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Social Security: The Government Pension Offset (GPO)

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Summary

A worker is “covered” by Social Security if he or she pays into Social Security through the Old-Age, Survivors, and Disability Insurance (OASDI) payroll tax. Currently 96% of all workers are covered by Social Security. The majority of non-covered positions are held by federal, state, and local government employees.

Generally, Social Security benefits are payable to the spouses of retired, disabled, or deceased workers covered by Social Security. Spousal benefits are intended for individuals who are financially dependent on spouses who work in Social Security-covered positions. Individuals who qualify for both a Social Security worker benefit (retirement or disability) based on their own work history and a Social Security spousal benefit based on their spouse’s work history are “dually-entitled” and are subject to the dual-entitlement rule. The Social Security dual-entitlement rule requires that 100% of a Social Security retirement or disability benefit earned as a worker (based on one’s own Social Security-covered earnings) be subtracted from any Social Security spousal benefit one is eligible to receive (based on their spouse’s Social Security-covered earnings), and only the difference, if any, is paid as a spousal benefit.

Individuals who qualify for both a government pension based on *non-Social Security-covered* employment and a Social Security spousal benefit are subject to the Government Pension Offset (GPO) provision. The GPO provision reduces Social Security benefits that a person receives *as a spouse* if he or she also has a federal, state or local *government pension based on work that was not covered by Social Security*. The GPO reduction in Social Security spousal benefits is equal to two-thirds of the government pension.

The intent of the dual-entitlement rule and the GPO is the same — to reduce the Social Security spousal benefits of individuals who are not financially dependent on their spouse because they receive their own benefits. The GPO attempts to replicate Social Security’s “dual-entitlement” rule, by removing an advantage these workers would otherwise receive if they could receive both a government pension and full Social Security spousal benefits. Opponents contend that the provision is basically inaccurate and often unfair while defenders argue it is the best method currently available for eliminating an unfair advantage for non-covered government workers. Six bills have been introduced in the 108th Congress that would modify or repeal the provision. One bill, H.R. 743, which eliminated a controversial exemption from the GPO (known as the “last-day rule”) was passed into law (P.L. 108-203) on March 2, 2004.

This report will be updated periodically.

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Social Security: The Government Pension Offset (GPO)

Background

Generally, Social Security benefits are payable to the spouses of retired, disabled, or deceased workers covered by Social Security. Spousal benefits are intended for individuals who are financially dependent on spouses who work in Social Security-covered positions. The spousal benefit is equal to 50% of the retired or disabled worker's benefit and 100% of the deceased worker's benefit. Individuals who qualify for both a Social Security worker benefit (retirement or disability) based on their own work history and a Social Security spousal benefit based on their spouse's work history are "dually-entitled" and are subject to the dual-entitlement rule. Individuals who qualify for both a *non*-Social Security-covered government pension and a Social Security spousal benefit are subject to the Government Pension Offset (GPO) provision.¹ The intent of the dual-entitlement rule and the GPO is the same — to reduce the Social Security spousal benefits of individuals who are not financially dependent on their spouse because they receive their own benefits. The key difference is what is used to determine financial dependence — benefits based on Social Security-covered work or benefits based on non-Social Security-covered work.²

Social Security-Covered and Non-Covered Work. A worker is "covered" by Social Security if he or she pays into Social Security through the Old-Age, Survivors, and Disability Insurance (OASDI) payroll tax. Approximately 96% of all workers are covered. The majority of non-covered positions are held by government employees: most federal employees hired before 1984 and some state and local government employees. Nationwide, approximately 72% of state and local government employees are covered.³ However, coverage varies from state to state. For example, approximately 97% of state and local employees in Vermont are

¹ The GPO is often confused with the Windfall Elimination Provision (WEP), which reduces Social Security benefits that a person receives *as a worker* if he or she also has a *government pension based on work that was not covered by Social Security*. For additional information in the Windfall Elimination Provision (WEP), please refer to CRS Report 98-35, *Social Security: The Windfall Benefit Provision*, by Laura Haltzel.

² 42 U.S.C. § 402(b)(4).

³ Social Security Administration, *Estimated Social Security Coverage of Workers with State and Local Government Employment, 2001*.

covered by Social Security, while only 3% of state and local employees in Ohio are covered.⁴

This disparity in coverage occurs because, while Social Security originally did not cover any state and local government workers, over time the law has changed. Most state and local government employees became covered by Social Security through voluntary agreements between the Social Security Administration and individual states.⁵ Beginning in July 1991, state and local employees who were not members of a public retirement system were mandatorily covered by Social Security. Those public employees who were already members of a public retirement system through their employment were not mandatorily covered because their state pensions already fulfilled the social insurance functions of Social Security.

