



Established 1973

4 rue de Chevreuse
75006 Paris, France
Tel: +33 (0)1 4720 2415
Website: www.aaro.org
Email: contact@aaro.org

Re: “The Windfall Elimination Provision and Government Pension Offset”

Hearing on April 16, 2024

Submission on behalf of The Association of Americans Resident Overseas (AARO)

House Committee on Ways & Means
Email to: WMSubmission@mail.house.gov

April 23, 2024

Dear Chairman Jason Smith,
Ranking Member Richard Neal,
Social Security Subcommittee Chairman Drew Ferguson,
Social Security Subcommittee Ranking Member John Larson, and
Members of the Committee:

Please accept this as our submission with respect to the April 16, 2024 House Committee on Ways & Means and Social Security Subcommittee Hearing: “The Windfall Elimination Provision and Government Pension Offset.”

The Association of Americans Resident Overseas (AARO) is an international, non-partisan, non-profit association with members who vote in 40 States. Our members, and the wider expat community of which they are a part, have too often been negatively affected by the Windfall Elimination Provision (WEP), so we appreciate the opportunity to provide you with AARO’s view of the WEP.

According to the Social Security Administration (SSA), as of December 2023, 2,055,476 people were affected by the WEP, 116,614 of whom resided outside of the United States

(5.7%). The remaining 94.3% of the persons subject to the WEP (“WEPT”) were state and local government employees covered by alternative retirement systems and federal employees hired before January 1, 1984, who remain covered by the Civil Service Retirement System.

AARO is aware that many State-side organizations support the elimination of WEP and Governmental Pension Offset (GPO). As we represent the interests of overseas Americans, in this submission AARO will focus on how the WEP affects the overseas constituency and not State-side persons. We will also address only the WEP, not the GPO.

Overseas Americans Often Do Not Know About WEP

Many Americans abroad only learn of WEP as they prepare to retire, so those who are WEPT discover a smaller Social Security pension only when it is too late to have prepared for it. This is because they are not specifically informed of it, unlike State-side Americans. U.S. State and local government employers are required by law to disclose the effect of WEP to new employees, so resident Americans are so informed. There is no comparable alert for people living abroad.

Despite generic language about WEP in the Social Security Statement sent to Americans, the SSA does not (in fact, cannot) provide an estimate of workers’ WEP reductions in these Statements, because the WEP adjustments depend on beneficiaries’ non-covered pensions and years of covered work, which is not known for certain until the end of their careers. Any estimation of one’s potential WEP reduction is even more inconceivable when one’s non-covered employment is in a foreign country. This makes it impossible for overseas Americans to understand how the rules will affect them and to plan their retirements.

AARO has evidence of overseas Americans’ unawareness of WEP. AARO conducted a survey of members and other overseas Americans in the fall of 2020 on various topics, including WEP, and found that 39% of respondents did not even know what WEP was. In advising our members living abroad of their rights with respect to Social Security, AARO has found that many have no idea that their Social Security could/would be reduced by the WEP.

Totalization Agreement Exception Not Always Useful

One of the exceptions to WEP is for workers who receive foreign pension payments after 1994 that are based on a totalization agreement with the United States. Overseas Americans generally do not know this because this exception is not publicized by the U.S. For example, this exception does not appear in SSA Publication No. 05-10045 (the official WEP publication). Further, even if they were aware of the exception, many overseas Americans do not know if their country of residence has such an agreement nor, if there were one, whether or how it would affect them.

That is because the application of this exception is complicated: First, one needs to have earned credits in a country with which the U.S. has a totalization agreement. Second, one only avoids the WEP reduction if one needed and used the totalization agreement in the country of the other pension to establish entitlement to benefits in that country. It is possible to establish entitlement to benefits in certain countries without totalization. If one does not use totalization, one loses this exception and could be WEPT. So, to take advantage of a totalization agreement exception, one must be fully aware of not only its existence, but of the implications of such agreement and how to effectively use it. On top of this, there are countries with totalization agreements with the U.S. that grant pensions based upon non-work factors (such as residence), which do not trigger the WEP reduction.

AARO cannot find an official government source explaining the applicability of any particular totalization agreement in relation to the WEP exception. It is practically impossible for the average American overseas to navigate the rules of how to take advantage of a totalization agreement, if one even learns of this exception.

WEP Calculations Arbitrary

WEP uses arbitrary percentages to substantially reduce a benefit that overseas Americans have counted on in their retirement plans; the data on beneficiaries' non-covered wages at the time of WEP's creation used to make the adjustments causes the formulas to be complex and the adjustments inexact. Some beneficiaries get higher benefits than they would if their benefits had been calculated with the correct replacement rate; others get lower benefits. The WEP formula therefore penalizes on the assumption of a "windfall" where there may not be one and thus can be unfair in individual cases.

The Social Security Fairness Act Solves the Problem

The bipartisan Social Security Fairness Act, which proposes to repeal WEP, sponsored in the House (H.R. 82) by Rep. Garret Graves (R. LA), and in the Senate (S. 597) by Sen. Sherrod Brown (D. OH), has significant bipartisan support with, as of April 18, 2024, 316 co-sponsors in the House and 53 co-sponsors in the Senate.

AARO supports legislation that would eliminate WEP for those with foreign pensions and welcomes the fact that the Social Security Fairness Act proposes to repeal WEP for Americans living in the United States as well as those overseas and, therefore, is not discriminatory to overseas Americans. This Act is significant for overseas Americans because previous bills addressing WEP reform would have treated Americans with State-side pensions differently than Americans with foreign pensions.

AARO understands that the SSA Chief Actuary concluded that the Act would advance the depletion of the Social Security Trust Funds by one year, from 2035 to 2034. But Congress has the same options at its disposal to overcome this obstacle as it would have to address the depletion of the funds in 2035, which it must do in any event, without WEP repeal.

Conclusion / Interim Suggestions

Although this submission relates to just a small number of the persons subject to WEP, the overseas consistency is more disadvantaged in retirement planning as compared to persons State-side in that overseas Americans are far less likely to even know of WEP. The totalization agreement exception, which one would normally consider to be a benefit to some in the overseas constituency, only helps those in certain countries, and is not useful to those who don't know of it or how to use it effectively.

For the reasons set forth above, AARO believes that WEP should be repealed and supports the Social Security Fairness Act. In the meantime, Congress should ensure that the SSA informs Americans abroad about WEP to avoid this surprise upon retirement. Three suggestions come to mind:

1. Add the notion of WEP to the instructions for Form 2555 (the foreign earned income exclusion).
2. Add the totalization agreement exception to SSA Publication No. 05-10045.

3. Publish information on the SSA website listing the countries with which the United States has a totalization agreement, whether one's foreign pension in such countries could trigger WEP and, if so, information which would help one to navigate the applicability of the exception.

Respectfully submitted by:

The Association of Americans Resident Overseas:
Doris L. Speer, President

Association of Americans Resident Overseas
4 rue de Chevreuse, 75006 Paris, France
president@aaro.org
www.aaro.org

About AARO:

The Association of Americans Resident Overseas (AARO) is an international, non-partisan non-profit association formed under the laws of France with members in over 40 countries. AARO seeks fair treatment for Americans abroad by advocating the issues that negatively affect their lives and informs its members of their rights and responsibilities as Americans. See [AARO](#).