

Congress Should Pass a Fair Correction to Social Security’s Windfall Elimination Provision and Government Pension Offset

Rachel Greszler

KEY TAKEAWAYS

Lower-income workers receive proportionally larger Social Security benefits, but a flaw in the system caused some high earners to be treated like low earners.

Congress tried to correct this flaw through the WEP and GPO with insufficient data. Sufficient data now exist for an accurate correction.

A fair and accurate remedy would cost nothing, while eliminating the WEP and GPO would cost \$183 billion and hasten Social Security’s insolvency by one year.

Social Security is designed to be contributory and progressive, meaning that benefits are based on how much individuals pay into the system as well as on their earning levels, so that lower-income earners receive proportionally higher benefits (relative to their prior earnings). The exemption of some state and local government workers from Social Security led to unintended “windfall” benefits. Since Social Security only included a fraction of years that those individuals spent working (only those years in jobs that are not exempt from Social Security), they were treated as lower-income earners and received proportionally higher Social Security benefits despite having higher lifetime earnings.

Congress corrected those artificially high windfall benefits with the Windfall Elimination Provision (WEP) in 1983. Lacking sufficient data to design an

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accurate correction, the WEP results in some individuals receiving smaller (and some people larger) Social Security benefits than intended. Similarly, the Government Pension Offset (GPO) of 1977 provided an imperfect remedy to Social Security's spousal benefit formula.

Congress has tried multiple times to address disparities caused by the WEP and GPO. A proposal by Representative Jodey Arrington (R-TX), the Equal Treatment of Public Servants Act of 2023, provides a long-term remedy to the WEP with modest short-term costs. Another proposal with multiple co-sponsors in the House and Senate, the Social Security Fairness Act of 2023, would eliminate the WEP and GPO entirely, reinstating unintended windfall benefits at a cost of \$183 billion and causing Social Security to become insolvent more than a year earlier, in 2032 instead of in 2033.

Policymakers should build on the Equal Treatment for Public Servants Act by expediting the shift to accurate benefit calculations and should also implement a similar proportional remedy for the GPO. This would preserve Social Security's progressive and contributory intent while also improving the program's shortfalls. To help to gain bipartisan support, policymakers could consider incorporating a Social Security credit for years spent out of the formal workforce while raising children.

How Are Social Security Benefits Calculated?

