116TH CONGRESS
2D SESSION

S.

To amend title II of the Social Security Act to replace the windfall elimination provision with a formula equalizing benefits for certain individuals with noncovered employment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CRUZ (for himself and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

To amend title II of the Social Security Act to replace the windfall elimination provision with a formula equalizing benefits for certain individuals with noncovered employment, and for other purposes.

1  Be it enacted by the Senate and House of Representa-
2  tives of the United States of America in Congress assembled,
3  SECTION 1. SHORT TITLE.
4  This Act may be cited as the “Equal Treatment of
5  Public Servants Act of 2020”.

PCB FS FRL
SEC. 2. REPLACEMENT OF THE WINDFALL ELIMINATION PROVISION WITH A FORMULA EQUALIZING BENEFITS FOR CERTAIN INDIVIDUALS WITH NONCOVERED EMPLOYMENT.

(a) In General.—Section 215(a) of the Social Security Act (42 U.S.C. 415(a)) is amended by inserting after paragraph (7) the following:

“(8)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection—

“(i) who first becomes eligible for an old-age or disability insurance benefit after 2060,

“(ii) who subsequently becomes entitled to such benefit, and

“(iii) who has earnings derived from noncovered service performed in a year after 1977,

the primary insurance amount of such individual shall be the amount computed or recomputed under this paragraph.

“(B) The primary insurance amount of an individual described in subparagraph (A), as computed or recomputed under this paragraph, shall be the product derived by multiplying—

“(i) the individual’s primary insurance amount, as determined under paragraph (1) of this subsection and subparagraph (C) of this paragraph, by
“(ii) a fraction—

“(I) the numerator of which is the individual’s average indexed monthly earnings (determined without regard to subparagraph (C)), and

“(II) the denominator of which is an amount equal to the individual’s average indexed monthly earnings (as determined under subparagraph (C)), rounded, if not a multiple of $0.10, to the next lower multiple of $0.10.

“(C)(i) For purposes of determining an individual’s primary insurance amount pursuant to clauses (i) and (ii)(II) of subparagraph (B), the individual’s average indexed monthly earnings shall be determined by treating all recorded noncovered earnings (as defined in clause (ii)(I)) derived by the individual from noncovered service performed in each year after 1977 as ‘wages’ (as defined in section 209 for purposes of this title), which shall be treated as included in the individual’s adjusted total covered earnings (as defined in clause (ii)(II)) for such calendar year together with amounts consisting of ‘wages’ (as so defined without regard to this subparagraph) paid during such calendar year and self-employment income (as...
defined in section 211(b)) for taxable years ending with
or during such calendar year.

“(ii) For purposes of this subparagraph:

“(I) The term ‘recorded noncovered earnings’
means earnings derived from noncovered service
(other than noncovered service as a member of a
uniformed service (as defined in section 210(m)) for
which satisfactory evidence is determined by the
Commissioner to be available in the records of the
Commissioner.

“(II) The term ‘adjusted total covered earnings’
means, in connection with an individual for any cal-
endar year, the sum of the wages paid to the indi-
vidual during such calendar year (as adjusted under
subsection (b)(3)) plus the self-employment income
derived by the individual during any taxable year
ending with or during such calendar year (as ad-
justed under subsection (b)(3)).

“(iii) The Commissioner of Social Security shall pro-
vide by regulation or other public guidance for methods
for determining whether satisfactory evidence is available
in the records of the Commissioner for earnings for non-
covered service (other than noncovered service as a mem-
ber of a uniformed service (as defined in section 210(m))
to be treated as recorded noncovered earnings. Such meth-
ods shall provide for reliance on earnings information which is provided to the Commissioner by employers and which, as determined by the Commissioner, constitute a reasonable basis for treatment of earnings for noncovered service as recorded noncovered earnings. In making determinations under this clause, the Commissioner shall also take into account any documentary or other evidence of earnings derived from noncovered service by an individual which is provided by the individual to the Commissioner and which the Commissioner considers appropriate as a reasonable basis for treatment of such earnings as recorded noncovered earnings.

“(D) Upon the death of an individual whose primary insurance amount is computed or recomputed under this paragraph, such primary insurance amount shall be computed or recomputed under paragraph (1) of this subsection.

