

116TH CONGRESS
2D SESSION

S. 3401

To amend title II of the Social Security Act to replace the windfall elimination provision with a formula equalizing benefits for certain individuals with noncovered employment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2020

Mr. CRUZ (for himself and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title II of the Social Security Act to replace the windfall elimination provision with a formula equalizing benefits for certain individuals with noncovered employment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equal Treatment of
5 Public Servants Act of 2020”.

1 **SEC. 2. REPLACEMENT OF THE WINDFALL ELIMINATION**
 2 **PROVISION WITH A FORMULA EQUALIZING**
 3 **BENEFITS FOR CERTAIN INDIVIDUALS WITH**
 4 **NONCOVERED EMPLOYMENT.**

5 (a) IN GENERAL.—Section 215(a) of the Social Secu-
 6 rity Act (42 U.S.C. 415(a)) is amended by inserting after
 7 paragraph (7) the following:

8 “(8)(A) In the case of an individual whose primary
 9 insurance amount would be computed under paragraph
 10 (1) of this subsection—

11 “(i) who first becomes eligible for an old-age or
 12 disability insurance benefit after 2060,

13 “(ii) who subsequently becomes entitled to such
 14 benefit, and

15 “(iii) who has earnings derived from noncovered
 16 service performed in a year after 1977,

17 the primary insurance amount of such individual shall be
 18 the amount computed or recomputed under this para-
 19 graph.

20 “(B) The primary insurance amount of an individual
 21 described in subparagraph (A), as computed or recom-
 22 puted under this paragraph, shall be the product derived
 23 by multiplying—

24 “(i) the individual’s primary insurance amount,
 25 as determined under paragraph (1) of this sub-
 26 section and subparagraph (C) of this paragraph, by

1 “(ii) a fraction—

2 “(I) the numerator of which is the individ-
 3 ual’s average indexed monthly earnings (deter-
 4 mined without regard to subparagraph (C)),
 5 and

6 “(II) the denominator of which is an
 7 amount equal to the individual’s average in-
 8 dexed monthly earnings (as determined under
 9 subparagraph (C)),

10 rounded, if not a multiple of \$0.10, to the next lower mul-
 11 tiple of \$0.10.

12 “(C)(i) For purposes of determining an individual’s
 13 primary insurance amount pursuant to clauses (i) and
 14 (ii)(II) of subparagraph (B), the individual’s average in-
 15 dexed monthly earnings shall be determined by treating
 16 all recorded noncovered earnings (as defined in clause
 17 (ii)(I)) derived by the individual from noncovered service
 18 performed in each year after 1977 as ‘wages’ (as defined
 19 in section 209 for purposes of this title), which shall be
 20 treated as included in the individual’s adjusted total cov-
 21 ered earnings (as defined in clause (ii)(II)) for such cal-
 22 endar year together with amounts consisting of ‘wages’ (as
 23 so defined without regard to this subparagraph) paid dur-
 24 ing such calendar year and self-employment income (as

1 defined in section 211(b)) for taxable years ending with
2 or during such calendar year.

3 “(ii) For purposes of this subparagraph:

4 “(I) The term ‘recorded noncovered earnings’
5 means earnings derived from noncovered service
6 (other than noncovered service as a member of a
7 uniformed service (as defined in section 210(m)) for
8 which satisfactory evidence is determined by the
9 Commissioner to be available in the records of the
10 Commissioner.

11 “(II) The term ‘adjusted total covered earnings’
12 means, in connection with an individual for any cal-
13 endar year, the sum of the wages paid to the indi-
14 vidual during such calendar year (as adjusted under
15 subsection (b)(3)) plus the self-employment income
16 derived by the individual during any taxable year
17 ending with or during such calendar year (as ad-
18 justed under subsection (b)(3)).