Dual-Entitlement Rule. The Social Security dual-entitlement rule requires that 100% of a Social Security retirement or disability benefit earned as a worker (based on one's own Social Security-covered earnings) be subtracted from any Social Security spousal benefit one is eligible to receive (based on their spouse's Social Security-covered earnings), and only the difference, if any, is paid as a spousal benefit. In other words, the dual-entitled worker will receive the higher of his or her own retirement benefit *or* the spousal benefit, but *not both*. The rationale is that a Social Security spousal benefit is based on the concept of "dependency," and someone who receives his or her own Social Security benefit as a retired worker is not financially dependent on his or her spouse. Because most workers are in Social Security-covered employment, the dual-entitlement scenario is the most common among two-earner couples. In December 2003, approximately 6.2 million out of 47 million Social Security beneficiaries, or about 13%, were dually-entitled (not including those whose spousal benefit was completely offset by their retired worker benefit).⁶ **Table 1** demonstrates how the Social Security dual-entitlement rule is applied.

⁴ Ibid.

⁵ These agreements are known as "Section 218 agreements" because they are authorized by Section 218 of the Social Security Act.

⁶ Social Security Administration, Annual Statistical Supplement, OASDI Monthly Statistics, Dec. 2003, Table 1.

Table 1. Regular Dual-Entitlement Formula

	John	Mary
Social Security retirement benefit (based on <i>worker's</i> earnings record)	\$900.00	\$400.00
Maximum Social Security spousal benefit eligible to receive (based on <i>spouse's</i> earnings record), equal to 50% of the spouse's Social Security retirement benefit	\$200.00	\$450.00
Reduction in spousal benefit due to dual-entitlement rule (equal to <i>worker's</i> own retirement benefit)	\$900.00	\$400.00
Actual Social Security SPOUSAL benefit paid (subtract worker benefit from spousal benefit)	\$0.00	\$50.00

Source: Illustrative example provided by Congressional Research Service (CRS).

In this example, both John and Mary have worked enough years in Social Security-covered positions (i.e., paid into Social Security) to qualify for Social Security retirement benefits. John has earned a Social Security benefit equal to \$900. His wife Mary has earned a Social Security benefit equal to \$400. Mary is also eligible for a Social Security spousal benefit of up to 50% of John's retirement benefit, or \$450. However, under the dual-entitlement rule, Mary's worker benefit of \$400 must be subtracted from her potential \$450 spousal benefit, and only the difference of \$50 is paid as a spousal benefit. In total, Mary will receive \$450 — \$400 as a Social Security worker benefit and \$50 as a Social Security spousal benefit. John is also eligible to receive a Social Security spousal benefit of up to 50% of Mary's retirement benefit, or \$200. However, in this application of the dual-entitlement rule, John would not be paid a spousal benefit because his \$900 retirement benefit based on his own earnings is higher and more than offsets the potential \$200 spousal benefit.

Government Pension Offset Formula. The Social Security spousal benefit of a person who receives a pension from government employment (federal, state, or local) that was based on work *not covered* by Social Security is reduced by a provision in the law known as the GPO. The GPO reduction in Social Security spousal benefits is equal to two-thirds of the government pension. In December 2003, approximately 390,400 Social Security beneficiaries, or less than 1% of all beneficiaries, had spousal benefits reduced by the GPO (not counting those who were eligible for spousal benefits but were deterred from filing for them because of the GPO).⁷ **Table 2** below provides an example of how the GPO is applied.

⁷ Social Security Administration, Office of Research Evaluation and Statistics, Unpublished Table DE01, Mar. 1, 2004.

Table 2. GPO Formula

	John	Mary
Social Security retirement benefit (based on <i>worker's</i> earnings record)	\$900.00	\$0.00
Non-Social Security-covered government pension	\$0.00	\$400.00
Maximum Social Security spousal benefit eligible to receive (based on <i>spouse's</i> earnings record), equal to 50% of the spouse's Social Security retirement benefit	\$0.00	\$450.00
Reduction in Social Security spousal benefit due to GPO (equals 2/3 of non-Social Security-covered pension)	\$0.00	\$266.67
Actual Social Security spousal benefit paid (subtract 2/3 of non-Social Security-covered worker's pension from Social Security spousal benefit)	\$0.00	\$183.33

Source: Illustrative example provided by CRS.