“(E) In the case of any individual whose primary insurance amount would be computed under this paragraph who first becomes entitled after 1985 to a monthly periodic payment made by a foreign employer or foreign country that is based in whole or in part upon noncovered service, the primary insurance amount of such individual shall be computed or recomputed under paragraph (7) or paragraph (1), as applicable, for months beginning with the
first month of the individual’s initial entitlement to such
monthly periodic payment.”.

(b) CONFORMING AMENDMENTS.—Section 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)) is amended—

(1) in clause (i)—

(A) by striking “after 1985” and inserting
“after 1985 and before 2061”; and

(B) by striking “or” at the end;

(2) in clause (ii)—

(A) by striking “after 1985” each place it appears and inserting “after 1985 and before 2061”; and

(B) by adding “or” at the end;

(3) by inserting after clause (ii) the following:
“(iii) is an individual described in paragraph
(8)(E),”; and

(4) by striking “hereafter in this paragraph and in subsection (d)(3)” and inserting “in this para-
graph, paragraphs (8) and (9), and subsection
(d)(3)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to monthly insurance benefits payable on or after January 1, 2022.
SEC. 3. BENEFIT CALCULATION DURING TRANSITION PERIOD.

(a) In General.—Section 215(a) of the Social Security Act (42 U.S.C. 415(a)), as amended by section 2, is further amended by inserting after paragraph (8) the following:

“(9)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection—

“(i) who first becomes eligible for an old-age or disability insurance benefit after 2021 and before 2061,

“(ii) who subsequently becomes entitled to such benefit, and

“(iii) who has earnings derived from noncovered service performed in a year after 1977,

the primary insurance amount of such individual shall be the higher of the amount computed or recomputed under paragraph (7) without regard to this paragraph or the amount that would be computed or recomputed under paragraph (8) if the individual were an individual described in subparagraph (A) of such paragraph.”.

(b) Conforming Amendment.—Section 215(a)(7)(A) of such Act (42 U.S.C. 415(a)(7)(A)), as amended by section 2(b), is further amended by striking
“shall be computed or recomputed” and inserting “shall, subject to paragraph (9), be computed or recomputed”.

(c) **Effective Date.**—The amendments made by this section shall apply with respect to monthly insurance benefits payable on or after January 1, 2022.

**SEC. 4. ADDITIONAL MONTHLY PAYMENT FOR INDIVIDUALS WHOSE BENEFIT AMOUNT IS REDUCED BY THE WINDFALL ELIMINATION PROVISION.**

(a) **In General.**—Section 215(a) of such Act (42 U.S.C. 415(a)), as amended by sections 2 and 3, is further amended by adding at the end the following:

“(10)(A) For any month in a calendar year after 2019, the Commissioner of Social Security shall, subject to subparagraphs (C) and (D), make an additional monthly payment of $100 to each individual who is an eligible individual for such month, and an additional monthly payment of $50 to each individual (other than an eligible individual) who is entitled to a benefit under section 202 for such month on the basis of the wages and self-employment income of such eligible individual.

“(B) For purposes of this paragraph, the term ‘eligible individual’ for a month means an individual who—

“(i)(I) first becomes eligible for an old-age or disability insurance benefit under this title before 2022; or
“(II) is an individual described in paragraph (8)(E); and

“(ii) is entitled to an old-age or disability insurance benefit under this title for such month based on a primary insurance amount that was computed or recomputed under paragraph (7) (and not subsequently recomputed under any other paragraph of this subsection).

“(C) In any case in which this title provides that no monthly benefit under section 202 or 223 shall be paid to an individual for a month, no additional monthly payment shall be paid to the individual for such month. This subparagraph shall not apply in the case of an individual whose monthly benefit under section 202 or 223 is reduced, regardless of the amount of the reduction, based on the individual’s receipt of other income or benefits for such month or the application of section 203(a) or due to the adjustment or recovery of an overpayment under section 204.

“(D)(i) An individual is not entitled to receive more than one additional monthly payment for a month under this paragraph.

“(ii) An eligible individual who is entitled to a benefit under section 202 on the basis of the wages and self-employment income of another eligible individual for a month
shall receive an additional monthly payment under this paragraph in the amount of $100 for such month.

“(E) Except for purposes of adjustment or recovery of an overpayment under section 204, an additional monthly payment under this paragraph shall not be subject to any reduction or deduction under this title.

