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Social Security Coverage of State and Local Government Employees

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SUMMARY

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Social Security Coverage of State and Local Government Employees

Social Security is the single largest federal program in terms of the number of beneficiaries as well as budget. It pays cash benefits to over 65 million beneficiaries each month, and total benefit payments are almost $94 billion on a monthly basis. Beneficiaries include retired or disabled workers and their eligible family members and eligible family members of deceased workers. People become eligible for Social Security benefits for themselves and their family members by working in jobs that are covered by Social Security. Most jobs in the United States are mandatorily covered by Social Security. An estimated 94% of workers in paid employment and self-employment are covered under the program, and an estimated 176 million people work in covered jobs. Workers in covered jobs and their employers are required to pay Social Security payroll taxes that are the primary source of funding for the program. In 2021, workers and their employers each contribute 6.2% (for a total tax rate of 12.4%) of the worker's earnings up to a maximum earnings level of $142,800. Current payroll tax collections are used to fund current benefit payments. People who work in jobs that are not covered by Social Security (noncovered workers) do not pay Social Security payroll taxes based on those earnings (nor do their employers), and they do not receive Social Security benefits based on those earnings.

Over the years, Congress expanded coverage under the program, making it a nearly universal system. On the basis of equity, some argue that certain noncovered workers should be brought into the system to share in the program's broader social goals. Social Security keeps many beneficiaries out of poverty, which benefits the nation as a whole. In addition, some argue that certain noncovered workers should share in the ongoing costs associated with the startup of the program (the *legacy costs*). In the early years, workers who had paid into the system for a short period received benefits far in excess of their contributions. Because the family members of noncovered workers (e.g., grandparents) likely benefitted from the program in its early years, they argue that noncovered workers should share in the system's legacy costs.

The largest and most high-profile group of noncovered workers is the segment of state and local government employees who are not covered by Social Security through their government employment. Social Security coverage is *voluntary* for state and local government employees covered under public retirement systems that meet certain requirements. These employees may elect Social Security coverage through Section 218 Agreements between the states and the Social Security Administration. Coverage is elected through referendums held at the option of the state. Social Security coverage is *mandatory* only for state and local government employees who are not covered under alternative retirement systems. Most state and local government employees participate in Social Security. In 2018, there were 23.2 million state and local government employees, and 16.6 million (72%) had Social Security coverage. The other 6.6 million (28%) did not have Social Security coverage through their government employment. The largest share of noncovered state and local government employees work at the local level, and most noncovered local government employees are police officers, firefighters, and teachers.

Proposals to make Social Security coverage mandatory for newly hired state and local government employees have been part of the policy debate for years. These proposals have drawn strong support and opposition for a variety of reasons. Supporters argue that mandatory coverage for newly hired state and local government employees would have a net positive effect on the Social Security trust funds and on federal revenues. Estimates show that the policy change would close 5% of the Social Security system's projected long-range funding shortfall. It would eventually eliminate the need for two controversial and administratively burdensome Social Security provisions that affect people who receive pensions from noncovered employment: the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO). Supporters also maintain that mandatory Social Security coverage would eliminate gaps in Social Security and pension coverage for workers who move between covered and noncovered positions during their careers. Compared to state and local pension plans in general, Social Security provides better inflation protection, disability benefits, benefits for dependents and survivors, and a progressive benefit formula intended to help workers with lower career-average earnings. Benefit protections provided by Social Security could be particularly important for noncovered workers in states and localities with underfunded pension plans and whose future pensions may be at risk.

Opponents maintain that mandatory coverage could pose administrative and cost burdens on state and local governments and their employees at a time when many state and local pension systems are underfunded. State and local governments would have to negotiate with employee representatives and legislatures on the redesign of existing retirement systems in response to a Social Security coverage mandate, a process that could take years, and could have to administer existing retirement systems alongside new retirement systems for many decades. Moreover, they point out that mandatory coverage could threaten or

undermine existing retirement systems, particularly those tailored to workers in certain occupations such as police officers and firefighters. The cost impact to state and local governments and their employees would depend on the type of pension benefit structure states and localities adopt in response to a Social Security coverage mandate, among other factors.