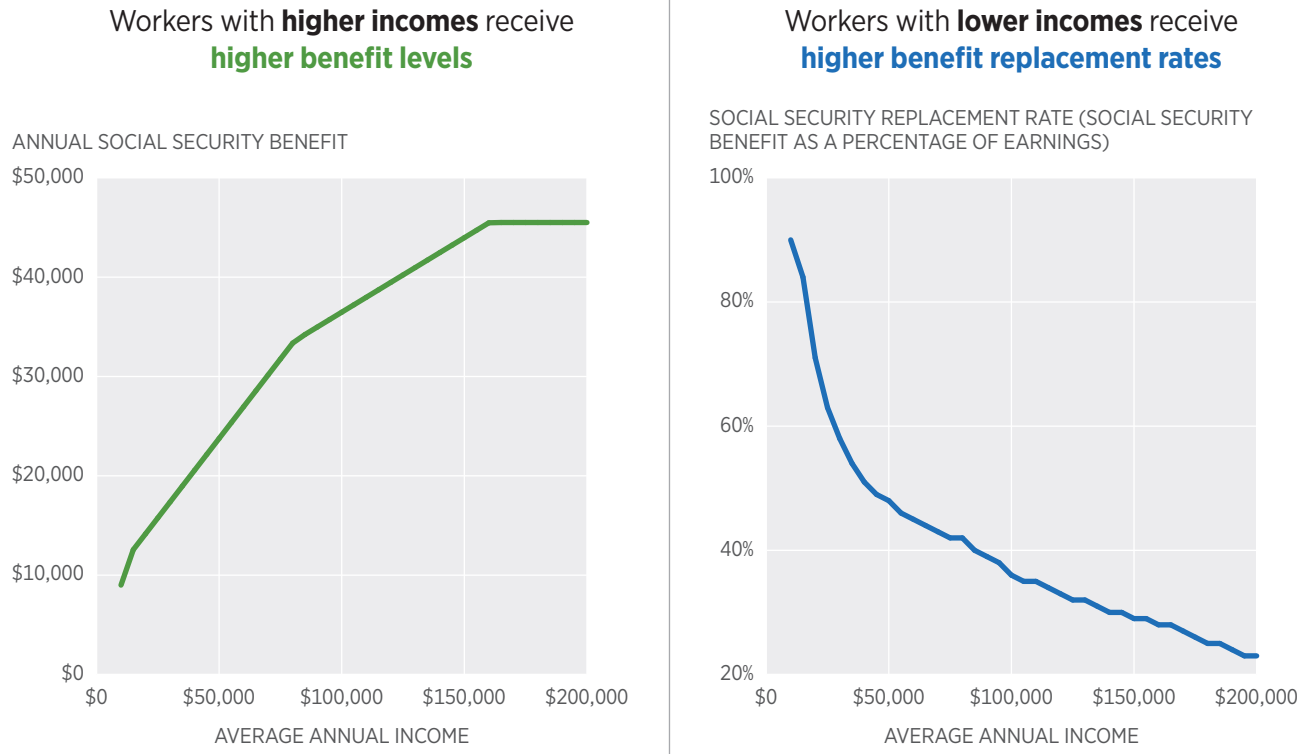
As mentioned, Social Security benefits are contributory and progressive, taking into account taxes paid into the system as well as earnings levels. Designed at a time when few married women participated in the formal labor force, Social Security includes a spousal benefit so that individuals who do work long enough to receive a benefit of their own can receive a benefit equal to half of their spouse's benefit.

When individuals file for Social Security's benefits upon reaching their normal retirement age of 67 (for those born in 1960 or later),¹ or as early as age 62 for individuals claiming early retirement benefits,² the Social Security Administration uses workers' earnings records to calculate their monthly benefits. Benefits are based on a worker's average indexed monthly earnings (AIME), over their highest 35 years (420 months) of earnings. If an individual worked for 42 years, his lowest seven years of earnings are not included, and someone who worked only 25 years will have 10 zero-earning years included in his AIME.

A worker's AIME is then broken down based on income-level "bend points" and multiplied by progressive "replacement rate" percentages. The

CHART 1

Social Security Benefits are Contributory and Progressive



NOTE: Social Security has a taxable maximum equal to \$160,200 in 2023. Beyond this income level, taxes are not collected and benefits do not increase, which is why benefit levels are flat for workers making over \$160,200.

SOURCE: Author's calculations based on Social Security's benefit formula and earnings levels bend points for 2023.

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first \$1,115 of monthly earnings is multiplied by 90 percent; the next \$1,116 to \$6,721 is multiplied by 32 percent; and amounts between \$6,722 and \$13,350³ are multiplied by 15 percent. This method mechanically works in a similar fashion to the federal government's progressive income tax rates that increase as incomes rise, but because Social Security is a transfer payment instead of a tax, the rates decline as incomes rise.

To be eligible for a Social Security benefit based on one's own earnings, an individual must have worked and contributed to Social Security for at least 10 years (40 quarters). Individuals who did not work at least 40 quarters are eligible to receive a spousal benefit equal to one-half of their spouse's benefit so long as they were married for at least 10 years.

TABLE 1

Examples of Social Security Benefits Based on Annual Earnings

	Average Annual Earnings	Monthly Social Security Benefit	Replacement Rate (benefit as % of average earnings)
Tom	\$25,000	\$15,760	63%
Sue	\$75,000	\$31,760	42%
Rick	\$150,000	\$43,970	29%

NOTE: Social Security benefit calculations assume workers each had 35 years or more of earnings.

