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PENALTY FOR PUBLIC SERVICE: DO THE SOCIAL SECURITY GOVERNMENT PENSION OFFSET AND WINDFALL ELIMINATION PROVISION UNFAIRLY DISCRIMINATE AGAINST EMPLOYEES AND RETIREES?

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

SEPTEMBER 24, 2003

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PENALTY FOR PUBLIC SERVICE: DO THE SOCIAL SECURITY GOVERNMENT PENSION OFFSET AND WINDFALL ELIMINATION PROVISION UNFAIRLY DISCRIMINATE AGAINST EMPLOYEES AND RETIREES?

WEDNESDAY, SEPTEMBER 24, 2003

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:33 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins and Akaka.

Chairman COLLINS. The Committee will come to order.

Good morning. Today, the Committee on Governmental Affairs is holding a hearing to examine the effect that the Social Security government pension offset and the windfall elimination provisions have on public employees and retirees.

I am going to go immediately to the distinguished senior Senator from California, Senator Dianne Feinstein, for her opening statement because of scheduling considerations. I will then resume with my own opening statement and we will continue with the hearing.

I want to welcome Senator Feinstein here this morning. She has been such a leader in the Senate in remedying this inequity that has affected so many of our constituents. I am very proud to be the lead Republican cosponsor of the legislation that Senator Feinstein has introduced. We work together on many issues and it is a great pleasure to welcome her to the Committee this morning.

Senator Feinstein.

TESTIMONY OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Madam Chairman. I appreciate your holding this hearing, and even more than that I appreciate your cosponsorship of this legislation which we together have introduced, along with 21 others of our body.

The reason we have introduced it is because under current law, public employees, whose salaries are often lower than those in the private sector, actually find that they are penalized and held to a different standard when it comes to retirement benefits. The arbitrary reduction in their benefits makes it more difficult to recruit teachers, police officers, and firefighters, and it does so at a time

when we should be doing everything we can to recruit the very best and brightest to these careers.

I am very delighted to have introduced you to Bill Lambert, of the United Teachers of Los Angeles. He represents some 48,000 teachers, the dominant majority of whom lose benefits under the present system that no one in the private sector does, and that is what our bill seeks to remedy.

The current government pension offset provision reduces Social Security spousal benefits by an amount equal to two-thirds of the spouse's public employment civil service pension. This can have the effect of taking away entirely a spouse's benefits from Social Security, and as one might guess, this provision disproportionately affects women. So as Mr. Lambert just said to you, you had better hope if you are going to be a teacher that you live a long time because if you don't, your spouse is going to be disadvantaged because you chose a public career rather than a private one.

The Social Security windfall elimination provision reduces Social Security benefits for retirees who pay into Social Security and also receive a government pension, such as from a teacher retirement fund. Private sector retirees receive monthly Social Security checks equal to 90 percent of the first $561 in average monthly earnings, plus 32 percent of monthly earnings up to $3,381, and 15 percent of earnings above $3,381. Government pensioners, however, are only allowed to receive 40 percent of the first $561 in career monthly earnings. Now, that is a penalty of $280.50. It is a big penalty for people who really need those funds. To my mind, it is simply unfair.

Our legislation will allow government pensioners the chance to earn the 90 percent to which non-government pension recipients are entitled. I don't understand why we want to discourage people from pursuing careers in public service by essentially saying that if you do enter public service, your family is going to suffer by not being able to receive the full retirement benefits they would otherwise be entitled to.

Record enrollments in public schools and the projected retirements of thousands of veteran teachers are driving this urgent need for teacher recruitment. Efforts to reduce class size also necessitate hiring additional teachers. It is estimated that schools will need to hire between 2.2 and 2.7 million new teachers nationwide by 2009.

My State, California, currently has more than 285,000 teachers, but is going to need to hire an additional 300,000 teachers by 2010 to keep up with California's rate of student enrollment, which is three times the national average. All in all, California has to hire 26,000 new teachers.

Now, to combat the growing teacher crisis, 45 States and the District of Columbia now offer alternative routes for certification to teach in the Nation's schools. It is a sad irony that policymakers are encouraging experienced people to change careers and enter the teaching profession at the same time that we clearly tell them we will reduce your Social Security benefits for making such a change, benefits they worked hard to earn.

Almost 300,000 government retirees nationwide are affected by the government pension offset and windfall elimination provisions,

but their impact is greatest in the 13 states that chose to keep their own public employee retirement systems, including yours and mine.

According to the Congressional Budget Office, the government pension offset reduces benefits for some 200,000 individuals by more than $3,600 a year. That is the loss; it is tremendous. As I mentioned earlier, the windfall elimination provision causes already low-paid public employees outside the Social Security system, like teachers, firefighters and police officers, to lose up to 60 percent of the Social Security benefits to which they are entitled.

Sadly, the loss of Social Security benefits may make these individuals eligible for more costly assistance, such as food stamps. So we deny these workers the benefits and that entitles them to food stamps. I am not sure this is the pride that we want to take in public employees.

I am also very aware that we are facing extraordinary deficits and that fixing the problem that we are talking about here will be expensive. So I am open, and I know you are open to considering all options that move us toward our goal of allowing individuals to keep the Social Security benefits to which they are entitled.

The reforms that led to the government pension offset provision and the windfall elimination provision are almost 20 years old now. At the time they were enacted, I am sure they seemed like a good idea. Now that we are witnessing the practical effects of those reforms, I think it is time that we pass legislation to address the unfair reduction of benefits that make it even more difficult to recruit and retain public employees.

What I want you and Senator Akaka to know is that I look forward to working with this Committee as you work this issue out. It is an expensive issue, but there is no question, on the side of fairness, that fairness says we should remedy this problem. So because on our bill we have some 23 Senators, and I know Senator Mikulski has a bill that does half what we do and I believe she has some 25 cosponsors, it seems to me that between the two bills, we ought to be able to put something together to get a fair conclusion to this in this session of the Congress.

Thank you very much.

Chairman COLLINS. Thank you very much, Senator. I certainly share your hope in that regard. I am proud to be a cosponsor of Senator Mikulski's bill, as well. Like you, I am open to compromises on this issue, but my hope is that by holding this hearing today, the Committee can shine a spotlight on what is a very troubling problem particularly for lower-income women retirees, as your statement so eloquently has pointed out, and that we will be able to prompt the Finance Committee to move these bills.

So I thank you very much for taking the time out of your busy schedule to be here with us today. I know this is of enormous importance to you and I thank you for your leadership.

Senator FEINSTEIN. Thanks, Madam Chairman. I appreciate it.

Chairman COLLINS. Senator Akaka, we began the hearing by hearing from Senator Feinstein because she has an Appropriations meeting that she needs to go to. I am now going to go to my opening statement and then I will call on you shortly.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. Senator Feinstein has given an excellent overview of the issue that we are looking at today. Individuals affected by both the government pension offset and the windfall elimination provisions are those who are eligible for Federal, State, or local pensions from work that was not covered by Social Security, but who also qualify for Social Security benefits based on their own work in covered employment or that of their spouses.

While the two provisions were intended to equalize Social Security's treatment of workers, many of us are concerned that they unfairly penalize individuals for holding jobs in public service when the time comes for them to retire. These two provisions have enormous financial implications not just for Federal retirees and employees, but also for our teachers, police officers, firefighters, and other public employees as well.

Despite their challenging, difficult, and sometimes dangerous jobs, these invaluable public servants often receive far lower salaries than private sector employees. It is therefore doubly unfair to penalize them when it comes to their Social Security retirement benefits. These public servants or their spouses have all paid taxes into the Social Security system. So have their employers, and I think that is a very important point.

Each of the people that we are talking about has paid Social Security into the system, paid payroll taxes; the employer has, too. So they earned these benefits. They have worked the necessary quarters under covered retirement. Yet, because of the way these two provisions work, they are unable to collect all of the Social Security benefits to which they otherwise would be entitled.

While the GPO and the WEP affect public employees and retirees in virtually every State, their impact is most acute in 15 States, including Maine, for the reasons that Senator Feinstein explained. Those States have retirement systems that do not have a Social Security component.

Nationwide, more than one-third of teachers and education employees and more than one-fifth of other public employees are affected by the GPO and/or the WEP. Almost one million retired government workers across the country have already been adversely affected by these provisions. Millions more stand to be affected by them in the future.

Moreover, at a time when we should be doing all that we can to attract qualified people to public service, this reduction in Social Security benefits makes it even more difficult for our Federal, State, and local governments to recruit and retain the teachers, police officers, firefighters, and other public servants who are so critical to the safety and well-being of our families.

The Social Security windfall elimination provision reduces benefits for retirees who paid into Social Security and also receive a government pension from work not covered by Social Security, such as pensions from the Maine State Retirement Fund. While private sector retirees receive monthly Social Security checks equal to 90 percent of their first $606 in average monthly career earnings, government pensioners are only allowed to receive 40 percent—a harsh penalty of more than $300 per month.

The government pension offset reduces an individual's survivor benefit under Social Security by two-thirds of the amount of his or her public pension. It is estimated that 9 out of 10 public employees affected by the pension offset lose their entire spousal benefit, even though their spouses paid Social Security taxes year after year.

What is most troubling is that this offset is most harsh for those who can afford it the least, and that is lower-income women. In fact, of those affected by the pension offset, 73 percent are women. According to the Congressional Budget Office, as Senator Feinstein noted, the GPO reduces benefits for more than 200,000 of these individuals by more than $3,600 a year. That is the difference between poverty and a comfortable retirement for a lot of low-income retirees. Our teachers and other public employees face difficult enough challenges in their day-to-day work. Individuals who have devoted their lives to public service should not have the added burden of worrying about their retirement.

This issue is extraordinarily important in my home State of Maine and it is one of the issues that I hear the most about. People stop me when I am in the grocery store, at church, wherever I am, even at my 30th high school class reunion a couple of years ago. I guess all of us as we are getting older are starting to finally think about what we are going to do when we retire.

Many of my high school friends entered the teaching profession. They are committed to living and working in Maine. They love their jobs and the children they teach, but they worry about their future and their financial security in retirement.

I hear a lot about this in my constituent mail and I want to share a couple of letters that I have received. One was from Patricia DuPont, from Orland, Maine. She wrote that because she had taught for 15 years under Social Security in New Hampshire, she is living on a retirement income of less than $13,000, after 45 years in education. Since she also lost survivor benefits from her husband's Social Security, she calculates that if we were to completely repeal the two provisions we are discussing today, it would double her current retirement income. And think how much better off she would be with $26,000 a year, still not exactly a fortune, versus $13,000.

Moreover, these provisions penalize private sector employees who leave their jobs to become public school teachers. At a time when we are trying to get more people to come into teaching, I think this is another unfortunate effect of these provisions.

Ruth Wilson, a teacher from Otisfield, Maine, wrote to me as follows: "I entered the teaching profession 2 years ago, partly in response to the nationwide plea for educators. As the current pool of educators near retirement in the next few years, our schools face a crisis. Low wages and long, hard hours are not great selling points to young students when selecting a career. I love teaching and only regretted my decision when I found out about the penalties I will unfairly suffer. In my former life as a well-paid systems manager at State Street Bank in Boston, I contributed the maximum to Social Security every year. When I decided to become an educator, I figured that because of my many years of maximum

Social Security contributions, I would still have livable retirement wage. I was unaware that I would be penalized as an educator."

That is a perfect example of someone who thought that she had planned well for her retirement years, had worked in the private sector, then made the sacrifice to take a lower salary and teach. And yet she finds out that she is going to lose the benefit of those years in the private sector when it comes to retirement.

Maine, like many States, is currently facing a shortage of teachers. I just don't think that we can afford to discourage people from pursuing important careers like teaching in the public sector in this way, and that is why I have joined Senator Feinstein in introducing her bill and have cosponsored Senator Mikulski's bill as well.

Today's hearing will examine how these two provisions work, why they were enacted, and what their effect has been on public employees and retirees. We will also look at options for their modification and repeal. We have heard from Senator Dianne Feinstein. We will hear next from the Social Security Commissioner, Jo Anne Barnhart, who will help us better understand the history and reasons underlying the pension offset and windfall elimination provisions, as well as the impact that proposals to modify or repeal these two provisions would have on the Social Security retirement and disability funds.

Finally, we will hear from a panel representing public employees and retirees, including Julia Worcester, who has traveled all the way from Columbia, Maine, to tell us about her work both in Social Security-covered retirement and as a Maine teacher. We will also be hearing from other public employee representatives, as well.

I look forward to hearing all the testimony today. My hope is that this oversight hearing, which one of our witnesses tells me is the first Senate hearing to delve into this issue, will lay the ground work for action to resolve what is a very troubling problem for far too many of our retirees.

I am very pleased to call on my colleague and friend, Senator Akaka, for any comments that he might have.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Madam Chairman, for holding this hearing. I commend you for highlighting this troubling issue not only for women, but for people of our country. I want to say good morning, also, to all of those who are with us today.

I am pleased that Senator Feinstein was able to join us and give her remarks. Senator Mikulski unfortunately could not be with us. They are leaders in addressing problems associated with the government pension offset, and also the windfall elimination provision, both of which impact our Federal employees and retirees.

As the Chairman noted, the general pension offset was established to create a level playing field between government and private sector workers who receive Social Security spousal benefits when the individual also receives a pension for work not covered by Social Security.

Under the GPO, those individuals are subject to a reduction in their Social Security spousal benefits equal to two-thirds of the

amount of the government pension. Unfortunately, the reduction has proved to be imprecise and has uneven results.

As of last December, there were 376,000 government annuitants whose Social Security spousal benefits were affected by the GPO. Approximately 73 percent of them were women. The impact of the GPO is especially hard on women. The 2001 data shows that the average monthly offset for women was nearly one-third greater than that for men.

In addition, women are harmed because many may have taken time off work to raise a family, resulting in a reduced pension. The reduction in one's pension, combined with reduced Social Security spousal benefits, put at risk many female retirees who have dedicated their lives to public service.

This Committee has acted before to protect women and their retirement benefits. Last year, we passed legislation I introduced, the thrift savings plan catch-up bill, which allows Federal employees age 50 and over to contribute additional amounts to the thrift savings plan. Just like the GPO proposal before us today, the TSP change will help those women who return to the workforce after raising families and have not been able to prepare adequately for retirement.

Due to the problems with the GPO and its aggravated impact on women, I am pleased to again cosponsor Senator Mikulski's legislation, S. 363. This bill would eliminate the application of the GPO for those individuals whose monthly combination of Social Security, spousal benefits, and non-Social Security pensions is $1,200 or less. Senator Mikulski's legislation will go a long way to minimize the harsh impact the GPO has on those government retirees, particularly women, who depend heavily on Social Security.

Today, we are also discussing the windfall elimination provision. Although the WEP, like the GPO, was created to even the playing field between public and private workers, it has had the effect of penalizing those who had lower earnings in their non-Social Security employment.

The problem has become so severe that last winter the *CBS Evening News* ran a special feature on the WEP, depicting the hardships faced by hundreds of thousands of Americans who receive less than their full Social Security benefits because of this provision. Congress must act now to mitigate the financial strains placed upon our retired workers because of the GPO and WEP.

Madam Chairman, I hope we can work together to find a solution to the problems facing retired government employees and their spouses, and help those who have dedicated their lives to public service. You have been a great leader, Madam Chairman, in this respect, too, and I thank you again for holding this hearing.

Chairman COLLINS. Thank you very much, Senator.

Senator AKAKA. Madam Chairman, I am sorry that I have another hearing to go to and I won't be able to stay for the remainder of the hearing.

Chairman COLLINS. I understand. I have that hearing also, so represent me well there.

Senator AKAKA. Thank you.

Chairman COLLINS. This is a day with a lot of hearing conflicts, but thank you very much for coming by.

The Committee would now like to welcome and call forward the Hon. Jo Anne Barnhart, the Commissioner of the Social Security Administration. I know that the Commissioner rearranged her very busy schedule in order to be with us today, and I want to express my appreciation for her efforts.

I also want to say that the Commissioner has done an excellent job running the Social Security Administration. It is an enormous task. My case workers in Maine tell me that you have made real progress in cutting down on the backlogs and processing claims and disputes, and I want to recognize that good work.

Commissioner Barnhart's experience with Social Security dates back to her service in 1981 as Deputy Associate Commissioner of the Office of Family Assistance. I would note that she also served as the Republican staff director for this very Committee and that we had the pleasure of working together decades ago.

We look forward to hearing your testimony this morning. You may proceed.

TESTIMONY OF JO ANNE B. BARNHART,[1] COMMISSIONER, SOCIAL SECURITY ADMINISTRATION

Ms. BARNHART. Thank you, Madam Chairman. I appreciate those kind comments about Social Security. Also, I must say that it was something of a nostalgic trip for me to walk in here this morning, because I don't think I have been in this hearing room for 15 years since I did serve as Republican staff director.

I want to thank you for inviting me to discuss the government pension offset provision, or GPO, and the windfall elimination provision, which is also known as WEP. These provisions are extremely complex and they are not well understood, so I appreciate this opportunity to briefly describe their purpose, how they work, and issues that should be evaluated when you are considering legislative changes.

I would like to begin with GPO which, as you have indicated, affects government retirees who are eligible for two benefits, a pension based on their own work in a Federal, State, or local government job that was not covered by Social Security and a Social Security spouse's or surviving spouse's benefit based on their husband's or wife's work in Social Security-covered employment.

If the GPO applies, the person's spouse or surviving benefit is reduced by an amount equal to two-thirds of the person's government pension based on work not covered by Social Security. As of December 2002, about 367,000 beneficiaries had their benefits fully or partially offset due to the GPO. Of those, 73 percent were women.

In enacting the GPO, Congress intended to assure that individuals working in non-covered employment would be treated in the same manner as those working in covered employment. Prior to GPO, a person who worked in a government job not covered under Social Security could receive, in addition to the government pension based on his or her own earnings, a full Social Security spouse's or surviving spouse's benefit. However, a person who works in a job covered under Social Security is subject to the dual entitlement provision.

[1] The prepared statement of Ms. Barnhart appears in the Appendix on page 32.

This provision, which has been applied since 1940, requires that Social Security benefits payable to a spouse or a surviving spouse be offset by that person's own Social Security benefit amount. Therefore, GPO really acts as a surrogate for the dual entitlement offset, ensuring that spouses and surviving spouses are treated similarly regardless of whether their jobs are covered under Social Security or not.

The impetus for enacting the GPO provision was a March 1977 Supreme Court ruling in *Califano v. Goldfarb.* That ruling eliminated the dependency test that then applied to men but not women in order to qualify for Social Security spousal benefits. Essentially, it eliminated gender bias in the Social Security programs. Because of the dual entitlement provision, men who worked in covered employment still did not typically receive spouse or widow benefits, but those who worked in non-covered employment could. Therefore, Congress enacted the GPO in December 1977.

While the GPO provision is intended to accomplish the same purpose as the offset under the dual entitlement provision, the amount of the reduction under the GPO is different. Under the dual entitlement provision, dollar-for-dollar is reduced. Under the GPO, there is a two-thirds reduction, and I would like to give just a brief example to clarify the difference.

If we take Ms. Jones, who is receiving a Social Security retirement benefit of $900 a month based on her own work, her own employment, she is also potentially eligible for $900 as a widow's benefit. So that would be a total of $1,800 if she were allowed to receive both. Her Social Security retirement benefit is subtracted from her widow's benefit, resulting in her widow's benefit being fully offset. So her Social Security benefit is subtracted from the $1,800 total and she receives only $900 in Social Security benefits.

A second widow, Ms. Brown, is in a comparable situation. She worked for the government and her pension is $900. Potentially, she too could be eligible for a Social Security widow's benefit of $900. However, the GPO provision reduces the $900 widow's benefit by two-thirds of her pension, or $600. So she receives a $300 Social Security benefit, in addition to her $900 government pension. Therefore, she receives $1,200, while the individual who worked in covered employment receives $900.

That is just a brief example to explain what, looking back over legislative history, it appears was Congress' intent in enacting the GPO—to create a situation comparable to the dual entitlement provision.

I would now like to briefly address the WEP provision. In 1983, the Social Security Act was amended and included WEP as a means to eliminate what were called and have been called windfall Social Security benefits for retired and disabled workers who were receiving pensions from employment that isn't covered by Social Security.

Generally while the WEP applies to any pension based on non-covered employment, it primarily affects government workers. The WEP, I want to point out, though, does not affect Social Security benefits that are payable to survivors of workers.

The WEP removes an unintended advantage that the weighting in the regular Social Security benefit formula would otherwise pro-

vide for persons who have substantial pensions from non-covered employment. This weighting is intended to help workers who spent their whole lives in low-paying jobs. It provides them with a relatively higher benefit in relation to their prior earnings than the benefit that is provided for higher-paid workers.