Overall, the impact on state and local plans and the net effect on total benefits would vary across plans and across individuals, depending on how states and localities would respond to a coverage mandate, the relative differences between existing pension plans and new or modified plans incorporating Social Security, and other factors. Any future legislative changes to Social Security to address the system's projected funding shortfall and achieve other policy objectives would also be a factor.

Every state has a mix of state and local government employees with and without Social Security coverage, so every state would be affected by a Social Security coverage mandate. Some states would be affected to a larger degree than others given the variation in coverage rates among the states under current law. In 2018, the share of state and local government employees *with* Social Security coverage ranged from 3% to 97% among the states. Overall, eight states accounted for almost three-fourths (73%) of noncovered state and local government employees (California, Texas, Ohio, Massachusetts, Illinois, Colorado, Louisiana, and Georgia). Three states accounted for almost half (48%) of noncovered state and local government employees (California, Texas, and Ohio).

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Introduction

The focus of this report is Social Security coverage among state and local government employees under current law and issues surrounding proposals to make Social Security coverage mandatory for newly hired state and local government employees.[1] To provide context for the discussion, the report begins with background on the Social Security program, including the expansion of coverage over time that has resulted in coverage for an estimated 94% of workers in paid employment and self-employment today. The report identifies the major categories of work/workers not covered by Social Security under current law, including the segment of state and local government employees who have not elected coverage (28% in 2018).[2] It briefly discusses reasons often cited for why Social Security should be a more fully universal system—the social goals of the program and the legacy costs associated with the startup of the program. The report then focuses on state and local government employees.

Background on Social Security

Social Security is the nation's largest federal program in terms of the number of beneficiaries as well as budget. It pays monthly cash benefits to over 65 million people, with almost $94 billion in benefits paid each month.[3] Beneficiaries include retired workers and their eligible family members, disabled workers and their eligible family members, and eligible family members of deceased workers.

Social Security is a work-related program that is funded primarily with dedicated payroll tax revenues. In all cases, a Social Security beneficiary becomes eligible for benefits either by working in a job that is covered by Social Security (a covered worker), by having a close family relationship to a covered worker, or both (among other requirements). For people who work in jobs that are covered by Social Security, participation is mandatory.[4] Covered workers and their employers are required to pay Social Security payroll taxes. In 2021, workers pay 6.2% of earnings in covered employment, up to a maximum earnings level of $142,800. The maximum earnings level is adjusted annually based on average wage growth in the national economy. (The adjustment is made in years when a Social Security cost-of-living adjustment is payable.) Employers pay a corresponding amount—6.2% of the worker's covered earnings up to the annual maximum. Self-employed workers pay 12.4% of net earnings up to the annual maximum.

To become eligible for benefits, a worker must have a sufficient connection to covered employment, which is measured in terms of *Quarters of Coverage (QCs)*. In 2021, a worker earns one QC for every $1,470 in covered earnings up to a maximum of four QCs for the year (based on covered earnings of $5,880 or more). The amount needed to earn one QC is adjusted annually based on average wage growth in the national economy. When a worker has earned a sufficient number of QCs, he or she is *insured* under the program. The number of QCs needed for insured status varies depending on the circumstances and type of benefit, ranging from a minimum of six

[1] Generally, mandatory coverage proposals affect *newly hired* state and local government employees, not current employees. Therefore, this report focuses on the mandatory coverage issue with respect to new hires.

[2] It is the option of the state to hold a referendum on coverage among eligible employees covered by a retirement system.

[3] Social Security Administration (SSA), *Monthly Statistical Snapshot, September 2021*, Table 2, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/index.html.

[4] Social Security coverage is tied to positions, not to individuals.

QCs to a maximum of 40 QCs. Insured status allows a worker to establish eligibility for retired-worker or disabled-worker benefits and to establish eligibility for benefits for the worker's family members in the event of the worker's retirement, disability, or death.[5]

Most jobs in the United States are covered by Social Security. The Social Security Administration (SSA) estimates that about 94% of workers in paid employment and self-employment are covered under the Social Security program and that an estimated 176 million people will work in covered employment in 2021.[6]

If a job is not covered by Social Security, the worker's earnings are not subject to Social Security payroll taxes. As a result, the earnings do not count toward the worker gaining insured status under the program (i.e., the earnings do not count toward establishing future benefit eligibility for the worker and his or her family members). In addition, the earnings are not included in the computation of benefits.