SOURCE: Author's calculations based on Social Security's benefit formula and earnings levels bend points for 2023.

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Table 1 shows the Social Security benefits of workers with different average income levels over the course of their careers.

The examples in Table 1 demonstrate Social Security's contributory and progressive nature. "Tom" had the lowest earnings, receives the lowest benefit amount, and has the highest benefit replacement rate. "Rick" had the highest earnings and receives the highest benefit amount but has the lowest replacement rate.

Impetus for the Windfall Elimination Provision and Government Pension Offset

While nearly all workers and employers must pay into Social Security, some jobs—namely state and local government jobs—were, and may still be, exempt. Because Social Security benefits are based on average earnings over 35 years, and years spent in exempt or non-covered employment are counted as zero earnings, Social Security's original benefit formula resulted in windfall benefits for many workers. Specifically, many who worked in both Social Security-covered and non-covered employment received higher Social Security replacement rates than individuals with the same earnings who worked exclusively in Social Security-covered employment.

Example: Windfall Elimination Provision. Prior to the WEP, those who worked in jobs exempt from Social Security taxes often received larger Social Security benefits than the program intended. Using the same examples of Tom, Sue, and Rick above, suppose that Rick spent only 12 years of

his career in Social Security–covered earnings and the other 23 in a job that was exempt from Social Security taxes and provided a separate pension, his 23 years would be counted as zeros even though he was earning \$150,000 each year. Thus, his average earnings according to Social Security’s formula would be only \$51,429 instead of \$150,000. Prior to the WEP, Rick would have received a \$24,218 annual Social Security benefit, which is in line with a 47 percent replacement rate for someone whose entire earnings were subject to Social Security taxes. Consequently, prior to the WEP, Rick would have received a proportionally higher Social Security benefit than Sue (whose benefit equals a 42 percent replacement rate) even though his earnings were twice as high as Sue’s, and even though he earned a separate, non–Social Security government pension.

What makes this calculation counter to Social Security’s intent is that it treats Rick like a lower-income earner when, in fact, he had high earnings that were not taxed by Social Security and which contributed to his separate, non–Social Security government pension. Supposing that Rick’s other government pension provided the same benefits as Social Security, he would receive a government pension of \$28,895 plus a Social Security pension of \$24,218.⁴ In total, Rick’s Social Security and government pensions would equal \$53,113, which is \$9,143 more than the \$43,970 he would have received if his entire career had been in Social Security–covered employment.