19 “(iii) The Commissioner of Social Security shall pro-
20 vide by regulation or other public guidance for methods
21 for determining whether satisfactory evidence is available
22 in the records of the Commissioner for earnings for non-
23 covered service (other than noncovered service as a mem-
24 ber of a uniformed service (as defined in section 210(m))
25 to be treated as recorded noncovered earnings. Such meth-

1 ods shall provide for reliance on earnings information
2 which is provided to the Commissioner by employers and
3 which, as determined by the Commissioner, constitute a
4 reasonable basis for treatment of earnings for noncovered
5 service as recorded noncovered earnings. In making deter-
6 minations under this clause, the Commissioner shall also
7 take into account any documentary or other evidence of
8 earnings derived from noncovered service by an individual
9 which is provided by the individual to the Commissioner
10 and which the Commissioner considers appropriate as a
11 reasonable basis for treatment of such earnings as re-
12 corded noncovered earnings.

13 “(D) Upon the death of an individual whose primary
14 insurance amount is computed or recomputed under this
15 paragraph, such primary insurance amount shall be com-
16 puted or recomputed under paragraph (1) of this sub-
17 section.

18 “(E) In the case of any individual whose primary in-
19 surance amount would be computed under this paragraph
20 who first becomes entitled after 1985 to a monthly peri-
21 odic payment made by a foreign employer or foreign coun-
22 try that is based in whole or in part upon noncovered serv-
23 ice, the primary insurance amount of such individual shall
24 be computed or recomputed under paragraph (7) or para-
25 graph (1), as applicable, for months beginning with the

1 first month of the individual’s initial entitlement to such
 2 monthly periodic payment.”.

3 (b) CONFORMING AMENDMENTS.—Section
 4 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is
 5 amended—

6 (1) in clause (i)—

7 (A) by striking “after 1985” and inserting
 8 “after 1985 and before 2061”; and

9 (B) by striking “or” at the end;

10 (2) in clause (ii)—

11 (A) by striking “after 1985” each place it
 12 appears and inserting “after 1985 and before
 13 2061”; and

14 (B) by adding “or” at the end;

15 (3) by inserting after clause (ii) the following:

16 “(iii) is an individual described in paragraph
 17 (8)(E),”; and

18 (4) by striking “hereafter in this paragraph and
 19 in subsection (d)(3)” and inserting “in this para-
 20 graph, paragraphs (8) and (9), and subsection
 21 (d)(3)”.

22 (c) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply with respect to monthly insurance
 24 benefits payable on or after January 1, 2022.

1 **SEC. 3. BENEFIT CALCULATION DURING TRANSITION PE-**
 2 **RIOD.**

3 (a) IN GENERAL.—Section 215(a) of the Social Secu-
 4 rity Act (42 U.S.C. 415(a)), as amended by section 2, is
 5 further amended by inserting after paragraph (8) the fol-
 6 lowing:

7 “(9)(A) In the case of an individual whose primary
 8 insurance amount would be computed under paragraph
 9 (1) of this subsection—

10 “(i) who first becomes eligible for an old-age or
 11 disability insurance benefit after 2021 and before
 12 2061,

13 “(ii) who subsequently becomes entitled to such
 14 benefit, and

15 “(iii) who has earnings derived from noncovered
 16 service performed in a year after 1977,

17 the primary insurance amount of such individual shall be
 18 the higher of the amount computed or recomputed under
 19 paragraph (7) without regard to this paragraph or the
 20 amount that would be computed or recomputed under
 21 paragraph (8) if the individual were an individual de-
 22 scribed in subparagraph (A) of such paragraph.”.

23 (b) CONFORMING AMENDMENT.—Section
 24 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)), as
 25 amended by section 2(b), is further amended by striking

1 “shall be computed or recomputed” and inserting “shall,
 2 subject to paragraph (9), be computed or recomputed”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply with respect to monthly insurance
 5 benefits payable on or after January 1, 2022.

