Social Security

Program Operations Manual System (POMS)

TN 35 (06-15)

GN 00307.290 Evidence of Foreign Pensions and the Windfall Elimination Provision (WEP)

A. Introduction

WEP is intended to eliminate windfall Social Security benefits for retired or disabled workers who also receive pensions based on work which was not covered under the U.S. Social Security system. RS 00605.360 contains a more detailed explanation of this provision.

For months **after** December 1994, this instruction applies only to those individuals eligible for both a regular title II (nontotalization) benefit and a foreign pension other than a foreign totalization benefit which is based on an agreement with the United States. For months **before** January 1995, this instruction applies to individuals eligible for a regular title II benefit and any foreign pension, including one based on a totalization agreement. GN 01701.300 shows how WEP affects workers entitled to totalization benefits.

B. Definition

A **foreign pension** is any periodic or lump-sum payment made by either a foreign employer or a foreign country.

C. Policy

1. General

Generally, SSA assumes that work which was covered under a foreign social security system was not covered under U.S. Social Security.

2. Foreign pensions

Generally, pensions based on noncovered work include social security or private pensions from foreign countries. Foreign payments may be only partially related to work (see GN 00307.290C.5.).

3. Foreign pensions which trigger WEP

A foreign pension based on post-1956 work will trigger WEP if it is:

- a private or governmental pension from a country which does not have a totalization agreement with the U.S., or
- for months **after** December 1994, a private or governmental pension from a country which does have a totalization agreement with the U.S. — if the individual is receiving a nontotalized U.S. benefit and the foreign pension is not based on a totalization agreement with the United States (see GN 01701.305).

Only the part which is based on noncovered work after 1956 is used.

4. Foreign pensions which do not trigger WEP

Foreign pensions based solely on non-covered foreign employment before 1957 do not trigger WEP (e.g., Ghetto pension or ZRBG).

Foreign pensions earned by the following under dual coverage situations do not cause WEP to apply:

a. U.S. citizens and residents who worked in foreign countries and were subject to both U.S. and foreign social security coverage on the same earnings (e.g., a U.S. citizen working for a foreign affiliate under a 3121(l) agreement — see RS 01901.070);

b. Self-employed persons who were covered by both the U.S. and the foreign country on the same earnings.

5. Payments which cannot be used to apply WEP guarantee provision

Some foreign pensions are not based in whole or in part on work performed after 1956. Therefore, the following foreign pension payments cannot be used to apply the WEP guarantee provision:

a. **Universal pension supplements** payable to all aged individuals in a particular country, and not just to qualified workers.

b. That part of a pension based on **voluntary social security contributions** which some countries allow individuals to make in order to increase the amount of their pension.

   EXAMPLE: Individuals in the United Kingdom may continue to make (voluntary) social insurance contributions to that system during periods they are not working in covered employment or self-employment.

c. **Statutorily mandated minimum social insurance benefits;** i.e., that part of a social insurance benefit representing the difference between the amount of the benefit based on noncovered earnings and the actual amount paid after the benefit is raised to a statutory minimum.

EXAMPLE: Italy pays a statutory minimum social insurance benefit, which is administratively increased if the benefit based on the individual's work history alone is not sufficient to meet the minimum required by law.

d. **Additional allowances allotted for dependents** which increase the pension amount to a given worker, and which are unrelated to actual work performed.

   EXAMPLE: Both Ireland and Germany pay family allowance benefits for children, which are unrelated to the pensioner's work history.

e. **Pensions based only on residence or citizenship** in a particular country; i.e., the pension is not based on work.

   EXAMPLES:

   - Australia and New Zealand pay social (insurance) security benefits which are financed entirely from general revenue. There is no direct tax to either employees or employers to support the program. Both countries pay the benefits to all residents and may pay benefits abroad in certain situations.
   - In Israel, the National Insurance Institute (NII) pays a flat-rate old-age pension to qualifying Israeli residents. The NII pension is payable whether a person worked or did not work.

     Since the basis for payment of the Australian, Israeli and New Zealand pensions are not derived from an individual’s work-related earnings, these benefits do not cause the WEP to apply.

f. **That part of a foreign pension which is based on covered work** (e.g., part of the work on which the pension is based was for an employer which did not have a 3121(l) agreement for its employees, while part was for an employer which had such an agreement.)

NOTE:

The examples listed above are not all-inclusive. Other countries allow voluntary contributions, pay family allowance benefits, and so on.

6. Countries having “two-tiered” social security systems

Many countries have a “two-tiered” social security system; i.e., some benefits are directly related to the individual's work and earnings, while other benefits are residence-based. In other countries, payments made under the social security program appear to be earnings-based but in fact are not. It is therefore important to question the claimant/beneficiary closely during the claims interview (and to examine any evidence he/she may have) to determine whether the pension received may, in fact, be used to apply WEP. Generally, an award notice or letter issued by the paying agency in the foreign country will suffice.

EXAMPLES:

a. **Canada.** Payments made under the Old Age Security Program (OAS) are residence-based and may not be used to apply WEP. Payments made under the Canada Pension Plan (CPP) or the Quebec Pension Plan (QPP) are earnings-based and are subject to WEP offset.

b. **Sweden.** Benefits paid under Sweden's pension program include a flat-rate basic benefit based on residence, as well as a benefit paid under the earnings-related supplementary pension program (known as ATP).

c. **Norway.** The basic pension paid under the National Insurance Scheme (NIS) is based on residence in Norway, while the supplementary pension is earnings-related.

d. **Finland.** The National Pension Scheme (NPS) pays flat-rate benefits based on residence, while the Employment Pension Scheme (EPS) pays benefits based on a worker's earnings.

e. **Netherlands.** Residence-related payments are made under the National Insurance Scheme (NIS) and earnings- related payments under the supplementary Employed Persons Insurance Scheme (EPIS). In addition, certain individuals who have lost their jobs prior to having attained retirement age may qualify for a “pre-retirement” payment. This payment is actually a form of unemployment compensation and may not be used to apply WEP.

f. **Switzerland.** Ordinary pension benefits are based on a worker's contributions, while Switzerland also pays an “extraordinary” benefit which is needs-related, not based on contributions, and payable only to residents of Switzerland.