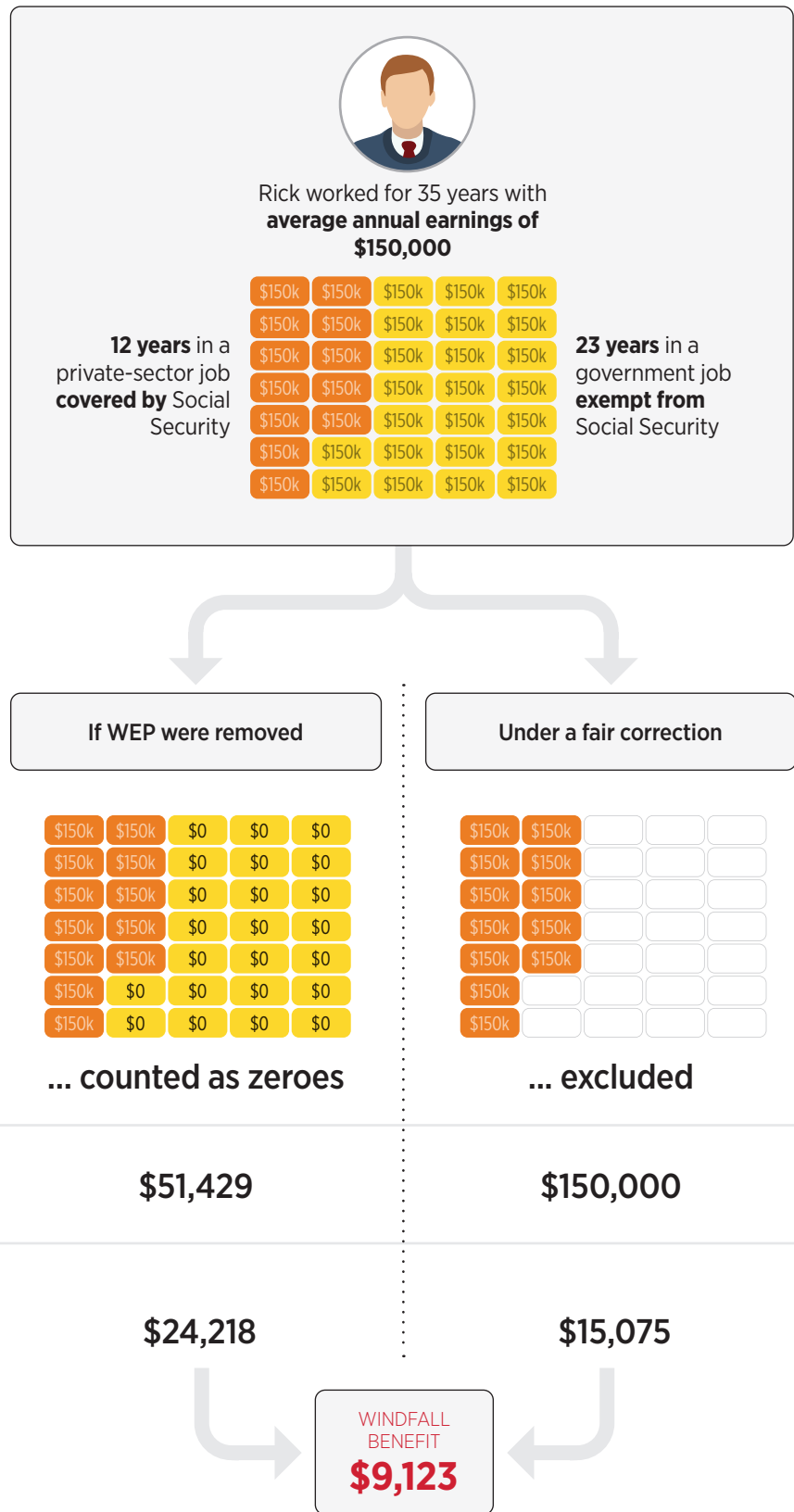
The logical correction is to exclude Rick’s years outside the Social Security system, rather than counting them as zero. Thus, Rick’s benefit would be calculated based on his \$150,000 of average earnings in his years of Social Security employment, and his benefit would then be multiplied by the percentage of his total work years that were spent in Social Security–covered jobs (12 years divided by 35 years), which equals 34 percent. Thus, Rick’s Social Security benefit would be \$15,075, which is directly proportional to the number of years he paid into Social Security, and results in the same replacement rate as Social Security intends for a worker with Rick’s earnings level.

Lacking sufficient earnings data to legislate an accurate remedy, policymakers implemented an ad hoc formula that reduces Social Security benefits based on a worker’s number of years with substantial earnings in Social Security–covered employment.⁵ The more years a worker spent in Social Security–covered employment, the smaller the reduction in his Social Security benefit. The WEP is capped and cannot take away more than half of a worker’s Social Security benefit. Based on the current WEP formula, Rick’s Social Security benefit would be reduced by \$6,690, taking it from \$24,218 to \$17,528.⁶ In Rick’s case, the current WEP formula still provides him with a windfall benefit compared to what he would have received had all

FIGURE 1

Keeping Social Security Benefits Fair

Removing the windfall elimination provision (WEP) would treat high-income workers as low-income workers. As this example shows, a corrected version of the WEP would prevent Rick from being credited with Social Security benefits for the years he did not pay Social Security taxes, when he was instead earning a separate government pension.



