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112TH CONGRESS
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H. R. 2797

To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 2011

Mr. BRADY of Texas (for himself, Mr. MARCHANT, Mr. SCHOCK, Mr. LONG, Mr. OLSON, Mr. PAUL, and Mr. MCCAUL) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Servant Retirement Protection Act of 2011".

SEC. 2. REPEAL OF CURRENT WINDFALL ELIMINATION PROVISION.

Paragraph (7) of section 215(a) of the Social Security Act (42 U.S.C. 415(a)(7)) is repealed.

SEC. 3. REPLACEMENT OF THE WINDFALL ELIMINATION PROVISION WITH A FORMULA EQUALIZING BENEFITS FOR CERTAIN INDIVIDUALS WITH NON-COVERED EMPLOYMENT.

(a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR FORMULA BASED ON COVERED PORTION OF PERIODIC BENEFIT.—

(1) IN GENERAL.—Section 215(a) of the Social Security Act (as amended by section 2 of this Act) is amended further by inserting after paragraph (6) the following new paragraph:

''(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

''(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

''(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (F), but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, (II) a payment

by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 233, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 210(m)) which is based in whole or in part upon his or her earnings for service which did not constitute 'employment' as defined in section 210 for purposes of this title (hereafter in this paragraph and in subsection (d)(3) referred to as 'noncovered service'), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under this paragraph.

''(B) The primary insurance amount of an individual described in subparagraph (A), as computed or recomputed under this paragraph, shall be—

''(i) in the case of an individual who first performs noncovered service after the 12th calendar month following the date of the enactment of the Public Servant Retirement Protection Act of 2011, the primary insurance amount determined under subparagraph (C), or

''(ii) in the case of an individual who has performed noncovered service during or before the 12th

calendar month following the date of the enactment of the Public Servant Retirement Protection Act of 2011, the larger of—

"(I) the primary insurance amount determined under subparagraph (C), or

"(II) the primary insurance amount determined under subparagraph (E).

"(C) An individual's primary insurance amount determined under this subparagraph shall be the product derived by multiplying—

"(i) the individual's primary insurance amount, as determined under paragraph (1) of this subsection and subparagraph (D) of this paragraph, by

"(ii) a fraction—

"(I) the numerator of which is the individual's average indexed monthly earnings (determined without regard to subparagraph (D)), and

"(II) the denominator of which is an amount equal to the individual's average indexed monthly earnings (as determined under subparagraph (D)),

rounded, if not a multiple of $0.10, to the next lower multiple of $0.10.

"(D)(i) For purposes of determining an individual's primary insurance amount pursuant to clauses (i) and (ii)(II) of subparagraph (C), the individual's average indexed monthly earnings shall be determined, subject to clause (ii), by treating all recorded noncovered earnings (as defined in clause (iii)(I)) derived by the individual from noncovered service performed in each year after 1950 as 'wages' (as defined in section 209 for purposes of this title), which shall be treated as included in the individual's adjusted total covered earnings (as defined in clause (iii)(II)) for such calendar year together with amounts consisting of 'wages' (as so defined without regard to this subparagraph) paid during such calendar year and self-employment income (as defined in section 211(b)) for taxable years ending with or during such calendar year.

"(ii) In any case in which some or all of the earnings derived from noncovered service performed by an individual during any calendar year after 1950 are not recorded noncovered earnings (as defined in clause (iii)(I)), for purposes of determining the individual's average indexed monthly earnings as described in clause (i), the amount of the individual's adjusted total covered earnings (as defined in clause (iii)(II)) for such calendar year shall be deemed to be, in lieu of the amount determined without

regard to this clause, an amount equal to the quotient derived by dividing—

"(I) the sum of all adjusted total covered earnings (determined without regard to this clause) of the individual for all calendar years after 1950, plus all recorded noncovered earnings which are paid to the individual during such calendar years (after adjustment under subsection (b)(3) as if such earnings were wages), by

"(II) the number of calendar years after 1950 for which there are, with respect to the individual, any earnings described in subclause (I).

