



Office *of the* Inspector General  
SOCIAL SECURITY ADMINISTRATION

*Audit Report*

Windfall Elimination Provision  
Exemptions

*A-13-17-34132 | August 2019*

**MEMORANDUM**

**Date:** August 8, 2019

**Refer To:**

**To:** The Commissioner

**From:** Inspector General

**Subject:** Windfall Elimination Provision Exemptions (A-13-17-34132)

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration correctly exempted Old-Age, Survivors and Disability Insurance benefits from the Windfall Elimination Provision. Specifically, we reviewed exemptions for (a) workers who had 30 or more years of coverage subject to Social Security earnings, (b) workers who were eligible for a pension before 1986, and (c) Federal employees under the mandatory coverage provision.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.



Gail S. Ennis

Attachment

# Windfall Elimination Provision Exemptions A-13-17-34132



August 2019

Office of Audit Report Summary

## Objective

To determine whether the Social Security Administration (SSA) correctly exempted Old-Age, Survivors and Disability Insurance (OASDI) benefits from the Windfall Elimination Provision (WEP). Specifically, we reviewed exemptions for (a) workers who had 30 or more years of coverage subject to Social Security earnings, (b) workers who were eligible for a pension before 1986, and (c) Federal employees under the mandatory coverage provision.

## Background

*The Social Security Amendments of 1983* include a provision that eliminates “windfall” Social Security benefits for retired and disabled workers who are receiving pensions from employment not covered by Social Security.

WEP applies when the wage earner becomes entitled to both a pension based on non-covered employment and Social Security benefits. Under WEP, SSA uses a modified benefit formula to determine a wage earner’s monthly Social Security benefit. WEP applies to both retirement and disability benefits. However, under certain circumstances, a beneficiary’s payments are exempt from this provision.

## Findings

Of 150 sampled beneficiaries, SSA improperly exempted 26 from WEP. Because of this processing error, the 26 beneficiaries were improperly paid approximately \$774,000. Although the Agency was aware these 26 beneficiaries had received pensions, it did not reduce their benefits for WEP. Of these 26 beneficiaries, SSA may not correct the payments for 24 because of SSA’s administrative finality rules. Based on our sample results, we estimate SSA improperly paid approximately 3,600 beneficiaries \$118 million.

Additionally, SSA exempted 28 beneficiaries from WEP where we found the exemptions questionable. If SSA did not apply WEP, but should have, we estimate the Agency paid these 28 beneficiaries approximately \$971,000 more than they were entitled to receive.

Because of its administrative finality rules, SSA may not correct all the payment errors we identified. If it does not take corrective action, we estimate the Agency will improperly pay an additional \$140 million in future payments to these beneficiaries.

## Recommendations

We made four recommendations pertaining to SSA’s exemptions of OASDI benefits from WEP.

SSA agreed with our recommendations.

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## ABBREVIATIONS

ASM	Annuity and Survivors Master File
C.F.R.	Code of Federal Regulations
CSRS	Civil Service Retirement System
FERS	Federal Employees Retirement System
MBR	Master Beneficiary Record
OARO	Office of Analytics, Review, and Oversight
OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
OPM	Office of Personnel Management
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SSA	Social Security Administration
U.S.C.	United States Code
WEP	Windfall Elimination Provision

## OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) correctly exempted Old-Age, Survivors and Disability Insurance (OASDI) benefits from the Windfall Elimination Provision (WEP). Specifically, we reviewed exemptions for (a) workers who had 30 or more years of coverage subject to Social Security earnings, (b) workers who were eligible for a pension before 1986, and (c) Federal employees under the mandatory coverage provision.

## BACKGROUND

SSA administers the OASDI program to provide monthly benefits to retired or disabled workers and their families and to certain survivors of deceased workers.<sup>1</sup> An individual may be eligible for OASDI benefits under his/her own work history as well as under a spouse's work history.

The *Social Security Amendments of 1983* (Pub. L. No. 98-21) include a provision that eliminates “windfall” Social Security benefits for retired and disabled workers who are receiving pensions from employment not covered by Social Security.<sup>2</sup> WEP applies when the wage earner becomes entitled to both a pension based on non-covered employment and Social Security benefits.<sup>3</sup> Under WEP, SSA uses a modified benefit formula to determine a wage earner's monthly Social Security benefit.<sup>4</sup> WEP applies to both retirement and disability benefits.<sup>5</sup> As of December 2017, more than 1.8 million Social Security beneficiaries were affected by WEP.<sup>6</sup>

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<sup>1</sup> *Social Security Act*, 42 U.S.C. §§ 401, 402 (govinfo.gov 2017).

<sup>2</sup> *Social Security Act*, 42 U.S.C. § 415(a)(7)(B) and (d)(3) (govinfo.gov 2017); 20 C.F.R. §§ 404.213 and 404.243 (govinfo.gov 2018); and SSA, *POMS*, RS 00605.360, A (June 24, 2013).

<sup>3</sup> Non-covered employment is earnings from a Federal, State, or local government or a non-profit organization on which no Social Security tax is paid.

<sup>4</sup> *Social Security Act*, 42 U.S.C. § 415(a)(7)(B) (govinfo.gov 2017); 20 C.F.R. § 404.213 (govinfo.gov 2018); and SSA, *POMS*, RS 00605.360, A (June 24, 2013).

