



# 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 imprecise and often unfair while defenders argue it is the best method currently available for eliminating an unfair advantage for non-covered government workers.

Five bills have been introduced in the 110<sup>th</sup> Congress to modify or repeal the GPO (H.R. 82, H.R. 1090, H.R. 2988, S. 206, and S. 1254). The last bill passed that modified the GPO, H.R. 743 from the 108<sup>th</sup> Congress, eliminated a controversial exemption from the GPO (known as the “last-day rule”) and was passed into law (P.L. 108-203) on March 2, 2004.

This report will be updated periodically.

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## 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.<sup>1</sup> 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.<sup>2</sup>

## 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 71% of state and local government employees are covered.<sup>3</sup> However, coverage varies from state to state. For example, approximately 97% of state and local employees in New York are covered by Social Security, while only 3% of state and local employees in Ohio are covered.<sup>4</sup>

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.<sup>5</sup> 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.

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<sup>1</sup> 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 Elimination Provision (WEP)*, by Laura Haltzel.

<sup>2</sup> 42 U.S.C. § 402(b)(4).

<sup>3</sup> Social Security Administration, *Estimated Social Security Coverage of Workers with State and Local Government Employment, 2005*.

<sup>4</sup> *Ibid.*

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

## 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 assumed to be financially independent of 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 2005, approximately 6.3 million out of 30.5 million Social Security retired worker beneficiaries, or about 20%, were dually-entitled (not including those whose spousal benefit was completely offset by their retired worker benefit).<sup>6</sup> **Table 1** demonstrates how the Social Security dual-entitlement rule is applied.

**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)	<b>\$0.00</b>	<b>\$50.00</b>

**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

<sup>6</sup> Social Security Administration, Annual Statistical Supplement 2006, Table 5.G2.

spousal benefits is equal to two-thirds of the government pension. In June 2007, approximately 464,537 Social Security beneficiaries, or about 1% of all retired worker 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).<sup>7</sup> **Table 2** provides an example of how the GPO is applied.

**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)	<b>\$0.00</b>	<b>\$183.33</b>

**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

<sup>7</sup> Social Security Administration, Office of Research Evaluation and Statistics, Unpublished Table A, August 28, 2007.

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** 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.

**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	_____	_____

	<b>Dually Entitled</b>	<b>Before GPO</b>	<b>After GPO</b>
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)	<b>\$50.00</b>	<b>\$450.00</b>	<b>\$183.33</b>

**Source:** Illustrative example provided by CRS.

**Note:** Dashes are used to represent scenarios in which 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.

## 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,<sup>8</sup> they, like all covered workers in the private sector, are subject to the Social Security dual-entitlement rule upon retirement. As of September 2005, approximately 645,000 federal workers (26% of the federal workforce) participate in CSRS and are potentially subject to the GPO, whereas 1.9 million (74%) participate in FERS and are subject to the dual-entitlement rule.<sup>9</sup>

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 2005, approximately 6.8 million state and local workers (29% of all state and local workers) were in non-Social Security-covered positions and are subject to the GPO. At the same time,

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

<sup>9</sup> Federal Retirement Thrift Investment Board, September 2005.



approximately 16.9 million state and local workers (71%) were in covered employment and are subject to the dual-entitlement rule upon retirement.<sup>10</sup>

As of June 2007, approximately 464,537 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). Of these 57% were spouses; 43% were widows and widowers. About 77% of all affected were women.<sup>11</sup> **Table 4** below provides a breakdown of the affected beneficiaries by state and type of benefit.