In this example, John worked enough years in Social Security-covered employment to qualify for Social Security retirement benefits. He has earned a Social Security benefit of \$900. His wife, Mary, is *not* eligible for a Social Security *worker* benefit on her own record because she worked in a non-Social Security-covered government position and did not contribute to Social Security. However, Mary is still eligible for a Social Security *spousal* benefit of up to \$450 based on John's work history. Mary is also eligible for a \$400 government pension based on her work in a non-Social Security-covered position. Under the GPO, Mary's potential Social Security spousal benefit is reduced by an amount equal to two-thirds of her non-Social Security-covered government pension, or \$266.67, and only the difference of \$183.33 is paid to her as a spousal benefit. In total, Mary will receive \$583.33 — \$400 from her non-covered pension and \$183.33 as a Social Security spousal benefit. In this example, John is not eligible for a Social Security spousal benefit because Mary did not qualify on her own earnings history for a Social Security worker benefit.

Rationale and Legislative History

The GPO is intended to place annuitants whose government employment was *not covered* by Social Security and who are eligible for a Social Security spousal benefit in approximately the same position as workers whose jobs *were covered* by Social Security and are also eligible for a Social Security spousal benefit. Before the GPO was enacted in 1977, workers who received pensions from a government job not covered by Social Security could also receive full Social Security spousal benefits even though they were not financially dependent on their spouse. Because the Social Security Administration (SSA) does not have complete earnings records of those who work in non-Social Security-covered positions, SSA is forced to rely on the government pension as a measure of those uncovered earnings. Essentially, it is assumed that two-thirds of the government pension is basically equivalent to the Social Security retirement or disability benefit the spouse would have earned as a

worker if his or her job had been covered by Social Security. Thus, the GPO attempts to replicate the Social Security dual-entitlement rule by requiring that an amount equal to two-thirds of the worker's non-covered government pension be subtracted from the Social Security spousal benefit. The scenarios below demonstrate why the law was changed.

Table 3 shows how the spousal benefit of the same individual, Mary, would vary under three scenarios: (1) as a dually-entitled recipient of Social Security retirement and spousal benefits; (2) as the recipient of a non-covered government pension and Social Security spousal benefits *before* the GPO was enacted; and, (3) as the recipient of a non-covered government pension and Social Security spousal benefits *after* the GPO was enacted. In each case, Mary's earnings (and thus the Social Security retirement benefit or non-covered government pension) and the maximum spousal benefit she is eligible to receive are identical.

Under the first scenario (as a dually-entitled retiree), 100% of Mary's own Social Security retirement benefit of \$400 is used to offset the \$450 Social Security spousal benefit that she is eligible for, leaving her with a net spousal benefit of \$50. Under the second scenario (where Mary receives a non-covered government pension instead of a Social Security retirement benefit), *before* the GPO was enacted, Mary's Social Security spousal benefits are not reduced at all and she receives a full Social Security spousal benefit of \$450. Under the third scenario (when the GPO is put into effect), Mary's Social Security spousal benefit is reduced by two-thirds of her \$400 non-covered government pension, leaving her with a net spousal benefit of \$183.33. Therefore, with the GPO in place, Mary's earnings and resulting retirement benefit are used to offset her Social Security spousal benefit just as they were under the dual-entitlement scenario.

**Table 3. Mary's Spousal Benefit —
Before and After GPO Enactment**

	Dually-entitled	Before GPO	After GPO
Social Security retirement benefit (based on own earnings record)	\$400.00	\$0.00	\$0.00
Non-Social Security-covered pension	\$0.00	\$400.00	\$400.00
Maximum Social Security spousal benefit eligible to receive (based on spouse's earnings record), equal to 50% of the spouse's Social Security retirement benefit	\$450.00	\$450.00	\$450.00
Reduction in spousal benefit due to dual-entitlement rule (equal to worker's retirement benefit)	\$400.00	-----	-----
Reduction in Social Security spousal benefit due to GPO (equals 2/3 of non-Social Security-covered pension)	-----	-----	\$266.67
Actual Social Security spousal benefit paid (subtract worker benefit from spousal benefit)	\$50.00	\$450.00	\$183.33

Source: Illustrative example provided by CRS.

Note: Dashes are used to represent scenarios where either the dual-entitlement rule or the GPO are not applicable. For example, in the dual-entitlement scenario, Mary does not receive a non-covered government pension and, thus, the GPO does not apply.