6 **SEC. 4. ADDITIONAL MONTHLY PAYMENT FOR INDIVID-**
 7 **UALS WHOSE BENEFIT AMOUNT IS REDUCED**
 8 **BY THE WINDFALL ELIMINATION PROVISION.**

9 (a) IN GENERAL.—Section 215(a) of such Act (42
 10 U.S.C. 415(a)), as amended by sections 2 and 3, is further
 11 amended by adding at the end the following:

12 “(10)(A) For any month in a calendar year after
 13 2019, the Commissioner of Social Security shall, subject
 14 to subparagraphs (C) and (D), make an additional month-
 15 ly payment of \$100 to each individual who is an eligible
 16 individual for such month, and an additional monthly pay-
 17 ment of \$50 to each individual (other than an eligible indi-
 18 vidual) who is entitled to a benefit under section 202 for
 19 such month on the basis of the wages and self-employment
 20 income of such eligible individual.

21 “(B) For purposes of this paragraph, the term ‘eligi-
 22 ble individual’ for a month means an individual who—

23 “(i)(I) first becomes eligible for an old-age or
 24 disability insurance benefit under this title before
 25 2022; or

1 “(II) is an individual described in paragraph
2 (8)(E); and

3 “(ii) is entitled to an old-age or disability insur-
4 ance benefit under this title for such month based
5 on a primary insurance amount that was computed
6 or recomputed under paragraph (7) (and not subse-
7 quently recomputed under any other paragraph of
8 this subsection).

9 “(C) In any case in which this title provides that no
10 monthly benefit under section 202 or 223 shall be paid
11 to an individual for a month, no additional monthly pay-
12 ment shall be paid to the individual for such month. This
13 subparagraph shall not apply in the case of an individual
14 whose monthly benefit under section 202 or 223 is re-
15 duced, regardless of the amount of the reduction, based
16 on the individual’s receipt of other income or benefits for
17 such month or the application of section 203(a) or due
18 to the adjustment or recovery of an overpayment under
19 section 204.

20 “(D)(i) An individual is not entitled to receive more
21 than one additional monthly payment for a month under
22 this paragraph.

23 “(ii) An eligible individual who is entitled to a benefit
24 under section 202 on the basis of the wages and self-em-
25 ployment income of another eligible individual for a month

1 shall receive an additional monthly payment under this
2 paragraph in the amount of \$100 for such month.

3 “(E) Except for purposes of adjustment or recovery
4 of an overpayment under section 204, an additional
5 monthly payment under this paragraph shall not be sub-
6 ject to any reduction or deduction under this title.

7 “(F) Whenever benefit amounts under this title are
8 increased by any percentage effective with any month as
9 a result of a determination made under subsection (i),
10 each of the dollar amounts in subparagraph (A) shall be
11 increased by the same percentage for months beginning
12 with such month.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to monthly insurance
15 benefits payable on or after January 1, 2020.

16 **SEC. 5. REPORTING OF NONCOVERED EARNINGS ON SO-**
17 **CIAL SECURITY ACCOUNT STATEMENTS.**

18 (a) IN GENERAL.—Section 1143(a)(2) of the Social
19 Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—

20 (1) by redesignating subparagraphs (B)
21 through (E) as subparagraphs (C) through (F); and

22 (2) by inserting after subparagraph (A) the fol-
23 lowing:

24 “(B) the amount of earnings derived by
25 the eligible individual from service performed

1 after 1977 which did not constitute employment
2 (as defined in section 210), not including serv-
3 ice as a member of a uniformed service (as de-
4 fined in section 210(m)), as shown by the
5 records of the Commissioner at the date of the
6 request;”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to Social Security ac-
9 count statements issued on or after January 1, 2020.

10 **SEC. 6. STUDY ON PARTNERING WITH STATE AND LOCAL**
11 **PENSION SYSTEMS.**

12 (a) STUDY.—

13 (1) IN GENERAL.—The Commissioner of Social
14 Security shall study and test the administrative fea-
15 sibility of partnering with State and local pension
16 systems, or other governmental entities, to improve
17 the collection and sharing of information relating to
18 State and local noncovered pensions.