**Table 4. Number of Social Security Beneficiaries Affected by the GPO, by State and Type of Benefit, June 2007**

State	Total	Spouses	Widow(er)s
Alabama	3,920	1,876	2,044
Alaska	1,772	1,070	702
Arizona	5,905	3,195	2,710
Arkansas	2,674	1,466	1,208
California	68,297	42,940	25,357
Colorado	15,434	9,564	5,870
Connecticut	5,747	3,655	2,092
Delaware	415	179	236
District of Columbia	2,616	794	1,822
Florida	19,766	10,982	8,784
Georgia	11,891	6,245	5,646
Hawaii	1,804	1,039	765
Idaho	1,239	694	545
Illinois	31,495	19,060	12,435
Indiana	3,760	1,764	1,996
Iowa	1,677	850	827
Kansas	1,909	853	1,056
Kentucky	7,170	4,453	2,717
Louisiana	21,929	11,822	10,107
Maine	4,585	2,684	1,901
Maryland	8,043	3,154	4,889
Massachusetts	22,436	13,446	8,990
Michigan	4,691	2,262	2,429
Minnesota	5,657	3,273	2,384

<sup>10</sup> Social Security Administration, *Estimated Social Security Coverage of Workers with State and Local Government Employment*, 2005.

<sup>11</sup> Social Security Administration, Office of Research Evaluation and Statistics, Unpublished Table DE01, February 27, 2007.

State	Total	Spouses	Widow(er)s
Mississippi	2,369	1,144	1,225
Missouri	9,847	5,868	3,979
Montana	940	487	453
Nebraska	1,106	560	546
Nevada	5,569	3,209	2,360
New Hampshire	1,565	882	683
New Jersey	4,212	1,877	2,235
New Mexico	2,790	1,610	1,180
New York	7,732	3,420	4,312
North Carolina	5,621	2,814	2,807
North Dakota	437	218	219
Ohio	64,808	38,275	26,533
Oklahoma	3,360	1,542	1,818
Oregon	3,559	1,936	1,623
Pennsylvania	7,386	3,343	4,043
Rhode Island	1,345	765	580
South Carolina	3,484	1,740	1,744
South Dakota	764	391	373
Tennessee	4,617	2,385	2,232
Texas	51,826	31,466	20,360
Utah	2,031	1,050	981
Vermont	545	311	234
Virginia	7,250	3,066	4,184
Washington	4,707	2,288	2,419
West Virginia	1,104	518	586
Wisconsin	2,947	1,595	1,379
Wyoming	430	222	208
Outlying areas and foreign countries	6,057	4,416	2,611
<b>Total</b>	<b>464,537</b>	<b>265,018</b>	<b>199,519</b>

**Source:** Social Security Administration, Office of Research Evaluation and Statistics, August 28, 2007.

In August 2006, the average monthly non-covered government pension amount was \$1,709 (\$1,508 for women and \$2,384 for men).<sup>12</sup> The average pre-offset Social Security spousal benefits at that time were \$560 per month overall (\$625 for women, and \$345 for men).<sup>13</sup> In August 2006,

<sup>12</sup> Ibid., Table G209, February 27, 2007. Data is limited to those beneficiaries for whom the offset amount is available. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>13</sup> Ibid., Table G309, February 27, 2007. Data is limited to those beneficiaries for whom the offset amount is available. (continued...)

the average offset caused by the GPO was \$459 (\$494 a month for women and \$340 for men).<sup>14</sup> 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.<sup>15</sup> In August 2006, the average resulting Social Security spousal benefit was \$102 per month (\$131 a month for women and \$4 a month for men).<sup>16</sup>

By contrast, in December 2005 approximately 6.3 million beneficiaries were affected by the dual-entitlement rule.<sup>17</sup> Of these, 43% were spouses and 57% were widow(er)s.<sup>18</sup> About 6.2 million (98%) of all affected were women.<sup>19</sup> The average retired worker benefit was \$498 overall.<sup>20</sup> The average spousal benefit (after being reduced for dual-entitlement) was \$403.<sup>21</sup> The average combined Social Security retired worker benefit plus reduced spousal benefit was \$902.<sup>22</sup> 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 those individuals would then not be counted among the dually-entitled population.

## 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 in some circumstances is sufficient to throw these workers into poverty. Opponents 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 negative 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

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(...continued)

More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>14</sup> Ibid., Table G609, February 27, 2007. Data is limited to those beneficiaries for whom the offset amount is available. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>15</sup> Ibid., Table G105, February 27, 2007.