"(iii) For purposes of this subparagraph—

"(I) The term 'recorded noncovered earnings' means earnings derived from noncovered service (other than noncovered service as a member of a uniformed service (as defined in section 210(m)) for which satisfactory evidence is determined by the Commissioner to be available in the records of the Commissioner.

"(II) The term 'adjusted total covered earnings' means, in connection with an individual for any calendar year, the sum of the wages paid to the individual during such calendar year (as adjusted under subsection (b)(3)) plus the self-employment income

derived by the individual during any taxable year ending with or during such calendar year (as adjusted under subsection (b)(3)).

"(iv) The Commissioner of Social Security shall provide by regulation for methods for determining whether satisfactory evidence is available in the records of the Commissioner for earnings for noncovered service (other than noncovered service as a member of a uniformed service (as defined in section 210(m)) to be treated as recorded noncovered earnings. Such methods shall provide for reliance on earnings information which is provided to the Commissioner by employers and which, as determined by the Commissioner, constitute a reasonable basis for treatment of earnings for noncovered service as recorded noncovered earnings. In making determinations under this clause, the Commissioner shall also take into account any documentary evidence of earnings derived from noncovered service by an individual which is provided by the individual to the Commissioner and which the Commissioner considers appropriate as a reasonable basis for treatment of such earnings as recorded noncovered earnings, except that such evidence provided by the individual shall be taken into account only to the extent that such evidence does not relate to earnings for service with respect to which information regarding earnings has already

been obtained by the Commissioner from the employer and only to the extent that such evidence does not result in a reduction in the individual's primary insurance amount as calculated under subparagraph (C).

"(E)(i) For purposes of determining the primary insurance amount under this subparagraph pursuant to subparagraph (B)(ii)(II)—

"(I) there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii), and

"(II) there shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be enti-

tled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits.

An individual's primary insurance amount determined under this subparagraph shall be the larger of the two amounts computed under this clause (before the application of subsection (i)).

"(ii) For purposes of clause (i), the percent specified in this clause is—

"(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

"(II) 70.0 percent with respect to individuals who so become eligible in 1987;

"(III) 60.0 percent with respect to individuals who so become eligible in 1988;

"(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

"(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

"(F)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis

equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

"(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(3)) by the amount of such reduction.

"(iii) For purposes of this paragraph, the term 'periodic payment' includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

"(G)(i) In any case in which the primary insurance amount would otherwise be calculated under subparagraph (E)—

"(I) this paragraph shall not apply in the case of an individual who has 30 years or more of coverage; and

"(II) in the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (E)(ii) shall (if such percent is smaller than the applicable per-

cent specified in the following table) be deemed to be the applicable percent specified in the following table:

"If the number of the individual's years of coverage (as so defined) is:	The applicable percent is:
29	85
28	80
27	75
26	70
25	65
24	60
23	55
22	50
21	45.

"(ii) For purposes of clause (i), the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.

"(H) An individual's primary insurance amount determined under this paragraph shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this title.

"(I) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 233 or an individual who on January 1, 1984—

"(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

"(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of the Social Security Amendments of 1983, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.".

(2) CONFORMING AMENDMENTS.—

(A) Section 215(d)(3) of such Act (42 U.S.C. 415(d)(3)) is amended—

(i) by striking "subsection (a)(7)(C)" each place it appears and inserting "subsection (a)(7)(F)";

(ii) by striking "subparagraph (E)" and inserting "subparagraph (I)"; and

(iii) by striking "subparagraph (D)" and inserting "subparagraph (G)(i)".

(B) Section 215(f)(9)(A) of such Act (42 U.S.C. 415(f)(9)(A)) is amended by striking "(a)(7)(C)" and inserting "(a)(7)(F)".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to monthly insurance benefits for months commencing with or after the 12th calendar month following the date of the enactment of this Act. Notwithstanding section 215(f) of the Social Security Act, the Commissioner of Social Security shall recompute primary insurance amounts to the extent necessary to carry out the amendments made by this Act.

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