Nearly Universal System

Social Security began as a compulsory federal old-age benefits program established under Title II of the Social Security Act of 1935 (P.L. 271, 74th Congress). The original program covered employees under the age of 65 in commerce and nonagricultural industry (excluding railroads) in the 48 states that existed at the time, plus Alaska, Hawaii, and the District of Columbia (about 56% of the workforce at the time).[7] Initially, the program provided monthly "old-age benefits" for insured workers aged 65 or older.

Over the years, Congress expanded coverage under the Social Security program, bringing most employees and self-employed workers into the system. Today, most jobs in the United States are covered by Social Security, regardless of whether the work is performed by U.S. citizens or noncitizens, with some exceptions.[8] In some cases, work performed outside the United States by U.S. citizens or resident aliens (noncitizens) is covered by Social Security (for example, if the person is employed by an American employer, employed by a foreign affiliate of an American employer that has elected coverage for its employees, or, under certain circumstances, self-employed).[9] Over the years, Congress also expanded the types of benefits available under the program. For example, benefits became available for a worker's dependents and survivors in 1939 and for disabled workers in 1956.

Major Categories of Work Not Covered

The rules surrounding Social Security coverage and exceptions are extensive.[10] The *major* categories of work/workers that are not covered by Social Security include

[5] For more information, see CRS Report R42035, *Social Security Primer*.

[6] SSA, Office of the Chief Actuary (OCACT), *Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program*, September 10, 2021, https://www.ssa.gov/oact/FACTS/index.html.

[7] William J. Nelson Jr., "Employment Covered Under the Social Security Program, 1935-84," *Social Security Bulletin*, vol. 48, no. 4 (April 1985), Table 2, p. 34, https://www.ssa.gov/policy/docs/ssb/v48n4/v48n4p33.pdf.

[8] The term *United States* is defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the territories of Guam and American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

[9] See Internal Revenue Service (IRS), *Social Security Tax Consequences of Working Abroad*, https://www.irs.gov/individuals/international-taxpayers/social-security-tax-consequences-of-working-abroad.

[10] For more information on the definition of *employment* for Social Security purposes, see (1) Section 210 of the Social

- Most civilian federal employees hired before 1984 (federal employees covered under the Civil Service Retirement System [CSRS]),[11]
- Segment of state and local government employees who have not elected coverage (28% of state and local government employees in 2018),
- Railroad workers (the Railroad Retirement System and Social Security are separate but coordinated systems),
- Certain family employment,
- Certain work performed by students,
- Certain members of the clergy and others, and
- Certain work performed by noncitizens.

For some types of work, there are coverage thresholds. If the worker's earnings are below a specified threshold, the work is generally excluded from Social Security coverage. These categories are

- Farm work,
- Self-employed workers,
- Election officials and election workers, and
- Household employees.

Different coverage thresholds apply for each category; in all cases, the threshold is relatively low. For example, the coverage threshold for self-employed workers is $400. Self-employed workers with net earnings below $400 for the year are generally excluded from Social Security coverage.[12]

Social Goals of the Program

Social Security is a *social insurance system* that is primarily self-financing with payroll taxes paid by workers in covered employment and their employers, as well as self-employed individuals. It provides monthly cash benefits to insured workers and their family members when there is a loss of earnings due to the worker's retirement, disability, or death. Social Security provides benefits to people of all ages, including retired workers, disabled workers, spouses, former spouses, surviving spouses, and dependent children. For many beneficiaries, Social Security represents a sizable share of their total income and serves to keep them out of poverty. Given Social Security's role in reducing poverty, which benefits the nation as a whole, some argue that Social Security should be a more fully universal system.[13] That is, on the basis of equity, certain noncovered workers should be brought into the system to share in the program's broader social goals.