NOTE:
See GN 01701.320 for a list of totalization agreement countries and which types of pensions paid by those countries will cause WEP to apply and which will not.

7. Evidence

Photocopies of evidence used in connection with WEP must be certified photocopies (see GN 00301.095). Evidence of entitlement to a foreign pension will generally be a letter or award notice issued by the paying agency in the foreign country.

8. Reporting responsibility

It is the beneficiary's responsibility to notify SSA promptly when he becomes entitled to a pension based on noncovered work after 1956. This is explained in SSA Pub. No. 05-10137 (Social Security - Your Payments While You Are Outside the United States), the foreign rights and responsibilities booklet.

D. Procedure - developing amount of foreign pension

1. Same earnings subject to both U.S and foreign social security coverage

Apply the same rules for verifying and determining the amount of a foreign pension as for pensions based on other noncovered work (see RS 00605.370 - RS 00605.374).

If a claimant alleges he also paid Social Security tax for a period of employment or self-employment shown on the SSA-308 (Modified Benefit Formula Questionnaire-Foreign Pension) as a period of noncovered work for which a foreign pension may be payable, verify this by checking the earnings record. If necessary, ask the claimant to contact the employer for the information.

2. Part of work subject to U.S. social security coverage

Ask the claimant to get the needed information directly from the employer or agency involved if the information on the SSA-308 is not sufficient to determine which parts are based on covered and noncovered employment.

3. Verifying foreign pension amount

Process the case as explained in RS 00605.370B. If the claimant has no (or an inadequate) reply to his requests to the foreign employer or agency, request the Office of International Operations (OIO) to assist in getting the necessary information (see GN 00904.220).

4. Converting weekly amount to monthly amount

Be aware that sometimes certificates of entitlement to a foreign pension will indicate a weekly pension amount rather than a monthly amount. To convert a weekly pension to a monthly pension, multiply the weekly amount by 52 and divide by 12.

E. Procedure - prorating a foreign pension

When it has been determined that a foreign pension is based in part on noncovered earnings and in part on a payment which may not be used to apply WEP (see GN 00307.290C.5.), prorate the foreign pension in order to obtain only that part based on noncovered earnings. Prorate the pension as follows:

- multiply the total pension amount (after converting it from a weekly amount to a monthly amount, if necessary) by the ratio of the number of months of noncovered work over the total number of months used in the computation; therefore
- multiply the pension amount by the total number of months of noncovered work after 1956, **and**
- divide this number by the total number of months used by the foreign country to compute the pension, based on both noncovered work **and** the pension payment which may not be used to apply WEP.

EXAMPLE: A worker is entitled to a German pension of 400 deutsch marks (DM) based on periods of employment and voluntary contributions in Germany from January 1951 through December 1970 (a total of 240 months). He made voluntary contributions to the German pension plan from January 1968 through December 1970 (a total of 36 months).

- Exclude months before 1957, since the WEP Guarantee applies only to noncovered earnings after 1956. This yields 168 months.
- Exclude the 36 months from 1968 through 1970 for which the worker made only voluntary contributions; i.e., he did not work in noncovered employment. This leaves 132 months during which the worker actually worked in noncovered employment after 1956.
- Multiply 400DM 132/240; i.e., 400DM 132 months = 52,800 divided by 240 months = 220DM. Therefore, for purposes of the WEP Guarantee provision (see GN 00307.290F.), the worker's foreign pension is 220DM.

Treat any month for which there are both noncovered earnings **and** one of the non-usable payments above (e.g., a month for which voluntary contributions were made) as a month of noncovered earnings.

F. Procedure - applying the WEP Guarantee

If, based on the worker's allegations, use of the WEP Guarantee (see RS 00605.370) would result in a higher PIA in the example above, apply the WEP Guarantee as follows:

- Require verification of the pension amount from the paying agency/ employer. Make sure this includes the amount of the pension in the first month of concurrent entitlement to both the pension and the Social Security benefit, as well as the months of employment (after 1956) and the months of (for example) voluntary contributions on which the pension is based.
- If the claimant has the necessary documentation before adjudication, compute the PIA using the WEP Guarantee. If not, compute the PIA using the maximum reduction, and tell the claimant SSA will recompute the PIA using the WEP Guarantee when SSA receives the necessary verification of pension amounts from the agency/employer. Regardless of which action is taken, document the claims file. Refer any questions on WEP and foreign pensions to the Office of International Programs at:

  Social Security Administration
  Office of International Programs
  3700 Operations Bldg
  6401 Security Blvd.
  Baltimore, MD 21235

G. Procedure - beneficiary reports

Apply WEP in accordance with GN 03001.020 if the beneficiary reports entitlement to a pension based on noncovered work. See GN 03001.005 if the report comes from a third party.

Do not apply WEP for months **after** December 1994, if the beneficiary receiving a regular U.S. Social Security benefit reports receipt of a totalization benefit based on an agreement with the United States. See GN 01701.310 and GN 01701.315 for how to exclude certain totalization benefits from WEP. See GN 01701.305 if the foreign totalization benefit is payable for months **before** January 1995.

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