However, because Social Security benefits are based on average earnings over a working lifetime, a worker who has spent part of his or her career in employment not covered by Social Security actually appears to have a lower lifetime earning than he or she actually had. Without the WEP, such a worker would be treated as a low-income worker for Social Security benefit purposes and therefore receive the advantage of the weighted benefit formula that was designed to help lower-wage earners.

I would like to explain how the WEP is computed. The primary insurance amount formula for determining Social Security benefits for workers who reach age 62 in 2003 is, as Senator Feinstein described in her testimony, 90 percent for the first $606 in average monthly earnings, plus 32 percent of the next $3,047, and 15 percent of average monthly earnings above $3,653.

Under the WEP computation, the 90 percent factor is reduced, so that the 90 percent of the first $606 becomes 40 percent of the first $606. Under the regular Social Security benefit formula, a worker would get $545 of that $606. Under WEP, the individual would receive $242 of the first $606. Under both scenarios, the 32-percent and the 15-percent factors remain the same. So the effect of WEP occurs at that first level of calculation.

For a worker first eligible in 2003, the maximum WEP reduction is $303 a month, because when you take 40 percent of $606, that is the largest reduction that you have, the 50 percent, the difference between the 40 and the 90 percent. Unlike the GPO, the WEP can never eliminate a person's Social Security benefit.

For workers who have 30 or more years of substantial covered earnings, the WEP does not apply at all. Substantial earnings for 2003 are defined as $16,125 a year. The WEP is phased out gradually for workers who have substantial earnings for 21 to 29 years. There is a phase-out of the WEP from the 21st year down to the 30th year, where the total exemption from WEP begins. As of December 2002, WEP reduced the Social Security benefits of approximately 635,000 retired and disabled workers, and of those affected workers, 66 percent are men.

The President's fiscal year 2004 budget includes a proposal that would improve the administration of both WEP and GPO. It is a change that would allow SSA to independently verify whether beneficiaries have pension income from employment not covered by Social Security. Right now, we rely largely on the applicants who come into the office. We do have an ongoing computer matching program with OPM that helps us as far as Federal employees go. But with State employees, it is a much more difficult situation.

A number of proposals have also been advanced to change the WEP and GPO provisions, and Senator Feinstein's bill is one of those. Senator Mikulski's, which you and Senator Akaka referenced, is another, and there are several others. Some would eliminate those provisions entirely. Others, like Senator Mikulski's bill, have set a limit for the offset.

These provisions would be costly and would restore the more favorable treatment afforded to many workers in non-covered employment prior to the enactment of the GPO and WEP. I raise that issue because I think it was Congress' intent to establish equity in enacting these previsions. Since you are looking at issues that would need to be addressed as you move ahead in looking at the GPO and WEP, certainly that is one that would warrant consideration. Further, if both WEP and GPO were eliminated, the Social Security trust fund exhaustion date would advance by 1 year, from 2042 to 2041, as would the year of cash flow deficit advance from 2018 to 2017.

Most other proposals to modify the effects of WEP or GPO provide higher Social Security benefits for government workers whose pensions from non-covered employment, in combination with Social Security benefits, are below certain levels. That would be Senator Mikulski's bill. However, those bills do not address the dual entitlement offset that applies to millions of comparable beneficiaries who worked only in covered employment. If you look at addressing the dual entitlement provision that has been in effect since 1940, you find that the cost increases substantially to over $500 billion.

As indicated, the GPO and WEP are two highly technical provisions of law that are not well understood by the public, and we have therefore greatly increased our public information efforts on these provisions. We have revised the annual Social Security statement to attempt to make it clearer to people who receive the statement that they could be affected by the government pension offset or by the windfall elimination provision.

We have individuals who conduct pre-retirement seminars. We have a website with a calculator so workers can actually see the individual effect of these reductions—actually put in their figures. And we are obviously happy to walk them through it if they come into our offices for an appointment because it is complicated and difficult for people to understand.

We are in the process right now of putting up a special website related specifically to WEP and GPO, in large measure because of the increased emphasis and interest that this issue has received; many people have expressed concern and a lack of understanding about how these provisions operate. We felt it was very important to make information accessible in every possible form.

At this time, I would be happy to answer any questions that you might have, Madam Chairman.

Chairman COLLINS. Thank you very much, Commissioner. Your explanation of how the law works, which was very good, demonstrates a problem, however, and that is its complexity. What I have found is that many of the people who have come to me about this issue were surprised to learn of the impact of the pension offset and the windfall elimination provision on their future Social Security benefits.

Ms. Worcester, who will be testifying on our next panel, is one of those who found out about it only when she happened to go to a retirement seminar. It is very common in my State that people are surprised to learn of the impact. One teacher friend of mine told me that he had worked every summer purposefully during his teaching career in order to earn his Social Security benefits, having

no idea that they would be offset. I am glad to hear about your efforts because I really think there is a lack of understanding that compounds the problem for a lot of retirees.

You mentioned the Social Security statements that we get after a certain age on an annual basis. The last time I got mine I specifically looked for mention of these provisions because I am one of those who has employment under both the public and private sector. I knew the amount that was listed was not going to be the amount that I would be eligible for, but I didn't see any warning or any caution to me.

Has that been changed recently?

Ms. BARNHART. Actually, it was, Senator. Thank you for asking that question, Madam Chairman, because I did make changes in the Social Security statement this past spring. So I hope that you are not going to tell me you received your statement since May of this year.

Chairman COLLINS. I did not. What does it say now?

Ms. BARNHART. We actually put in a highlighted area. It is in bold print and it actually says, under your estimated benefits, "The law governing benefit amounts may change. Your benefit amount may be affected by military service, railroad employment, or pensions earned through work on which you did not pay Social Security. Visit"—then we give the website—"to see whether your Social Security benefit amount will be affected."

In addition, in the "Some Facts About Social Security" section, we list five publications that we have available and one of those is "The Windfall Elimination Provision: How It Affects Your Retirement of Disability Benefits," and "Government Pension Offset: Explanation of a Law that Affects Spouse's or Widow(er)'s Benefits."

This information had not been included prior to the changes that were made last spring. I felt it was important because of the increased concern that I was hearing that we include this warning and advisory, basically, to individuals who might not realize that their benefits could be affected.

When we put this statement out—and we do it for everyone 25 years of age and older—we estimate future earnings, and we estimate your benefit; we have the posted earnings—but we don't have a way to tell you at this point what the offset would be because we don't know whether you will receive a noncovered pension or the amount of your pension.

We are looking at ways to see if we could set some sort of parameter for individuals who, on their statement, have many years of covered work, but then they have years of noncovered work, or they have years of noncovered work and then they are working in covered employment. The feasibility of setting up some sort of a computer alert, an automated alert, so we could then put a special advisory in those statements—is something we are investigating now to see if it is possible.

We still wouldn't be able to tell the individual the dollar effect, but if we are able to accomplish this, we could give a more direct advisory to the person that it appears, because of "x" years of noncovered employment, you may be affected by this.

Chairman COLLINS. I think that would be extremely helpful. I still believe the provisions themselves need to be modified and, in

practice, have become unfair. But the least we can do is make sure that people realize the impact. And I think because the law was changed, a lot of people are surprised.

In the case of Ms. Worcester, for example, her mother's retirement was not affected. So I think it is incumbent upon the Social Security Administration to do everything possible to wave a red flag so that at least people can make appropriate plans for their retirement until we can get this modified or fixed.

Ms. BARNHART. I certainly appreciate that and if you or other Members of the Committee have recommendations or the panelists that are following me have other recommendations of other activities we could undertake, I would certainly be willing to take those under consideration.

Chairman COLLINS. Thank you. Some have criticized, including myself, the windfall elimination provision for the way that it actually works in practice; that it sounded fine, perhaps, when it was passed—I wasn't a Member of the Senate at the time and I want to make sure everybody in the room knows that—but that, in practice, it creates inequities and hardships.

For example, many would contend that the arbitrary 40-percent factor in the formula does not reflect the actual "windfall" when it is applied in individual cases. The current formula seems to overpenalize lower-paid workers with shorter careers or with full careers that are fairly evenly split between Social Security-covered and non-covered employment. The current formula, in my judgment, also is regressive because the reduction causes a relatively large reduction in benefits for lower-wage workers.

Would it be appropriate to modify the formula, for example, by perhaps including a means test—Senator Mikulski's bill does that to some extent—to ensure that low-wage workers receive a greater portion of the earned benefits?

Ms. BARNHART. One of the basic tenets of the Social Security program has been the "earned right" nature of the program, and that is that you pay into the system for the benefits that you obtain. I do think that if Congress considers the inclusion of a means test, it would be important to recognize that could be viewed as a significant departure from that "earned right" nature of the Social Security program.

Also, it may be helpful for you if I could provide some information to you about the relative poverty status of individuals who are affected by the WEP.

Chairman COLLINS. It would be helpful.

Ms. BARNHART. I would be happy to do that.

The information follows:

INFORMATION PROVIDED BY MS. BARNHART

POVERTY STATUS OF BENEFICIARIES AFFECTED BY THE WINDFALL ELIMINATION PROVISION

Based on the most recent data available, approximately 3 percent of beneficiaries affected by the windfall elimination provision have incomes below the poverty level ($8,628 for aged individual in 2002 and $10,874 for aged couple). In contrast, 8.4 percent of all aged (age 65 or older) Social Security beneficiaries have incomes below the povery level.

Chairman COLLINS. Thank you. You mentioned the "earned right" feature of Social Security, but I think that is what is so frustrating to teachers and firefighters and police officers who have paid in personally into the system, worked for 10 years in the private sector, earned their benefits and can't get the benefit—don't get them.

Ms. BARNHART. I certainly understand that. I think the thing that is a very difficult aspect of the WEP to explain, again, looking back at the comparability between individuals working in covered and non-covered employment, part-time in each of those or entirely covered employment—the Social Security program benefit, structure provides a different replacement rate depending on the lifetime amount of covered wages of the individual.

For the low-income earner, the replacement rate is approximately 56 percent of pre-retirement income. For the average earner, it is around 42 percent and for the high-wage earner it is somewhere around 27 to 30 percent. So the issue here is if you have an individual who worked for 10 years in covered employment at, say, $60,000 a year, when we calculate the Social Security benefit, we do it over a 35-year work history. So we take that $60,000 for 10 years and for the remainder of the years, we put zeroes in for all those years.

So it presents in the benefit calculation a situation where that individual has a much lower lifetime earning. In other words, the $60,000 a year over 10 years gets averaged out over that 35-year time period and it appears that the individual worked for many years as a low-wage earner. If we had a person who worked in Social Security and had the equivalent lifetime earnings as the case that I just described, they would, in fact, be a low-wage earner, and therefore entitled to the progressivity of the replacement rate.

I think this is really the dilemma, Madam Chairman, when we look at this in terms of how the Social Security benefit is structured and the effect that changing the WEP would have on the concern that low-wage workers receive a higher replacement rate than higher-wage workers do.

Chairman COLLINS. But if you look at the CBO study about the impact of these two provisions, it seems that they disproportionately affect lower-income workers because of the way the formula works. Since, as you mentioned, Social Security is designed to replace more of the income for lower-income workers than higher-income workers, in a sense it already has a means test built in, in that it isn't an equal benefit as far as the replacement of wages.

That is why it seems that, at the very least, a first step ought to be to try to help those lower-income workers who are particularly hard hit by these provisions, because I really don't think that Congress intended that. It was an attempt, as you said, to have equity in the system, to make sure the dual eligibles were not treated differently or more harshly than those with other pensions. But, in practice, it has created a lot of problems.

Ms. BARNHART. I certainly understand, and I have read the testimony of the panelists who are going to follow me.

Chairman COLLINS. I was going to ask you that. Good. I am glad you did.

Ms. BARNHART. Yes, I absolutely did, last night. Let me just take this opportunity to say, if I may, in the situation that related to the overpayment, I read about that last night and met with my staff this morning and have asked them to look into that situation and find out the circumstances that created it. I will contact your office to let you know if that situation can be resolved in any way.

Chairman COLLINS. I appreciate that. That was an issue that I was going to bring up to you.

For those in the audience who haven't read the testimony of the next panel, the President of the National Association of Retired Federal Employees brought to our attention the case of a 79-year-old widow who worked for the Veterans Administration, retired in 1994. No one ever told her about the impact of these two provisions. As a consequence, she received both Social Security and her pension without an offset and has now been told that she owes more than $20,000.

I want to tell you, Commissioner, that this is not uncommon, that my case workers in my six State offices deal with exactly this kind of overpayment case all the time. As you can imagine, it imposes a tremendous hardship on elderly people when they all of a sudden are presented with this huge bill because of an overpayment.

I did want to ask you what the Social Security Administration's general policy is in dealing with overpayments and whether there is any procedure for waiving or lessening them when it is clear it would impose a considerable financial hardship, and it is also clear that the individuals involved had no idea and were not at fault.

Ms. BARNHART. Yes, let me say we do have procedures. First of all, the law would allow us technically to withhold the entire benefit check. We most times do not do that, particularly in cases where it is evident that the individual was not at fault and it certainly was an unintended situation.

Generally what we do, first of all, is offer to sit down and negotiate and look at the person's financial status and withhold a much smaller amount over time, so that we do not expect to be paid back immediately. We actually try to work with the individual to do something that will not financially penalize them even further.

We are allowed to grant waivers, and there are special circumstances. I would be happy to provide a description of that waiver process for you for the record, if you would like.

Chairman COLLINS. That would be helpful.

The information follows:

INFORMATION PROVIDED BY MS. BARNHART

The following outlines the Social Security Administration's process for determining if an overpayment can be waived:

- The Social Security Act (Section 204(b)) provides that recovery of an overpayment can be waived if the person from whom we are seeking recovery is *without fault* in causing the overpayment **and** recovery would either *defeat the purpose* of title II of the Act or be *against equity and good conscience.*
- To make a fault/without fault finding, we consider all of the circumstances surrounding the overpayment in each case. We take into account any physical, mental, educational or linguistic limitations the person has. If the person caused or helped to cause the overpayment, he is found at fault. If he is blameless in the creation of the overpayment, he is *without fault.*

- To determine if recovery would *defeat the purpose,* we look at the person's current financial condition, that is, his situation at the time the waiver decision is being made. Current financial information is defined as no more than 1 year old when the waiver decision is made. Financial information must be provided to make a *defeat the purpose* determination.
- If a person does not wish to pursue the *defeat the purpose* criteria by providing current financial information, he may still pursue waiver by showing that recovery is *against equity and good conscience.* As defined by Social Security regulations, this means that the person changed his position for the worse or relinquished a valuable right because of reliance on a notice that a payment would be made or because of the overpayment itself. Financial circumstances are not material to a finding of *against equity and good conscience.*
- A decision by SSA regarding a request for waiver of an overpayment is an initial determination and a decision that is unfavorable to the beneficiary may be appealed through all levels of administrative appeals within SSA (i.e., reconsideration, hearing before an Administrative Law Judge, and review by the Appeals Council.) When all administrative appeals have been exhausted, the beneficiary may file a civil action with the appropriate United States District Court.

Ms. BARNHART. That is precisely what I have my staff looking into to see if this would be one of those cases where such a waiver might be appropriate. I would point out to you this is one of the reasons—the fact that this situation occurs is one of the reasons that the President's budget includes the proposal I described in my testimony. Because we have situations where we don't know whether a claimant is receiving a pension from non-covered work, even though our workers are trained to ask. I am sure that doesn't happen a hundred percent of the time. Although we have very dedicated workers, there are a lot of things they must attend to when someone comes in to apply for retirement.

By the same token, I am sure in some cases individuals don't necessarily understand what that means, even if an attempt is made to describe it, or they may not be receiving a pension at that time and the situation may change later. In fact, they may be eligible fully for Social Security at one point, but not for the other pension because of different rules, and so forth.

That is one of the reasons that we wanted to have the ability to do independent verification so that we wouldn't have people in these situations where they receive Social Security and then get this overpayment notice. It really is an administrative issue for us.

Chairman COLLINS. One of the challenges in tackling this problem is the cost. You mentioned in your statement that if we enacted the various legislative proposals, the Social Security trust fund would be depleted a year earlier. I have two questions in that regard.

One is, either today or for the record, could you give us an estimate of the Feinstein-Collins bill and the Mikulski-Collins bill so that we do have a sense of what we are dealing with?

Second, is the administration open to working on this issue to try to come up with some sort of approach that would lessen the burden particularly for lower-income retirees? I realize that, much as I would like to see outright repeal, that may not be feasible this year or next year, but surely we can start down the path of remedying some of the problems that are described by our next panel of witnesses.

Ms. BARNHART. I do have some estimates that were developed by our independent chief actuary's office. First of all, to eliminate the GPO and the WEP, as the Feinstein-Collins legislation provides, it would cost $22.5 billion over 5 years and $61.9 billion over 10 years. In the Mikulski-Collins legislation, which modifies the GPO, as has been described earlier, the cost is estimated at $10.1 billion over 10 years.

So we are talking, if we look at it from a 10-year perspective, for either the Mikulski or Feinstein bills, about a range of $10 to $60 billion-plus in cost.

Chairman COLLINS. Thank you. And not to press you, but will the administration continue to work with us to try to see if there is a way that we can start to remedy this?

Ms. BARNHART. I wrote that down because I knew I would forget the second part of that question. I have my 35th high school reunion coming up.

Certainly, we at the Social Security Administration would be very happy to work with you and the Committee and any other Members in terms of providing any analysis that we can on the effect that various provisions would have. I would say this, that due to the cost, and certainly if we look at the $10 to $60 billion-plus, and then looking at the dual entitlement—the cost of eliminating the dual entitlement should be somewhere around $500 billion, not that you suggested that, but if we get into those kinds of equity issues, I would say that I do think that one could make a real case for waiting until the entire Social Security program has been strengthened and protected to entertain these kinds of costly changes.

As you know, and as we have discussed and alluded to in the hearing earlier, it is projected by our actuaries that the Social Security trust fund will move into a negative cash flow basis in 2017 and that the trust funds will be entirely exhausted by 2042, which, absent any action, would necessitate that only 73 percent of benefits would be able to be paid. So it would be my hope that as we undertake changes to benefits—and clearly this would affect the benefit program into the future—that it could be done in that context.

Chairman COLLINS. I want to thank you very much for your testimony today which has been very helpful to the Committee as we consider this important issue. Your testimony was very helpful in giving us a better understanding of how it works, and I salute you for your efforts on the education front to make sure that people understand the impact.

I still feel very strongly that we do need to act, that we can't wait on this issue, because every day it creates a hardship for people who are struggling to live on their retirement income. Every day, it discourages another would-be teacher, firefighter, Federal employee, or police officer from going into public sector employment. So I hope we can come up with a creative approach and work together to see if we can remedy this problem, and I very much appreciate your being here today.

Ms. BARNHART. Thank you, Madam Chairman, and in that spirit of cooperation that you have just expressed, let me say that we stand ready, as I say, to provide any information and analysis, and

to answer any questions for the record you or your colleagues may have, and certainly any questions that arise as a result of the panel that is going to follow me.

Chairman COLLINS. Thank you very much.

Ms. BARNHART. Thank you.

Chairman COLLINS. We now will call forward our next panel. I would like to extend a special welcome to Julia Worcester, of Columbia, Maine. Ms. Worcester worked for 20 years in Social Security-covered employment before deciding at the age of 49 to go back to school to pursue her dream of becoming a teacher.

I think it is a wonderful story, Ms. Worcester, and I admire you so much for doing that.

After teaching full-time for 15 years, Ms. Worcester retired and now her monthly income is substantially reduced because of the government pension offset and the windfall elimination provisions. As a result, she is still substitute-teaching to make ends meet.

Again, Ms. Worcester, we very much appreciate your willingness to share your story with the Committee today. I want to mention that you were brought to our attention by Sue Shaw, who has been a very strong advocate in the State of Maine on this issue, and she will be submitting some testimony which, without objection, we will enter into the record as well.

The Committee is also delighted to welcome Charles Fallis, who will testify on behalf of the 400,000 members of the National Association of Retired Federal Employees. Since 1921, the association has focused on improving the retirement benefits of Federal retirees, employees, and their families. I know that elimination of both the GPO and the WEP provisions are top legislative priorities for the National Association of Retired Federal Employees, and the Committee thanks you for your work on this issue and for being here today.

Finally, I would like to welcome to the Committee Kenneth Rocks, the National Vice President of the Fraternal Order of Police. Due to the physical demands of their jobs and the number of law enforcement officers who augment their income with second and third jobs, law enforcement officers are particularly affected by the provisions we are discussing today.

In fact, Mr. Rocks, my most recent constituent to contact me on this issue stopped me at a convenience store in Bangor, Maine. He was a Bangor police lieutenant who told me that he had been working two jobs for years to try to ensure that he would have sufficient retirement income and had only just learned of what the impact of these provisions would be on his retirement as well. So we very much appreciate your being here today on behalf of your members.