Table 3 also shows how, given equal Social Security retirement benefits or non-covered government pension amounts of \$400, individuals under the GPO actually receive a lesser reduction in Social Security spousal benefits compared to those covered by Social Security and subject to the dual-entitlement rule. Those under dual-entitlement face a 100% offset and receive only a \$50 spousal benefit while those under the GPO face a 66.6% offset and receive \$183.33 as a spousal benefit. If those non-Social Security-covered workers had been covered by Social Security, they would have been subject to the dual-entitlement rule and their spousal benefits would be lower than what they receive under the GPO.

Why a Two-Thirds Reduction? Using two-thirds of the government pension as the equivalent of a Social Security benefit was established by the Social Security Amendments of 1983 (P.L. 98-21). The original 1977 law provided that 100% of the government pension be subtracted from the Social Security spousal benefit. If the original legislation had been left intact, the treatment of individuals affected by the dual-entitlement rule and the GPO would in fact have been identical because the Social Security spousal benefit would have been offset by 100% of the retirement benefit in both cases. In 1983, Congress passed P.L. 98-21, which made a number of amendments to Social Security in an attempt to strengthen the system's finances. One section of the House version of this law proposed that the amount used in calculating the offset be one-third of the government pension. The Senate version

contained no such provision. The conferees adopted the House bill except that the offset would be two-thirds of the government pension.

Who Is Affected by the GPO?

Government workers not paying into Social Security are potentially affected by the GPO. Generally, employees of the federal government hired before 1984 are covered by the Civil Service Retirement System (CSRS) and are not covered by Social Security; therefore, they are subject to the GPO upon retirement. Most federal workers first hired into federal service after 1983 are covered by the Federal Employees' Retirement System (FERS), which includes Social Security coverage; thus, although FERS retirees are not subject to the GPO,⁸ they, like all covered workers in the private sector, are subject to the Social Security dual-entitlement rule upon retirement. As of March 2003, approximately 770,000 federal workers (30% of the federal workforce) participate in CSRS and are potentially subject to the GPO, while 1.8 million (70%) participate in FERS and are subject to the dual-entitlement rule.⁹

Some state and local government workers do not pay into Social Security and are potentially subject to the GPO upon retirement. Social Security coverage varies by state. In 2001, approximately 6.7 million state and local workers (28% of all state and local workers) were in non-Social Security-covered positions and are subject to the GPO. At the same time, approximately 16.9 million state and local workers (72%) were in covered employment and are subject to the dual-entitlement rule upon retirement.¹⁰

As of December 2003, approximately 390,400 Social Security beneficiaries, or less than 1% of all beneficiaries, had spousal benefits reduced by the GPO (not counting those who were eligible for spousal benefits but were deterred from filing for them because of the GPO).¹¹ Of these 59% were spouses; 41% were widows and widowers. About 75% of all affected were women. **Table 4** below provides a breakdown of the affected beneficiaries by state and type of benefit.

⁸ Workers who switch from CSRS to FERS must work for five years under FERS in order to be exempt from the GPO.

⁹ Federal Retirement Thrift Investment Board, *Participation in the Thrift Savings Plan by Department and Agency*, Mar. 2003.

¹⁰ Social Security Administration, *Estimated Social Security Coverage of Workers with State and Local Government Employment*, 2001.

¹¹ Social Security Administration, Office of Research Evaluation and Statistics, Unpublished Table DE01, Mar. 1, 2004.

Table 4. Number of Social Security Beneficiaries Affected by the GPO, by State and Type of Benefit, December 2003