SOURCE: Author's analysis.

his earnings been in Social Security–covered employment, but it is a smaller windfall than what Social Security provided without the WEP. Under the current WEP, there are also workers who pay a WEP penalty because the ad hoc formula results in them receiving less than they would have received had all their earnings been in Social Security–covered employment.

Example: Government Pension Offset. Prior to the GPO, those who worked in jobs that were exempt from Social Security taxes and provided separate government pensions could also receive Social Security spousal benefits equal to what individuals with little or no work history received. The spousal benefit allows individuals to receive the greater of their own earned benefit, or 50 percent⁷ of their spouse’s benefit, and it was designed to support spouses—namely women—who generally stayed at home to care for children and a household. Individuals who worked in jobs exempt from Social Security often looked like stay-at-home-spouses or very low-income earners for purposes of Social Security benefit eligibility. In reality, they worked and earned government pensions of their own and did not have to pay into the Social Security system.

For example, if Sue and Rick were married and both worked in Social Security–covered jobs, Sue’s individual benefit of \$31,760 would be greater than the spousal benefit of \$21,985 (half of Rick’s \$43,970), so she would not receive a spousal benefit. If Sue had the exact same earnings and the exact same pension of \$31,760 in a job exempt from Social Security, then, prior to the GPO, she would have received both her \$31,760 pension and a \$22,000 Social Security spousal benefit.

The logical correction to this discrepancy is to calculate an imputed Social Security benefit for Sue, assuming that her Social Security–exempt earnings had instead been in Social Security–covered employment. That would make Sue’s imputed Social Security benefit equal to \$31,760, and because this amount is greater than the \$21,485 spousal benefit that Sue could receive on behalf of Rick, she would not be eligible for a spousal benefit.

Since sufficient earnings data did not exist to provide an accurate remedy, policymakers provided a simple change that aimed to get close to the correct amount, but nevertheless resulted in some people receiving more or less than an accurate correction would have provided. In the case of Sue and Rick, Sue’s spousal benefit is reduced by two-thirds of the amount of her government pension. Two-thirds of \$31,760 equals \$21,173, and her spousal benefit of \$21,485 minus \$21,173 equals \$312. So, Sue is left with a small spousal benefit, which is larger than the \$0 she would have received if her earnings had been in Social Security–covered employment but is much less than the \$22,000 windfall she would have received absent the GPO.

Time for a Fair Correction

At the time that Congress sought to correct these windfall benefits through the GPO in 1977 and the WEP in 1983, sufficient earnings records did not exist to allow appropriate corrections as described above. Consequently, the GPO and WEP imposed ad hoc adjustments that aimed to preserve Social Security's intent but resulted in some people having their Social Security benefits reduced by more or less than an arguably fair amount.

Today, sufficient earnings records exist to provide correct, proportional corrections that would preserve Social Security's intent while improving the program's finances.⁸ The crux of an appropriate remedy is to presume that a worker's entire earnings had been in Social Security-covered employment, to calculate the benefit based on the worker's entire career, and then to credit the worker with a proportional benefit based on years of Social Security earnings as a percentage of total years of earnings. These corrections could be implemented through a near-term transition period, allowing those close to retirement to receive the greater of the current and corrected formulas, and shifting others fully to the correct formula over a period of 20 years or 30 years.

To increase the political viability of an accurate remedy, policymakers could consider pairing a WEP and GPO correction with a modernization of the spousal benefit to more accurately reflect women's increased participation in the workforce since Social Security's inception. That could include sharing of benefit credits between couples⁹ and the addition of a caregiver credit provided to one parent or legal guardian for years spent outside of the formal labor force while raising children.