Ms. Worcester, because you are from Maine, we are going to start with you on this panel today.

Ms. WORCESTER. Thank you, ma'am. It is nice to know influential people.

Chairman COLLINS. Thank you.

TESTIMONY OF JULIA WORCESTER,[1] COLUMBIA, MAINE

Ms. WORCESTER. Good morning, Senators. Thank you for the chance to tell you how the changes in the way Social Security retirement benefits are calculated for public service employees has affected me.

I am 73 years old and my husband of 54 years, Oswald, will be 88 in December. I am one of seven children, all born in Downeast Maine. I was not raised to expect something for nothing. I live a modest life, I work hard, and I do not spend time fretting about things I cannot change, but this law has had a tremendous effect on me.

I was fortunate to be raised in a family that respected education. My father insisted on good grammar and corrected our speech when we strayed. My mother's family was college-educated and my mother went to what was then Machias Normal School in the 1920's and received a lifetime teaching certificate, which she updated toward the end of her career by taking courses by television. She taught school for many years and retired in the mid-1960's. She was able to collect both Social Security retirement, earned from work she did during summers and after she retired, and her State of Maine pension from her teaching. She was not bad off.

I have worked 20 years outside of my teaching career. As a young woman, I worked in a herring cannery factory and in a string bean factory. While Oswald and I had two young children, a son and a daughter, I persuaded him that we should move to Connecticut, since the school system in our town at that time was very small. There was a two-teacher grade school and a two-teacher high school.

We lived in Branford, Connecticut, for 13 years, and Oswald worked in a stone quarry. At first, I waitressed full-time so that I could work nights when Oswald could be home with the children. When the children were teenagers, I found a day job in a factory, as I discovered that teenagers needed their mother paying close attention to where they were in the evening and their father was not very good at saying no.

In 1968, when I was 37, we had another child. We decided to come home to Maine when she was 6 years old. The other children were out of school and on their own, and even though we had another young child, the school system had improved greatly. My parents were getting older and my husband's brothers and sisters were also reaching elder years, and it was time for us to come home.

When we got back to Columbia, I worked part-time for a while. Oswald was approaching retirement age, as he is 15 years older than I, and I thought seriously about our future. I decided to become a teacher, like my mother. It was something I always wanted to do. So at the age of 49, with the help of Pell grants and federally-subsidized loans, I started at the University of Maine, in Machias. I went to school year-round and completed my degree in 3 years, completing the degree in December 1982. I did some long-term substitute teaching right away and was hired full-time in the

[1] The prepared statement of Ms. Worcester appears in the Appendix on page 42.

fall of 1983, which turned out to be an ominous year for my retirement benefits, but I loved it.

This is where the problem comes in: Four or 5 years after I started teaching, I went to a seminar put on by Horace Mann and learned of the new law that meant all those years of working in factories and waitressing were not going to count for much in my retirement years, and that I was not even going to be able to collect much on Oswald's work record if that should be the case. That was when I learned that the life I had carefully planned wasn't going to work out quite the way I thought it was going to. I was nearly 60 years old, much too late to start over with a new plan.

With my working, we are all right. Last year, I subbed 125 days out of the 175-day school year. The year before that, I substitute-taught 140 days out of the 175 days. It certainly makes a big difference in our income. We are not big spenders. Oswald is a bear about debts. We have long since paid off our mortgage and we don't charge things on credit cards.

But I have to face facts. I will not be able to teach forever and Oswald is getting on in years. I should have what I rightfully earned. My family is a family that has accepted life as it has been handed. You do what you can with what you have. I am not bitter about the situation. I just believe I have earned this benefit through years of honest work and I should be able to receive it.

I also have an addendum of my monthly income, if you would like me to continue with that.

Chairman COLLINS. Certainly.

Ms. WORCESTER. My monthly retirement is $814. I pay $418 a month for companion plan insurance for my husband and I out of my retirement, which is a necessity in this day and age. I receive from Social Security $107 a month, which is the 40-percent area, and my husband receives $716 a month, and both of those Social Security benefits are calculated after the Part B Medicare is taken out.

I thank you.

Chairman COLLINS. Thank you very much for your testimony. You so embody the Maine values of independence, hard work, thrift, and integrity, and I really appreciate your being here today to help us put a human face on what is a serious problem not only for you, but for so many others. So I appreciate your speaking out and your willingness to be here.

For all of those years that you worked so hard waitressing and in other jobs, to receive only $107 a month in Social Security after paying into the system for so long seems just so unfair to me.

Ms. WORCESTER. Well, it is kind of like an insurance policy that the company is not paying off on.

Chairman COLLINS. That is a good way to put it, and yet you paid the premiums—i.e. payroll taxes—year after year, as did your employer, too. So thank you for that testimony.

Mr. Fallis, can you beat that? [Laughter.]

TESTIMONY OF CHARLES L. FALLIS,[1] NATIONAL PRESIDENT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES

Mr. FALLIS. I can't beat that.

Madam Chairwoman, I am Charles Fallis, President of NARFE, the National Association of Retired Federal Employees. I am testifying today on behalf of 400,000 retirees, employees, spouses, and survivors who are NARFE members.

I would like to commend you, Senator Collins, for paving the way and holding the first ever Senate hearing on GPO and WEP. These atrocious laws have for many years destroyed the quality of life of a significant number of our members. We can't afford to wait any longer for corrective action to repeal or reform these onerous offsets—corrective action, by the way, that has a lot of support in the 108th Congress in the House and the Senate.

NARFE has worked for repeal of GPO and WEP from the very beginning, well over 20 years. Throughout the course of those years, the pernicious provisions of these two offsets have denied many thousands of our older members, particularly women, of the economic dignity that they thought they would have in retirement.

So I appreciate your invitation to come here today. I humbly ask for this Committee's assistance in the repeal of GPO and WEP, and I reiterate NARFE's continuing support for changes that would restore earned benefits to women and other deserving retirees.

The GPO law targets government retirees who were first eligible to retire after December 1982, preventing them from collecting Social Security benefits based on their spouse's work record while at the same time they are collecting government annuities based on their own work. This law requires that two-thirds of a non-exempt public sector retiree's annuity must be used to offset whatever Social Security benefits are payable to him or her as a spouse, widow, widower, or survivor.

By all accounts, this two-thirds offset against Social Security income is an arbitrary figure and, as such, we believe it should be reexamined. Of all the affected GPO beneficiaries, about 80 percent are fully offset, which translates into no benefits at all. I believe it is important to recognize, also, that almost 70 percent of those affected are low-income women, many of whom exist either in or on the fringes of poverty.

Turning to WEP, current law greatly reduces the earned Social Security benefit of a retired or disabled worker who also receives a public sector annuity based on his or her own earnings. It applies to anyone who becomes 62 or disabled after 1985 and becomes eligible for a government annuity after 1985. This windfall reduction can reduce the worker's earned monthly Social Security income by up to $303.

Madam Chairwoman and Members of this Committee, I have stated before that the harshness of GPO and WEP as they exist today causes both fears and tears among thousands of older retirees. They fear for their financial survival and their tears come from deep frustration that Congress, despite widespread congressional support to do so, has not acted to ameliorate their suffering.

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[1] The prepared statement of Mr. Fallis appears in the Appendix on page 46.

There are several bills pending before the Senate today that would offer relief to hundreds of thousands of former teachers, policemen, firefighters, cafeteria workers, postal workers, VA nurses, Social Security employees, and others who work long and hard for their benefits. There are 40 Senators of this 108th Congress, including you, Madam Chairwoman and several Members of this Committee, who have indicated their support for a change in GPO and WEP. They have cosponsored one or more of the pending bills introduced by Senator Feinstein and Senator Mikulski. We applaud you and we thank all of you for your continuing efforts to change or eliminate these Social Security offsets.

I would like to share with you today a sad and compelling account of a situation concerning a NARFE member who contacted us early last week and described the details of her case. This NARFE member is 79 years old and is widowed. We have received documentation substantiating the facts in her case and, with that member's permission and upon your request, Madam Chairwoman, we would provide the documents to you.

Chairman COLLINS. Without objection, those documents will be part of the record.[1]

Mr. FALLIS. This unfortunate lady originally filed for divorced spousal benefits in 1989 while still working for the Veterans Administration. Her divorced spouse died in 1991, thus converting her claim to an application for surviving divorced spousal benefits. She became sick in 1993 and subsequently retired in early 1994 and began receiving her government annuity soon thereafter.

She asserts that no one ever explained GPO or WEP to her, or the effect these offsets would have on her annuity and finally on her total income. Upon her retirement, and with no thought that retribution would follow, she began receiving both her government pension and Social Security survivor benefits.

Then, in July 1997, this very unlucky lady received a letter from Social Security requesting repayment of $20,737 because of an erroneous overpayment. It had been determined belatedly, they said, that she was not exempt from GPO. She began an immediate appeals process that has been denied at every stage, culminating in a very recent final denial from an administrative law judge in Chicago.

Madam Chairwoman, it is clear that this elderly lady with a meager pension from the VA of only $752 a month has no financial means of repaying this tremendous amount of money, money that she had no idea that she was not entitled to. Hers is not the only case such as this. There have been many, but this is a recent one and it is one of the worst that we have seen. But there are thousands of others in this same situation.

Senator Collins, over the past two decades we have received thousands of letters from NARFE members, from Maine and elsewhere, describing in detail the anguish and economic hardships they experience every day because of GPO and WEP. For hundreds of thousands of Federal, State, and local government retirees, repeal of both of these offsets would ease or eliminate the devastating

[1] The information referred to appears in the Appendix on page 59.

financial burdens they endure because of the effects of these onerous laws.

Social Security Administration actuaries have determined that repeal of GPO and WEP would increase the size of the OASDI actuarial deficit by an amount estimated at .11 percent of taxable payroll. Now, the amount is not negligible, of course, but returning this income to long-suffering and deserving retirees would help restore their financial independence, provide them with increased purchasing power, and return to them a measure of self-esteem and economic dignity that was taken from them over 20 years ago with the enactment of this pair of insidious laws.

Senator Collins, your hearing advisory today says, "The individuals affected by GPO and WEP are individuals who are eligible for Federal, State, or local pensions from work that was not covered by Social Security." Yes, these affected individuals' work was not covered by Social Security, but they and/or their spouses worked in other jobs outside of the government that were covered long enough to make them eligible for Social Security benefits. But they still are being denied unfairly the Social Security benefits to which they are entitled and they still are being punished for having worked another full-time or part-time job in a different venue.

I want to thank and commend you, Madam Chairwoman and Members of this Committee, for recognizing the need for change in GPO and WEP, and for addressing that need in this hearing today. I ask that you convey the urgency of this need to your colleagues on the Senate Finance Committee. Please ask them to recognize the significance of these issues, as well, so that we can get a bill out of the Senate, passed in the House, and on to the President's desk for his signature, a bill that would at long last allow Federal, State, and local government retirees in this country some relief from these terrible offsets.

Finally, on behalf of the 400,000 members of NARFE, I commit to you today that we stand ready to work with you and the Members of the Senate for the expeditious resolution of these issues. I thank you.

Chairman COLLINS. Thank you very much for your excellent testimony. Mr. Rocks, we are pleased to welcome you here today as well.

TESTIMONY OF KENNETH ROCKS,[1] NATIONAL VICE PRESIDENT, FRATERNAL ORDER OF POLICE

Mr. ROCKS. Good morning, Madam Chairman. My name is Kenneth Rocks and I am a Philadelphia police officer and the Vice President of the National Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 310,000 rank-and-file officers in every region of the country.

I am here this morning at the request of Chuck Canterbury, National President of the Fraternal Order of Police, to share with you the views of the members of the Fraternal Order of Police on the windfall elimination provision and the government pension offset provisions in current Social Security law.

[1] The prepared statement of Mr. Rocks appears in the Appendix on page 52.

The Fraternal Order of Police has designated the repeal of the windfall elimination provision and the government pension offset as one of its top legislative priorities, and we strongly advocate the passage of S. 349, the Social Security Fairness Act. The Social Security Fairness Act, introduced by Senator Dianne Feinstein, would repeal both the windfall elimination provision and government pension offset. This bill already has 23 cosponsors, drawing strong support from both sides of the aisle.

It is our hope that Congress will take a serious look at the manifest unfairness of the windfall elimination provision and the government pension offset, and act to correct them by passing this bill. Ultimately, this legislation is about fairness to the State and local employees who paid for and ought to receive their Social Security benefits.

Let me begin by explaining the impact of the windfall elimination provision on retired police officers. Simply put, law enforcement officers who serve communities which are not included in the Social Security system may lose up to 60 percent of the Social Security benefits to which they are entitled by virtue of secondary or post-retirement employment which required them to pay into the Social Security system. This 60 percent is a lot of money, especially when you consider the officer and his family were likely counting on that benefit when they planned retirement.

The FOP contends that this provision has a disparate impact on law enforcement officers for several reasons. First of all, law enforcement officers retire earlier than many other professions. Owing to the physical demands of the job, a law enforcement officer is likely to retire between the ages of 45 and 60.

Second, after 20 or 25 years on the job, many law enforcement officers are likely to begin second careers and hold jobs that do pay into the Social Security system. Even more officers are likely to moonlight and to hold second or third jobs throughout their law enforcement careers in order to make ends meet.

This creates an unjust situation that too many of our members find themselves in. They are entitled to a State and local retirement benefit because they worked 20 or more years keeping their streets and neighborhoods safe, and also worked a job or jobs in which they paid into Social Security, entitling them to a benefit as well. However, because of the windfall elimination provision, if their second career resulted in less than 20 years of substantial earnings, upon reaching the age they are eligible to collect Social Security they will discover that they lose 60 percent of the benefit for which they were taxed.

Actuarily speaking, I doubt many officers will live long enough to break even—that is, to collect the money they paid into the system—let alone receive any windfall. These men and women earned their State or local retirement benefit as public employees and they paid Social Security taxes while employed in the private sector. How is this a windfall?

I think it is clear that Congress did not intend to reduce the benefits of hard-working Americans who choose to serve their States and communities as public employees and then went on to have second careers or worked second jobs to make ends meet. When the windfall elimination provision was enacted in 1983, it was part of

a large reform package designed to shore up the financing of the Social Security system.

The ostensible purpose was to remove a windfall for persons who spent time in jobs not covered by Social Security, like public employees, and also worked other jobs where they paid Social Security taxes long enough to qualify for retirement benefits. However, we can now clearly see that the windfall elimination provision was a benefit cut designated to squeeze a few more dollars out of a system facing financial crisis. The fallout has had a profoundly negative impact on low-paid public employees outside the Social Security system, like law enforcement officers.

This is a matter of fairness. The arbitrary formula in current law, when applied, does not eliminate windfalls because of its regressive nature. The reduction is only applied to the first bracket of the benefit formula and causes a relatively larger reduction in benefits to low-paid workers. It also over-penalizes low-paid workers with short careers or, like many law enforcement officers, those whose careers are split inside and outside the Social Security system. Simply put, this provision has not eliminated a windfall for any individuals who did not earn it. It has resulted in a windfall for the Federal Government at the expense of public employees.

Let me now discuss the aspects of the bill which would repeal the government pension offset. Like the windfall elimination provision, the government pension offset was adopted in 1983 to shore up the finances of the Social Security trust fund. This provision reduces the surviving spouse's benefit from Social Security by two-thirds of the monthly amount received by the government pension.

For example, the spouse of a retired law enforcement officer who at the time of his or her death was collecting a government pension of $1,200 would be eligible to collect a surviving spouse benefit of $600 from Social Security. Two-thirds of $1,200 is $800, which is greater than the spouse's benefit of $600. Thus, under the law, the spouse is unable to collect a single dime of it. If the spouse's benefit were $900, only $100 can be collected because $800 would be offset by the officer's government pension.

In 9 out of 10 cases, this completely eliminates the spousal benefit, even though the covered spouse paid Social Security taxes for many years thereby earning the right to these benefits. It is estimated that approximately 349,000 surviving spouses of State and local employees have been unfairly affected by the government pension offset.

The present system creates a tremendous inequity in the distribution of Social Security benefits. The standard for this narrow class of individuals, retired public employees who are surviving spouses of retirees covered by Social Security, is inconsistent with the overall provisions of the Social Security Act and does not apply to persons receiving private pension benefits. This imbalance exists even though Congress, through ERISA standards and tax code provisions, has more direct influence over private employers than public employers. Clearly, this is an issue that Congress must address.

Previous Congresses sought to save money for the Social Security system by cutting benefits earned by State and local employees. The windfall elimination provision and government offset pension provision do not eliminate a windfall for workers. Rather, they

have provided a windfall for the Federal Government at the expense of public employees. This is not right and it is not fair. This Congress has a chance to set things right by passing S. 349.

Madam Chairman, I want to thank you and the Members of this distinguished Committee for the chance to appear before you today. It is my hope that this hearing will bring greater attention to the issue and increase the chances that S. 349, the Social Security Fairness Act, will be considered in this Congress.

Thank you for inviting me to testify before you this morning and I would be pleased to answer any questions that you may have.

Chairman COLLINS. Thank you very much, Mr. Rocks. You have very ably represented your members and we appreciate your being here.

I am going to start with a question for Mr. Fallis and Mr. Rocks and then go back to Ms. Worcester.

You heard Ms. Worcester testify that she was not aware of the windfall elimination provisions or the government pension offset until she had been teaching for a number of years. At that point I think she testified she was about age 60 and it was a little hard to come up with a new plan, in her words.

Do you think that her situation is unusual, or have you found with NARFE members that there is also a lack of information and that a lot of your members, retired Federal employees, are also shocked to learn of the impact?

Mr. FALLIS. Yes, too many of them are unaware. I think we probably have a better communications system than in other areas. I think school teachers have been especially hard hit. I have two sisters-in-law in Florida who, until they retired and were hit with GPO and WEP, had never heard of these two terrible laws. So, yes, there is a problem here.

If I might say so, I think GPO and WEP were enacted in a stealthy kind of way. The GPO first passed in 1977 and was not implemented until January 1983, thus sort of low-keying the whole thing in my mind. The arbitrariness of these two bills is really striking. In my own situation, I was eligible first to retire in 1982, in September, and if you come right on up to WEP, if you were eligible to retire on December 31, 1985, you were OK. But if you were eligible to retire on January 1, 1986, 1 day later, the sky fell. That is arbitrary. You know, what happened to equal protection of the law here, while one is victimized and the other escapes harm? This sort of thing is terribly unfair.

Chairman COLLINS. I think you are right that there was not a lot of discussion about what the impact would be, as we have gone back and studied this issue. I think these changes caught a lot of public employees by surprise, particularly because it was such a dramatic change without a lot of discussion and debate.

Mr. Rocks, are some of your members surprised to learn about the impact of these provisions when they go to retire and file for Social Security benefits?

Mr. ROCKS. Yes. Much of it, Senator, is usually the lack of information at the local Social Security offices to be able to articulate to our members the adverse impact of the government pension offset and the windfall elimination provision. Many of the counselors in Social Security clearly don't understand the application of the

law, because our members will go in there and represent that they worked for 20 years and when they retired from their police departments, they continued to work in other secondary jobs, performing security work in their communities.

So they felt that because they worked a substantial amount of time, but unfortunately less than 30 years of substantial earnings, and therefore they were adversely impacted by the windfall elimination provision. It clearly is a shock when you have planned for something because in many cases, as a previous speaker said, you will work with another officer who is eligible to retire on December 31, 1985, and this officer next to him was eligible to retire on January 3, 1986. One was offset and affected by the windfall elimination and the other wasn't, and therein is the confusion.

If you got it, then I must be able to get it, and therefore the confusion actually came into the local Social Security offices. And it is still present, with the information being requested not really being articulated in a manner which our members would understand it.

Chairman COLLINS. Ms. Worcester, you decided to become a teacher relatively late in life, at age 49. I suspect, though I would be interested in your views on this, that you probably would have gone into teaching regardless because you enjoyed it so much. But do you think that had you known of the impact that it might have made a difference in your career choices?

Ms. WORCESTER. Not in my case, I don't think, the circumstances being what they were and it being something I always wanted to do and something I could do at that age. It was definitely a boost financially to be able to go into the teaching profession where I was, and because of several other considerations concerning my family, it probably would have still happened.

Chairman COLLINS. Do you think that these provisions discourage other people from changing professions later in life and deciding to become teachers at a time when we really need teachers?

Ms. WORCESTER. I am sure it will. As a matter of fact, a young lady who graduated in my graduating class and ended up teaching in the same school I taught in worked 14 years under the teaching profession and then chose to leave and withdraw her State retirement, invest it privately, and seek other employment, mainly because of this law. She felt, as a young person, she had to make a decision whether to continue or to change professions and she chose to change professions.