State	Total	Spouses	Widow(er)s
Alabama	3,631	1,854	1,777
Alaska	1,271	729	542
Arizona	4,914	2,659	2,255
Arkansas	2,279	1,318	961
California	56,262	36,006	20,256
Colorado	12,437	7,820	4,617
Connecticut	4,641	2,975	1,666
Delaware	332	142	190
District of Columbia	2,573	836	1,737
Florida	17,424	9,937	7,487
Georgia	9,874	5,388	4,486
Hawaii	1,684	1,047	637
Idaho	980	560	420
Illinois	24,686	15,017	9,669
Indiana	3,340	1,619	1,721
Iowa	1,514	831	683
Kansas	1,771	848	923
Kentucky	5,462	3,409	2,053
Louisiana	17,663	9,530	8,133
Maine	3,795	2,268	1,527
Maryland	7,445	3,272	4,173
Massachusetts	17,957	11,059	6,898
Michigan	4,274	2,165	2,109
Minnesota	5,431	3,354	2,077
Mississippi	1,999	993	1,006
Missouri	8,119	4,889	3,230
Montana	843	460	383
Nebraska	1,003	554	449
Nevada	4,178	2,442	1,736
New Hampshire	1,233	712	521
New Jersey	4,205	2,013	2,192
New Mexico	2,407	1,423	984
New York	7,886	3,882	4,004
North Carolina	4,701	2,491	2,210
North Dakota	409	225	184
Ohio	53,818	32,804	21,014
Oklahoma	3,142	1,565	1,577
Oregon	3,030	1,716	1,314
Pennsylvania	7,195	3,553	3,642
Rhode Island	1,211	714	497
South Carolina	2,973	1,583	1,390
South Dakota	686	367	319
Tennessee	4,017	2,200	1,817
Texas	42,973	27,154	15,819
Utah	1,783	959	824
Vermont	449	270	179
Virginia	6,743	3,229	3,514
Washington	4,045	2,045	2,000
West Virginia	978	459	519

State	Total	Spouses	Widow(er)s
Wisconsin	2,603	1,460	1,143
Wyoming	371	189	182
Outlying areas and foreign countries	5,791	3,787	2,004
Total	390,431	228,781	161,650

Source: Social Security Administration, Office of Research Evaluation and Statistics, Mar. 1, 2004.

In December 2003, the average monthly non-covered government pension amount was \$1,555 (\$1,343 for women and \$2,194 for men).¹² The average pre-offset Social Security spousal benefits at that time were \$500 per month overall (\$564 for women, and \$310 for men).¹³ In December 2003, the average offset caused by the GPO was \$409 (\$444 a month for women and \$306 for men).¹⁴ For 75% of those with spousal benefits reduced by the GPO, the GPO reduction was large enough to fully offset any potential spousal benefit either because the non-covered pension was large or the potential Social Security spousal benefits were small.¹⁵ In December 2003, the average resulting Social Security spousal benefit was \$91 per month (\$120 a month for women and \$4 a month for men).¹⁶

By contrast, in December 2003 approximately 6.2 million beneficiaries were affected by the dual-entitlement rule.¹⁷ Of these, 43% were spouses and 57% were widow(er)s.¹⁸ About 6.1 million (98%) of all affected were women.¹⁹ The average retired worker benefit was \$459 overall.²⁰ The average spousal benefit (after being reduced for dual-entitlement) was \$372.²¹ The average combined Social Security retired worker benefit plus reduced spousal benefit was \$831.²² It is impossible to know from the administrative records how many individuals subject to the dual-entitlement rule have their spousal benefits completely offset, because they would then not be counted among the dually-entitled population.

¹² Ibid., Table G209. Data is limited to those beneficiaries for whom the offset amount is available.

¹³ Ibid., Table G309. Data is limited to those beneficiaries for whom the offset amount is available.

¹⁴ Ibid., Table G609. Data is limited to those beneficiaries for whom the offset amount is available.

¹⁵ Ibid., Table G105.

¹⁶ Ibid., Table G509, May 7, 2004. Data is limited to those beneficiaries for whom the offset amount is available.

¹⁷ Social Security Administration, Social Security Bulletin, Annual Statistical Supplement, 2004, Table 5.G1.

¹⁸ Ibid., 2004, Table 5.G3.

¹⁹ Ibid., Table 5.G3.

²⁰ Ibid., Table 5.G3.

²¹ Ibid.

²² Ibid.

Issues

Arguments Against the GPO. Critics of the GPO say that it is not well understood and that many affected by it are unprepared for a smaller Social Security benefit than they had assumed in making retirement plans. They also argue that the provision especially hurts low-income workers such as teachers, and is in some circumstances sufficient to throw these workers into poverty. They maintain that the original purpose of the GPO was to prevent higher-paid workers from reaping windfall benefits, and it was not intended to have such a drastic effect on lower-paid workers. They question why the provision applies only to government workers and not to workers in the private sector who also receive pensions from their employers. They also point out that whatever the rationale, reducing everyone's spousal benefit by two-thirds of their government pension is an imprecise way to estimate what the spousal benefit would be had the government job been covered by Social Security. They say this procedure has uneven results and that it is especially disadvantageous for surviving spouses and low-paid workers. Ideally, the way to compute the offset to replicate the dual-entitlement rule would be to apply the Social Security benefit formula to an individual's total earnings, including the non-covered portion, and reduce the resulting Social Security benefit by the proportion of total earnings attributable to non-covered earnings.

