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Municipal Technical Advisory Service

*In cooperation with the
Tennessee Municipal League*



March 11, 2005

GOVERNMENT PENSION OFFSET AND WINDFALL ELIMINATION PROVISIONS OF THE SOCIAL SECURITY ADMINISTRATION

Richard L. Stokes, PHR, IPMA-CP, Municipal Human Resources Consultant

On March 2, 2004, President George W. Bush signed into law H.R. 743 of the Social Security Protection Act (Pub. L. No. 108-203). The new law requires public employers who are not covered by Social Security to inform their employees of the impact of the Government Pension Offset and Windfall Elimination Provision (GPO and WEP) on their future pension/retirement plans.

The GPO and WEP are two provisions of the act that reduce the Social Security benefits of non-covered workers who become entitled to Social Security either through a spouse or by working the requisite amount of time in a covered position. The GPO reduces spousal benefits and the WEP reduces Social Security benefits earned through outside work. Unfortunately, many public sector employees working in non-covered positions are unaware of these provisions until they actually retire and receive their Social Security benefits.

GOVERNMENT PENSION OFFSET

Benefits paid to wives, husbands, widows, and widowers are known as “dependent’s benefits.” These benefits were established in the 1930s to compensate spouses who stayed home to raise a family and who were financially dependent on the working spouse. But as it has become more common for both spouses in a married couple to work, each now earns his or her own Social Security benefits. The law has always required that a person’s benefits as a spouse, widow,

or widower be offset dollar for dollar by the amount of his or her own retirement benefit. In enacting the GPO provisions, Congress’s intent was to ensure that when determining the amount of spousal benefit, government employees who do not pay Social Security taxes will be treated in a manner similar to those who work in the private sector and do pay Social Security taxes.

The Government Pension Offset results in a benefit offset for individuals receiving spouse’s or surviving spouse’s benefits. The benefits of about 367,000 spouses and surviving spouses have been affected by the GPO provision. It specifically provides that a person’s Social Security benefits as a spouse or surviving spouse are reduced by two-thirds the amount of any government pension the person receives based on his/her own work in federal, state, or local government not covered by Social Security. This offset is similar to the dual entitlement offset that applies to the spouse’s or surviving spouse’s benefits paid to individuals who are covered by Social Security. Under the GPO, it is possible for the spouse’s or surviving spouse’s benefit to be totally eliminated. For example, if a retiree receives a monthly pension of \$600, two-thirds of that, or \$400, must be deducted from the retiree’s Social Security benefit. If the spouse is eligible for a \$500 spouse’s, widow’s or widower’s benefit from Social Security, the spouse would receive \$100 per month from Social Security

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(\$500 - \$400 = \$100). If the individual takes a government pension annuity in a lump sum, Social Security still will calculate the reduction as if the individual chose to receive monthly benefit payments from the government work.

Generally, Social Security benefits to a spouse, widow, or widower will not be reduced if the individual is

1. Receiving a government pension that is not based on his/her earnings; or
2. A state or local government employee whose government pension is based on a job in which the individual paid Social Security taxes...
 - ...on the last day of employment and that last day was before July 1, 2004;
 - ...during the last five years of employment and the last day of employment was July 1, 2004, or later. (Under certain conditions, fewer than five years may be required for people whose last day of employment falls between July 1, 2004, and March 2, 2009.)

The legislation modifying the GPO exemption was enacted on March 2, 2004. The effective dates that provisions will apply are as follows:

1. Any current Social Security beneficiary who is receiving Social Security spouse's or surviving spouse's benefits and does not have the GPO applied because of the last day of covered employment exemption will continue to receive Social Security benefits without the application of the GPO.
2. Any state or local government worker who applied for Social Security spouse's or surviving spouse's benefits before April 2004 will avoid the GPO reduction if their last day of government employment was covered by both Social Security and

their pension system (regardless of when that "last day" occurred).

3. Any state or local government worker whose last day of government employment was before July 1, 2004, and whose last day of employment was covered by both Social Security and their pension system will not have the GPO applied to a future claim for Social Security spouse's or surviving spouse's benefit. For example, a teacher whose last day of government employment was in June 2004 and who was covered under Social Security and the pension system would be exempted from the GPO regardless of when he or she filed for benefits.
4. Any state or local government worker whose last day of government employment occurs within five years after the date of enactment (before March 2, 2009) can qualify for a reduction in the requirement that the last 60 months of government employment be covered by Social Security. For these workers, the "last 60 months" requirement can be reduced (but not to less than one month) by the total number of months that the worker had in covered government service under the same retirement system before the date of enactment. If the 60-month period is reduced, the remaining months of service needed to fulfill the requirement must be performed after the date of enactment.
5. For all other noncovered state and local government workers, if they first switch to government employment covered by Social Security and their pension plan after June 30, 2004, they will have to work in covered government employment for the entire 60 months in order to avoid the GPO.

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WINDFALL ELIMINATION PROVISION

The WEP affects people who earned a pension from working for a government agency and who also worked at other jobs where they paid Social Security taxes long enough to qualify for retirement or disability benefits. It also may affect individuals who earn a pension in any job where they did not pay Social Security taxes. The total number of people affected by WEP is about 700,000 (635,000 retired and disabled workers and 64,000 family members).

The WEP uses a modified benefit formula when computing a retired or disabled worker's own benefit (and the benefits of their family) if the worker also receives a pension based in whole or in part on his other earnings in non-covered employment. While benefits are lower using the modified WEP formula, they are never totally eliminated.

The WEP does not apply to survivor's benefits. It also does not apply if

1. The individual is a federal worker first hired after December 31, 1983;
2. The individual was employed on December 31, 1983, by a nonprofit organization that did not withhold Social Security taxes at first but then began withholding Social Security taxes;
3. The individual's only pension is based on railroad employment;
4. The only work the individual performed where the individual did not pay Social Security taxes was before 1957; or
5. The individual has 30 or more years of substantial earnings under Social Security.

The WEP provides a guarantee. If an individual receives a relatively low pension, he or she is protected. The reduction in Social Security benefits cannot be more than one-half of that part of the pension based on earnings after 1956 from which Social Security taxes were not deducted.

LAST-DAY LOOPHOLE

H.R. 743 also includes a provision closing the "last-day loophole." Prior to the law's passage, an employee working in a non-covered position could avoid the effect of the GPO by spending the last day of employment in a position covered by Social Security. H.R. 743 now requires the employee to spend at least the last 60 months of employment in a covered position.

For more information about the Government Pension Offset and Windfall Elimination Provision, contact your MTAS municipal management consultant in Knoxville, Johnson City, Nashville, Jackson, or Martin. You also may contact Richard L. Stokes, municipal human resources consultant, directly at (615) 532-6827 or via e-mail at richard.stokes@tennessee.edu. Additional information may be obtained at the Social Security Administration Web site at www.socialsecurity.gov or by calling toll-free (800) 772-1213.

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