Chairman COLLINS. I hear that, as well, and I think that is one of the problems. In addition to creating hardship and inequities for the individuals who are affected, the provisions also discourage people from going into careers like teaching, like police work, like firefighters, like Federal employees, where we really need talented people to be willing to enter these careers. So I think that disincentive is an issue as well.

Ms. WORCESTER. There is one other thing that I might add which has been brought up by these other gentlemen. My lifetime girlfriend retired last year, and because of all I had been through and all of the publicity, because of Sue Shaw's enthusiasm, she understood this a little better than anybody that might not have had that advantage.

It required four telephone calls and dogged pursuit to convince the Social Security Administration that they were overpaying her. When her Social Security checks started coming, she put them in a separate account because she knew she was being grossly overpaid, and it took her almost 9 months to sort this out and to convince somebody to do the work that needed to be done to settle the issue and come up with the right sums.

Because she had put her Social Security checks in a separate account, she ended up, of course, just writing a check and sending it back. But had she not known that this existed, she is one of those people that would have been eventually in this sort of a repayment situation.

Chairman COLLINS. I am so glad that you mentioned that because I know the case workers in my State offices deal with overpayments all the time, and very few people would have the knowledge that your friend did to actually argue the case with Social Security and withhold the money. And then they get into terrible problems, just like the case that Mr. Fallis described to us.

I am going to pass on all of your comments to the Social Security Administration about people still not being aware and the local workers not necessarily being fully aware of how these complex laws work. I think that is an excellent point.

Mr. Fallis, I would like to ask you to respond to the argument that the commissioner made that if we correct this problem, we create other inequities. I disagree with her about that, but do you or Mr. Rocks have any comments about the argument regarding dual-eligibles and that if we correct the pension offset and the windfall elimination provisions that we will create an inequity for the dual-eligibles?

Mr. FALLIS. Well, I disagree with some of the things she said, as well. I think there were unintended consequences of both these laws when they were passed and, as I say, the chickens are coming home to roost now and have been for some time.

I think the truly outrageous and bizarre twist in all of this is, with WEP, those people retire and find out that they have been penalized to the point that they have to go back to work and are working in a Social Security-covered job and are paying premiums into Social Security with no hope of ever getting any kind of return because WEP has eliminated it.

Of course, the Social Security payments were designed to favor low-income people. But you take a person who takes a fairly low-income job with the Federal Government or any public sector job and it is totally objective; they get no consideration because of the low wage, and so forth, in that retirement. And then this thing in Social Security, which is designed to take care of them, comes back and hits them and takes it away, too.

So this individual is penalized, even though we have in our system a provision to take care of those low-income people. They get no benefits from their government job or their public sector job and because of WEP, they get none from Social Security either. So it is a double whammy here and it is so atrocious that I think these other considerations pale in comparison.

Chairman COLLINS. I want to clarify that I understand that the commissioner is correct in saying why the Act was passed in the

first place, but I think the impact has not been what was anticipated.

Mr. Rocks, do you have any comments on that?

Mr. ROCKS. I think from an actuarial standpoint, the commissioner's argument was very sound in that with the members I represent, they may retire early due to the rigors of the job, the rotation of shift work, working 24 hours, 7 days a week, which is the case in some of our departments, and the stressful nature of the law enforcement profession.

But our members do not live based on the actuarial standards set down by the Social Security Administration. So in many cases, we will not, like I said in my testimony, reap the benefits of even the monies that we put in, to recoup them. So I don't think from looking at the actual dollar amounts from the actuarial standards that argument can carve out certain groups. You don't have any basis for an argument. It is easy to throw around billion-dollar figures, but when you get into reality the actuarial tables of the life expectancy of law enforcement officers, you will find it significantly reduces and would reduce that figure.

Chairman COLLINS. Thank you. I want to thank all of you for testifying. This is the first Senate hearing to review the impact of these two provisions. It is my intention to share our hearing record with every single member of the Finance Committee, in the hope of giving them the information that they need.

They deal with so many different issues, but I feel this is a very important issue. It is important to school teachers, it is important to public employees, it is important to our public safety officers, and I am going to continue my efforts to get this law changed. To me, this is a matter of simple fairness. If you are paying into the Social Security system, if your spouse had paid into the Social Security system, if you have earned those benefits, then as Ms. Worcester said, it is like an insurance policy. And if you are paying in the premiums, when the time comes to collect, you should be able to do so when you have met the other requirements and otherwise would be eligible.

So I thank you for giving us a better understanding today. I want to thank all of our witnesses and I want to assure you of my personal commitment to keep working to rectify this inequity. I also want to thank my staff, which worked very hard on this hearing and all others who have contributed to it.

The hearing record will remain open for the submission of additional materials and statements for 15 days, and a special thank you to my constituent, Ms. Worcester, who came from Maine today. Thank you.

[Applause.]

You do deserve that applause. We don't usually allow that, but this is well deserved. Thank you.

This hearing is now adjourned.

[Whereupon, at 11:22 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR LAUTENBERG

Madam Chairman, I believe the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) are good examples of the law of intended consequences.

While these provisions were designed to shore up the financing of Social Security they have instead hurt close to one million public service employees.

I have always supported strengthening Social Security and ensuring the programs fiscal solvency. However, I support the repeal of both the GPO and the WEP, and I have cosponsored Senator Feinstein's bill that will do just that.

We have an Administration that has its priorities way off the mark. The President is giving away huge tax cuts to the wealthy and neglecting our teachers, our police, our firefighters, and our Federal employees—people who we rely upon more and more in the post-September 11 world.

These are not individuals who are counting on stock options or extremely generous corporate retirement plans. They are public servants—individuals who dedicated their careers to making our communities better.

The current policies penalize those employees least able to afford it. I believe we need to fix this inequity.

I look forward to hearing the views of all our witnesses and making progress to identify ways to improve Social Security's fairness for *all* workers.

Thanks you, Madam Chairman.

Testimony of Jo Anne B. Barnhart
Commissioner of Social Security
Hearing before the
Senate Committee on Governmental Affairs
September 24, 2003

Chairman, Members of the Committee:

Thank you for inviting me to discuss the Government Pension Offset provision, or GPO, and the Windfall Elimination Provision, also known as WEP. These provisions are not well understood, so today, I would like to take some time to describe the purpose of these provisions, how they work, and issues that should be evaluated when considering legislative changes to them.

GPO Background

I would first like to describe the GPO provision and discuss how it works and why it was enacted in 1977. For ease of discussion, when referring to government employment, I am referring to employment at all levels of Federal or State government that is not covered by Social Security. Government workers whose employment has always been covered by Social Security are not impacted by the WEP or GPO provisions.

The GPO affects government retirees who are eligible for two benefits:

- ✓ A pension based on their own work in a Federal, State, or local government job that was not covered by Social Security, and
- ✓ A Social Security spouse's or surviving spouse's benefit based on their husband's or wife's work in covered employment.

If the GPO applies, the person's Social Security spouse's or surviving spouse's benefit is reduced by an amount equal to two-thirds of the amount of the person's government pension based on work not covered by Social Security. As of December 2002, about 367,000 beneficiaries had their benefits fully or partially offset due to the GPO. Of those, 27 percent were men and 73 percent were women. The following table shows important distinctions on the provision's impact on men and women:

	Men	Women
Benefits Fully Offset:	98%	66%
Average Monthly Offset (12/01):	$296	$424

In enacting the GPO, Congress intended to assure that when determining the amount of a spousal benefit (e.g., wife's, husband's, widow's, widower's), individuals working in non-covered employment would be treated in the same manner as those who work in covered employment. The GPO provision removed an advantage that some government workers had before the GPO was enacted. Before GPO, a person who worked in a government job that was not covered under Social Security could receive, in addition to a government pension based on his or her own earnings, a full Social Security spouse's or surviving spouse's benefit.

However, a person who works in a job that is covered under Social Security is subject to an offset under the dual entitlement provision. This provision, which has applied since 1940 when benefits were first payable to a worker's family members, requires that Social Security benefits payable to a person as a spouse or surviving spouse be offset by the amount of that person's own Social Security benefit. Thus, dually entitled beneficiaries receive the equivalent of their own worker's benefit or the spouse's/surviving spouse's benefit, whichever is higher.

The GPO acts as a surrogate for the dual entitlement offset for workers receiving a government pension based on work not covered under Social Security because, if that work had been covered, any spouse's or surviving spouse's benefit would have been reduced by the person's own Social Security worker's benefit. The result of the GPO is that spouses and surviving spouses are treated similarly, regardless of whether their jobs are covered under Social Security or not.

The impetus for enactment of the GPO provision was a March 1977 ruling by the U.S. Supreme Court in *Califano v. Goldfarb*. That ruling eliminated the dependency test that then applied to men, but not women, in order to qualify for Social Security spousal benefits.

With this Court decision, men who worked in covered employment still did not typically receive spouse/widow(er) benefits because of the dual entitlement provision. But those who worked in non-covered employment could now receive those benefits. In order to prevent many non-covered government workers from receiving dependent's benefits--while similarly-situated people in covered employment had those benefits offset by the dual-entitlement provision -- Congress enacted the GPO in December 1977.

Two-Thirds GPO Reduction

As noted previously, although the GPO provision is intended to accomplish the same purpose as the offset under the dual entitlement provision, the amount of the reduction under the GPO is different:

- ✓ Under the dual entitlement provision, there is a **dollar-for-dollar** reduction -- if a person gets a Social Security retirement benefit of $600 based on his or her own work, then $600 is subtracted from any Social Security benefit the person would get as a spouse.

- ✓ Under the GPO, there is a **two-thirds** reduction. If a person gets a pension of $600 based on her own work in government, then two-thirds of it ($400) is subtracted from any Social Security benefit he or she would get as a spouse.

I would like to use a hypothetical example that may help to clarify how the dual-entitlement offset applies to a widow compared to a similarly situated widow who is also entitled to a government pension. Ms. Jones is receiving a Social Security retirement benefit of $900 per month based on her own work. The amount she is potentially eligible for as a widow is also $900. The amount of her Social Security retirement benefit is subtracted from her widow's benefit, resulting in her widow's benefit being fully offset under the dual entitlement provision; she receives only her own Social Security retirement benefit of $900.

The other widow, Ms. Brown, is in a comparable situation, but Ms. Brown worked for the government, and her pension is $900. Potentially, she too, is eligible for a Social Security widow's benefit of $900. However, the GPO provision reduces the $900 widow's benefit by two-thirds of the $900 pension (i.e., $600). After subtracting the $600 offset, the $300 result is the amount of the Social Security widow's benefit payable in addition to her $900 government pension.

In this case, Ms. Jones, who worked only in covered employment, receives a total of $900, and Ms. Brown, who worked in government employment, receives a total of $1,200.

Dual Entitlement—Ms. Jones

Social Security Worker's Benefit	= $900
Social Security Widow's Benefit	= $900
Total Widow's Benefit Payable	= $0
Total Social Security Payable	= $900

GPO—Ms. Brown

Worker's Government pension		= $900
Social Security Widow's benefit (before offset)		= $90(
GPO formula	2/3 of $900	= $60(
Worker's Government pension		= $900
Widow's Benefit ($900 - $600)		= $30(
Total Pension & Social Security (after offset)		= $120

'urpose of the WEP

would now like to discuss the WEP provision. The Social Security \mendments of 1983 (P.L. 98-21) included the WEP provision as a neans to eliminate "windfall" Social Security benefits for retired and lisabled workers receiving pensions from employment not covered y Social Security. (This provision was among those recommended y the National Commission on Social Security Reform — the Greenspan Commission, which issued it's report in January 1983.) Generally, while the WEP applies to any pension based on ioncovered employment, it primarily affects government workers. The WEP does not affect the Social Security benefits payable to urvivors of workers who received pensions based on non-covered mployment.)

'he purpose of the WEP was to remove an unintended advantage hat the weighting in the regular Social Security benefit formula would therwise provide for persons who have substantial pensions from ion-covered employment. This weighting is intended to help workers vho spent their whole lives in low-paying jobs by providing them with benefit that is relatively higher in relation to their prior earnings than he benefit that is provided for higher-paid workers.

However, because benefits are based on average earnings in employment covered by Social Security over a working lifetime (35 years for retired workers), a worker who has spent part of his or her career in employment not covered by Social Security appears to have lower average lifetime earnings than he or she actually had. (Years with no covered earnings are counted as years of zero earnings for purposes of determining average earnings for Social Security benefit purposes.) Without the WEP, such a worker would be treated as a low-lifetime earner for Social Security benefit purposes and inappropriately receive the advantage of the weighted benefit formula. The WEP provision eliminates the potential "windfall" by providing for a different, less heavily weighted benefit formula to compute benefits for such persons.

Computation of the WEP Reduction

Let me explain how the reduction under the WEP is computed. To do this, I first need to explain how the regular (non-WEP) benefit formula works. Under the regular benefit computation rules, a three-step weighted benefit formula is applied to a worker's average indexed monthly earnings (AIME) to determine his or her primary insurance amount (PIA). The PIA is the monthly benefit amount payable to a retired worker first entitled at the full retirement age or a disabled worker. The PIA formula applicable to workers who reach age 62 or become disabled in 2003 is:

90 percent of the first $606 of AIME, plus
32 percent of the next $3,047 of AIME, plus
15 percent of AIME above $3,653.

Under the WEP computation, the 90-percent factor applied to a worker's average earnings in the first band of the Social Security benefit formula generally is replaced by a factor of 40 percent for workers who are receiving a pension from non-covered employment.

- ✓ Under the regular Social Security benefit formula, a worker would receive 90 percent, or $545, of the first $606 of his or her average indexed monthly earnings.

- ✓ Under the WEP formula, that worker would generally receive 40 percent--$242--of the first $606 of AIME.

- ✓ Under both scenarios, the 32 and 15 percent factors are the same.

For a worker first eligible in 2003, the maximum WEP reduction is $303 per month. Unlike the GPO, the WEP can never eliminate a person's Social Security benefit.

For workers who have 30 or more years of substantial earnings, the WEP does not apply at all. The reduction under the WEP is phased out gradually for workers who have 21-29 years of substantial covered earnings under Social Security.

However, the WEP provision includes a guarantee designed to help protect workers with relatively low pensions based on non-covered employment. This guarantee provides that the reduction in Social Security benefits can never exceed one-half the amount of the pension based on non-covered work.

As of December 2002, the WEP reduced the Social Security benefits of about 635,000 retired and disabled workers. Of those workers affected, 66 percent are men and 34 percent are women.

Proposal to Improve Administration of the WEP and GPO

The President's FY 2004 Budget includes a proposal that would improve the administration of the WEP and GPO by improving the coordination of reports of pension payments based on employment not covered by Social Security. This change would give SSA the ability to independently verify whether beneficiaries have pension income from employment not covered by Social Security. When a

person applies for Social Security benefits, he/she is required to tell SSA if they are receiving a pension based upon non-covered employment. SSA then obtains verification of the pension and applies the WEP and/or GPO accordingly. SSA largely relies on the applicant to correctly inform us that he/she is entitled to a non-covered pension.

SSA has an ongoing computer-matching program with the Office of Personnel Management (OPM) that matches persons receiving Social Security benefits with persons receiving a pension from OPM based on non-covered employment. However, SSA does not have any similar program to identify Social Security beneficiaries who are also receiving pensions based on non-covered work for a State or local government.

A past study of SSA's administration of the WEP and GPO provisions by the General Accounting Office (GAO) found that there are many beneficiaries who are not subjected to the WEP and GPO because SSA does not know they are receiving pensions based on non-covered employment.

With this change, SSA would be able to obtain data on pensions based on non-covered work in a more timely and consistent manner. The proposal would thereby improve SSA's stewardship over the program and the Social Security trust funds.

Proposals to Change WEP and GPO

A number of proposals have been advanced to change the WEP and GPO provisions. Some proposals would eliminate the provisions entirely. Eliminating these provisions would be costly and restore the more favorable treatment afforded many workers in non-covered employment over those in covered employment prior to the enactment of the GPO and WEP.

Eliminating the WEP would cost $29.7 billion over the first 10 years and would increase the long-range cost of the program by 0.06 percent of taxable payroll. Eliminating GPO would cost $32.2 billion over the first 10 years and the long-range cost would also be 0.06 percent of taxable payroll. The 10-year cost of eliminating both provisions would be $61.9 billion and would increase the long-range actuarial deficit by 0.12 percent of taxable payroll. Further, if both WEP and GPO were eliminated, the trust fund exhaustion date would advance by one year, from 2042 to 2041, as would the year of cash flow deficit -- from 2018 to 2017.

Most other proposals that would modify the effects of the WEP or GPO provide higher Social Security benefits for government workers whose pensions from non-covered employment, in combination with their Social Security benefits, are below certain levels. In effect, these proposals focus on providing higher Social Security benefits to public sector retirees, who were not covered by Social Security (and did not pay OASDI taxes) during their years in government work, simply because their combined public pension and Social Security benefits are deemed to be "too low."

It is important to point out that these proposals do not address the dual entitlement offset that applies to the millions of comparable beneficiaries who worked only in covered employment.

Public Education

As my testimony has indicated, the GPO and WEP are two very technically complicated provisions of the law. Although the GPO and WEP were enacted many years ago, neither provision is well understood by the public. In this regard, SSA has greatly increased its efforts to inform the public about these provisions. SSA representatives are frequently meeting with government pension administrators and groups of government employees to explain the GPO and WEP, and SSA provides numerous informational factsheets about these provisions.

Recently we have completed an update of SSA's website (www.socialsecurity.gov) to include a special section on the GPO and WEP. This section includes factsheets, information about pending legislation, and answers to frequently asked questions. The detailed calculator that can be downloaded from our website now allows a benefit estimate reflecting the WEP reduction. We are in the process of making changes to the other more "user friendly" online calculators to provide benefit estimates under both the WEP and GPO provisions. I believe that this improved website will be especially helpful to individuals who are or will be subject to the WEP or GPO.

Conclusion

In conclusion, let me note that Congress established the WEP and GPO provisions to prevent workers who spent a portion of their careers in employment not covered by Social Security from receiving more favorable treatment under Social Security than comparable workers who had worked a lifetime in covered employment. Congress' intention was to provide fair and equitable benefits under Social Security for workers in both covered and non-covered employment.

As previously noted, proposals to modify the effects of the GPO and WEP, or to eliminate them entirely, would treat government workers more favorably than comparable workers in the private sector—to whom the dual entitlement offset and the weighted benefit formula apply. Further, all of these proposals would significantly increase the cost of the OASDI program. Given that the program is not in actuarial balance, it seems appropriate that significant changes should be evaluated when considering other elements in a comprehensive plan to strengthen and protect Social Security.

I want to again thank the Chairman and the Committee for giving me this opportunity to discuss the GPO and WEP and to share SSA's analysis on legislation before the Congress. As always, I would be more than happy to provide assistance to the Members and more than willing to work with you to provide any additional information you request. I would be glad to answer any questions you might have concerning the WEP and GPO provisions.

Testimony of Julia Worcester
Columbia, Maine
Governmental Affairs Committee Hearing
Wednesday, September 24, 9:30 a.m.

Good morning, Senators.

Thank you for the chance to tell you how the changes to the way Social Security retirement benefits are calculated for public service employees has affected me.

I am 73 years old, and my husband of 54 years, Oswald, will be 88 in December. I am one of seven children, all born in Downeast Maine. I was not raised to expect something for nothing, I live a modest life, I work hard — and I do not spend time fretting about things I can't change. But this law has had a tremendous effect on me.

I was fortunate to be raised in a family that respected education. My father insisted on good grammar and corrected our speech when we strayed. My mother's family was college-educated, and my mother went to Machias Normal School and received her lifetime teaching certificate, which she updated towards the end of her career by taking courses by television. She

taught school for many years and retired in the mid-1960's. She was able to collect both Social Security retirement, earned from work she did during the summers and after she retired, and her state of Maine pension from her teaching, and she was not too bad off.

I have worked for over 20 years outside of my teaching career. As a young woman, I worked in a herring canning factory and in a string bean factory. When Oswald and I had two young children, a son and a daughter, I persuaded him that we should move to Connecticut, since the school system in our town at that time was very small — there were two teachers in the grade school, and two teachers in the high school. We lived in Branford, Connecticut for 13 years, and Oswald worked in a stone quarry. At first, I waitressed full-time, so that I could work nights when Oswald could be home with the children. When the children were teenagers, I found a day job in a factory, as I discovered that teenagers needed their mother paying close attention to what they were up to in the evening!

In 1968, when I was 37, we had another child. We decided to come home to Maine. The older children were out of school and on their own, and

even though we had another young child, the school system had improved at home. Our parents were getting older and it was time to go home.