Arguments for the GPO. Defenders of the GPO maintain that it is an effective method to curtail what otherwise would be an unfair advantage for non-Social Security-covered government workers. The provision was phased in over six years and now has been in the law for 27 years; therefore, they say, there has been ample time for people to adjust their retirement plans. H.R. 743 (P.L. 108-203), discussed below, includes a provision that seeks to ensure that SSA and government employers notify potentially affected individuals about the effect of the GPO. They maintain that it is not true that the measure was intended to apply particularly to higher-paid workers, nor does analysis support the position that the measure disproportionately affects lower-paid workers. While 75% of those affected by the GPO have their benefits fully offset, only 44% of those with non-covered pensions of less than \$1,000 per month had their benefits fully offset compared with 91% of those with non-covered pensions between \$1,000 and \$1,999 and 100% of individuals with non-covered pensions over that amount.²³ Of the 75% of individuals affected by the GPO whose benefits were fully offset as a result of the GPO, only 21% had a non-covered pension amount of less than \$1,000 per month.²⁴ Thus, if the non-covered pension amount is a reflection of the earnings levels of individuals affected by the GPO, a greater percentage of those with lower earnings receive at least a partial Social Security benefit relative to the overall GPO-affected population. Furthermore, recent data from the Bureau of Labor Statistics indicate that state and local government workers earned on average \$21.54 per hour compared to the

²³ CRS calculations based on Table I, "Estimated Number of Beneficiaries Affected by the GPO by Current Offset Status and the Non-Covered Government Pension Amount, Limited to Those Beneficiaries For Which the Offset Amount is Available, Dec. 2003," produced by the Social Security Administration's Office of Research, Evaluation and Statistics, Mar. 1, 2004.

²⁴ Ibid.

national average of \$17.18 per hour and the private sector average of \$16.40 per hour.²⁵ Thus, on average, private sector workers, who are affected by the dual-entitlement rule, earn less than their counterparts in state and local government who are affected by the GPO. Defenders point out that, if these government workers had been covered by Social Security, in many cases Social Security's dual-entitlement rule would produce a higher reduction in spousal benefits than does the GPO. Thus, they say, to weaken or eliminate the GPO would be unfair to other workers, including the majority of government workers whose jobs *are* covered by Social Security and therefore are subject to Social Security's dual-entitlement rule. They maintain that the fact that the GPO does not apply to private sector pensions is irrelevant, because the employment on which the private pension is based would be covered by Social Security, and thus Social Security's dual-entitlement rule (which the GPO is meant to replicate) would reduce any spousal benefits for which the workers would be eligible. They also argue that weakening or eliminating the GPO would be costly at a time when neither Social Security nor the federal budget is in sound financial condition. The Congressional Budget Office (CBO) has projected the savings produced by the GPO to be about \$31 billion over the next 10 years (hence, the 10-year cost of repealing the provision would be about \$31 billion). Finally, because administrative considerations have precluded applying the Social Security benefit computation rules to government employment, the GPO is defended as a practical way to prevent undue Social Security benefits from going to government annuitants.

The “Last Day” Rule. A burgeoning controversy has arisen with the recent revelation that a growing number of state and local government workers have been making use of a little-known provision of the law that allows them to escape the application of the GPO if they switch jobs at the end of their government careers. They have been able to do this because, until recently, the law granted an exception to the GPO if, on the last day of one's government service, he or she worked in a Social Security-covered position. On August 15, 2002, the General Accounting Office (GAO) released a report that found that, as of June 2002, 4,819 individuals in Texas and Georgia had switched to Social Security-covered positions to avoid the application of the GPO to their Social Security spousal benefits. The GAO projected that the cost to the program for these cases could be about \$450 million. The GAO stated that possible remedies to these potential abuses of the last-day exception clause could be to lengthen the time period to qualify for the exemption or to prorate the reduction in benefits to the proportion of time spent in the non-covered job compared to the covered one. On February 11, 2004, the House of Representatives agreed to Senate amendments and passed H.R. 743, the Social Security Protection Act of 2003, which became P.L. 108-203.²⁶ As discussed below, P.L. 108-203 eliminated the last-day exception clause by requiring those workers switching from non-covered

²⁵ U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Occupational Wages in the United States, July 2002*, June 2003.