<sup>5</sup> SSA, *POMS*, RS 00605.360, C.4 (June 24, 2013).

<sup>6</sup> Congressional Research Service, *Social Security: The Windfall Elimination Provision (WEP)*, p. 5 (2019).

Under certain circumstances, a beneficiary's payments are exempt from WEP.

- **Exemption A:** Beneficiaries who have at least 30 years of substantial Social Security earnings.<sup>7</sup>
- **Exemption B:** Beneficiaries who were eligible to receive payments from their pension plans before 1986.<sup>8</sup>
- **Exemption C:** Beneficiaries who were Federal employees whose service began on January 1, 1984 and whose coverage under Social Security began on January 1, 1984, under the mandatory coverage provision in Pub. L. No. 98-21.<sup>9</sup>

See Appendix A for more information on WEP.

According to SSA, WEP was a leading cause of computational errors related to overpayments.<sup>10</sup> In Fiscal Years (FY) 2013 through 2017, WEP accounted for 63 percent of reported computation overpayment errors, and the average overpayments related to WEP totaled approximately \$520 million annually.<sup>11</sup> To address this issue, SSA released a series of training modules that targeted both basic and complex WEP processing and policy issues, updated various Program Operations Manual System references relating to WEP, and implemented several automation enhancements to increase the accuracy of WEP issues.<sup>12</sup>

To assist in making WEP determinations, SSA obtains from the applicant, entitlement information related to current or future pensions based on non-covered earnings. For Federal pensions, SSA matches the Office of Personnel Management's (OPM) Annuity and Survivors Master (ASM) file, which contains payment information for civil service annuitants, to its Master Beneficiary Record (MBR). The WEP match determines whether SSA applies WEP or there is an exemption. However, the Agency does not have a way to receive similar pension information from State and local governments. As a result, many of these pensions go unreported, which leads to improper payments. In its FY 2019 budget, the Agency proposed entering into automated data-exchange agreements with State and local government pension payers to facilitate reporting of information about pensions based on non-covered work.<sup>13</sup>

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<sup>7</sup> SSA, *POMS*, RS 00605.362, A (November 9, 2017). For 2017, \$23,625 of covered wages was required to obtain 1 year of coverage.

<sup>8</sup> SSA, *POMS*, RS 00605.364, B.2 (October 12, 2017).

<sup>9</sup> SSA, *POMS*, RS 00605.362, B.1 (November 9, 2017).

<sup>10</sup> SSA, OARO, *Fiscal Year 2017 Title II Payment Accuracy Report*, p. 7 (September 2018).

<sup>11</sup> SSA, OARO, *Fiscal Year 2017 Title II Payment Accuracy Report*, p. 15 (September 2018).

<sup>12</sup> SSA, OARO, *Fiscal Year 2017 Title II Payment Accuracy Report*, p. 8 (September 2018).

<sup>13</sup> SSA, Office of Budget, Finance, and Management, *Fiscal Year 2019 Budget Overview*, p. 27 (February 2018).

We obtained an electronic data extract of 239,659 beneficiaries with WEP Exemption A, B, or C.<sup>14</sup> After we applied additional screening criteria, we identified 31,733 beneficiaries who had a higher risk of ineligibility for the exemption given. We randomly selected samples of 50 beneficiaries from each WEP Exemption. See Appendix B for a discussion of our scope and methodology and Appendix C for our sampling methodology and results.

## RESULTS OF REVIEW

We identified OASDI beneficiaries who were improperly paid because SSA had not correctly applied WEP. SSA should have reduced their benefits because they received pensions based on their non-covered employment. Of the 150 beneficiaries we sampled,

- 26 were not eligible for WEP exemptions and were improperly paid approximately \$774,000;
- 28 had questionable WEP exemption eligibility and may have been improperly paid approximately \$971,000;
- 34 had a WEP exemption coded on the MBR but did not receive pensions;
- 10 had a WEP exemption applied incorrectly but were actually eligible for a different WEP exemption; and
- 52 were correctly exempted from WEP (see Table 1 and Table 2).

Based on our sample results, we estimate SSA improperly paid approximately 3,600 beneficiaries \$118 million because Agency staff improperly exempted OASDI benefits from WEP. Further, if SSA does not apply WEP, we estimate it will improperly pay an additional \$140 million over the beneficiaries' lifetimes.

**Table 1: WEP Exemption Review Results**

Group	Not Eligible for WEP Exemption	Questionable Exemption	WEP Exemption Coded but Did Not Receive Pensions	Eligible for Another WEP Exemption	Eligible for WEP Exemption	Total
WEP Exemption A	0	0	33	3	14	50
WEP Exemption B	10	3	1	1	35	50
WEP Exemption C	16	25	0	6	3	50
<b>Total</b>	<b>26</b>	<b>28</b>	<b>34</b>	<b>10</b>	<b>52</b>	<b>150</b>

<sup>14</sup> The MBR comprises 20 groupings of records called segments. We took our electronic data extract from all 20 segments.