When we got back to Columbia, I worked part-time for a while. Oswald was approaching retirement age, as he is 15 years older than I am, and I thought seriously about our future. I decided to become a teacher, like my mother. It was something I had always wanted to do. So at the age of 49, with the help of Pell grants and federally subsidized loans, I started at the University of Maine at Machias. I went to school year-round, and completed my degree in December 1982. I did some long-term substitute teaching right away, and was hired full-time in the fall of 1983. And I loved it!

This is where the problem comes in. Four or five years after I started teaching, I went to a seminar put on by Horace Mann, and I learned of the new law that meant all those years of work in factories and waitressing were not going to count for much in my retirement years, and that I was not even going to be able to collect much on Oswald's work record. That was when I learned that the life I had carefully planned was not going to work out the way I thought — and I was nearly 60 years old. Too late to start over with a

new plan.

With my working, we are all right now. Last year I subbed 125 days out of 175 school days, and the year before it was 140 days out of 175. It makes a big difference in our income. We are not big spenders, Oswald is a bear about debt so we have paid off the mortgage on the house and we don't charge things on credit cards. But I have to face facts — I will not be able to teach forever, and Oswald is getting on in years.

I should have what I have rightfully earned. My family is a family that has accepted what life has handed it. You do what you have to with what you have. I am not bitter about the situation, I just believe I have earned this benefit through years of honest work.

Thank you.

Addendum - Income:

Wages for Julia Worcester	$396/month ($814/month less $418 for Anthem BC/BS for Oswald and Julia)
Julia's SSA	$107/month (40% of what she would receive if not a public employee)
Oswald's SSA	$716/month (both SSA amounts after Medicare Part B has been deducted)

STATEMENT BY

CHARLES L. FALLIS

NATIONAL PRESIDENT
THE NATIONAL ASSOCIATION OF RETIRED
FEDERAL EMPLOYEES
(NARFE)

HEARING ON
"PENALTY FOR PUBLIC SERVICE: DO THE SOCIAL SECURITY GOVERNMENT PENSION OFFSET AND WINDFALL ELIMINATION PROVISION UNFAIRLY DISCRIMINATE AGAINST PUBLIC EMPLOYEES AND RETIREES?"

BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ROOM SD-342
DIRKSEN SENATE OFFICE BUILDING

SEPTEMBER 24, 2003
9:30A.M.

Madame Chairwoman and members of the Committee, I am Charles L. Fallis, President of NARFE (the National Association of Retired Federal Employees). I am testifying, today, on behalf of the more than 400,000 federal retirees, employees, spouses, and survivors who are NARFE members.

I would like to commend you, Senator Collins, for paving the way and holding the first-ever hearing on GPO (the Government Pension Offset) and WEP (the Windfall Elimination Provision) in the Senate. These Social Security provisions have a continuous adverse affect on the quality of life of a significant number of our members. We cannot afford to wait any longer to address changes to these onerous offsets -- changes which have considerable support here in the Senate and in the House for repeal or reform.

NARFE has worked for over twenty-six (26) years to repeal or reform the GPO and approximately twenty-one (21) years to do the same to the WEP. Both offsets have denied many of our older members, particularly women, the economic dignity they had been led to expect in retirement. I, therefore, appreciate your invitation to appear here today to reiterate NARFE's support and to urge this Committee's assistance in the repeal of the GPO and the WEP provisions, which would restore earned benefits for women and other retirees.

Present-day GPO law prevents government retirees, who were first eligible to retire in December 1982 and later, from collecting Social Security benefits based on their spouse's work record while collecting a government annuity based on their own work.

This law provides that two-thirds of a public sector retiree's annuity shall be used to offset whatever Social Security benefits are payable to him or her as a spouse (wife, husband, widow, widower, etc.).

By all accounts, the use of this two-thirds offset against social security income as determined by the Social Security Administration is an arbitrary figure. As such, we believe it can and should be reexamined and eliminated.

Of the approximately 335,000 affected GPO beneficiaries, about 80 percent are fully offset which translates into no benefit at all. I believe it is crucial to recognize, also, that almost 70 percent of those affected are women. And it is worth noting that about 40 percent of the total are widowed individuals, and roughly seventy percent of that number are fully offset with no benefit.

Current WEP law greatly reduces the Social Security benefit of a retired or disabled worker who also receives a government annuity based on his/her **own** earnings. It applies to anyone who becomes 62 (or disabled) after 1985 **and** becomes eligible for her/his government annuity after 1985. This windfall reduction can reduce the worker's monthly earned Social Security benefit by as much as 60 percent or up to $303.

Madame Chairwoman, and members of this committee, I have stated before—as I'm sure some of you already know—that the harshness of the GPO and WEP, as they exist today, cause both fears and tears among hundreds of older retirees. Fears for their financial futures, and tears of frustration that Congress has not acted sooner to reform this provision despite widespread support for doing so.

There are several bills pending before the Senate today which would offer relief to the hundreds of thousands of former teachers, cafeteria workers, postal workers, VA nurses, social security employees, and others who worked long and hard to help support their families. In fact, more than 40 Senators of this 108th Congress, and several members of this committee, including you, Madame Chairwoman, have already indicated your support for change in the GPO and the WEP by cosponsoring one or more of the pending bills sponsored by Senators Feinstein and Mikulski. Senator Feinstein testified before you this morning on her bill, S. 349. We applaud and thank all of you for your continuing efforts to alleviate these Social Security Offsets.

I would like to share with you today a situation concerning a NARFE member who contacted us early last week and described the dire details of her case. We have since received documentation substantiating this case and, if requested, would be able to provide this to you, Madame Chairwoman, with the member's permission. Our member is seventy-nine years old, widowed, and speaks some English but, by her own acknowledgement, has limited understanding and ability in the use of oral and written language.

She originally filed for divorced spousal benefits in 1989 while still working for the Veterans Administration. Her divorced spouse died in 1991, converting the claim to an application for surviving "divorced" spousal benefits. She became sick in late 1993, subsequently retired in early 1994 and began receiving her government annuity soon thereafter. She asserts that no one ever explained to her the GPO, the WEP, or the effect that either of these offsets would have on her pension and eventually, her income. She began receiving and continued to receive both her government pension and social security survivor benefits until sometime in 1998.

Then, in July of 1997, this lady received a letter from Social Security requesting repayment of the $20,737 "overpayment" because the GPO affected her. Her pension from the VA is $752 a month. She began her appeals process and has been denied each time, to a final denial this month from an Administrative law judge in Chicago, Illinois.

Madame Chairwoman, it is clear that this elderly woman has no financial means of repaying this tremendous amount of money. Money that she had no idea she was not entitled to receive. Instead, she keeps having her case denied with no allowance for even a minimal good faith payment. She is not the only case like this, but she is the most recent and the worst that we have seen denied.

The current GPO has caused thousands of situations such as this one. GPO continues to prevent widows and other deserving individuals from getting survivor benefits because two-thirds (2/3) of the amount of their pension usually eliminates their total Social Security benefit. And WEP has a similar affect on person's trying to collect their own earned Social Security benefit based on their own work.

Senator Collins, over the past two decades we have received many letters from NARFE members who are constituents, not just in Maine, but throughout New England and quite frankly, all over the country. All describe in detail the anguish and economic hardships they experience every day because of the GPO and/or the WEP. For hundreds of thousands of federal, state, and local government retirees, the repeal of both of these offsets would diminish, and in some cases eliminate, the devastating financial hardships they endure because of the effects of these onerous laws.

The Social Security system has endured and will continue to endure some serious challenges and concerns over the next century. None of us can predict what this program or our economy will be like seventy-five years from now, even though we try. And unfortunately, none of us here today will be around to know. One thing is certain; some changes are inevitable. And since we know that some of our seniors need help right now, I believe that we must make some changes right now.

Social Security Administration actuaries have determined that the repeal of the GPO and the WEP would increase the size of the OASDI actuarial deficit by an amount estimated at 0.11 percent of taxable payroll. This amount is not negligible; but returning this income to these retirees would consequently provide them with increased purchasing power, and allow them to significantly increase their financial efforts in supporting and strengthening this country's economy.

In the President's Radio Address to the Nation this past April, he eloquently stated, "...America's greatest economic strength is the pride, the skill, and the productivity of American workers." Madame Chairwoman and members of this committee, he is absolutely right. NARFE's members, along with the other federal, state, and local government retirees and employees in this, country are the proud, skilled, and productive American workers of yesterday and today. They continue to support and strengthen our nation's economy to the best of their ability, just like all of your constituents, as they continue to work, even though these heinous offsets debilitate their efforts to significantly contribute. If they are ever to feel vindicated, these punitive offsets must be repealed.

Senator Collins, you stated in your hearing advisory that this hearing... "is intended to examine the effect that the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) have on public employees and retirees. The individuals affected by the GPO and the WEP are individuals who are eligible for federal, State, or local pensions from work that was not covered by Social Security."

Yes, there are individuals receiving pensions from work that was not covered by Social Security but they and/or their spouses worked in jobs outside of the government that was **covered** by Social Security long enough to be eligible to receive these benefits. Unfairly, they are still being denied the social security covered benefits that they earned, being unfairly punished

for working another full or part time job at the same time they were working full time for the government.

I thank and commend you and this committee for recognizing the need for changes in the GPO and the WEP and for addressing it in this hearing today. I, further, urge you to convince your colleagues on the Finance Committee to recognize the significance of these issues, so that we can get a bill out of the Senate, ratified in the House and subsequently, to the President for his signature, that would allow the federal, state, and local government retirees in this country some relief from these offsets.

I commit to you today that on behalf of the over 400,000 members of the National Association of Retired Federal Employees, we stand ready to work with you and the members of the Senate to expeditiously resolve these issues.

Kenneth Rocks
Testimony Before the Senate Committee on Governmental Affairs
September 24, 2003

Good morning, Madam Chairman, Ranking Member Lieberman, and distinguished Members of the Senate Committee on Government Affairs. My name is Ken Rocks, and I am a Philadelphia police officer and the National Vice President of the Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 310,000 rank-and-file officers in every region of the country. I am here this morning at the request of Chuck Canterbury, National President of the F.O.P. to share with you the views of the members of the F.O.P. on the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) provisions in current Social Security law.

The Fraternal Order of Police, by a vote of its delegates at our National Biennial Conference in 1997, has designated the repeal of the WEP and GPO as one of its top legislative priorities and we strongly support the passage of S. 349, the "Social Security Fairness Act."

The "Social Security Fairness Act,", introduced by Senator Dianne Feinstein (D-CA), would repeal both the WEP and GPO. The bill has strong bipartisan support, with twenty-three (23) cosponsors. It is our hope that Congress will take a serious look at the manifest unfairness of the WEP and GPO and act to correct them by passing this bill. Ultimately, this legislation is about fairness to the State and local employees who paid for and ought to receive their Social Security benefits.

Let me begin by explaining the impact of the WEP on retired police officers. Simply put, law enforcement officers who served communities which are not included in the Social Security system may lose up to sixty percent (60%) of the Social Security benefit to which they are entitled by virtue of secondary or post-retirement employment which required them to pay into the Social Security system. This sixty percent (60%) is a lot of money, especially when you consider that the officer and his family were likely counting on that benefit when they planned for retirement.

The F.O.P. contends that this provision has a disparate impact on law enforcement officers for several reasons. First of all, law enforcement officers retire earlier than employees in many other professions. Owing to the physical demands of the job, a law enforcement officer is likely to retire between the ages of 45 and 60. Secondly, after 20 or 25 years on the job, many law enforcement officers are likely to begin second careers and hold jobs that do pay into the Social Security system. Even more officers are likely to "moonlight," that is, hold second or even third jobs throughout their law enforcement career in order to augment their income. This creates an unjust situation that too many of our members find themselves in: they are entitled to a State or local retirement benefit because they worked 20 or more years keeping their streets and neighborhoods safe, and also worked at a job or jobs in which they paid into Social Security, entitling them to that benefit as well. However, because of the WEP, if their second career resulted in less than twenty (20) years of substantial earnings, upon reaching the age they are eligible to collect Social Security, they will discover that they lose sixty percent (60%) of the benefit for which they were taxed! Actuarially speaking, I doubt many officers will live long

enough to "break even"--that is, collect the money they paid into the system, let alone receive any "windfall." These men and women earned their State or local retirement benefit as public employees and they paid Social Security taxes while employed in the private sector. How is this a windfall?

I think it is clear that Congress did not intend to reduce the benefits of hard-working Americans who chose to serve their States and communities as public employees and then went on to have second careers or worked second jobs to make ends meet. After all, when Social Security was established in 1935, it intentionally excluded State and local employees. And though most public employees are now in the Social Security system, sixteen (16) States--Alaska, California, Colorado, Connecticut, Georgia (certain local governments), Illinois, Louisiana, Kentucky (certain local governments), Maine, Massachusetts, Missouri, Nevada, Ohio, Pennsylvania, Rhode Island, and Texas--have large majorities of their State and local employees outside the Social Security system. In Pennsylvania, the police departments of Philadelphia, Pittsburgh and the State Police are all outside the Social Security system. It is these public employees that need the help of Congress.

When the WEP was enacted in 1983, it was part of a large reform package designed to shore up the financing of the Social Security system. Its ostensible purpose was to remove a "windfall" for persons who spent some time in jobs not covered by Social Security (like public employees) and also worked other jobs where they paid Social Security taxes long enough to qualify for retirement benefits. However, we can now clearly see that the WEP was a benefit cut designed to squeeze a few more dollars out of a system facing fiscal crisis. The fallout of this effort has had a profoundly negative impact on low-paid public employees outside the Social Security system, like law enforcement officers.

This is a matter of fairness. The WEP substantially reduces a benefit that employees had included and counted on when planning their retirement. The arbitrary formula in current law, when applied, does not eliminate "windfalls" because of its regressive nature--the reduction is only applied to the first bracket of the benefit formula and causes a relatively larger reduction in benefits to low-paid workers. It also overpenalizes lower paid workers with short careers or, like many retired law enforcement officers, those whose careers are split inside and outside the Social Security system. This provision has not eliminated a windfall for individuals who did not earn it, it has resulted in a windfall for the Federal government at the expense of public employees.

Let me now discuss the other aspect of the bill, which would repeal the Government Pension Offset (GPO). In 1977, Federal legislation was enacted that required a dollar-for-dollar reduction of Social Security spousal benefits to public employees and retired public employees who received earned benefits from a Federal, State, or local retirement system. Following a major campaign to repeal the provisions in 1983, Congress, which was looking for ways to reduce the fiscal pressure on the Social Security system, adopted instead the Government Pension Offset, which limits the spousal benefits reduction to two?thirds of a public employee's retirement system benefits. This remedial step falls far short of addressing the inequity of Social Security benefits between public and private employees. This "offset" provision should have been repealed in 1983 and might have been were it not for the fiscal condition of the Social Security system.

The new GPO formula reduces the spouse's or widow(er)'s benefit from Social Security by two-thirds of the monthly amount received by the government pension. For example, the spouse of a retired law enforcement officer who, at the time of his or her death, was collecting a government pension of $1,200, would be ineligible to collect the surviving spousal benefit of $600 from Social Security. Two-thirds of $1,200 is $800, which is greater than the spousal benefit of $600 and thus, under this law, the spouse is unable to collect it. If the spouse's benefit were $900, only $100 could be collected, because $800 would be "offset" by the officer's government pension. In nine out of ten cases, this completely eliminates the spousal benefit even though the covered spouse paid Social Security taxes for many years, thereby earning the right to these benefits. It is estimated that approximately 349,000 spouses and widow(er)s of State and local employees have been unfairly affected by the Government Pension Offset, Moreover, these estimates do not capture those public employees or retirees who never applied for spousal benefits because they wrongly believed themselves ineligible. According to the Congressional Budget Office, the GPO reduces benefits for some 200,000 individuals by more than $3,600 a year. Ironically, the loss of these benefits may cause these men and women to become eligible for more costly Federal assistance, such as food stamps.

The present system creates a tremendous inequity in the distribution of Social Security benefits. The standard for this narrow class of individuals--retired public employees who are surviving spouses of retirees covered by Social Security--is inconsistent with the overall provisions of the Social Security Act and does not apply to persons receiving private pension benefits. This imbalance exists even though Congress, through ERISA standards and tax code provisions, has more direct influence over private employers than public employers. Clearly, this is an issue that Congress must address.

I am concerned that Congress continues to look for ways to save money for the Social Security system by cutting benefits earned by State and local employees. This is not right and it is not fair. The Federal government has a commitment to these men and women that must be honored.

I also want to speak to the issue of mandatory participation in the Social Security system by all State and local employees. This is not the way to solve the inherent unfairness of the WEP or GPO, nor is it a sound fiscal or retirement policy for those States and localities which are better off outside the Social Security system. Mandatory inclusion in Social Security must be seen for what it is--a scheme to require participation for all employees currently outside the system--thus covering the expected shortfall with a huge influx of new tax dollars.

If the Federal government imposes mandatory Social Security participation, it severely compromises the financial solvency of existing pension and retirement plans into which these employees contribute. These plans, which are often designed and tailored with the public safety employee in mind, deliver a greater benefit to their participants than does Social Security.

Additionally, the cost to States, localities, and the individual employees would be immense. The employee would be required to pay 6.2% of his or her salary into the Social Security trust fund. This amount would be in addition to the contribution already paid by the employee into the State or local retirement system. The employer would have to match the employees

contribution--another 6.2% cost to the employing agency *for each employee*. And that, too, would be in addition to whatever matching contribution must be made by the employer into the existing State or local retirement system.
Clearly, the damage that would be done to State and local governments and the families of the employees cannot be overestimated if the Federal government forces them to pay a new tax of 12.4%. Collected data shows that the first year cost to employers??local and State governments??to cover newly hired employees only would be over $771 million. The newly hired employees would be responsible for an equal amount, making the cost of the first year of coverage over $1.5 billion. The total annual cost to employers for covering employees not currently in the Social Security system would be $8.5 billion. When the employees' share is counted, that amount rises to over $17 billion per year.

The result of this is obvious: less take home pay for the employee and cut backs in services, equipment and other expenditures on the part of State and local governments. Police departments and other law enforcement agencies already stretch every dollar to the limit to meet homeland security burdens. Mandatory participation would mean huge new costs that will devastate their budgets.

Federally mandated participation in Social Security is not a minor issue. Such a mandate would adversely affect millions of employees and impose billions of dollars in additional costs to State and local governments. Many retirement and pension plans for public sector employees have been specifically designed and refined on the assumption that local governments would not be required to participate in the Social Security system. This was a reasonable assumption since local governments have never been required to pay into the system. An important consideration for law enforcement and other public safety officers is a much earlier retirement age than other, more typical, government employees. Local and State retirement plans take this early retirement into consideration, Social Security does not.

Sometimes, proposals sound good on the surface, but after careful examination are revealed to be unsound policies with damaging consequences. We believe that mandating the inclusion of all public sector employees into the Social Security system falls into this category. It is wrong to change the rules sixty?eight (68) years later because the Federal government is looking for an easy way to fund Social Security without making hard choices. The State and local governments who chose not to participate in Social Security did not create this problem, nor did the nearly four million employees who do not pay into the system. But those States and localities would be paying a hefty price for their previous decision to create their own retirement plans. Destroying the retirement programs of these hard?working Americans and raiding the budgets of State and local governments should not be part of the Federal government's solution.

The President's Commission to Strengthen Social Security (CSSS) rejected the mandatory participation scheme in its final report issue on 21 December 2001. Congress should do likewise.

Madam Chairman, I want to thank you, Ranking Member Lieberman and the other Members of this distinguished Committee for the chance to appear before you today. It is my hope that this hearing will bring greater attention to this issue and increase the chances that S. 349, the "Social Security Fairness Act" will be considered in this Congress.

SENATOR BARBARA A. MIKULSKI TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON GOVERNMENT AFFAIRS ON THE GOVERNMENT PENSION OFFSET

"I am pleased to talk with you this morning about an issue that is very important to me, very important to my constituents in Maryland and very important to government workers and retirees across the nation – the Government Pension Offset and the Windfall Elimination Provisions.

"Earlier this year, I reintroduced my bill along with fifteen of my colleagues, including the chair and several Members of this committee, to modify a cruel rule of government that is unfair and prevents current workers from enjoying the benefits of their hard work during retirement , the Government Pension Offset.

"My bill has bipartisan support and the House companion bill had nearly 300 cosponsors last year. With this strong bipartisan support, I hope that we can correct this cruel rule of government this year.

"Under current law, a Social Security spousal benefit is reduced or entirely eliminated if the surviving spouse is eligible for a pension from a local, state or federal government job that was not covered by Social Security. This policy is known as the Government Pension Offset.

"This is how the current law works. Consider a surviving spouse who retires from a local government job – like a teacher or policeman and receives a government pension of $600 a month. She also qualifies for a Social Security spousal benefit of $645 a month. The Government Pension Offset reduces her Social Security benefit by 2/3 of her other pension, and her spousal benefit is reduced to $245 a month. So, instead of $1245, she will receive only $845 a month. That is $400 a month less to pay the rent, purchase a prescription medication, or buy groceries. I think that is wrong.