<sup>16</sup> Ibid., Table G509, February 27, 2007. Data is limited to those beneficiaries for whom the offset amount is available. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>17</sup> Social Security Administration, Social Security Bulletin, Annual Statistical Supplement, 2006, Table 5.G1. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>18</sup> Ibid., 2006, Table 5.G3. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>19</sup> Ibid., Table 5.G1. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>20</sup> Ibid., Table 5.G3. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

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, opponents argue, 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 30 years; therefore, they say, there has been ample time for people to adjust their retirement plans. P.L. 108-203, passed in 2004, included a provision that seeks to ensure that SSA and government employers notify potentially affected individuals about the effect of the GPO.

Others 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. Last year, CRS completed an analysis of the benefit reductions under the GPO relative to those under the dual-entitlement rule to determine how well two-thirds of the government pension amounts serve as a proxy for the Social Security worker benefits that individuals would receive if they had worked in covered employment. If two-thirds of the government pension were in fact a good proxy for Social Security retirement benefits, the overall increase or decrease in the offset amount under the dual-entitlement rule on the basis of the Social Security benefit formula would be zero. However, the estimates show that there is great variation in outcomes. Some individuals, including lower earners, would have a much larger offset amount under the dual-entitlement rule, while others, including higher earners, would have a somewhat smaller offset amount. This finding suggests that the common criticism that the GPO penalizes lower earners more than higher earners may not be accurate.

Other evidence of the effect of the GPO on low earners comes from statistics produced by the Social Security Administration. While 75% of those affected by the GPO have their benefits fully offset, only 39% of those with non-covered pensions of less than \$1,000 per month had their benefits fully offset compared with 88% of those with non-covered pensions between \$1,000 and \$1,999 and nearly 100% of individuals with non-covered pensions over that amount.<sup>23</sup> Of the 75% of individuals affected by the GPO whose benefits were fully offset as a result of the GPO, only 17% had a non-covered pension amount of less than \$1,000 per month.<sup>24</sup> 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.

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<sup>23</sup> 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, August 26, 2006," produced by the Social Security Administration's Office of Research, Evaluation and Statistics, February 27, 2007. More recent data was unavailable from the Social Security Administration at the time of publication.

<sup>24</sup> Ibid.

Regarding concerns about pushing those affected by the GPO into poverty, in 2001, the poverty rate among those affected by the GPO was approximately 6.0%, whereas the poverty rate for those affected by the dual-entitlement rule was approximately 8.9%.<sup>25</sup> The poverty rate for all Social Security beneficiaries age 65 and older was about 8.5%. For comparison purposes, the poverty rate for the general population at that time was approximately 11.3%.

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. June 2006 data from the Bureau of Labor Statistics indicate that state and local government workers earned on average \$23.99 per hour compared with the national average of \$19.29 per hour and the private sector average of \$18.56 per hour.<sup>26</sup> Some 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. Defenders of the provision 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.

Some 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 Social Security Administration has projected the 10-year cost of repealing the GPO to be about \$42 billion.<sup>27</sup> Such a move could lead to demands of repeal of the dual-entitlement rule to ensure parallel treatment for those working in Social Security-covered employment. By comparison, eliminating the dual-entitlement rule would cost approximately \$500 billion over a five-year period.<sup>28</sup>

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.

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<sup>25</sup> Poverty rates were calculated by David Weaver of the Social Security Administration's Office of Retirement Policy using the March 2001 Current Population Survey (CPS). Poverty status is taken directly from the CPS and is thus subject to errors in the reporting of income. The sample for the GPO and dually-entitled poverty rates only includes persons for whom SSA administrative records could be matched. The sample size for the GPO poverty rate is relatively small (130 cases). The poverty rates for the Social Security beneficiary population age 65 and over and for the general population do not require matched data and are based completely on CPS data.

<sup>26</sup> U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Occupational Wages in the United States, June 2006*, June 2007.