Such a credit could provide a modernized version of the spousal benefit by acknowledging that most women participate in the formal labor force for some or most of their adult lives. A per-child credit would support parents, and it would also reduce Social Security's implicit tax rate for many parents who spend time both in and out of the formal workforce.¹⁰

Equal Treatment of Public Servants Act: Provides Long-Term Remedy for WEP at No Net Cost

The proposed Equal Treatment of Public Servants Act of 2023 (H.R. 5342) ultimately achieves a fair and accurate correction to the WEP.¹¹ The proposal includes a full remedy for individuals who retire in 2068 or later (effectively, people born in 2000 or later), but allows everyone retiring in

2067 or earlier to receive the larger amount of either the current, flawed formula or the newly corrected formula. Social Security's Chief Actuary estimated that an earlier version of the Equal Treatment of Public Servants Act would cost \$26.3 billion over the first 10 years and be revenue neutral over the long term.¹²

Congress could improve the Equal Treatment of Public Servants Act by gradually phasing in the remedy over the next 30 years instead of allowing retirees to receive the best of both calculations for 45 years. Moreover, adding a similar remedy to the GPO would provide a comprehensive solution to fairly calculate benefits while strengthening Social Security's solvency and minimizing future benefit reductions already incorporated into current law.

Social Security Fairness Act: Reverts to Original Flawed Formulas at Cost of \$183 Billion and Hastens Social Security's Insolvency

Unlike the Equal Treatment of Public Servants Act, which corrects the current problem of an imprecise benefit offset formula for the WEP, lawmakers in the House and Senate have proposed a bill, the Social Security Fairness Act of 2023 (H.R. 82 and S. 597), that would eliminate the WEP and GPO altogether.¹³ By returning to the flawed formulas of more than 40 years ago that provided large windfall benefits, the Congressional Budget Office estimated that eliminating the WEP and GPO would cost \$183 billion over the next 10 years and cause Social Security to become insolvent more than a year earlier, in 2032.¹⁴ When Social Security becomes insolvent, all retirees will be subject to 23 percent benefit cuts, with an average loss of more than \$5,000 per year for a typical retiree.

Conclusion

When Congress attempted to eliminate windfall benefits that were accruing to individuals who had been exempt from Social Security taxes for part of their career by enacting the WEP and GPO, sufficient data did not exist to provide an accurate correction, and the ad hoc correction resulted in some individuals continuing to receive windfall benefits while others received penalties as a result of their earnings outside the Social Security system. Sufficient data now exist to allow an accurate correction. Representative Arrington's Equal Treatment for Public Servants Act provides a long-term correction

to the WEP, with no long-run cost. Hastening the implementation of that proposal and adding a correction to the GPO would provide a comprehensive solution.

The Social Security Fairness Act, on the other hand, would revert to the deeply flawed benefit system at a cost of \$183 billion while hastening Social Security's looming insolvency and across-the-board benefit cuts. Policymakers should preserve Social Security's original intent of providing progressive and contributory benefits by taking workers' full earnings histories into account when calculating benefits. An accurate remedy would reduce Social Security's long-term costs and improve its long-term finances.

Rachel Greszler is Senior Research Fellow for Budget and Entitlements in the Grover M. Hermann Center for the Federal Budget at The Heritage Foundation.

