

Social Security

Program Operations Manual System (POMS)

TN 27 (05-99)

RS 00605.360 WEP Applicability

Citations:

Social Security Act as amended in 1983 — § Sections 215(a)(7) and 215(d)(3);
Regulations 20 CFR 404.213 and 404.243.

A. Background

The Social Security Amendments of 1983 (P.L. 98-21) includes a provision that eliminates “windfall” Social Security benefits for retired and disabled workers receiving pensions from employment not covered by Social Security. Under this provision, a modified benefit formula is used to determine the NH's primary insurance amount (PIA).

Social Security benefits are based on the monthly average of lifetime earnings. In the basic formula for figuring benefits, the first part of the average earnings is multiplied by 90 percent; the second part is multiplied by 32 percent; and any part of the average monthly wage remaining is multiplied by 15 percent. However, under WEP, the 90 percent factor is replaced by a factor ranging from 50 to 80 percent for workers who reached age 62 or became disabled between 1986 and 1989. For those who reach age 62 or become disabled in 1990 or later, the 90 percent factor is replaced by a factor ranging from 85 to 40 percent depending on the number of years of “substantial” earnings the NH has.

B. Definitions

1. A pension

A pension is a periodic or lump sum payment from an employer's retirement or disability plan, based on employer and/or employee contributions and based on eligibility factors such as age, length of service or earnings. Payments from either defined benefit (DB) or defined contribution (DC) plans may be considered pensions for WEP purposes. For a pension to cause WEP, the payment must be based on earnings for service that were not covered by Social Security. (For additional guidance on DC plans, see RS 00605.364A.3. and RS 00605.364B.1.)

2. Eligible

An individual is considered eligible when he or she meets all requirements for the pension except for stopping work or filing an application. (See RS 00605.364B.)

3. Entitled

An individual is entitled to a pension when he or she has applied for benefits and has proven his or her rights to benefits for a given period of time. (See RS 00605.364B.)

4. Years of Coverage (YOCs)

YOCs are substantial years of Social Security earnings. See chart in RS 00605.362A.1.

C. Policy WEP application

1. When WEP is applicable

The formula for determining the PIA is modified when the following situation occurs:

- a. A worker becomes eligible for old-age insurance benefits after 1985; or
- b. A worker becomes eligible for disability insurance benefits after 1985; and
- c. For the same months after 1985 the worker is entitled to old age or disability benefits, the worker also becomes entitled to a monthly pension(s) for which he or she first became eligible for after 1985 and, the pension is based in whole or in part on earnings in employment which were not covered by Social Security.

NOTE: If the worker is entitled to spouse's benefits on another social security number, the Government Pension Offset (GPO) may apply. For more information about GPO, see GN 02608.100.

2. When PIA is recomputed to apply WEP

If the NH becomes entitled to an applicable pension after the MOET for RIB or DIB, the PIA is recomputed to apply WEP in the first month of the pension entitlement. However, the WEP is not recomputed due to changes, such as yearly increases, in the money amount of the pension.

3. How the WEP PIA is used

- a. All benefits, including the family maximum, are determined using the WEP PIA.
- b. The WEP PIA is used to decide if the NH is eligible for auxiliary or survivor benefits on a different record.
- c. The WEP PIA does not apply when the special minimum PIA method is used.

4. How WEP is applied

The WEP was phased in for workers eligible for retirement or disability insurance benefits and for a pension from non-covered employment beginning in 1986.

WEP is applied as follows based on year of eligibility:

Eligibility Year	First Factor in Benefit Formula
1986	80 percent
1987	70 percent
1988	60 percent
1989	50 percent
1990 and Later	40 percent

NOTE: See RS 00605.362 to adjust the first factor percentage for partial exemption when NH has 21 or more YOCs. See RS DAL00605.360.

5. When WEP application ends

The WEP computation is no longer used when:

- the entitlement to the pension payment ceases or the proration of a lump sum payment based on a specified period ends,
- the NH dies (in the month of the NH's death, the PIA is recalculated without applying WEP), or
- the NH becomes eligible for the WEP exemption by earning 30 YOCs. (The system will automatically identify additional YOCs and consider a recomputation for WEP.)

D. Policy - eligibility for Social Security benefits

1. Eligible for old age retirement benefits

For purposes of applying WEP, an NH is eligible for a Social Security old age retirement benefit in the month he or she attains age 62.

2. Eligible for disability insurance

An NH is eligible for an SSA disability benefit in the month of disability onset when the claimant meets both fully and disability insured status. If the onset date is before 1986, WEP does not apply to the disability exclusion (freeze) computation. For the non-freeze computation, the NH is eligible in the first month of the waiting period. These are two separate computations and SSA uses the computation that is more beneficial to the claimant.

EXAMPLE: If the onset date is 12/15/85 and the first month of the waiting period is 1/86, we would compare two PIAs. The exclusion PIA would not be subject to WEP because the eligibility date is

before 1986. The non-freeze computation would be subject to WEP because the eligibility date is 1986. The two PIAs would be compared and the higher would be paid.

3. Prior period of disability

A prior period of SSA disability exempts an individual from WEP only if he or she became entitled to a disability insurance benefit or freeze before 1986 and remained so entitled in any of the 12 months immediately before attaining age 62 or the new disability onset. However, the WEP will apply in computing the PIA if this prior period of disability is disregarded (non-freeze computation).

NOTE: An individual receiving disability benefits may also be subject to the Public Disability Offset in addition to WEP. (See DI 52101.001.)

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RS 00605.360 - WEP Applicability - 06/24/2013

Batch run: 06/24/2013

Rev:06/24/2013