²⁶ For more information on H.R. 743, see CRS Report RS21448, *The Social Security Protection Act of 2003 (H.R. 743)*, by Dawn Nuschler.

positions to Social Security-covered positions to work in the covered position for at least 60 months (five years) before being exempt from the GPO.²⁷

Recent Legislation

Proposed Changes to the GPO Formula. Five bills have been introduced in the 108th Congress that would affect the GPO formula. Representative McKeon and Senator Feinstein have introduced identical bills, H.R. 594 and S. 349, both of which would eliminate the GPO entirely, effective in 2004.²⁸ Senator Mikulski has introduced S. 363, which would eliminate the application of the GPO to those whose monthly combination of Social Security spousal benefits and non Social Security-covered pension is \$1,200 or less.²⁹ For those whose monthly combination of Social Security spousal benefits and non-Social Security-covered pension is more than \$1,200, the reduction in their spousal benefit would be equal to the lesser of (1) two-thirds of the amount by which the combined benefit exceeds \$1,200 or (2) two-thirds of the government pension. In future years, the \$1,200 threshold would rise in proportion to the rate of inflation. Similarly, H.R. 887, by Representative Jefferson and 126 co-sponsors, would eliminate the application of the GPO to those whose monthly combination of Social Security spousal benefits and non Social Security-covered pension is \$2,000 or less. For those whose monthly combination of Social Security spousal benefits and other government benefits is more than \$2,000, the reduction in their benefit would be the lesser of the excess over \$2,000 or two-thirds of the government pension. The \$2,000 threshold would rise in the future in proportion to the rate of inflation. Lastly, Representative Shaw has introduced H.R. 75, which would reduce the offset to one-third of the government pension.³⁰

According to estimates provided by the CBO and the Office of the Actuary of the SSA, elimination of the GPO would cost \$31.3 billion over 10 years,³¹ and in the long run would cost 0.06% of taxable payroll, which would increase Social Security's long-range deficit by about 3%.³² They estimate that enactment of S. 363, which would eliminate the application of the GPO to those whose monthly combination of Social Security spousal benefits and non Social Security-covered pension is \$1,200

²⁷ This five year period for GPO exemption is consistent with that required of federal employees converting from CSRS to FERS.

²⁸ H.R. 594 and S. 349 are essentially the same as H.R. 2638 and S. 1523 in the 107th Congress.

²⁹ S. 363 is essentially the same as S. 611 from the 107th Congress.

³⁰ H.R. 75 is essentially the same bill as H.R. 3497 in the 107th Congress.

³¹ Congressional Budget Office, *Options to Soften or Repeal GPO, Preliminary and Unofficial*, Sept. 12, 2003.

³² Social Security Administration, Office of the Chief Actuary, Memorandum from Chris Chaplain to Alice H. Wade, "Estimated Long-Range OASDI Financial Effects of H.R. 594, the "Social Security Fairness Act of 2003" — Eliminate the Government Pension Offset and the Windfall Elimination Provision – INFORMATION," Mar. 25, 2003.

or less, would cost \$7.9 billion over 10 years,³³ and in the long run would cost 0.01% of taxable payroll (causing an increase in Social Security's long-range deficit of about 0.5%).³⁴ They estimate that enactment of H.R. 887, which would eliminate the application of the GPO to those whose monthly combination of Social Security spousal benefits and non Social Security-covered pension is \$2,000 or less, would cost \$18.1 billion over 10 years,³⁵ and in the long run would cost 0.02% of taxable payroll, (causing an increase in Social Security's long-range deficit of about 1.0%).³⁶

On May 1, 2003, the Social Security Subcommittee of the House Committee on Ways and Means held a hearing on the GPO, in which Members and witnesses discussed approaches to modifying the provision. The SSA testified that if any action were taken affecting the GPO, it should be done in the context of overall reform of the Social Security system.

On March 10, 2004, Representative Jim Turner filed a motion to discharge the Committee on Rules from the consideration of a resolution (H.Res. 523) to force consideration of H.R. 594 by the Committee. If the petition is successful, H.R. 594 would be released by the Committee to the floor of the House of Representatives for a debate and a vote on the bill. A discharge petition requires the approval of a majority of the House of Representatives (218 signatures) for further action. As of June 10, 2004, 158 members had signed the petition.