Endnotes

1. Social Security has both early and normal retirement ages. Individuals who first begin collecting benefits at the normal retirement age receive a full benefit whereas those who retire early (as young as age 62) receive a reduced benefit. Social Security's normal retirement age is currently 65 for those born before 1937, between 65 and 66 for those born between 1938 and 1942, 66 for those born between 1943 and 1954, between 66 and 67 for those born between 1955 and 1959, and 67 for those born in 1960 or later.
2. About 70 percent of workers claim early Social Security benefits before reaching their normal retirement age.
3. The maximum amount of earnings included in Social Security's benefit formula is a function of Social Security having a maximum amount of income that is subject to Social Security taxes. This taxable maximum is intended to restrict benefits for high-income earners, as well as to carry out the program's function as a contributory social insurance program.
4. This assumption is for simple comparison purposes only. Non-Social Security government pensions may provide benefits that are greater than or less than the benefits that Social Security provides.
5. The WEP applies to individuals who spent years working in jobs exempt from Social Security taxes and who spent fewer than 30 years in Social Security-covered employment. The WEP reduces the first 90 percent factor in the AIME calculation to an amount ranging from 40 percent to 85 percent, depending on how many years the individual had "substantial" earnings in Social Security-covered employment. (For 2023, "substantial" earnings are defined as \$29,700 or more.) For an explanation of the WEP and GPO, see Congressional Research Service, "Social Security: The Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO)," February 13, 2023, [https://crsreports.congress.gov/product/pdf/IF/IF10203#:~:text=In%202023%2C%20the%20amount%20of,coverage%20\(YOC\)%20is%20%2429%2C700](https://crsreports.congress.gov/product/pdf/IF/IF10203#:~:text=In%202023%2C%20the%20amount%20of,coverage%20(YOC)%20is%20%2429%2C700) (accessed October 12, 2023).
6. The WEP reduces the first 90 percent replacement rate in the AIME to 40 percent for Rick because he had 20 or fewer years with substantial earnings in Social Security-covered employment. Because Rick had only 12 years with substantial earnings and his reduction was no larger than someone who had spent 20 years in covered employment, he ends up still receiving a windfall benefit under the current WEP.
7. After the death of a spouse, the spousal benefit shifts to a survivor's benefit, which can be equal to 100 percent of the deceased spouse's benefit, depending on the age at which the individual begins collecting the benefit.
8. Such corrections use a different formula for workers with non-covered earnings. Instead of including \$0 of earnings in years of non-covered employment, average earnings would be calculated based only on years of covered employment, and the worker's benefit would then be multiplied by a proportional factor to account for the years he or she spent working in covered employment compared to total work years.
9. Under a shared benefits system, if one spouse had \$50,000 in earnings and the other had \$70,000 in earnings, both would be credited with \$60,000 in total (\$25,000 on behalf of one spouse and \$35,000 on behalf of the other). Converting to a system of shared credits for married couples would align with the legal treatment of shared marital assets and would particularly help to protect spouses—generally women—who give up work in the formal labor force to stay home raising children.
10. Currently, those who spend a significant time out of the labor force receive zero Social Security credit for that time. Consequently, they are more likely to receive a spousal benefit instead of an individual benefit. For anyone who receives a spousal benefit and also spent time working, the Social Security taxes he or she had to pay while working resulted in zero additional Social Security benefit. Thus, they were a pure tax. The allowance of a per-child caregiver credit would increase the individual benefits of parents and guardians who spend time outside the labor force, and therefore increase the likelihood that their Social Security benefits increase as a result of the taxes they pay into the system.
11. H.R. 5342, Equal Treatment of Public Servants Act of 2023, 118th Congress, 1st Session, introduced September 5, 2023, <https://www.congress.gov/118/bills/hr5342/BILLS-118hr5342ih.pdf> (accessed September 25, 2023).
12. Steven C. Goss, Chief Actuary, Social Security Administration, letter to the Honorable Kevin Brady, November 3, 2021, https://www.ssa.gov/OACT/solvency/KBrady_20211103.pdf (accessed October 12, 2023).
13. H.R. 82, Social Security Fairness Act of 2023, 118th Congress, 1st Session, introduced January 9, 2023, <https://www.congress.gov/118/bills/hr82/BILLS-118hr82ih.pdf> (accessed September 26, 2023), and S. 597, Social Security Fairness Act, 118th Congress, 1st Session, introduced March 1, 2023, <https://www.congress.gov/118/bills/s597/BILLS-118s597is.pdf> (accessed September 26, 2023).
14. Congressional Budget Office, "H.R. 82, Social Security Fairness Act of 2021 as Ordered Reported by the House Committee on Ways and Means on September 20, 2022," Cost Estimate, September 20, 2022, https://www.cbo.gov/system/files/2022-09/hr82_0.pdf (accessed September 25, 2023).