**Table 2: WEP Exemption Overpayments**

Group	OASDI Overpayments		Questionable WEP Exemptions (Possible OASDI Overpayments)	
	Number	Amount	Number	Amount
WEP Exemption A	0	\$0	0	\$0
WEP Exemption B	10	\$337,770	3	\$121,855
WEP Exemption C	16	\$436,478	25	\$849,407
<b>Total</b>	<b>26</b>	<b>\$774,248</b>	<b>28</b>	<b>\$971,262</b>

## WEP Exemption A: Substantial Years of Social Security Earnings

Beneficiaries are exempt from WEP if they have at least 30 years' substantial Social Security-covered earnings.<sup>15</sup> Of the 50 beneficiaries sampled, 14 had substantial Social Security earnings, and SSA correctly exempted their OASDI benefits from WEP.<sup>16</sup> Agency records showed three beneficiaries were not eligible for the WEP exemption as coded on their MBR, but we determined they were eligible for a different WEP exemption.<sup>17</sup> For the remaining 33, the beneficiaries did not receive pensions.<sup>18</sup> These 36 beneficiaries did not have OASDI overpayments. See Appendix D for more information.

## WEP Exemption B: Pension Eligibility Before January 1, 1986

Beneficiaries are exempt from WEP if they were eligible to receive their non-covered pensions before January 1, 1986.<sup>19</sup> To apply this WEP exemption, SSA primarily relied on applicants to report their entitlement to current or future pensions from employment not covered by Social Security. However, for retired Federal employees, OPM provided SSA monthly pension notifications.

Of the 50 beneficiaries we sampled, SSA correctly exempted 32 from WEP.<sup>20</sup> Agency records showed 1 of these 50 beneficiaries had the WEP exemption coded on his MBR but did not receive a pension. In a second case, a beneficiary was not eligible for the WEP exemption as

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<sup>15</sup> See Footnote 7.

<sup>16</sup> SSA exempted 14 beneficiaries' OASDI benefits from WEP; 1 beneficiary was deceased as of June 2018.

<sup>17</sup> Of the three beneficiaries who were not eligible for the WEP exemption as coded on their record, but eligible for a different WEP exemption, one beneficiary was deceased as of June 2018.

<sup>18</sup> Of the 33 beneficiaries who did not receive pensions, 2 were deceased as of June 2018.

<sup>19</sup> A person is considered eligible to receive a pension if he/she meets requirements of the pension plan, even if he/she is still working and not receiving (entitled to) the pension plan benefits.

<sup>20</sup> Of the 32 beneficiaries SSA correctly exempted, 2 were deceased as of June 2018.

coded on his record, but he was eligible for a different WEP exemption. As a result, SSA did not overpay these two beneficiaries.

However, the Agency improperly exempted 10 beneficiaries from WEP and, as a result, improperly paid them approximately \$338,000. Based on our sample results, we estimate SSA improperly paid approximately 2,900 beneficiaries \$99 million. Further, we estimate SSA will pay these beneficiaries an additional \$110 million over their lifetimes that they would not receive if the Agency applied WEP.

For example, one beneficiary met the eligibility requirements for a local government pension in March 1992.<sup>21</sup> In February 2006, the beneficiary began receiving a local government pension and OASDI benefits. On his claim for Social Security benefits, the beneficiary reported he was also entitled to a pension based on non-covered work. We found no other WEP exemption applied. SSA improperly paid the beneficiary approximately \$37,000 from February 2006 through June 2018. If SSA does not correct the benefits, we estimate it will pay the beneficiary an additional \$34,975 over his lifetime that he would not receive had the Agency applied WEP.

In another instance, a beneficiary became eligible for a Federal pension in August 1987. In June 2009, the beneficiary started receiving a pension and OASDI benefits. The beneficiary informed SSA staff that he was entitled to a pension from work not covered by Social Security. Further, his name was included in the ASM file SSA received from OPM. However, SSA did not apply WEP. We found no other WEP exemption applied. SSA improperly paid the beneficiary approximately \$46,000 from June 2009 through June 2018. If SSA does not correct the benefits, we estimate it will pay the beneficiary an additional \$60,180 over his lifetime that he would not receive had the Agency applied WEP.

We could not determine whether SSA correctly exempted three beneficiaries from WEP. When the beneficiaries applied for Social Security benefits, the beneficiaries reported they were first eligible to receive their pensions before January 1, 1986. However, the Agency did not have evidence of this in its systems. We attempted to obtain information from the pension-paying agencies. One agency stated a beneficiary was not in its retirement systems; another agency would not release pension information for a beneficiary; and another agency did not respond to our request. Therefore, we could not determine whether SSA properly exempted the beneficiaries from WEP. If SSA exempted these beneficiaries from WEP in error, we estimate they were paid approximately \$122,000 more than they should have been. To determine whether WEP applies to these three cases, SSA needs to contact the beneficiaries to obtain and confirm additional information regarding their pensions and then assess whether administrative finality applies to the initial determinations that resulted in the improper payments.

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<sup>21</sup> According to the pension paying agency's April 2018 pension confirmation letter, the beneficiary met eligibility requirements for the State pension and was still entitled to, and receiving, the pension.

## WEP Exemption C: Federal Employment

WEP applies to Federal employees who began Federal employment before 1984, were covered by the Civil Service Retirement System (CSRS), and did not contribute to Social Security. However, a beneficiary may be exempt from WEP<sup>22</sup> if he/she was a Federal employee on January 1, 1984 and first become covered under the *Federal Insurance Contribution Act*<sup>23</sup> on January 1, 1984 based on the mandatory coverage provision.<sup>24</sup> Beneficiaries who were rehired for Federal employment after January 1, 1984 were not automatically exempt from WEP. If any rehired beneficiary had prior CSRS coverage, they were potentially subject to WEP. In addition, other CSRS beneficiaries were also potentially subject to WEP if they had prior non-covered employment.