19 (2) COORDINATION WITH STATE AND LOCAL
20 PENSION SYSTEMS.—In conducting the study de-
21 scribed in paragraph (1), the Commissioner shall co-
22 ordinate with State and local pension systems that
23 reflect the diversity of systems and individual experi-
24 ences to explore the development of automated data

1 exchange agreements that facilitate reporting of in-
2 formation relating to noncovered pensions.

3 (b) REPORT.—The Commissioner of Social Security
4 shall conclude the study described in subsection (a) not
5 later than 4 years after the date of enactment of this Act.
6 As soon as possible after conclusion of the study and not
7 later than 4½ years after the date of enactment of this
8 Act, the Commissioner shall submit to the Committee on
9 Ways and Means of the House of Representatives and the
10 Committee on Finance of the Senate a report on the re-
11 sults of the study. Such report shall include the following:

12 (1) A discussion of how the automated data ex-
13 change agreements could be implemented to cover
14 noncovered pensions nationally, including the range
15 of implementation timelines across State and local
16 pension systems, or with other governmental entities.

17 (2) An analysis of the barriers to developing
18 automated data exchange agreements and lessons
19 learned that can help address these barriers.

20 (3) A description of alternative methods for ob-
21 taining information related to noncovered pensions,
22 and an analysis of the barriers to obtaining non-
23 covered pension data through such methods.

24 (4) An explanation of how coverage information
25 is obtained by the Social Security Administration

1 when an individual purchases service credits to apply
 2 to a new covered or noncovered pension after moving
 3 from another covered or noncovered pension within
 4 the State or in another State.

5 (5) An estimate of the total amount, as of the
 6 date of the enactment of this Act, of noncovered
 7 pensions not reported to the Social Security Admin-
 8 istration as a result of noncompliance with voluntary
 9 reporting policies.

10 (c) STATE AND LOCAL PENSION INFORMATION TO
 11 BE REQUESTED BY THE COMMISSIONER.—Section 202 of
 12 the Social Security Act (42 U.S.C. 402) is amended by
 13 inserting after subsection (l) the following:

14 “(m) STATE AND LOCAL PENSION INFORMATION TO
 15 BE REQUESTED BY THE COMMISSIONER.—

16 “(1) The Commissioner may partner with
 17 States to request information, including the informa-
 18 tion specified in paragraph (2), with respect to any
 19 designated distribution (as defined in section
 20 3405(e)(1) of the Internal Revenue Code of 1986)
 21 from an employer deferred compensation plan (as
 22 defined in section 3405(e)(5) of such Code) of the
 23 State (or political subdivision thereof) to a partici-
 24 pant of such plan in any case in which any portion
 25 of such participant’s earnings for service under such

1 plan did not constitute ‘employment’ as defined in
2 section 210 for purposes of this title.

3 “(2) The information specified in this para-
4 graph is the following:

5 “(A) The name and Social Security ac-
6 count number of the participant receiving the
7 designated distribution.

8 “(B) The dollar amount of the designated
9 distribution and the date paid.

10 “(C) The date on which the participant
11 initially became eligible for a designated dis-
12 tribution under the plan and, if different, the
13 date of payment of the initial designated dis-
14 tribution.

15 “(D) The dates of each period of service
16 under the plan that did not constitute ‘employ-
17 ment’ as defined in section 210 for purposes of
18 this title, and the dates of any other period of
19 service under the plan.”.

20 (d) DEFINITIONS.—In this section—

21 (1) the term “noncovered pension” means a
22 pension any part of which is based on noncovered
23 service (within the meaning of section 215(a)(7) of
24 the Social Security Act (42 U.S.C. 415(a)(7))); and

- 1 (2) the term “covered pension” means any
2 other pension.

