



FRATERNAL ORDER OF POLICE

Testimony of
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on GPO and WEP: Policies Affecting Pensions from Work
Not Covered by Social Security

before the Senate Subcommittee on Social Security, Pensions and Family Policy
Committee on Finance



Good afternoon, Mr. Chairman, Ranking Member Ensign, and distinguished Members of the Senate Subcommittee on Social Security, Pensions, and Family Policy. My name is Chuck Canterbury, National President of the Fraternal Order of Police. I am the elected spokesperson of more than 325,000 rank-and-file police officers—the largest law enforcement labor organization in the United States.

I am very pleased to have this opportunity to come before you and share with you the views of the members of the FOP on the effect that the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) have on public employees, specifically on law enforcement officers.

I want to begin by urging this Subcommittee to consider and pass S. 206, the “Social Security Fairness Act.” This bill was jointly introduced in this and previous sessions of Congress by Senators Dianne Feinstein (D-CA) and Susan M. Collins (R-ME), the latter of whom testified on the first panel today. The Senate bill currently has thirty-four (34) cosponsors, including you, Mr. Chairman. The House companion bill has more than three hundred and twenty (320) cosponsors and can claim a majority of both caucuses.

While we are grateful that the Subcommittee is holding this hearing today, the FOP is frustrated that this legislation, which has been the subject of five hearings in the past four years, has not yet received legislative action. At a time when there seems to be very little that Members of both parties can agree on, this legislation has demonstrated broad bipartisan support in great numbers. It deserves consideration and a vote.

Ultimately, S. 206 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 the WEP has 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 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 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, all States have “pockets” of State and local employees that are not covered by Social Security. In fifteen (15) States—Alaska, California, Colorado, Connecticut, Georgia (certain local governments), Illinois, Louisiana, Kentucky (certain local governments), Maine, Massachusetts, Missouri, Nevada, Ohio, Rhode Island, and Texas—significant percentages of State and local employees are 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.

To the FOP, which represents these rank-and-file 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. Bluntly put, this provision has not eliminated a windfall for individuals who did not earn it, but it has resulted in a windfall for the Federal government at the expense of public employees.

Let me now discuss the other aspect of S. 206, which would repeal the Government Pension Offset. 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 at that time.

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 this benefit and the right to bequeath the benefits to their surviving spouse. 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. It should also be noted that 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 WEP and GPO create 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 also want to mention the FOP's support for S. 1647, the "Public Servant Retirement Protection Act." This legislation, introduced by Senator Kay Bailey Hutchison (R-TX), would repeal the Windfall Elimination Provision (WEP) and replace it with an individualized calculation of Social Security worker benefits based on an individual's entire work history.

While the passage of this bill is not a top priority of the FOP, we do regard it as an excellent first step in correcting the inequity of current law. The repeal of the Windfall Elimination Provision has triggered no organized opposition, allowing us to conclude that the overwhelming majority of Members of Congress agree with the position of the Fraternal Order of Police, which is that the current law is unfair to public employees. Yet

despite this agreement, the estimated costs for a full repeal of the WEP are considerable, which leads me to believe that this is the primary reason that such proposals garner a great deal of support, but little attention. The bill introduced by Senator Hutchinson, while it does not fully address the problem in the estimation of the FOP, does represent a commendable compromise between those who justly believe that public employees are being treated unfairly and those who are concerned about the potential fiscal consequences of repealing the WEP in its entirety.

I now want to address an issue that the FOP and many other public employee organizations thought was wholly discredited, but is occasionally discussed when considering the inequities of the WEP and GPO—mandatory participation in Social Security. This scheme was considered and rejected in 2001 by the President's Commission to Strengthen Social Security (CSSS), and for good reason. According to the U.S. Government Accountability Office, there are 6.8 million governmental employees not covered by Social Security, and the Public Pension Coordinating Council (PPCC) previously estimated that seventy-six percent (76%) of this total are public safety personnel, far more than any other category of public employee. State and local government employers carefully designed pension plans and retirement systems to fit the unique needs of law enforcement officers, public safety officials and other public employees. These pension plans, which exist in every State in the union, better serve State and local government employees and deliver a greater benefit than participation in Social Security. As just one example, State and local plans take into consideration the significantly earlier retirement age of law enforcement officers and other public safety officers as compared to other, more typical government employees. Social Security does not.

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 employee's 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, which would severely compromise the financial solvency of the existing pension and retirement plans into which public employees outside the Social Security system currently contribute.

The result of this is obvious: less take home pay for the employee and cutbacks in services, equipment and other expenditures on the part of State and local governments. Police departments and other law enforcement agencies stretch every dollar to the limit now—these huge new costs will devastate their budgets and certainly impact on their ability to function as first responders at a time when we need to be improving our homeland security.

Clearly, the damage that would be done to State and local governments and the families of the employees cannot be overstated 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 only newly hired employees would be over \$771 million. The most recent estimated cost to public employers and employees for the first five years of mandatory participation in Social Security is enormous—\$44 billion. And what benefit does this enormous cost have on the overall health of the Social Security trust fund? According to the SSA, requiring newly hired employees to be covered by Social Security will extend the solvency of the Social Security Trust Fund for two years. Just two years—and this projection does not take into account the effect of increasing Social Security’s unfunded obligations by adding this huge new influx of participants.

The Fraternal Order of Police understands that reforms in the Social Security system are necessary and that certain steps need to be taken if we are to avoid the expected shortfall in 2042. 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 almost seventy years later because the Federal government is looking for an easy way to fund Social Security without making hard choices. It is also wrong to impose a \$44 billion cost on State and local governments and their employees just to extend the solvency of Social Security for two years.

Ultimately, this is about fairness to the men and women that have sworn to serve and protect our communities. The State and local governments which employ these officers chose not to participate in Social Security, but they did not create this problem, nor did their 5.25 million employees who do not pay into the system. But if participation in Social Security is mandated by the Federal government, all of them would be paying a hefty price for contributing into 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, and I urge Congress to reject any proposal requiring public employees to participate in Social Security.

Similarly, the foundation of the FOP’s position on the repeal of the WEP and GPO is also about fairness. It is not unreasonable to ask that the men and women who spent their careers putting their lives on the line for their fellow citizens be treated fairly after they retire. But because of the WEP and the GPO, they are treated differently and are subject to arbitrary formulas which reduce benefits for which they have been taxed and to which they are entitled. Both of these provisions should be repealed, and I urge the Subcommittee to consider and favorably report S. 206.

Mr. Chairman, I want to thank you and the other Members of this distinguished Subcommittee for the chance to appear before you today. I would be happy to answer any questions you have.