<sup>27</sup> Social Security Administration, Memorandum from Bert M. Kestenbaum and Tim Zayatz of the Office of the Chief Actuary, "Estimated Additional OASDI Benefit Payments Resulting From Several Proposals to Modify the Windfall Elimination Provision and the Government Pension Offset—INFORMATION," October 26, 2007.

<sup>28</sup> Social Security Administration, Memorandum from Bert Kestenbaum of the Office of the Chief Actuary, "Estimated Additional OASDI Benefit Payments from Proposals to Eliminate or Change the Dual-Entitlement Offset Provision—INFORMATION," April 17, 2003.

## The “Last Day” Rule

A burgeoning controversy arose in the 108<sup>th</sup> Congress with the revelation that a growing number of state and local government workers had been making use of a little-known provision of the law that allowed them to escape the application of the GPO if they switched jobs at the end of their government careers. These workers could 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 Government Accountability Office (GAO, formerly the General Accounting Office) 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.<sup>29</sup> As discussed below, P.L. 108-203 eliminated the last-day exception clause by requiring those workers switching from non-covered 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.<sup>30</sup> The new GPO provision became 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 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 occurred before July 1, 2004, and they worked their last day in a Social Security-covered position within the same retirement system.* In other words, if a worker switched from non-covered government work to Social Security-covered work for their last day of work within the same retirement system, they are exempt from the GPO, even if they file for Social Security benefits at a later date. However, if a worker returns to

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<sup>29</sup> For more information on H.R. 743, see CRS Report RS21448, *The Social Security Protection Act of 2003 (H.R. 743)*, by Dawn Nuschler.

<sup>30</sup> This five year period for GPO exemption is consistent with that required of federal employees converting from CSRS to FERS.

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.

## Recent Legislation

### Proposed Changes to the GPO Formula

In the 110<sup>th</sup> Congress, five bills have been introduced that would alter the GPO. Representative Berman and Senator Feinstein introduced H.R. 82 and S. 206, the Social Security Fairness Act of 2007. These identical bills would eliminate the GPO for Social Security benefits payable after December 2007. According to estimates provided by Social Security actuaries, elimination of the GPO would cost \$41.7 billion over 10 years,<sup>31</sup> and in the long run would cost 0.06% of taxable payroll, which would increase Social Security’s long-range deficit by about 3%.<sup>32</sup>

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<sup>31</sup> Social Security Administration, Memorandum from Bert M. Kestenbaum and Tim Zayats, Office of the Chief Actuary, “Estimated Additional OASDI Benefit Payments Resulting From Several Proposals to Modify the Windfall Elimination Provision and the Government Pension Offset—INFORMATION,” October 26, 2007. All 10-year cost estimates are taken from this document.

<sup>32</sup> Social Security Administration, Office of the Chief Actuary, Memorandum from Eugene Yang and Chris Chaplain to Stephen C. Goss, Chief Actuary, “Estimated Long-Range OASDI Financial Effects from Several Proposals to Modify the Windfall Elimination Provision and the Government Pension Offset—INFORMATION,” October 26, 2007. All long-term cost estimates are taken from this document.

H.R. 1090, introduced by Representative Ron Lewis, would, among other things, reduce the offset to one-third of the government pension. The Social Security actuaries estimate that reducing the offset from two-thirds to one-third of the government pension would cost approximately \$11.0 billion over 10 years.

Representative Wynn and Senator Mikulski introduced H.R. 2988 and S. 1254, the Government Pension Offset Reform Act. These bills would eliminate the application of the GPO to those whose monthly combination of Social Security spousal benefits and non Social Security-covered pension was \$1,200 or less. For those whose monthly combination of Social Security spousal benefits and non-Social Security-covered pension was 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 exceeded \$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. The Social Security actuaries estimate that enactment of H.R. 2988/S. 1254, would cost \$6.1 billion over 10 years, and in the long run would cost less than 0.005% of taxable payroll.

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.

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