Of the 50 beneficiaries sampled, SSA correctly exempted from WEP 3 beneficiaries who received Federal pensions based on work that was not covered by Social Security.<sup>25</sup> Agency records showed six beneficiaries were not eligible for the WEP exemption coded on their records but were eligible for a different exemption. Hence, SSA did not overpay these beneficiaries.

However, the Agency improperly exempted 16 beneficiaries from WEP and, as a result, improperly paid them approximately \$436,000. Based on our sample results, we estimate SSA improperly paid approximately 714 beneficiaries \$19 million. Further, we estimate SSA will improperly pay the beneficiaries an additional \$31 million over their lifetimes if the Agency does not correct the benefits and apply WEP.

For example, one beneficiary was eligible for a Federal pension in December 1988. The beneficiary began Federal employment before 1983, was covered by CSRS, and did not contribute to Social Security. In March 2000, the beneficiary began receiving a Federal pension and OASDI benefits. Information in SSA's file indicated the beneficiary was entitled to a Federal pension. Further, the beneficiary was included in OPM's ASM file. However, SSA did not apply WEP. We found no other WEP exemption applied. SSA improperly paid the beneficiary approximately \$46,000 from March 2000 through June 2018. In June 2018, SSA reviewed this case and determined it should have applied WEP. Since SSA determined its administrative finality<sup>26</sup> rules precluded it from imposing WEP and correcting the benefits, we estimate SSA will pay the beneficiary an additional \$24,560 over her lifetime that she would not receive had the Agency correctly applied WEP.

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<sup>22</sup> SSA, *POMS*, RS 00605.362, B.1 (November 9, 2017).

<sup>23</sup> This law requires that individuals pay Social Security and Medicare taxes.

<sup>24</sup> SSA's Center for Disability and Program Support provided regional guidance on CSRS and WEP. The guidance was updated on March 1, 2019.

<sup>25</sup> SSA correctly exempted three beneficiaries, and one beneficiary was deceased as of June 2018.

<sup>26</sup> Administrative finality is the concept that an Agency determination or decision becomes final and binding when rendered, unless it is timely appealed or subsequently reopened. See the Administrative Finality section of this report for more details.

In another instance, a beneficiary was eligible for a Federal pension in July 2005. In April 2013, the beneficiary began receiving a Federal pension and OASDI benefits. During the initial interview for Social Security benefits, the beneficiary indicated she was not entitled, and did not expect to be entitled, to a pension from work not covered under Social Security. However, in January 2014, SSA received pension information from OPM that indicated the beneficiary was entitled to a pension based on non-covered earnings. The beneficiary was improperly paid approximately \$20,000 from April 2013 through June 2018. In June 2018, SSA reviewed this case and determined it should have applied WEP. Since SSA determined its administrative finality rules precluded it from imposing WEP and correcting the benefits, we estimate SSA will pay the beneficiary an additional \$54,605 over her lifetime that she would not receive had the Agency correctly applied WEP.

For the remaining 25 beneficiaries,<sup>27</sup> we could not determine whether the Agency correctly exempted them from WEP.<sup>28</sup> For these beneficiaries, the Agency's records identified the pension-paying agency as either OPM or the Federal, State, or local agency of employment. When the beneficiaries became entitled to Social Security benefits, SSA's files indicated they were receiving pensions based on Federal work covered by Social Security after December 31, 1983. However, according to the Agency's Master Earnings File,<sup>29</sup> these beneficiaries were not Federal employees on January 1, 1984 and were not initially covered by Social Security on January 1, 1984.

In addition, we reviewed OPM's ASM Files,<sup>30</sup> which did not include the 25 beneficiaries. According to SSA guidance on CSRS and WEP, OPM advises that the records it includes in the files used in the matching operation were those of beneficiaries who were covered under CSRS and then retired under CSRS.<sup>31</sup> If the beneficiary converted to the Federal Employees Retirement System (FERS) or was hired under FERS then retired under FERS, the beneficiary would be excluded from OPM's file. However, a Federal employee who converted from CSRS to FERS was still potentially subject to WEP, assuming no other exemption was met. Therefore, these 25 beneficiaries would not have been detected by SSA's matching operation and were still potentially subject to WEP. SSA may have improperly paid the 25 beneficiaries approximately \$849,000. To determine whether WEP applies to these 25 cases, SSA needs to contact the beneficiaries to obtain and confirm additional information regarding their pensions and then assess whether administrative finality applies to the initial determinations that resulted in the improper payments.

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<sup>27</sup> According to information in SSA's file, two beneficiaries were receiving State and local pensions and were not Federal employees.

<sup>28</sup> Of the 25 beneficiaries we found questionable and could not determine whether the WEP exemption was correctly applied, 4 beneficiaries were deceased as of June 2018.

<sup>29</sup> The Master Earnings File is SSA's record of all earnings reported by employers.

<sup>30</sup> We reviewed OPM's ASM file dated 2014 and 2018.

<sup>31</sup> See Footnote 24.