"My bill does not repeal the government pension offset entirely as Senator Feinstein's bill would, but it will allow retirees to keep more of what they deserve. It guarantees that those subject to the offset can keep at least $1200 a month in combined retirement income.

- more -

"With my modification, the 2/3 offset would only apply to the combined benefit amount that exceeds $1200 a month. So, in the example above, the surviving spouse would face only a $30 offset, allowing her to keep $1215 in monthly income.

"Unfortunately, the current law disproportionately affects women. Women are more likely to receive Social Security spousal benefits and to have worked in low-paying or short-term government positions while they were raising families.

"It is also true that women receive smaller government pensions because of their lower earnings, and rely on Social Security benefits to a greater degree. My modification will allow these women who have contributed years of important government service and family service to keep more of retirement income they earned.

"The last time Congress passed a bill significantly effecting Social Security benefits was in 1999. At that time, the Senate unanimously voted for and passed The Senior Citizens' Freedom to Work Act of 1999. This legislation ensured that senior citizens who choose to work or who must work can earn income after retirement without losing a portion of their Social Security benefit. This law helps senior citizens who earn above $17,000 per year. In contrast, my bill specifically targets those with more moderate retirement incomes around $13,000 per year and less.

"I believe that we must work to ensure a safety net for all of our seniors including those retired government employees who every day are forced to make difficult choices between rent, food, and prescription drugs due to the drastic effects of the government pension offset.

"Why do we punish people who have committed a significant portion of their lives to government service? We are talking about workers who provide some of the most important services to our community teachers, firefighters, police, and many others. Some have already retired. Others are currently working and looking forward to a deserved retirement. These individuals deserve better than the reduced monthly benefits that the Government Pension Offset currently imposes on them.

"Government employees work hard in service to our nation, and I work hard for them. I do not want to see them penalized simply because they have chosen to work in the public sector, rather than for a private employer, and often at lower salaries and sometimes fewer benefits. If a retired worker in the private sector received a pension, and also received a spousal Social Security benefit, they would not be subject to the Offset.

"I think we should be looking for ways to reward government service, not the other way around. I believe that people who work hard and play by the rules should not be penalized by arcane, legislative technicalities. Frankly, I would like to repeal the offset all together. But, I realize that budget considerations make that unlikely. If we could find a way to accomplish full repeal and address the Windfall Elimination Provisions also, I would support that.

– more –

"As a down payment, I hope we can agree that retirees who have worked hard all their lives should not have this offset applied until their combined monthly benefit both government pension and Social Security spousal benefit exceeds $1,200. I also strongly believe that we should ensure that retirees buying power keeps up with the cost of living. That's why I have also included a provision in my bill to index the base $1,200 amount to inflation so retirees will see their minimum benefits increase along with their cost of living.

"The Social Security Administration recently estimated that enacting the provisions contained in my bill will have a minimal long-term impact on the Social Security Trust Fund about 0.01% of taxable payroll.

"Additionally, my bill is bipartisan and has the support of several groups that represent seniors or retired civil servants including the National Association of Retired Federal Employees (NARFE), the American Federation of Federal State County and Municipal Employees (AFSCME), the National Treasury Employees Union (NTEU), and the National Committee to Preserve Social Security and Medicare.

"I thank the Chair of this Committee for holding this hearing and bringing attention to these important issues."

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SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

DECISION

IN THE CASE OF
Maria M. Alamar
(Claimant)

CLAIM FOR

Leo R. Alamar
(Wage Earner)

(Social Security Number)

PROCEDURAL HISTORY

Beginning in November 1993, claimant began receiving surviving divorced spouses benefits on account of decreased former spouse Mr. Leo Alamar, who passed away in March, 1991 (Exhibit 1). On/about May 5, 1998, the Social Security Administration (SSA) requested information from the claimant relative to pension benefits received by her for the period November 1, 1993 through the present (Exhibit 2). This Correspondence was essentially duplicated on June 11, 1998 (Exhibit 4). In accordance with a review of the benefit payment records for the period November 1993 through July 1998 (Exhibit 14), and government annuity payment records (Exhibit 35), an overpayment in the amount of $20,737.40 was calculated for the period November 1993 through July 1998 (Exhibit 14). A request for waiver was filed by the claimant on August 12, 1998 (Exhibit 11). It was initially denied on November 10, 1998 (Exhibit 13) and on reconsideration on October 30, 2000 (Exhibit 19). A request for hearing was thereafter filed November 27, 2000 (Exhibit 21). The claimant appeared and testified at a hearing held in Evanston, Illinois on May 20, 2003. After being fully advised concerning the legal issues to be resolved and of her rights concerning representation, the claimant elected to proceed without representation. The claimant's daughter, Ms. S. Stevenson, was present throughout the hearing for the purpose of providing assistance, if needed to her mother. Ms. Stevenson also testified as a witness on behalf of the claimant.

ISSUE

The issue is whether there occurred an overpayment as defined in 20CFR 404.501, 502, and if so, whether waiver of recovery of the overpayment is appropriate. This depends on whether the claimant was without fault in causing and/or accepting an overpayment, and, if so, whether recovery thereof would defeat the purposes of Title II of the Act, or be against equity and good conscience as defined in the regulations. 20CFR404.506 and 507.

TESTIMONY AND DOCUMENTARY RECORD

In August 1989 the claimant applied for divorced spouse's benefits on the account of her former spouse, Leo Alamar. At the time of the application, the claimant reported that she was still working for the Veterans Administration, and that she was not yet receiving any government pension, but that she expected to receive such a pension on retirement (Exhibit 1). The claimant, at the hearing, recalled the above application and then providing a copy of her divorce decree. She reported, however, having no discussion with agency personnel at that time concerning pension reporting requirements. Agency records reflect that Mr. Alamar passed away in March 1991 and that the previously filed application was converted to an application for surviving divorced spouses benefits (Exhibit 1). The claimant at the hearing did not recall having any discussion with agency personnel at the time of the conversion.

The claimant further testified that in late 1993 (likely November 1993) she had been on sick leave from her job and had advised Social Security (SSA) of her plan to retire from work. The agency employee(s) to whom she spoke reportedly took her application for the start of benefits, but provided no information about reporting requirements regarding government pension benefits. The claimant could not identify the person spoken to. The claimant also testified that she reported her cessation of work, likely in early 1994, and that she began receiving SSA and work pension benefits in about November 1993.

Agency payment records reflect total monthly payments (for the period November 1993 – July 1998) and an overpayment in the amount of $20,737.30 (Exhibit 14 and Exhibit 20). No records or documents contradicting or disputing this amount have been submitted. SSA records likewise contain no evidence of report by or receipt of information from the claimant regarding her receipt of VA pension benefits through at least January 1998. Although an October 2, 1996 letter from the agency contained a determination that no adjustment of benefits was necessary for 1995 - 1996, the correspondence was based upon the claimant's report of work earnings. It contained no reference to VA pension benefits. Similar correspondence dated December 11, 1996 referenced 1993 work earnings, making no reference to pension benefits.

In correspondence dated July 6, 1997, SSA advised the claimant that it had become aware (from information contained in Office of Personnel and Management (OPM) records) that the claimant had received a government pension. The correspondence provided that no reduction in benefits would occur until the claimant had an opportunity to check the information (Exhibit 36). There is no record of response from the claimant to this letter. At some point between January 14, 1998 and May 15, 1998 SSA officials received an OPM alert relative to receipt, by the claimant, of VA pension benefits in a monthly amount of $752.00, from on or about November 2, 1993 (Exhibit 33). On May 19, 1998, SSA again requested information of the claimant regarding pension benefits received (Exhibit 2, Exhibit 36). In a May 28, 1998 response, the claimant acknowledged receipt of VA pension benefits in a gross monthly amount of $752.00, and reported various monthly expenses leaving a balance of $7.33 from her net pension benefits (Exhibit 3). An additional request for specific annuity amounts for the period 1993 to current was again directed to the claimant on June 11, 1998 (Exhibit 4).

According to the hearing testimony, the claimant forwarded the annuity payment information (annuity adjustment stubs concerning the period January 1995 through February 1998) contained in Exhibit 35 to SSA in June 1998. The claimant thereafter received letters dated June 28, 1998 and July 20, 1998 concerning a then ascertained overpayment of widows benefits secondary to her receipt of the government pension (Exhibit 9 and Exhibit 36). In a June 25, 1998 letter, claimant reported sending in (unspecified) documents when she first retired (Exhibit 37). As noted, no such documents are contained in the present record. In later correspondence, dated June 27, 1998, the claimant reported an inability to repay any overpayment, referring to then current monthly expenses. The claimant also reported having not received any previous notification regarding the offset for government pension (Exhibit 6). In a July 9, 1998 letter, the claimant restated the previously stated information regarding want of notice and inability to repay any overpayment. In support of her letter, the claimant attached a copy of the above discussed letter of December 11, 1996 reporting that claimant had not been overpaid. As noted, the letter pertained to earnings during 1993, and did not reference any issue concerning pension benefits (Exhibit 7).

In a July 31, 1998 letter to her U.S. Senator, the claimant reported her November 1993 retirement from the VA, and that SSA knew she was a federal retiree at the time. The claimant also reported an inability to repay any overpayment, and requested assistance in resolving the issue (Exhibit 10).

In her August 12, 1998 request for waiver, the claimant asserted that she was without fault in causing the overpayment and that she had no previous knowledge of any offset for receipt of a governmental pension. She further reported expense information indicating an inability to repay any overpayment (Exhibit 11 and exhibit 15). At hearing, Ms. Alamar stated that the expense information therein reported was true and accurate.

In a November 10, 1998 rationale for denial of waiver, the agency referred to a May 1989 application for divorced spouse's benefits wherein the claimant reported a future expectancy of government pension (See Exhibit 1) and that benefits were thereafter started on a cessation of work notice. The agency was reportedly not notified by the claimant of her receipt of pension benefits. The claimant could not be found without fault due to failure to report receipt of pension benefits (Exhibit 13 and Exhibit 17). This determination was directed to the claimant on September 14, 2000 (Exhibit 36). Following an October 4, 2000 Personal Conference, waiver was again denied on reconsideration on October 30, 2000 (Exhibit 17, 18, 19). In a letter dated May 1, 2003 the claimant reported monthly expenses in the amount of $672.20 (Exhibit 34).

The claimant testified that the amounts reported in Exhibit 34 were an accurate representation of her current monthly expenses. She further reasserted that she had no prior knowledge of any offset requirements regarding government pensions or of any need to report ongoing pension benefits to SSA. The claimant was seventy-eight years or age at the time of the hearing, and had three years of high school, with the ability to read and write English language. The claimant's daughter, Ms. S. Stevenson testified that the claimant's expenses make her unable to repay the amount in issue and that her immediate family does not have the ability to assist in any such repayment.

DECISION

The instant record establishes an overpayment in a total amount of $20,737.40 (Exhibit 14) 20CFR {404.501, 502}. As the overpayment in issue resulted secondary to a failure to furnish information (concerning receipt of pension benefits) which was known or should have been known to be material, the claimant cannot be found without fault 20 CFR {404.507. This is especially evident in the context of a 1989 application, wherein the claimant reported that she expected to receive a government pension upon her future retirement from work (Exhibit 1). The record is similarly not indicative of unusual or unavoidable circumstances which reveal that the claimant was unaware of reporting and/or offset requirements (20 CFR 404.510). Insofar as the claimant cannot be found without fault, further analysis of whether collection of overpayment would defeat the purposes of Title II, or whether recovery would be against equity and good conscience, need not be resolved. 20 CFR (404.508, 404.509).

ROBERT T. KARMGARD
Administrative Law Judge

JUN 27 2003
Date

FILE COPY

Richard Renaud & Associates
Counsel to all Social Security Applicants

Richard P. Renaud, L.L.B.

Mailing Address
P.O. Box 44
Cape Canaveral, FL 32920

Tel (321) 783-6833

August 8, 2003

Social Security Administration
Office of Hearings and Appeals
5107 Leesburg Pike
Falls Church, VA 22041-3255

RE: Claimant Maria M. Alamar Account Number

Dear Sir or Madam:

I am Maria Alamar's representative. I wish to state that we disagree with the unfavorable decision dated June 27, 2003 in connection with Ms. Alamar's case.

We are not questioning the facts of the case – only the conclusion and assumptions of the ALJ.

Facts:

- When claimant first filed for SSA benefits she indicated that she would be entitled to a Federal Pension. (Claimant wasn't hiding anything.)
- When claimant was requested by SSA to tell them the amount of the Federal Pension she receives she told them the exact amount.
- Claimant indicates that she sent a notice of pension amount when first received (though file does not contain such information). In my over 45-years of experience dealing with Social Security I have found that it is not unusual for them to lose documents.
- Social Security did not have a reliable interface program with OPM.
- The WEP and Offset Programs are the most misunderstood and least fair legislation ever passed by Congress.
- The National Association of Retired Federal Employees and myself, as a writer on the overpayment provisions, have received over 500 telephone calls on the WEP and Offset Programs by overpaid former Federal workers.
- Social Security and OPM have done little to inform the public about these draconian programs.

RE: **Claimant Maria M. Alamar** **Account Number**
August 8, 2003
Page 2

Conclusion:

- The Judge reaches the conclusion that the claimant should have known that her pension would offset her SSA benefits and claimant should have acted to bring about that reduction, even though it is a confusing piece of legislation. This legislation provides graduated percentages in reduction over a 30-year employment history if certain factors take place. Does this sound like easy legislation to understand? Now consider a person that has difficulty with the English language, such as the claimant.
- The Judge does not say that the claimant speaks broken English and has limited understanding of the spoken or written word.
- The Judge does not take into consideration the age of the individual. We know that people over 70 begin losing concentration, agility, memory and any number of other factors, including the ability to drive a car. Claimant is 78 years old.
- The Judge also ignores the fact that he is placing this claimant in a position of abject poverty. If this case does not meet the test of equity and good conscience then none does. This claimant is facing the specter of being homeless. She has already provided Social Security with a listing of assets, income and resources of which there are precious few.
- We believe the claimant is without fault and meets the test of equity and good conscience as well as defeats the purpose of Title II.

If you have any questions, please call me.

Sincerely,

Richard Renaud & Associates

Richard P. Renaud

cc: Maria M. Alamar
6615 W. Cornelia, Apt. 2
Chicago, IL 60630

SOCIAL SECURITY ADMINISTRATION/OFFICE OF HEARINGS AND APPEALS

Form Approved
OMB No. 0960-0277

REQUEST FOR REVIEW OF HEARING DECISION/ORDER

(Take or mail original and all copies to your local Social Security office)

See Privacy Act Notice on Reverse

1. CLAIMANT: Maria M Olmar

2. WAGE EARNER, IF DIFFERENT:

3. SOCIAL SECURITY CLAIM NUMBER:

4. SPOUSE'S NAME AND SOCIAL SECURITY NUMBER *(Complete ONLY in Supplemental Security Income Case)*:

5. I request that the Appeals Council review the Administrative Law Judge's action on the above claim because:

I am without fault

ADDITIONAL EVIDENCE

If you have additional evidence, submit it with this request for review. If you need additional time to submit evidence or legal argument, you must request an extension of time in writing now. If you request an extension of time, you should explain the reason(s) you are unable to submit the evidence or legal argument now. If you neither submit evidence or legal argument now nor within any extension of time the Appeals Council grants, the Appeals Council will take its action based on the evidence of record.

IMPORTANT: Write your Social Security Claim Number on any letter or material you send us.

SIGNATURE BLOCKS: You should complete No. 6 and your representative (if any) should complete No. 7. If you are represented and your representative is not available to complete this form, you should also print his or her name, address, etc. in No. 7.

DATE	☐ ATTORNEY ☐ NON-ATTORNEY
6. CLAIMANT'S SIGNATURE	7. REPRESENTATIVE'S SIGNATURE: Richard Renaud
PRINT NAME: Maria M Olmar	PRINT NAME: RICHARD RENAUD
ADDRESS: 6615 W. Cornelia Apt 2	ADDRESS: PO Box 44
(CITY, STATE, ZIP CODE): Chicago IL 60630	(CITY, STATE, ZIP CODE): Cape Canaveral, FL 32920
TELEPHONE NUMBER (INCLUDE AREA CODE): ( )	TELEPHONE NUMBER: (321) 783-6833 / FAX NUMBER (INCLUDE AREA CODE): ( )

THE SOCIAL SECURITY ADMINISTRATION STAFF WILL COMPLETE THIS PART

8. Request received for the Social Security Administration on _____ by: _____

(Title) (Address) Servicing FO Code PC Code

9. Is the request for review received within 65 days of the ALJ's Decision/Dismissal? Yes ☐ No ☐

10. If no checked: (1) attach claimant's explanation for delay; and (2) attach copy of appointment notice, letter or other pertinent material or information in the Social Security Office.

11. Check one:
☐ Initial Entitlement
☐ Termination or other

APPEALS COUNCIL
OFFICE OF HEARINGS AND APPEALS, SSA
5107 Leesburg Pike
FALLS CHURCH, VA 22041 - 3255

12. Check all claim types that apply:

☐	Retirement or survivors	(RSI)
☐	Disability—Worker	(DIWC)
☐	Disability—Widow(er)	(DIWW)
☐	Disability—Child	(DIWC)
☐	SSI Aged	(SSIA)
☐	SSI Blind	(SSIB)
☐	SSI Disability	(SSID)
☐	Health Insurance-Part A	(HIA)
☐	Health Insurance-Part B	(HIB)
☐	Other—Specify: _____	

Form HA-520-U5 (12-95)
Issue Old Stock

SOCIAL SECURITY ADMINISTRATION

Refer to: TAHB

Office of Hearings and Appeals
5107 Leesburg Pike
Falls Church, VA 22041-3255
Telephone: (703) 605-8000

Date: SEP 11 2003

NOTICE OF APPEALS COUNCIL ACTION

Ms. Maria M. Alamar
6615 W. Cornelia, Apt. 2
Chicago, IL 60630

This is about your request for review of the Administrative Law Judge's decision dated June 27, 2003.

We Have Denied Your Request for Review

We found no reason under our rules to review the Administrative Law Judge's decision. Therefore, we have denied your request for review.

This means that the Administrative Law Judge's decision is the final decision of the Commissioner of Social Security in your case.

Rules We Applied

We applied the laws, regulations and rulings in effect as of the date we took this action.

Under our rules, we will review your case for any of the following reasons:

- The Administrative Law Judge appears to have abused his or her discretion.
- There is an error of law.
- The decision is not supported by substantial evidence.
- There is a broad policy or procedural issue that may affect the public interest.
- We receive new and material evidence and the decision is contrary to the weight of all the evidence now in the record.

What We Considered

In looking at your case, we considered the reasons you disagree with the decision.

REPRESENTATIVE

We found that this information does not provide a basis for changing the Administrative Law Judge's decision.

If You Disagree With Our Action

If you disagree with our action, you may ask for court review of the Administrative Law Judge's decision by filing a civil action.

If you do not ask for court review, the Administrative Law Judge's decision will be a final decision that can be changed only under special rules.

How to File a Civil Action

You may file a civil action (ask for court review) by filing a complaint in the United States District Court for the judicial district in which you live. The complaint should name the Commissioner of Social Security as the defendant and should include the Social Security number(s) shown at the top of this letter.

You or your representative must deliver copies of your complaint and of the summons issued by the court to the U.S. Attorney for the judicial district where you file your complaint, as provided in rule 4(i) of the Federal Rules of Civil Procedure.

You or your representative must also send copies of the complaint and summons, by certified or registered mail, to:

The General Counsel
Social Security Administration
Room 617 Altmeyer Building
6401 Security Boulevard
Baltimore, MD 21235

And:

The Attorney General of the United States
Washington, DC 20530

Time To File a Civil Action

- You have 60 days to file a civil action (ask for court review).
- The 60 days start the day after you receive this letter. We assume you received this letter 5 days after the date on it unless you show us that you did not receive it within the 5-day period.

REPRESENTATIVE

- If you cannot file for court review within 60 days, you may ask the Appeals Council to extend your time to file. You must have a good reason for waiting more than 60 days to ask for court review. You must make the request in writing and give your reason(s) in the request.

You must mail your request for more time to the Appeals Council at the address shown at the top of this notice. Please put the Social Security number(s) also shown at the top of this notice on your request. We will send you a letter telling you whether your request for more time has been granted.

About The Law

The right to court review for claims under title II (Social Security) is provided for in Section 205(g) of the Social Security Act. This section is also Section 405(g) of Title 42 of the United States Code.

The right to court review for claims under title XVI (Supplemental Security Income) is provided for in Section 1631(c)(3) of the Social Security Act. This section is also Section 1383(c) of Title 42 of the United States Code.