Changes to the “Last Day” Rule: P.L. 108-203. To address the last-day rule controversy, Representative Shaw introduced H.R. 743, a bill to enhance protection of Social Security benefits, which included a provision that would require government workers who switch from non-Social Security-covered jobs to covered ones to work for the last 60 consecutive months (five years) under the covered job in the same retirement system in order to be exempt from the GPO (i.e., it would repeal the “last-day” rule). The CBO estimates that the change to the last-day rule in H.R. 743 would save \$185 million over 10 years. On April 2, 2003, the House passed H.R. 743 by a vote of 396-28.

On December 9, 2003, the Senate passed H.R. 743, with amendment, by unanimous consent. In regard to the repeal of the GPO last day rule, the Senate differed from the House in that it would exempt workers from the 60-month rule if their last day of Social Security-covered government service occurs before July 1,

³³ Congressional Budget Office, *Options to Soften or Repeal GPO, Preliminary and Unofficial*, Sept. 12, 2003.

³⁴ Social Security Administration, Office of the Chief Actuary, Memorandum from Chris Chaplain to Alice H. Wade, “Estimated Long-Range OASDI Financial Effects of a Proposal to Modify the Government Pension Offset — ‘Government Pension Reform Act’ (S. 363) — INFORMATION,” Mar. 25, 2003.

³⁵ Congressional Budget Office, *Options to Soften or Repeal GPO, Preliminary and Unofficial*, Sept. 12, 2003.

³⁶ Social Security Administration, Office of the Chief Actuary, Memorandum from Chris Chaplain to Alice H. Wade, “Estimated Long-Range OASDI Financial Effects of a Proposal to Modify the Government Pension Offset (H.R. 887) — INFORMATION,” Mar. 25, 2003.

2004, regardless of when they file for Social Security benefits. If the last day of government service occurs after June 30, 2004, and within five years of enactment, the required 60-month period of Social Security-covered employment would be reduced (but not to less than one month) by the number of months in Social Security-covered employment performed *under the same retirement system* on or before the date of enactment.

On February 11, 2004, the House of Representatives agreed to the Senate amendments and passed H.R. 743 by a vote of 402-19, clearing the measure for the President's signature. The President signed the bill into law (P.L. 108-203) on March 2, 2004. The new GPO provision becomes effective for Social Security spousal benefit applications filed after March 31, 2004.

How Does the New Law Affect Exemption from the GPO? Any current Social Security beneficiary who is receiving spousal benefits and is exempt from the GPO because they retired from their non-covered position in government under the "last-day" rule would continue to be exempt from the GPO. Individuals who have not yet retired from non-covered government employment may still be exempt from the GPO if:

- *They applied for Social Security spousal benefits before April 1, 2004, and work their last day in a Social Security-covered position within the same retirement system.* In this case, the individual could continue to work in a non-covered position and still make use of the "last-day" rule when he or she retires from government employment, regardless of how far in the future the retirement occurs.
- *Their last day of government service occurs before July 1, 2004 and they work their last day in a Social Security-covered position within the same retirement system.* In other words, if a worker switches from non-covered government work to Social Security-covered work for their last day of work within the same retirement system, they will be exempt from the GPO, even if they file for Social Security benefits at a later date. However, if a worker returns to work in a non-covered position in the same retirement system that they previously retired from and new contributions are made by either the employee or employer to the non-covered pension system, his or her "last-day" exemption from the GPO will be revoked and they will be subject to the new 60-month requirement for exemption from the GPO.
- *Their last day of government service occurs on or after July 1, 2004 and before March 2, 2009 and they work a total of 60 months in a Social Security-covered position within the same retirement system.* The required 60-month period of Social Security covered employment would be reduced by the number of months the worker performed in Social Security covered employment under the same retirement system prior to March 2, 2004. However, in no case can the 60-month requirement be reduced to less than one month. For example, a teacher who is currently working in a non-covered

position but who previously worked for 12 months in a Social Security-covered position under the same retirement system would have the 60-month requirement reduced to 48 months. The remaining months to be worked (in this case 48 months), must be worked consecutively and after March 2, 2004. Thus, if she switched to a covered position *in the same retirement system* as her prior government work for at least the final 48-month period of her employment AND her last day of employment was before March 2, 2009, she would be exempt from the GPO.

- *Their last day of government service occurs after March 3, 2009 and they work their last 60 consecutive months in a Social Security covered position within the same retirement system.* In this case, the entire 60 month period must be worked after March 2, 2004.

All other individuals receiving government pensions based on non-covered employment would be subject to reductions in Social Security spousal benefits under the GPO