For example, one beneficiary was not a Federal employee. When the beneficiary became entitled to Social Security benefits, SSA's file indicated the beneficiary was entitled to a pension from work not covered under Social Security. In 1982, the beneficiary had covered Social Security earnings from a health care organization in Texas and non-covered earnings from a school district. We found no other WEP exemption applied. In June 2018, SSA reviewed this case and determined it should have applied WEP; however, the Agency determined its administrative finality rules precluded it from changing the benefits. As a result, SSA paid the beneficiary approximately \$40,000 from April 2004 through June 2018 that she would not have received had the Agency applied WEP. In addition, we estimate SSA will pay the beneficiary an additional \$34,391 over her lifetime that she would not receive had the Agency applied WEP.

## Administrative Finality

Administrative finality is SSA's rule that prescribes time limits for when the Agency can reopen and revise a determination or decision.<sup>32</sup> Generally, if the Agency finds an error longer than 4 years after the date of the initial determination notice, it will not correct the error if the result of revising the record would be unfavorable to the claimant.<sup>33</sup> However, there are various situations, such as fraud or similar fault, in which the Agency can reopen a case.<sup>34</sup>

Because of SSA's administrative finality rules, the Agency may not correct the WEP payment errors for 24 of the 26 beneficiaries we identified. For example, the beneficiaries had informed the Agency that they were entitled to non-covered Government pensions. According to SSA policy, if there is information in the file indicating the claimant was entitled to a non-covered pension when he/she initially became entitled to Social Security benefits, but the adjudicator did not apply WEP, the Agency will not correct the error after 4 years.<sup>35</sup>

However, for the remaining two beneficiaries, SSA may have been able to apply WEP and recover the related overpayments. For one case, the date of the initial determination notice was within 4 years. We estimate the Agency improperly paid this beneficiary approximately \$3,400. In the remaining case, the beneficiary indicated she was not entitled, and did not expect to be entitled, to a pension from work not covered under Social Security.<sup>36</sup>

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<sup>32</sup> SSA, *POMS*, GN 04001.001, C (September 9, 2011).

<sup>33</sup> SSA, *POMS*, GN 04030.100, B.1 (August 7, 2013).

<sup>34</sup> SSA, *POMS*, GN 04030.100, B.2 (August 7, 2013).

<sup>35</sup> See Footnote 33.

<sup>36</sup> The beneficiary indicated on the application summary for retirement insurance benefits she was not entitled, nor did she expect to become entitled, to a pension or annuity in whole or in part on work after 1956 not covered by Social Security.

According to SSA policy,<sup>37</sup> if a claimant is receiving a non-covered pension but answers that he/she is not entitled to a non-covered pension at the interview for Social Security benefits, a claim should be developed for fraud or similar fault.<sup>38</sup> If the Agency establishes fraud or similar fault, it can reopen and revise its initial determination from the date the claimant became entitled to both a non-covered pension and SSA benefits. If SSA cannot establish fraud or similar fault, it may be able to reopen the case based on good cause.<sup>39</sup> If good cause is established and all the requirements for reopening the case are met, the Agency can reopen and revise its initial determination from the date the claimant became entitled to both a non-covered pension and SSA benefits. Unless the Agency takes corrective action on these two cases, it will pay the beneficiaries an additional \$81,367 over their lifetimes.

In a September 2016 report, we recommended that SSA finalize changes to its administrative finality policy regarding continued payments of future benefits where administrative finality prohibits reopening the determination.<sup>40</sup> Additionally, in an August 2018 report, we recommended that SSA decide whether it should revise its rules on administrative finality to allow for the correction of WEP and Government Pension Offset overpayments for the populations identified by our audits.<sup>41</sup> The Agency agreed with our recommendations and reported it was finalizing changes to the administrative finality policies and procedures. However, as of April 2019, the Agency had not changed its policies and procedures.

Because of the Agency's administrative finality policies at the time of our review, SSA did not correct all the payment errors we identified. As a result, we estimate the Agency will pay beneficiaries an additional \$140 million in future benefits that they would not be entitled to receive had SSA applied WEP.

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<sup>37</sup> See Footnote 34.

<sup>38</sup> Fraud exists when a person, with intent to defraud, either (1) makes, or causes to be made, a false statement or misrepresentation of a material fact for use in determining rights to Social Security benefits or (2) conceals, or fails to disclose, a material fact for use in determining rights to Social Security benefits. Similar fault exists when a person either (1) knowingly makes an incorrect or incomplete statement that is material to the determination or (2) knowingly conceals information that is material to the determination.

<sup>39</sup> Good cause exists if there is a clerical error, error on the face of the evidence, or new and material evidence. SSA can reopen the case within 4 years of the date of the notice of the initial determination for good cause. SSA, *POMS*, GN 04010.001, A.1 (September 9, 2011).

<sup>40</sup> SSA OIG, *Old-Age, Survivors and Disability Insurance Benefits Affected by Federal Pensions*, A-13-16-23006, p. 7 (September 2016).

<sup>41</sup> SSA OIG, *Follow-up: Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset*, A-09-17-50252, p. 9 (August 2018).