The rules on filing civil actions are Rules 4(c) and (i) in the Federal Rules of Civil Procedure.

If You Have Any Questions

If you have any questions, you may call, write, or visit any Social Security office. If you do call or visit an office, please have this notice with you. The telephone number of the local office that serves your area is 773-794-0777. Its address is:

SOCIAL SECURITY
4849 N MILWAUKEE AVE
CHICAGO, IL 60630

ORIGINAL SIGNED BY

Pamela D. Crawford
Acting Administrative Appeals Judge

cc: Richard Renaud
P.O. Box 44
Cape Canaveral, FL 32920

REPRESENTATIVE

Richard Renaud & Associates
Counsel to all Social Security Applicants

Richard P. Renaud, L.L.B.

Mailing Address
P.O. Box 44
Cape Canaveral, FL 32920

Tel (321) 783-6833

FILE COPY

September 15, 2003

Maria M. Alamar
6615 W. Cornelia, Apt. 2
Chicago, IL 60630

RE: Social Security Account Number

Dear Maria:

As evidenced by their 9/11/03 letter the Appeals Council has turned down our appeal. I believe this to be inequitable and unfair, given your circumstances.

As we discussed on the telephone today, I suggest you bring this paperwork and my request to the Appeals Council dated 8/8/03 to your Senator or Congressman and petition them for some corrected action on your case.

If you have any questions or have difficulty pursuing this with your Senator or Congressman, please give me a call.

Sincerely,

Richard Renaud & Associates

Richard P. Renaud

Re: Submission to the Record:
GOP and WEB Hearing held 9/24/2003 at 9:30 AM

Submitted Topic: **An Error in Applying WEB Currently in SSA**
by Dr. Ronald Stewart Dick, Columbia University Math. Stat.
(Former Operations Research Analyst at SSA, Army & Census)

This note is done to raise a problem with WEB that was only touch stoned at the 9/24/2003 hearing, but should be looked into along with other problems stated at the hearing, namely:

"Administrative error applying to WEB."

At the hearing the SSA Commissioner admitted the GOP and WEB laws were difficult for her employers to learn and apply correctly. A citation was made to error by an SSA administrative law judge in Chicago (and the writer could name personally another in the SSA-OHA in Washington, D, C.)

1. My first suggestion to stop WEB error is use the online computer programs for IBM and Macintosh by SSA Actuary Steve McKay at www.SSA.gov for years of coverage count.

2. However, years of coverage is **not** the only WEB criteria as mentioned by witness NARFE President Charles L. Fallis, namely:

WEB applies at and after 1985 where first eligibility was after 1985.

It is SSA's understanding of what OPM tells SSA that also governs the application of WEB. In my case, I had to use OPM/MSPB to show that WEB did not apply due to 1985 time considerations starting in 1975 to 1984 since SSA counted only 26 years of coverage. The SSA judge did not understand the MSPB ruling of 3/2002 on federal earnings **all** prior to 1985 because of exempt 1989, 1990, 1999, and 2000 Census work; hence, the case is still pending before the SSA Appeals Counsel.

3. The communication between OPM and SSA is crucial to the above WEB where back SSA collection made collection more like 21 years of coverage until 2005 when it would be 26 years of coverage. (The SSA DO dropped back collection in June, 2003, but still collects $100+ a month as if SSA were right, and MSPB wrong.)

4 WEB exemption for Census work, and statue of limitations was not mentioned at the 9/24/ hearing. To get into these topics is beyond the scope of this note, but as we get closer to 2009 something must be done not to discourage 2010 Census workers if SSA can ignore 1999 and 2000 WEB exemptions in my case. The Census Commissioner should be informed of SSA action on WEB.

The best way to use my WEB/Census case as a learning tool for the current or new WEB laws proposed would for me to speak directly to the SSA Commission's staff on

WEB; not by putting the case on a two year queue in July, 2003, to be handled by any SSA employee who is handling his next case in the inbox tray while over $100 a month for WEB is improperly removed from monthly benefits making an SSA bill returnable to me for 1996 to 2005 of over $12,000.

I wrote the first SSA WC Computer Program in 1973-5 in CSC BASIC, and was an SSA witness in 1982 in US v. CSC when CSC over priced SSA. I am familiar with other complex SSA problems like military, railroad and large family benefits. I would be willing to return to SSA as a consultant, but SSA could get Steve McKay to do more complex programming as I did for WC in the seventys.

I will let Congress review all records in this WEB/Census case and may use this note as proof of my permission. The records are with SSA, FERCCA, OPM, and MSPB.

Ronald S. Dick

Silver Spring MD

Committee on Governmental Affairs

Statement of Junita Drisko, Orrington, Maine 04474

Testimony Before the Committee on Governmental Affairs

September 17, 2003

Thank you for giving me this opportunity to write to you.

My name is Junita Drisko, and I am here today as a secondary school teacher and worker at various private-sector businesses.

I am very concerned about the Social Security offset laws that penalize Maine's retired educators. I, along with thousands of Maine workers, am adversely affected by this legislation and I urge you to support the repeal of the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP).

I have dedicated my life to teaching Maine children. Spending over thirty years in the classroom, I have been committed to teaching my students to be perceptive and skillful readers, writers, and thinkers. Together with my husband, who was a beloved teacher for twenty-eight years, I know that we have made a difference in the lives of hundreds of children.

My husband and I have also owned a small blueberry farm since we were first married about forty years ago. Every year my husband has paid the Social Security self-employment tax ***which is about 15% of his earnings***. I have either raked blueberries or worked in the blueberry factory every summer since I was a teenager and have also had Social Security taxes deducted from my wages. Both my husband and I have earned the necessary quarters to get a Social Security benefit but when we become eligible, we cannot receive them because we were public school teachers.

Because of the offsets, I am faced with a very uncertain future. My husband had to leave teaching when he was 50 and if he predeceases me, his state pension stops. He and I will receive no benefits from Social Security even though both he and I have paid in for 40 years. All I will receive is a small state pension which I will get for my years of teaching. It will not be enough to pay my bills although I have worked almost every day of my life with no vacations.

I have paid into the Social Security system for many years, only to be denied any of the benefits that I justly earned and deserve. Please do what you can to repeal this discriminatory legislation.

Most sincerely,

Junita Drisko

September 19, 2003

The Honorable Susan M. Collins, Chair,
Senate Governmental Affairs Committee
Room SD-340 Dirksen Office Bldg.,
Washington, D.C. 20510

Dear Representative Collins:
I was very pleased to learn of your concern about and action taken in scheduling a hearing on S 349, the Social Security Offsets. I am writing to express concerns and opinions about the existing WEP and GPO Social Security Offsets, so as to provide you with information for the scheduled September 24th, 2003 hearing.

My Personal Experience with the WEP:
I worked as a Medical Technologist, MT(ASCP), full-time for ten years , and part-time for a few years. During that time, I earned my 40 Social Security quarters. There was a teacher shortage, and I had always had a desire to teach, so I went back to college to complete courses that would qualify me for an Illinois teacher's certificate for secondary schools. Later I earned a Master's degree in Education-Guidance and Counseling. I both taught at and coordinated a local hospital school of medical technology prior to taking a teaching position in the Joliet Township High School system, and later, a Counseling position at Joliet Jr. College. I retired from Joliet Jr. College as Dean of Counseling and Advising three years ago. I earned a state pension for my high school and college employment. Had I not stayed 30 years, my state pension would have been reduced. In this day and age, with schools encouraging early retirement, it will be less likely that second- career teachers and other school employees, who had prior jobs in which they had paid into Social Security, will work 30 years in education.

I learned about the offsets back in the 80's, and wrote to then Senator Paul Simon about the issue. The President's Commission on Social Security, with chairman, Dr. Alan Greenspan, appointed by President Reagan, apparently thought that those on State pensions, who also qualified for Social Security benefits were double-dipping, and should be penalized.
I lost over half of my earned Social Security benefits as a result of application of the WEP Offset. I still do not understand why I was singled out for such a cut, and feel I was penalized for entering the teaching profession. Today, we have another teacher shortage. How many will be willing to leave other careers or to begin a teaching career when they learn their earned Social Security benefits from other positions will be drastically cut once they begin receiving a teacher's pension in one of the states affected by the Offsets? The WEP seems to especially penalize those who worked 15-20 years in the private sector and 15-20 years in the public sector.

Experience of Members of State(Illinois) Universities Annuitants Association:
After retiring, I became chair of the Ad Hoc Committee on Social Security Offset/Equity for the State (Illinois) Universities Annuitants Association , (SUAA), which represents

more than 120,000 members of the State Universities Retirement System, a public retirement system for Illinois' 50 public community colleges and 12 state universities. It didn't take me long to form a committee of those who had lost their own and/or their spouses' earned Social Security benefits. Many were widows who had retired from a variety of positions in Illinois public colleges, from cafeteria worker to secretary to teacher, and had counted on obtaining spousal survivor Social Security benefits, only to be shocked to learn that, because of the GPO, they would receive very little or NO Social Security benefits. Yet, in order to have Medicare coverage, they were expected to pay the Medicare B monthly supplement. A few of these women, who are in their 70's and are fortunate to be in good health are still working or have returned to work because of the offset cuts. Others are trying to make ends meet on small state pensions.

The Social Security Administration has a tendency to inform benefit recipients of Offset cuts long after the fact. Often, the Social Security letter indicating an overpayment and need to reimburse Social Security is the retiree's first knowledge of the Offsets. Some of our members received this letter nearly a year after their Social Security benefits had begun and been spent! This Social Security letter neither presents a full explanation of the Offsets nor the calculation used in determining the exact amount of the cut. One of our SUAA members appealed her case several times, but lost, because " the law is the law", and had to reimburse Social Security. Just this week, we have been made aware by members of several more cases of alleged overpayments . Those who choose to appeal also are seeking our assistance in understanding the process and data to be collected.

In this day of computers, it would seem that these Social Security Administration's procedures could be transformed from what I consider to be those lacking in quality into very good business practices. However, data must be timely, clarity must be included in the data provided and human caring- a customer service component- included in dealing with recipients by mail and in person. Many have suffered stress and hardship as a result of lack of knowledge about the Offsets and some of the Administration's practices.

Believing that the Offsets are discriminatory and harmful at best, SUAA*, along with some thirty or more other retiree groups is supporting HR 594 and S 349 for total elimination of the WEP and GPO Offsets. We have been trying to make prospective retirees aware of the Offsets, for more realistic retirement planning purposes, and thus, to relieve the shock most face now when experiencing Offset cuts in their earned Social Security benefits. SUAA members have been writing their stories of how they were affected by the Offsets, and sending them to their Congressional leaders.
Over the years, some of the reductions have been modified and there are numerous bills in Congress designed to modify, rather than eliminate the offsets. New formulas and calculations seem to always adversely affect some group of people The fact that the state of Texas, for one, found a loophole, (now closed), that saved more than a thousand of their retired teachers from the GPO reductions, is further proof that the GPO was flawed in the first place. But why did public service employees have to carry the burden when back in the 80's it was thought that Social Security was going broke? And, what has happened to the billions on dollars that the Federal government reaped from this large

group of public service employees? Unfortunately, the GPO has caught many senior women who never made the high wages to begin with.

It is my hope that the WEP and GPO Social Security Offsets issue and Social Security practices will be seriously reviewed, and changes made to help, not hinder retirees who dedicated many work years in public service positions. Thank you again for your leadership in scheduling a hearing relative to these issues. I look forward to learning the results of the hearing and of a scheduled vote on the Senate floor. Our enthusiasm in attempting to eliminate the WEP and GPO has not and will not wane.
Sincerely yours,

Carolyn T. Engers

Carolyn T. Engers

*State Universities Annuitants Association,

Springfield, IL. 62703

Senate Governmental Affairs Committee
Senator Susan Collins, Chairman

Statement of Jane Nelson, Cleveland, Texas

Testimony for the hearing of Social Security Fairness Act (Repeal of GPO/ WEP)

September 23, 2003

Thank you so much for calling this hearing on S 349 to shed some light on the crass injustice being perpetrated on U.S. citizens who have chosen to be public employees, (public school teachers, county nurses, military personnel and city firemen) and are thereby penalized by having their Social Security benefits reduced or eliminated.

This only applies to 15 non-mandatory Social Security states. According to the Congressional Budget Office the cost of meeting their obligation to these U.S. citizens would be $51.7 Billion over 10 years. These funds would go directly into the economy to meet everyday needs, medicine, rent, groceries—a stimulus, unlike HR 8 which will cost the government $162 Billion over 10 years for eliminating the estate tax. IRS reported that 52,000 people paid estate taxes in 2000. The Social Security Administration reported that 729,234 people lost benefits in 2000 due to the GPO and WEP (estimated close to 1 million for 2003).

I know your committee will hear many stories of the devastating effects this legislation has on the lives of retirees. Retirees, who thought they had planned well for their retirement, found out too late that there is no retirement for them, only continued employment or part time jobs to supplement their pension. Why was this law kept such a secret?

I don't feel that U.S. citizens should have to, "tell their story," to elicit sympathy, or grovel and plead with their government to pay them when they have contributed personally to SS or are eligible for spousal or widow's benefits.

Senator John Cornyn (R-TX) has proposed guest-worker legislation that would allow Mexican nationals to be eligible for SS benefits including

any time that they were in this country illegally. A totalization contract is being negotiated by the SS Administration with Mexico to pay Social Security to Mexican citizens, while denying those same benefits to U.S. citizens.

This is grossly unfair!

Public employees who live and work in the 15 non-mandatory SS states should be allowed their SS benefits. Don't keep Social Security alive by reducing or eliminating the numbers of people who should receive benefits.

Thank you.

Jane Nelson

Jane Nelson

Cleveland, Texas

Senate Committee on Governmental Affairs

Statement of Sharon Richard, Sour Lake, Texas

Testimony Before the Senate Committee on Governmental Affairs

September 24, 2003

Thank you for giving me this opportunity to write to you.

I am a sixth-year Texas schoolteacher. I teach American history, including the American Revolution, the Constitution, and the Bill of Rights, to eighth grade students at Henderson Middle School in Hardin-Jefferson Independent School District. I absolutely love what I teach. As I strive to share with my students the ideas of the Founding Fathers and the many reasons why they fought, deliberated, perspired, and worked on the noble experiment known fondly as the United States of America, I constantly urge my students to undertake a life-long participation in their government. I do my best to instill the belief that the founders' idea of popular sovereignty is still true in this democratic republic, and they must always think of themselves as part of "We the People."

Before my teaching career began, however, for over twenty-five years my husband Randy and I owned and operated Sour Lake Drug, Inc., a small independent community pharmacy.

Both my husband and I have paid significantly into social security over the course of our lifetimes. He began paying into social security at the age of sixteen. I first paid into social security at the age of twenty-one. Also, since we owned our business, we MATCHED the social security paid in by our employees and ourselves. Therefore, we consider that for more than twenty-five years, we paid DOUBLE amounts into social security.

Three years into my teaching career, I found out about the Government Pension Offset and the Windfall Elimination Provision. Of course, at first I could not believe that my government would really take away EARNED social security at retirement. But in the course of the last two years, I have learned that, indeed, my government really will do that.

Yes, my government, the government "of the people, by the people, and for the people," really will literally deny our hard earned and previously paid benefits because of two obscure and misunderstood laws called the Government Pension Offset and Windfall Elimination Provision.

I have learned that when I retire through the Texas Teacher Retirement System, and draw a pension, I will likely lose my spousal benefits because of the Government Pension

Offset. My husband simply cannot comprehend that he has spent thirty years as a diligent independent community pharmacist, often serving the public around the clock, and that his wife of over thirty years will be denied benefits based on the social security he has paid in!

Further, because of the Windfall Elimination Provision, I will also be denied much of my OWN paid-in social security, because I ONLY have 25 "substantial" years of social security. I will not receive the amount of money per month that is quoted on my quarterly social security earnings statement. Meanwhile, of course, I have no choice but to pay into the TRS. I will lose hundreds of dollars each month when I retire, dollars that will make a significant difference in our retirement years. These are my *earned* benefits that I will be denied! And I also paid matching amounts through my business! Unconscionable. Unjust. Unfair. Unbelievable. Incomprehensible.

My salary as a sixth-year Texas social studies teacher is slightly more than $29,000 per year. I am in my mid-fifties, and plan to teach only a few more years. With a meager salary like this, my pension will hardly be a "windfall." And although many people consider pharmacy to be lucrative, on the contrary, small-town independent pharmacies have taken severe financial hits with the advent of insurance-driven HMOs, PPOs, drug formularies, and the like. Accordingly, our business retirement plan was minimal. Because of these factors, we have since sold our little independent pharmacy. Therefore, we had certainly counted on our fully earned social security benefits, along with my small teacher pension, to help with our retirement.

As badly as the WEP and GPO are affecting public servants at present, the future of education is also being severely undermined by these laws. We need quality individuals to enter education, and we need them now. As a measure to recruit these quality individuals, plans such as Troops to Teachers and Careers to Classroom have tried to lure past military and professionals into the classrooms of America. However, as prospective teachers are made aware of these unjust social security laws, they are foregoing the idea of going into the classrooms of Texas and the other 14 impacted states, and rightly so. How wrong it is, for example, to recruit retired military, praise them for excellence in the classroom, and then deny them the social security benefits they earned while serving their country!

These laws are such an injustice to hard-working public servants. And to be told that we are "double dipping" is unjustified and quite untrue.

We know the reasons these laws were implemented, to prevent the "double dipping." But the effect is negligible on those who get large pensions. Those who are hurt are the lowest paid public servants in America. To allow the Government Pension Offset and Windfall Elimination Provision to continue to force custodians and cafeteria workers, bus drivers and school nurses into virtual poverty is simply immoral. It is beyond unjust to allow these dedicated and conscientious, but lowest paid personnel on Texas campuses to be treated in such a manner by their government. To let these laws stand, to postpone the

elimination of these unfair laws through yet another Congress, is a travesty. Two decades of this injustice is long enough.

The General Accounting Office may not have taken into consideration that the cost of repeal of these laws must be measured by more than dollars and cents. The cost must also be measured by the life of each American public servant and the respect each deserves for a lifetime of commitment.

"America's heroes," the firemen and policemen, along with the millions of others who are affected by these unbelievably unjust laws are also having a hard time understanding why this issue appears to be so partisan. This is not a Republican vs. Democrat issue; this is a simple issue of fairness to multitudes of public servants in this great country.

As one of those public servants, I respectfully request immediate elimination of the Government Pension Offset and Windfall Elimination Provision.

Respectfully submitted,
Sharon Richard

Sour Lake, Texas

American history teacher
Hardin-Jefferson Independent School District

Senate Committee on Governmental Affairs

Statement of Suzanne Shaw, Penobscot, Maine

Testimony Submitted to the Senate Committee on Governmental Affairs
April 26, 2003

Thank you for giving me this opportunity to write to you.

My name is Sue Shaw and I am writing to you today as a retired teacher. A retired teacher who, in 4 years when I reach the age to receive the Social Security (SS) benefit that the government has collected the taxes for and has to promised me, will see that benefit either severely reduced (WEP) or totally eliminated (GPO). Because I have not only worked under SS for the required 40 quarters but also have a spouse who contributed to SS for almost 50 years, I will be subject to both the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP). I fully realize that everyone is limited to one SS benefit--instead a complete benefit however, since I chose to be a teacher for 37 years in Maine, I will be eligible to receive not a penny of my husband's earned benefit (GPO) and only 40% of my own (WEP).

One of the arguments I hear is that SS is slanted toward the low wage earners. As I say in the following paragraphs, that is what I thought I was! That is why I was working two jobs and during vacations from school! When you are young and poor, that is what you do--you work extra jobs! When you are old and the benefits that you supposedly earned when you were doing that extra work are denied to you...what do you do then?

Just like Everyone Else...

I am so tired of people acting as though we who are fighting the Social Security Offset of The Windfall Elimination Provision are trying to steal something. I am tired of hearing people tell me that Social Security (SS) needs to be preserved for current recipients and for those who will be retiring in the future, as though we are some type of an unfunded liability. As though we are asking for something that has not been paid for.

I am tired of people who do not understand anything except that they are afraid someone is trying to steal SS retirement money. I am tired of being told that the government cannot afford to pay us 100% of our earned SS benefits.

And hundreds of thousands of workers are tired of being forced to pay into a system from which they will not be able to realize fair benefits.

People who are penalized by the Windfall Elimination Provision (WEP) have paid into the SS system exactly the same as everyone else. Exactly the same formula was used for

withholding SS tax from our private sector work. For every penny we earned, we paid a portion of that penny into SS, just like everyone else.

Social Security says that in order for an individual to receive a benefit, they must first earn "40 quarters" which means a minimum of 10 years working time. Just like everyone else, those of us who are trapped by the WEP have earned those forty quarters--and in many cases well over that number. We are NOT asking for benefits for non-covered work--we simply want the same SS benefits for the same quarters and contributions as everyone else!

