Government Executive

When is a Windfall not a Windfall?

By Tammy Flanagan

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What if the government got rid of the Windfall Elimination Provision? Well, it did in April for some retirees--but unfortunately not those covered under the Civil Service Retirement System.

More on that in a bit. First, a little background.

Congress created the WEP in 1983 as a way to level the playing field for Social Security recipients. It covers employees who receive pensions related to work for which they didn't pay Social Security taxes and who also receive Social Security retirement benefits from other work they performed that was covered by Social Security taxes. Federal retirees under CSRS, along with others who receive pensions from work not covered by Social Security, appear to be low wage earners from the standpoint of their Social Security earnings record. Under the WEP, their Social Security benefits are reduced in order to, the theory goes, eliminate the "windfall" they'd get from receiving full Social Security.

According to the American Federation of State, County and Municipal Employees, nearly 900,000 retired federal, state and local government employees are currently affected by the WEP. That number grows by about 60,000 retirees each year.

For many years, AFSCME, the National Active and Retired Federal Employees Association and others have lobbied Congress to repeal the WEP. So far, their efforts haven't gained traction.

But one small group of workers just got out from under the WEP. According to a notice on the Social Security Administration's web site, on April 8, the United States District Court for the District of Columbia preliminarily approved a nationwide class action settlement agreement in the case *Greenberg v. Colvin*. As a result of the settlement, SSA will no longer apply the WEP to people who qualify for Social Security retirement benefits and also receive National Institute of Israel pensions. (The NII is Israel's form of social insurance for the residents of Israel, like Social Security benefits are for Americans.) The plaintiffs in the case had argued that SSA had misapplied the WEP to NII old-age benefits.

That's good news for recipients of such benefits who also qualify for Social Security, but CSRS retirees are still subject to the WEP. How does it affect them? Let's look at the example of one theoretical retiree (fair warning: this gets a little complicated):

John spent most of his career working in a government job where he was exempt from paying Social Security tax because he was covered under CSRS. After 30 years of federal service, at age 55, John was eligible to receive his CSRS retirement benefit. His benefit was computed as 56.25 percent of his $60,000 high-three average salary. So his unreduced retirement is $33,750 per year, or $2,812 per month.

After ending his federal career, John worked in the private sector for another 11 years, at a salary of $30,000 a year. The combination of his retirement and new salary was a little more than the amount John would have earned had he kept working for the government. John's new salary was subject to income and Social Security tax withholdings.

To calculate John's Social Security retirement benefit, first figure that his total earnings over 11 years add up to $330,000. Social Security benefits are computed by adding up the highest 35 years of Social Security covered wages and then dividing the total by 35 and dividing again by 12 months to come up with an average monthly earnings amount. John didn't have 35 years

of Social Security covered wages, but the average is nevertheless determined by dividing by 35 years. The average monthly wage for John would be approximately $786.

For someone who first becomes eligible for Social Security benefits in 2015, the unreduced Social Security benefit amount is the sum of the following:

- 90 percent of the first $826 of average indexed monthly earnings
- 32 percent of indexed monthly earnings over $826 and up to $4,980
- 15 percent of average indexed monthly earnings over $4,980

(Wages also are indexed to reflect wage values in the year you first become eligible to receive benefits, generally age 62. According to SSA, such indexation ensures that a worker's future benefits reflect the general rise in the standard of living that occurred during his or her working lifetime. For simplicity, John's future wages in this example have not been indexed.)

For John, the Social Security formula would be applied as follows (without the WEP):

- 90 percent x $786 (average wage up to $826) = $707.40

But John is subject the WEP. Under the WEP, the first factor of the formula is changed from 90 percent to 40 percent. So his benefit would be computed as:

- 40 percent x $786 = $314.40

So John's Social Security benefit would be cut by $393 a month due to the WEP. When he fully retires at age 66, his income would include his CSRS retirement of $2,812 a month, plus his Social Security retirement of $314.40 a month (and any other retirement savings or pensions John may have earned during his career.)

If John would have remained in the government for another 11 years rather than working in a second career in the private sector, he would have qualified for a CSRS benefit equal to 78.25 percent of his high-three average salary of $60,000, or $46,950 per year ($3,912.50 per month). This is $786.10 more than his combined monthly Social Security and CSRS benefit. Based on his example, John would have been better off financially to continue working in his federal career rather than beginning a second career where he was covered by Social Security instead of CSRS.

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