## CONCLUSIONS

SSA needs to improve its processes for ensuring OASDI benefits are correctly exempted from WEP. Our review of 150 beneficiaries found SSA paid 26 beneficiaries approximately \$774,000 in improper payments because the Agency did not correctly apply WEP. As a result, we estimate SSA improperly paid approximately 3,600 beneficiaries \$118 million. Further, we estimate SSA will pay the beneficiaries an additional \$140 million over their lifetimes that they would not be entitled to receive had SSA applied WEP.

## RECOMMENDATIONS

We recommend SSA:

1. Collect overpayments or determine if administrative finality policies apply to the determinations made for the 26 beneficiaries identified during this review.
2. Determine whether the WEP determinations made for the 28 beneficiaries we identified as questionable are eligible for the WEP exemptions recorded in the Agency's information system, or are eligible for other WEP exemptions.
3. Instruct staff to review policies and procedures related to pension eligibility before January 1, 1986 and Federal employees under the mandatory coverage provision before applying a WEP exemption.
4. Finalize changes to its administrative finality policy regarding whether the Agency should continue to pay prospective benefits even where administrative finality currently prohibits reopening the determination.

## AGENCY COMMENTS

SSA agreed with our recommendations. The Agency's comments are included in Appendix E.



Rona Lawson  
Assistant Inspector General for Audit

# *APPENDICES*



## Appendix A – WINDFALL ELIMINATION PROVISION

The *Social Security Amendments of 1983* (Pub. L. No. 98-21) include the windfall elimination provision (WEP), which eliminates windfall benefits for retired and disabled workers receiving pension benefits based on employment earnings not covered by Social Security.<sup>1</sup> Under WEP, the Social Security Administration (SSA) uses a modified benefit formula to determine a wage earner’s monthly Social Security benefit. WEP does not apply until the entitlement<sup>2</sup> to a non-covered pension begins. SSA receives, from the applicant, entitlement information related to current or future pensions from employment not covered by Social Security. However, for retired Federal employees, SSA receives monthly pension alerts from the Office of Personnel Management.

Under certain conditions, a WEP exemption may apply. If WEP does not apply, SSA employees must record the exemption on the Master Beneficiary Record. Using the beneficiary’s pension information, the Agency codes the record with an exemption (see Table A–1).

**Table A–1: Windfall Elimination Provision Exemptions<sup>3</sup>**

Code	Description
A	Workers who have 30 or more years of coverage
B	A worker was eligible to receive a non-covered pension before 1986 <sup>4</sup>
C	Federal workers who were performing services on January 1, 1984 and became newly covered by Social Security on January 1, 1984 under the mandatory coverage provision in Pub. L. No. 98-21 <sup>5</sup>
D	Employees of nonprofit organizations mandatorily covered by Social Security as of January 1, 1984
E	Pensions based on earnings under the <i>Railroad Retirement Act</i> <sup>6</sup>
F	Pensions based solely on domestic or foreign pre-1957 non-covered employment
G	Pensions based wholly on U.S. uniformed services <sup>7</sup>
H	Administrative Finality
I	Other
J	Special Minimum Primary Insurance Amount
K	Subsequent Disability Insurance Benefit Guarantee Primary Insurance Amount

<sup>1</sup> WEP also applies to some fully insured beneficiaries who receive certain foreign pensions.

<sup>2</sup> The beneficiary has applied for benefits and has proven his or her rights to benefits for a given period of time.

<sup>3</sup> SSA, *POMS*, RS 00605.362 (November 9, 2017) and SSA, *POMS*, RS 00605.374, B.1 (August 7, 2013).

<sup>4</sup> A beneficiary is considered eligible when he/she meets all the requirements for the pension.

<sup>5</sup> Federal workers hired before January 1, 1984 who later transferred to the Federal Employees Retirement System are potentially subject to WEP.

<sup>6</sup> *Railroad Retirement Act*, Pub. L. No. 93-445, § 1, 88 Stat. 1305, pp. 1306-1362 (October 16, 1974).

<sup>7</sup> This change was effective January 1995.

## Appendix B – SCOPE AND METHODOLOGY

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To accomplish our objective, we:

- Obtained and reviewed applicable Federal laws and regulations and Social Security Administration (SSA) policies and procedures.
- Reviewed prior Office of the Inspector General reports pertaining to the Windfall Elimination Provision (WEP).
- Identified SSA's ongoing and planned initiatives to improve payment accuracy for WEP.
- Interviewed SSA employees from the Offices of Operations and Retirement and Disability Policy.
- Obtained and analyzed an electronic data extract from SSA's Master Beneficiary Record and Master Earnings File as well as the Disability, Railroad, Alien Deportation and Military Service file. See Appendix C for detailed information.
- Grouped extracted data into three separate WEP exemption categories. Selected 3 samples of 50 beneficiaries each, from (1) WEP Exemption A, (2) WEP Exemption B, and (3) WEP Exemption C. For the sampled cases, we reviewed queries from SSA's Master Beneficiary Record, Informational/Certified Earnings Records System, Master Earnings File, Modernized Claims System, Paperless System, Shared Process System, and Claims File User Interface to determine the applicability of WEP and calculate the related overpayment.
- Mailed pension confirmation letters to obtain non-covered employment information from Federal, State, or local government agencies. The letters requested that employers provide information about beneficiaries receiving pensions from wages not covered by Social Security.
- Obtained and reviewed the Office of Personnel Management's Annuity and Survivors Master file.
- Requested SSA review those instances where it appeared WEP should have applied.
- Estimated the future overpayments using SSA's WEP Online Calculator.
- Estimated future overpayments using the life tables in the Department of Health and Human Services, Centers for Disease Control and Prevention, National Vital Statistics Report.