The government tells us that SS is meant to be a safety net for those at the low end of the income scale. Those of us who worked full time at one job and evenings and weekends at another thought we fit that description!

We were low paid--so we worked an extra job. We climbed the ladder of advancement and crossed private/public sector lines. We relocated to follow family or opportunity. We opened a small business on the side. We worked...and now we will have to continue to work, because the retirement benefits we were promised for the payments we made will not be forthcoming due to the WEP.

Just like everyone else, we paid 100% of the required tax into SS. But--UNLIKE everyone else, we will NOT receive a 100% benefit! Because we receive a "public pension" for part of our work history, our benefit for work under SS is offset. UNLIKE everyone else, our earned SS benefit could be well less than half of what was promised by the government.

Unlike those with a 401K, our public pension will cause our SS benefit to be slashed. Unlike a private sector pension from an employer, our public pension will cause our SS benefit to be reduced by thousands of dollars.

Public pensions and SS are different systems--different forms of government (state/federal) oversee them, different taxes and contributions support them, and they have different vesting and benefits schedules. To receive both SS and a public pension is NOT double dipping--it is receiving different benefits for different paid taxes for different work under different employers. It is paying in twice--and working twice. Benefits should be paid twice--once from each employer--both at the 100% level!

All we are asking for is the SS benefit we earned. The SS benefit promised when we paid SS taxes on every penny earned for year after year after year...**just like everyone else.**

The Widows of America...

Imagine this--you are recently retired. While your children were young, you worked part time occasionally, but spent a lot of time at home, raising your family. When they were through with school, you took your turn at college, and at mid-life began the career you had always dreamed of--teaching school. You worked for 20 more years, and now, you and your spouse are looking toward a well-deserved retirement. A relatively common, uncomplicated scenario.

But then, as happens all too often, tragedy strikes and your beloved spouse unexpectedly dies. Your world collapses, and things turn upside down as you bury your life-partner. As time passes, there is business that needs to be seen to, and you begin to deal with the paper work that death creates. You go down to the Social Security offices, and a bleak picture becomes even more so, and the future becomes not only lonely, but also frightening, because you find that there will not be enough money to live on. Social Security says you can not have any of your deceased spouse's benefit. You will be living on only your public pension from your relatively short career.

Every day, all across the country, widows (and, of course, widowers) find that, when they go to SS after the death of their spouses, there will be either severely reduced survivor benefits, or none at all. These surviving spouses find that they are denied the benefits earned for them by the work record of the deceased simply because they (the survivors) have a public pension.

This law that devastates the income of so many of America's elderly widows is the Government Pension Offset (GPO). Passed in the early 80's, it was designed to keep those with high incomes from doing what was perceived as "double dipping" or getting two top-level government retirement benefits. As conceived, the law had good points. In practice, however, it is extremely flawed. What the GPO does is give a secure retirement the kiss of death for low and middle income public employees who, along with their spouses, have worked, paid their bills, and paid their taxes for many long years. What the GPO does, in fact, is put the income of many of these retirees at the poverty level upon the death of a spouse. What the GPO does is see to it that all too often, when the spouse dies, the benefit dies also.

These retired public employees--postal workers, clerical staff in the state offices, police, firefighters, Department of Transportation workers, secretaries, teachers, guidance counselors, bus drivers, game wardens, public utility workers, federal employees, custodians, state health workers, prison employees, air traffic controllers, and many more, have retirement income stolen by the GPO. The loss of this income, which had been earned for them by their spouses, makes many of these dedicated individuals eligible for public assistance programs. They become eligible for heating assistance, housing assistance, food stamps, and health care. Programs that, in fact, end up costing the government more money than it would to simply give the workers their earned benefits in the first place.

These people do not WANT assistance--they want the money from the benefits that SS promised when SS taxes were taken from paychecks. As one worker put it..."It's all tax money....it's just how you get it! It would be cheaper for the government to keep me off of the 'dole' if it can!" These widows can find themselves living on less than $25 a day--many times much less, simply because they had the misfortune to chose to work in the public sector. As Marti Flint said in the January 8th 2003 CBS Evening News "Eye on America" segment on SS--"the only thing I did wrong was to go to work in a school!"

The encouraging of workers to embrace "2nd careers"...

President Bush encourages the military to turn to a 2nd career in the classroom in his "Troops to Teachers" program. One has to wonder if the military personnel who walk into classrooms after 20 years in uniform realize that they could possibly, with the opening of that classroom door be closing another! They could easily be closing a door on a large portion of their SS benefits. Military pensions and SS paid while in the military are exempt from the Windfall Elimination Provision (WEP). But the WEP says a public pension from non-SS-covered work cancels out that exemption when a state pension from non-covered work is thrown into the formula!

People from the private sector are urged to step to the front of the classroom and "make a difference" as a public servant. Public workers begin small businesses on the side, or in the case of teachers or other school personnel, work summers and vacations to help make ends meet. Whatever the scenario, when an individual's work history straddles the public sector/private sector line, it is like having one foot on the boat and one foot on the dock. If their public sector work is in non-SS-covered employment, these individuals are going to take a soaking!

Unlike the person with one foot on the dock and one on the boat, however, the vast majority of those affected by the WEP do not even suspect that disaster is imminent! They think they have planned ahead! They had paid in good faith into one system for retirement, and then into another! They had paid the taxes and expected the benefits. They expected promises made by the government to be kept! What a nasty shock to discover, often not until the very edge of retirement, that 100% of that *promised benefit* will not be forthcoming.

It has been said that elimination of the Offsets would cost too much and would cause depletion of the SS account that much sooner. Whose money is being held so tightly in the governmental fist? Don't forget--we paid in for years and years! If a state worker knows that they are only going to receive 40% of their SS from other jobs, will the government let them only pay in 40% of the tax rate? Definitely not.

So--here is the public worker, retired and needing more income because the WEP has significantly reduced planned on retirement benefits. Being a cheerful, energetic soul, a post-retirement job is decided on as being the answer, and off to Wal-Mart our retiree goes. Unfortunately, that happy little retiree is now paying even more money into the Social Security system. Money that is, of course, at some point in the future going to be denied as a benefit. Our retiree is caught between a rock and a hard place by the WEP.

Most retirement plans tout the Social Security Administration's "three-legged stool of retirement"--pension, SS and savings. The public workers affected by the Offsets had earned their SS "quarters", had a public pension, and had saved. They had, in fact, planned for their future. Unfortunately for them, however, the WEP cut off one of the legs and the stool fell over!

Heroes need a hand...

These laws, The Government Pension Offset and the Windfall Elimination Provision, are undermining the financial quality of life for America's Heroes. The very people who dedicate their lives to serving the public from one side of the country to the other, the firefighters, the police, the teachers and the other public workers are finding that their reward for that life of service is a slap in the face from the federal government. Over 75% of the nation's emergency responders will be affected by these laws, almost half of the teachers, and one third of the public employees, for a total of approximately 4% of the work force.

They are finding that they cannot collect benefits earned for them on a spousal work record under SS (the GPO), and they are finding that benefits from work that they did with their own hands is denied them also (WEP).

These laws, the GPO and the WEP, have been like dirty little secrets that no one talked about in polite company. No one discovered them until the day they went down to SS to begin collecting a benefit...and what could be done then? No one explained to people changing careers that if they crossed the line between covered and non-covered SS work that they were putting their retirement income at risk. No one pointed out the fine print on the SS form that gives approximated retirement

income, which warns..."income from non-covered work ***may*** affect benefits". No one today is telling the young people who are becoming the teachers of tomorrow that they need to consider these laws when deciding where to teach. The GPO and the WEP were virtually unknown just a few short years ago. But as with any secret, tell a few people, and soon everyone knows! We have been saying in loud voices all across the country...***"HEY--LISTEN UP--THESE LAWS APPLY TO YOU!"***

What a "Thank You"...

When America is in crisis, we turn our eyes and hopes to our heroes...to the armed services and the emergency responders who dedicate their lives to serving the public. In our memories live times of Iraq, Desert Storm, Vietnam, Korea, WWII and of course the devastation of 9-11.

We revere these men and women. We build memorials, dedicate parks, and hold parades in their honor. And then—when they decide to move on and re-dedicate their lives to the people of America by becoming workers in the public sector in certain geographical areas, the federal government pays them back by stealing the Social Security (SS) benefits that they bought and paid for in their military or ER careers!

If these brave men and women who have put their lives on the line as policemen, firemen and soldiers decide in their 2nd public service career to settle in certain areas, they will find that they will lose over ½ of the SS they already earned. The Windfall Elimination Provision (WEP), a federal law enacted in the late 70's, causes anyone who accepts a pension from "non-covered" work (work that does not pay into SS) to lose a substantial portion of their earned SS. Those who have already dedicated their lives once to the public should not be cheated out of their SS benefits just because they chose to live in certain geographical areas as they re-dedicate their lives to public service. These thousands of American heroes are going to lose SS that they earned in time dedicated to the safety of America.

The WEP changes the formula that is used to figure SS benefits for those who also earn a pension from non-covered work. This changed formula costs those with a SS pension up to $6,000 an amount equal to 60% of their benefit. For those with larger SS pensions, the price tops out at $3,600 a year.

For anyone to lose a retirement benefit that has been earned and paid for, to lose a benefit that is expected, is devastating. For the government to break the promise that was made when the taxes were paid is unfair. To steal SS benefits in a manner that is completely unfounded is criminal.

But....to cut the benefits of those who have dedicated and re-dedicated their lives to the service of the American public is even worse than devastating, unfair and criminal...it is an unpatriotic practice of the lowest order!

What a governmental payback for America's heroes!

A new twist...

There is an argument in favor of elimination of these laws from the state budget point of view. State budgets are in big trouble. There is not enough money coming in, to simplify the matter. But--there is a simple solution that would increase the cash flow into some of these economically strapped states, and that would, as President Bush says, "stimulate the economy". This stimulation would, in turn, help the state budgets because people would be spending this money and then paying sales tax on what they buy. More business would mean a need for more employees, which means more jobs.

If a one-time tax break payment of several hundred dollars is supposed to help the economy, how much more help could be given by allowing these earned benefits to be paid month after month? If "stimulation of the economy" is the desired result, how much better it would be to eliminate the Social Security Offset laws than to simply give a one time tax reduction of a few hundred dollars!

I am a retired Physical Education teacher, and over the 37 years that I taught, one of the things that was crystal clear was "you do NOT change the rules in the middle of the game". Back in the early '80s, a well-meaning Congress changed the rules in the middle of our game. As a result, we are in a 7th inning slump. But we have high hopes for a comeback.

There is no 'right way to do the wrong thing'...

Now, with hope in our hearts, we ask that Congress realize the unfairness of these laws and the necessity of voting to eliminate them by passing HR594 and S349. We ask that Congress not settle for less than "the Social Security Fairness Act of 2003". We ask that Congress do this because it is simply the right thing to do. And, as the title itself says, "the fair thing to do". Because...there is no right way to do the wrong thing, and **the Social Security Offsets are wrong.**

October 8, 2003

Senator Susan M. Collins
Chairman
Senate Committee on Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Collins:

Our Association appreciates this opportunity to offer our comments on Social Security's Government Pension Offset (GPO) and Windfall Elimination Provision (WEP), as well as mandatory Social Security coverage. We thank you for including our statement in the September 24, 2003 hearing record of the Senate Committee on Governmental Affairs.

For the past 35 years, our Association has been the leading advocate for public retirees and their survivors in Massachusetts. Currently, our membership totals over 58,000, many of whom now reside in Maine.

While our primary focus has been, and remains, at the state and local levels, we have also involved ourselves in federal issues, particularly those related to Social Security and Medicare. Foremost are the GPO, WEP and mandatory Social Security coverage.

Among our members are widows, who, in addition to being homemakers, worked at relatively modest public sector jobs that supplemented their family income and enabled them to earn, by today's standards, a relatively small public pension. These members, and their husbands, believed that if they became widows they would hopefully have an adequate retirement income because they would also receive their husband's full Social Security benefits.

Unfortunately, when their husbands died, they discovered, to their shock and dismay, that because of their small pensions, they were not eligible for their deceased husband's full Social Security. Instead, they were told by the Social

Security Administration (SSA) that because of the GPO, they would receive far less than they anticipated.

Our membership also includes those who worked two jobs - one in the public sector and another with a private employer - in order to support their families. Naturally they expected that their hard work in the private sector entitled them to the same Social Security benefits as their co-workers.

However, these expectations for many of these members failed to be realized when they received their first Social Security check. That's because the WEP reduced their Social Security benefits by as much as sixty percent.

Over the past years, the number of members contacting the Association over the GPO/WEP's devastating effect on their lives has steadily increased. They rose to such a level that our Association committed itself to resolving their problem.

Throughout this debate, we have maintained that the issues of the GPO and WEP are not about "double dipping" for an entitlement. To the contrary, these issues are about the federal government following through on a commitment made generations ago. These retirees and their spouses have paid for and earned a benefit that they are now being unfairly denied.

It is because of this that we call upon the Committee to release a report calling for immediate legislative action by the senate. We believe that such legislation should repeal both the GPO and WEP.

We also believe that any bill should not include mandating that newly hired public employees in Massachusetts, and other non-Social Security states, be covered under Social Security. Analyses have shown that the short-term infusion of Social Security taxes from new hires will have a relatively insignificant effect upon the system's future solvency. Moreover, the revenues, generated by these taxes, will be offset in the long term when those employees receive their Social Security benefits.

More important is the overwhelming tax increase upon the Commonwealth and its political subdivisions. State agencies have placed the cost at nearly $3.9 billion over the first 10 years under mandatory Social Security. As a result, state and local officials would have to increase taxes, cut essential services in areas, such as education or public safety, or both. Simply put, the end does not justify the means in this particular case.

In the 1950s, state and local governments were given the option to join in the Social Security system. While many states and localities did enroll in the system,

Massachusetts and its political subdivisions chose to maintain their own comprehensive retirement system, specifically developed for their own retirees and employees, because it provides superior benefits for those who chose a career in public service at lesser pay.

If one considers how mandatory Social Security will disrupt the well-established system and cause new long-term fiscal problems at the state and local levels, then only one conclusion can be reached. Social Security should not be mandated for newly hired public employees in Massachusetts and similarly situated states.

In conclusion, we again appreciate this opportunity to voice our opinion on the GPO, WEP and mandatory Social Security and urge the Committee to act promptly on needed legislation repealing both the GPO and WEP. There is no question that it will bring a deserved measure of dignity to the lives of those currently being severely hurt by these laws.

On behalf of our 58,000 members, I thank you for your hard work and serious consideration of these issues. Your leadership in holding the September 24 hearing was instrumental in helping to bring the GPO and WEP issues to light before the full Senate. Our hope is that your colleagues will work together towards a remedy in the same bipartisan manner in which you have displayed.

Thank you.

Sincerely yours,

Ralph White
President
Retired State, County and Municipal
Employees Association of Massachusetts

Shawn Duhamel
Legislative Liaison

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WRITTEN TESTIMONY OF THE

FEDERALLY EMPLOYED WOMEN (FEW)

SENATE GOVERNMENTAL AFFAIRS COMMITTEE

HEARING ON
"Penalty for Public Service: Do the Social Security Government Pension Offset and Windfall Elimination Provisions Unfairly Discriminate Against Employees and Retirees?"

September 24, 2003

Federally Employed Women (FEW)
Submitted by Patricia Wolfe, President
1666 K Street, NW
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Washington, DC 20006
(202-898-0994)
www.few.org

FEW is a private, non-profit organization founded in 1968 after Executive Order 11375 – that added sex discrimination to the list of prohibited discrimination in the federal government – was issued. FEW has grown into an international organization serving the one million federally employed women (both civilian and military). FEW is the only organization dedicated solely to eliminating sex discrimination in the federal workplace, and the only organization that monitors legislation particularly of concern to women employed in the federal government.

INTRODUCTION

Federally Employed Women (FEW) very much appreciates the opportunity to submit this written testimony on the repeal of the Government Pension Offset (GPO) and Windfall Elimination Provisions (WEP) on federally employed women and men. On behalf of the one million women employed in the federal government and military, we thank Chairman Collins, Ranking Member Joseph Lieberman and the other Senators serving on this Committee for conducting this important hearing. We also especially want to thank Sen. Dianne Feinstein and the 23 other Senators who have joined and cosponsored S 349, the Social Security Fairness Act of 2003 that repeals both the GPO and WEP. These provisions are simply unfair and should be repealed.

FEW is a private, non-profit organization founded in 1968 after Executive Order 11375 – that added sex discrimination to the other forms of discrimination prohibited in the federal government – was issued. The early organizers of FEW realized that the government could dismantle the Federal Women's Program (FWP) that was established after E.O. 11375 was issued within most Federal agencies. They wanted to ensure that there would always be an organization dedicated to promoting equality for women and addressing concerns of women in the Federal workforce.

As a private organization, FEW works as a constructive pressure group to improve the status of women employed by the Federal government. This includes contact with Congress to encourage progressive legislation. FEW national officers also meet with agency officials at all levels to demonstrate support of the FWP, encourage officials to support the program and to obtain insight on the effectiveness of the FWP at agency and local levels. FEW has been called on in past years to testify before Congress on sexual discrimination and sexual harassment cases.

For 35 years, Federally Employed Women has been working to end sexual discrimination and enhance opportunities for the advancement of women in government. Every day, nationwide, FEW members work together to bring about an awareness of the issues facing women throughout the federal government and achieve positive reforms and equality for women in the federal workplace.

In addition, FEW members support all efforts within the government to improve operations and efficiencies in the federal workforce.

THE PROVISIONS

The Government Pension Offset (GPO) was enacted in 1977 to prevent government retirees from collecting both a government annuity based on their own work and Social Security benefits based on their spouse's. This law decreases by two-thirds whatever spousal social security benefits for which a retired government worker might be eligible.

The GPO, in effect, prohibits federal retirees from collecting both a full Civil Service Retirement System (CSRS) annuity based upon his or her own government employment and full Social Security benefits based upon a spouse's employment. The victims of GPO are largely elderly women who are both CSRS annuitants and widows of private sector employees. Had these women spent their careers anywhere but the federal government, they would be entitled to full, unreduced Social Security spousal or survivor benefits. But because they earned their pensions through federal service under CSRS, their Social Security benefit is "offset" by their own earned retirement benefits.

The other provision – the Windfall Elimination Provision (WEP) – greatly reduces the Social Security benefits of a retired federal worker who paid into Social Security and also receives a government pension. Private sector retirees receive monthly Social Security checks equal to 90% of their first $561 in average monthly career earnings, plus 32% of monthly earnings up to $3,381 and 15% of

earnings above $3,381. Federal retirees however are only allowed to receive 40% of the first $561 in career monthly earnings, a penalty of $280.50 per month simply for working in the federal government.

OUR VIEWS

FEW supports the repeal of both of these unfair provisions. Both the GPO and WEP lower the retirement income of federal employees by altering the Social Security benefit formula for certain groups. What is particularly egregious is that spousal and retirement benefits are reduced for Americans simply because they worked for the federal government. The end result is to dissuade more potential federal workers from joining the civilian workforce.

Additionally both affect women much more harshly than men despite the fact that older women are one of the fastest growing poverty populations in our nation today. Plus, women are more likely to spend time out of the workforce (about 12 years) to tend to family care giving responsibilities. That is time she is not earning a pension, vesting in a pension or contributing to Social Security. This absence from the paid workforce translates into inadequate retirement income and an increased financial dependency on their spouses.

In general, women who have worked in the federal government during their career still tend to retire from government at lower grades, and the current provisions of the GPO and WEP disproportionately affect them.

The long-term cost of eliminating both of these very unfair provisions is negligible, according to Social Security's actuaries. Yet the reduction in retirement income for those who are now affected by either GPO or WEP is anything but negligible.

GRASSROOTS EFFORTS

FEW, on August 1, asked its members and other interested parties to send letters to their Senators urging them to co-sponsor S 349. In less than two months, over 1100 letters were sent to 71 Senators representing 36 states. Obviously this is a very important issue to thousands of Americans who are adversely impacted by these unfair provisions or simply believe that they need to be repealed. During these times of an aging workforce, we need to do what is right for federal retirees. Americans who choose to serve their country by working for the federal government should not then be penalized during their retirement years. These provisions need to be repealed as soon as possible.

Again, FEW very much appreciates the Committee's and Chairwoman's interest in this issue and all the support you have given federal workers in the past. I, as well as the thousands of other FEW members, am proud of the work we do for the federal government, and simply want to receive those retirement benefits to which we are entitled. We look forward to working with the Committee members and their staffs to repeal these unfair provisions in any way you see fit to best produce positive results to repeal both the GPO and the WEP. It is time to do the right thing for federal employees.

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