“(F) Whenever benefit amounts under this title are increased by any percentage effective with any month as a result of a determination made under subsection (i), each of the dollar amounts in subparagraph (A) shall be increased by the same percentage for months beginning with such month.”.

(b) Effective Date.—The amendments made by this section shall apply with respect to monthly insurance benefits payable on or after January 1, 2020.

SEC. 5. REPORTING OF NONCOVERED EARNINGS ON SOCIAL SECURITY ACCOUNT STATEMENTS.

(a) In General.—Section 1143(a)(2) of the Social Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—

(1) by redesignating subparagraphs (B) through (E) as subparagraphs (C) through (F); and

(2) by inserting after subparagraph (A) the following:

“(B) the amount of earnings derived by the eligible individual from service performed
after 1977 which did not constitute employment (as defined in section 210), not including service as a member of a uniformed service (as defined in section 210(m)), as shown by the records of the Commissioner at the date of the request;”.

(b) Effective Date.—The amendments made by this section shall apply with respect to Social Security account statements issued on or after January 1, 2020.

SEC. 6. STUDY ON PARTNERING WITH STATE AND LOCAL PENSION SYSTEMS.

(a) Study.—

(1) In general.—The Commissioner of Social Security shall study and test the administrative feasibility of partnering with State and local pension systems, or other governmental entities, to improve the collection and sharing of information relating to State and local noncovered pensions.

(2) Coordination with state and local pension systems.—In conducting the study described in paragraph (1), the Commissioner shall coordinate with State and local pension systems that reflect the diversity of systems and individual experiences to explore the development of automated data
exchange agreements that facilitate reporting of information relating to noncovered pensions.

(b) REPORT.—The Commissioner of Social Security shall conclude the study described in subsection (a) not later than 4 years after the date of enactment of this Act. As soon as possible after conclusion of the study and not later than 4 1⁄2 years after the date of enactment of this Act, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the study. Such report shall include the following:

(1) A discussion of how the automated data exchange agreements could be implemented to cover noncovered pensions nationally, including the range of implementation timelines across State and local pension systems, or with other governmental entities.

(2) An analysis of the barriers to developing automated data exchange agreements and lessons learned that can help address these barriers.

(3) A description of alternative methods for obtaining information related to noncovered pensions, and an analysis of the barriers to obtaining noncovered pension data through such methods.

(4) An explanation of how coverage information is obtained by the Social Security Administration
when an individual purchases service credits to apply
to a new covered or noncovered pension after moving
from another covered or noncovered pension within
the State or in another State.

(5) An estimate of the total amount, as of the
date of the enactment of this Act, of noncovered
pensions not reported to the Social Security Admin-
istration as a result of noncompliance with voluntary
reporting policies.

(c) STATE AND LOCAL PENSION INFORMATION TO
BE REQUESTED BY THE COMMISSIONER.—Section 202 of
the Social Security Act (42 U.S.C. 402) is amended by
inserting after subsection (l) the following:

“(m) STATE AND LOCAL PENSION INFORMATION TO
BE REQUESTED BY THE COMMISSIONER.—

“(1) The Commissioner may partner with
States to request information, including the informa-
tion specified in paragraph (2), with respect to any
designated distribution (as defined in section
3405(e)(1) of the Internal Revenue Code of 1986)
from an employer deferred compensation plan (as
defined in section 3405(e)(5) of such Code) of the
State (or political subdivision thereof) to a partici-
pant of such plan in any case in which any portion
of such participant’s earnings for service under such
plan did not constitute ‘employment’ as defined in section 210 for purposes of this title.

“(2) The information specified in this paragraph is the following:

“(A) The name and Social Security account number of the participant receiving the designated distribution.

“(B) The dollar amount of the designated distribution and the date paid.

“(C) The date on which the participant initially became eligible for a designated distribution under the plan and, if different, the date of payment of the initial designated distribution.

“(D) The dates of each period of service under the plan that did not constitute ‘employment’ as defined in section 210 for purposes of this title, and the dates of any other period of service under the plan.”.

(d) DEFINITIONS.—In this section—

(1) the term “noncovered pension” means a pension any part of which is based on noncovered service (within the meaning of section 215(a)(7) of the Social Security Act (42 U.S.C. 415(a)(7))); and
(2) the term “covered pension” means any other pension.