We conducted our review from November 2016 to May 2017 and February to November 2018 at SSA Headquarters in Baltimore, Maryland. The principal entity audited was the Office of the Deputy Commissioner for Operations.

We determined the computer-processed data used for this audit were sufficiently reliable to meet our audit objective. Further, any data limitations were minor in the context of this assignment, and the use of the data should not lead to an incorrect or unintentional conclusion.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix C – SAMPLING METHODOLOGY AND RESULTS

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We obtained an electronic data extract of information from the Social Security Administration’s Master Beneficiary Record (MBR)<sup>1</sup> and Master Earnings File as well as the Disability, Railroad, Alien Deportation and Military Service file as of July 2016. The data extract consisted of beneficiaries who were exempt from the Windfall Elimination Provision (WEP). Our review focused on cases coded as (a) workers who had 30 or more years of coverage subject to Social Security earnings (WEP Exemption A), (b) workers who were eligible for a pension before 1986 (WEP Exemption B), and (c) Federal employees under the mandatory coverage provision (WEP Exemption C).

We refined the file by applying additional screening criteria to identify beneficiaries who had a higher risk of ineligibility for the exemption given. For example, we applied screening criteria against the Master Earnings File and Disability, Railroad, Alien Deportation and Military Service file to identify (1) beneficiaries who had fewer than 30 years of *Federal Insurance Contributions Act* coverage but were given WEP Exemption A and (2) Federal employees who had non-*Federal Insurance Contributions Act*/Medicare Qualified Government Employment earnings but who were given WEP Exemption C. In addition, we screened beneficiaries against the MBR to identify individuals whose age may indicate they were too young to be eligible for a government pension before 1986 but who were given WEP Exemption B.

In addition, we excluded from each exemption code

- beneficiaries in non-payment status,
- deceased beneficiaries as of July 2016,
- beneficiaries no longer receiving WEP, and
- beneficiaries from the State of Louisiana.<sup>2</sup>

After applying the screening requirements, we identified 31,733 beneficiaries who were receiving Old-Age, Survivors and Disability Insurance (OASDI) benefits and exempted from WEP. We selected 3 random samples of 50 beneficiaries each from WEP Exemptions A, B, and C to determine whether SSA correctly exempted OASDI benefits from WEP and calculated any related improper payments.

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<sup>1</sup> The electronic data extract comes from all 20 segments of SSA’s MBR. The MBR comprises 20 specific groupings of records called “segments.”

<sup>2</sup> We removed all WEP exemption cases with beneficiaries residing in the State of Louisiana from our population. The *Louisiana Act of 1985* (Act No. 154) granted early retirement eligibility of members with at least 10 years as of September 1, 1985. Members of 13 Louisiana Public Retirement Systems, regardless of age, are able to retire in 10 years. This legislative change caused a high number of cases from the State of Louisiana to appear in our data extract and would have impacted our sampling efforts. The removal of these cases normalized and accurately reflected the potential finding rate in all the other states.

The following tables provide the details of our populations and samples.

**Table C–1: WEP Exemption A Population and Sample Size**

Description	Number
Population	14,897
Sample Size	50

**Table C–2: WEP Exemption B Population and Sample Size**

Description	Number
Population	14,606
Sample Size	50

Our review determined SSA improperly paid approximately \$338,000 in OASDI benefits to 10 beneficiaries. Projecting our sample results to the population (WEP Exemption B), we estimate approximately 2,900 beneficiaries were improperly paid approximately \$99 million because SSA incorrectly exempted OASDI benefits from WEP. Further, an additional \$110 million in improper payments could accrue over the beneficiaries’ lifetimes if SSA does not take correction action.

**Table C–3: Number of OASDI Beneficiaries Who Should Have WEP Applied–Frame 2**

Description	Number
Sample Results	10
Point Estimate	2,921
Projection Lower Limit	1,649
Projection Upper Limit	4,606

**Note:** All statistical projections are at the 90-percent confidence level.

**Table C–4: Amount of OASDI Benefits Not Offset for WEP–Frame 2**

Description	Amount
Sample Results	\$337,770
Point Estimate	\$98,669,372
Projection Lower Limit	\$49,523,433
Projection Upper Limit	\$147,815,311

**Note:** All statistical projections are at the 90-percent confidence level.

**Table C–5: Amount of OASDI Benefits that Will be Paid in the Future if WEP is Not Applied–Frame 2**

Description	Amount
Sample Results	\$376,297
Point Estimate	\$109,923,880
Projection Lower Limit	\$54,023,521
Projection Upper Limit	\$165,824,238

**Note:** All statistical projections are at the 90-percent confidence level.

**Table C–6: WEP Exemption C Population and Sample Size**

Description	Numbers
Population	2,230
Sample Size	50

Our review determined SSA improperly paid approximately \$436,000 in OASDI benefits to 16 beneficiaries. Projecting our sample results to the population (C), we estimate approximately 700 beneficiaries were improperly paid approximately \$19 million because SSA incorrectly exempted OASDI benefits from WEP. Further, an additional \$31 million in improper payments could accrue over the beneficiaries’ lifetimes if SSA does not take correction action.

