” because of its regressive nature—the reduction is only applied to the first bracket of the benefit formula and causes a relatively larger reduction in benefits to low-paid workers. It also overpenalizes lower paid workers with short careers or, like many retired law enforcement officers, those whose careers are split inside and outside the Social Security system. Bluntly put, this provision has not eliminated a windfall for individuals who did not earn it, but it has resulted in a windfall for the Federal government at the expense of public employees.

Many of the Members here today know that the profession of law enforcement is facing an existential crisis in recruiting the next generation of law enforcement officers. We are struggling to recruit and train new officers and when these prospective candidates learn that any Social Security benefit they may earn will be reduced after a career in law enforcement, that makes the career a lot less attractive. I know this is the case in law enforcement, but it probably has a much broader effect on any public servant impacted by these provisions. We should be encouraging people to seek careers in public service, but the WEP and GPO discourage people from public service.

While the GPO impacts fewer people, its effect can sometimes be more profound. In 1977, Federal legislation was enacted that required a dollar-for-dollar reduction of Social Security spousal benefits to public employees and retired public employees who received earned benefits from a Federal, State, or local retirement system. Following a major campaign to repeal the provisions in 1983, Congress, which was looking for ways to reduce the fiscal pressure on the Social Security system, adopted instead the current Government Pension Offset, which limits the spousal benefits reduction to two-thirds of a public employee's retirement system benefits. This remedial step falls far short of addressing the inequity of Social Security benefits between public and private employees. This "offset" provision should have been repealed in 1983 and might have been were it not for the fiscal condition of the Social Security system at that time.

I want to emphasize this point—Congress had the opportunity to get rid of the GPO in 1983 and chose not to because of the fiscal strains on the Social Security system—forty years ago. For forty years, Congress has leaned on the GPO crutch or used it as an excuse to continue to treat public employees differently from other Americans. Congress should not make this mistake again. I have heard the speculation that a WEP/GPO repeal would shorten the life of the Social Security Trust Fund by about one year. Congress must find another way—it should no longer depend on Americans who chose public service and then are denied the benefits they earned and paid for. It's wrong, unfair, and frankly dishonest. If this scheme was being run by a pension board or private money management group instead of the Social Security Administration, they would not call it an elimination of a windfall or an offset—it would be considered embezzlement. One entity enriching itself by denying a benefit earned by an individual is criminal and that is exactly what is happening here.

Having missed the opportunity to repeal this unfair provision, the current GPO formula reduces the spouse's or widow(er)'s benefit from Social Security by two-thirds of the monthly amount received by the government pension. For example, the spouse of a retired law enforcement officer who, at the time of his or her death, was collecting a government pension of \$1,200 would be ineligible to collect the surviving spousal benefit of \$600 from Social Security. Two-thirds of \$1,200 is \$800, which is greater than the spousal benefit of \$600 and thus, under this law, the spouse is unable to collect it. If the spouse's benefit were \$900, only \$100 could be collected, because \$800 would be "offset" by the officer's government pension.

This completely eliminates the spousal benefit for 70% of beneficiaries even though the covered spouse paid Social Security taxes for many years, thereby earning the right to this benefit and the right to bequeath the benefits to their surviving spouse.

In my submitted testimony, I have attached a video compilation of just a few of our members who are facing financial hardship because of WEP and GPO. I will let those members speak for themselves.

Ultimately, this is about fairness to the men and women who have sworn to serve and protect our communities. It is not unreasonable to expect that the men and women who spent their careers putting their lives on the line for their fellow citizens be treated fairly after they retire. But because of the WEP and the GPO, they are treated differently and are subject to arbitrary formulas that reduce benefits for which they have been taxed and to which they are entitled. Both of these provisions should be repealed, and I urge the Committee to get back to Washington and pass H.R. 82, the "Social Security Fairness Act."

Mr. Chairman, I want to thank you and the other Members of this distinguished Committee for the chance to appear before you today. I would be happy to answer any questions you have.