**Table C–7: Number of OASDI Beneficiaries Who Should Have WEP Applied–Frame 3**

Description	Amount
Sample Results	16
Point Estimate	714
Projection Lower Limit	476
Projection Upper Limit	988

**Note:** All statistical projections are at the 90-percent confidence level.

**Table C–8: Amount of OASDI Benefits Not Offset for WEP–Frame 3**

Description	Amount
Sample Results	\$436,478 <sup>3</sup>
Point Estimate	\$19,466,919
Projection Lower Limit	\$11,435,337
Projection Upper Limit	\$27,498,500

**Note:** All statistical projections are at the 90-percent confidence level.

<sup>3</sup> Of the 16 beneficiaries identified with WEP exemption C, 15 had a dollar impact. Although SSA did not apply WEP, for the remaining beneficiary, the amount of OASDI benefits paid did not result in an overpayment.

**Table C-9: Amount of OASDI Benefits that Will be Paid in the Future if WEP is Not Applied-Frame 3**

Description	Amount
Sample Results	\$684,927 <sup>4</sup>
Point Estimate	30,547,744
Projection Lower Limit	18,606,807
Projection Upper Limit	42,488,682

**Note:** All statistical projections are at the 90-percent confidence level.

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<sup>4</sup> See Footnote 3.

## Appendix D– WINDFALL ELIMINATION PROVISION EXEMPTION A

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We identified 33 beneficiaries who did not have substantial Social Security earnings, but the Social Security Administration (SSA) recorded a Windfall Elimination Provision (WEP) Exemption A on the beneficiary's Master Beneficiary Record (MBR).

Earnings information posted on the Agency's Master Earnings File indicate these beneficiaries had fewer than 30 years of substantial Social Security earnings. In addition, information in SSA's file and based on the beneficiary's own acknowledgment indicate they were not entitled to a non-covered pension.

On March 31, 2017, we discussed 15 of the 33 cases with technical experts from SSA's Office of Public Service and Operations Support under the Office of the Deputy Commissioner for Operations. Agency staff agreed beneficiaries (1) did not meet the requirements for a WEP exemption based on substantial Social Security earnings and (2) based on information recorded in Agency's systems, were not entitled to a non-covered pension. Agency staff was unable to provide a definite reason why the WEP exemption was present on the MBR but did state representatives may have added the exemption manually.

On July 19, 2018, we forwarded all 33 cases to SSA for additional review to determine why Agency staff applied a WEP exemption when beneficiaries had limited Social Security earnings and no indication of a non-covered pension. Agency staff further confirmed that based on the Master Earnings File, none of the beneficiaries had substantial Social Security earnings, there was no indication beneficiaries were entitled to or receiving non-covered pensions before January 1, 1986, nor were they Federal employees. Additionally, employees stated they could not conclude on these beneficiaries because of conflicting information or lack of information in SSA's systems.

Since these individuals had limited Social Security earnings and there was no indication that beneficiaries received a non-covered pension, there were no Old-Age, Survivors and Disability Insurance benefits for SSA to reduce. Thus, these 33 beneficiaries did not have overpayments. Hence, we believe SSA inaccurately recorded a WEP exemption on the beneficiaries' MBR.



## Appendix E – AGENCY COMMENTS

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## SOCIAL SECURITY

### MEMORANDUM

Date: July 30, 2019 Refer To: S1J-3

To: Gail S. Ennis  
Inspector General

From: Stephanie Hall  
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report “Windfall Elimination Provision Exemptions”  
(A-13-17-34132) -- INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.

Sincerely,

A handwritten signature in blue ink that reads 'Stephanie Hall'.

Stephanie Hall  
Acting Deputy Chief of Staff

**SSA COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT, "WINDFALL ELIMINATION PROVISION EXEMPTIONS" (A-13-17-34132)**

**GENERAL COMMENTS**

One of our key focuses is to address improper payments in the Windfall Elimination Provision (WEP) program. We continue to improve efficiency, and implement automation and process improvements. At the end of fiscal year 2018, we released new system enhancements to improve the processing of WEP cases. For example, we automated lump sum benefit calculations to reduce human error and created alerts to technicians to ensure they considered WEP in an initial computation. Additionally, we continue to review and update WEP policy instructions for clarity and focus on areas that are error prone, such as exemptions to the WEP. Finally, we are continuing our review of our rules of administrative finality, and obtaining data to support any potential changes.

Our response to the recommendations are below.

**Recommendation 1**

We recommend SSA collect overpayments or determine if administrative finality policies apply to the determinations made for the 26 beneficiaries identified during this review.

**Response**

We agree.

**Recommendation 2**

We recommend SSA determine whether the WEP determinations made for the 28 beneficiaries we identified as questionable are eligible for the WEP exemptions recorded in the Agency's information system, or are eligible for other WEP exemptions.

**Response**

We agree.

**Recommendation 3**

We recommend SSA instruct staff to review policies and procedures related to pension eligibility before January 1, 1986 and Federal employees under the mandatory coverage provision before applying a WEP exemption.

**Response**

We agree.

#### **Recommendation 4**

We recommend SSA finalize changes to its administrative finality policy regarding whether the Agency should continue to pay prospective benefits even where administrative finality currently prohibits reopening the determination.

#### **Response**

We agree.

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