On a related point, noncovered workers do not share in the costs associated with the startup of the program. In the early years of Social Security, workers who had paid into the system for a short period received benefits far in excess of their contributions. The inherited unfunded liability

Security Act [42 U.S.C. §410]; (2) Title 20, Part 404, of the *Code of Federal Regulations*, Subpart K; and (3) SSA's Program Operations Manual System [POMS], *Coverage and Exceptions*.

[11] For more information, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

[12] For more information, see CRS In Focus IF11824, *Social Security: Who Is Covered Under the Program?*.

[13] For example, Social Security lessens the reliance on need-based programs such as Supplemental Security Income (SSI), which is funded with federal general revenues. SSI provides monthly cash payments to aged, blind, or disabled individuals who have limited income and resources. For more information, see CRS In Focus IF10482, *Supplemental Security Income (SSI)*.

associated with the startup of the program is referred to as the *legacy costs*. It is estimated that about 3 percentage points of the current 12.4% Social Security payroll tax goes toward covering these costs.[14] Benefits paid during the early years of the program often went to the parents, grandparents, and great-grandparents of current noncovered workers. Therefore, on the basis of equity, some argue that certain noncovered workers should be brought into the system to share in the legacy costs.

State and Local Government Employees

The largest and most high-profile group of noncovered workers is the segment of state and local government employees who participate in alternative public retirement systems that do not have a Social Security component. Under current law, state and local government employees are not required to participate in Social Security if they participate in public retirement systems through their employers that meet certain requirements.[15] However, they may elect coverage as a group through a coverage agreement between the state and SSA. These agreements, called *Section 218 Agreements*, are authorized under Section 218 of the Social Security Act (42 U.S.C. §418). Social Security coverage is mandatory only for those state and local government employees who do not participate in public retirement systems that qualify as an alternative to Social Security. SSA data shows that there were 23.2 million state and local government employees in 2018.[16] Of those, 16.6 million (72%) were covered by Social Security. The other 6.6 million state and local government employees (28%) were not covered by Social Security through their government employment. Over the years, there have been proposals to make Social Security coverage mandatory for newly hired state and local government employees.

The remainder of the report discusses Social Security coverage among state and local government employees under current law and provides a brief legislative history of coverage for these workers. It then discusses proposals to mandate coverage for newly hired state and local government employees and issues to consider with respect to mandatory coverage.

Key Points (Part I): Recap

- Participation in Social Security is mandatory for most workers. An estimated 94% of workers in the United States participate in Social Security, making it a nearly universal system.
- The largest and most high-profile group of noncovered workers is the segment of state and local government employees who do not participate in Social Security through their government employment.
- Participation in Social Security is *voluntary* for state and local government employees who are covered by alternative public retirement systems that meet certain requirements. Participation is *mandatory* only for those state and local government employees who are not covered by such systems.
- State and local government employees covered by alternative public retirement systems may elect Social Security coverage via referendums held at the option of the state.
- In 2018, there were 23.2 million state and local government employees. Based on data from SSA, 72% of these workers were covered by Social Security. The other 28% of workers were not covered by Social Security through their government employment.

[14] Alicia H. Munnell, Jean-Pierre Aubry, and Anek Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," Center for Retirement Research at Boston College, CRR WP 2014-9, May 2014, pp. 6-7, available at https://crr.bc.edu/.

[15] To qualify as an alternative to Social Security, the public retirement system must provide a minimum level of benefits. In general, it must provide a retirement benefit that is comparable to Social Security.

[16] Data from SSA obtained by CRS in January 2021.

- There have been proposals to make Social Security coverage mandatory for newly hired state and local government employees. On the basis of equity, some argue that Social Security should be a more fully universal system given the program's broader social goals and the system's legacy costs.

State and Local Coverage Under Current Law

Unlike most employers, state and local governments are not required to participate in Social Security. Social Security coverage is *voluntary* for state and local government employees who are covered under alternative public retirement systems that meet certain requirements. If these state and local government employees choose to participate in Social Security, they may elect coverage as a group through the state's Section 218 Agreement with SSA. Coverage is elected through a referendum held by the state. Ultimately, the decision to extend coverage to certain state and local government positions lies with the state, as the state must hold a referendum among eligible employees covered by a retirement system before Social Security coverage can be extended.[17]

Social Security coverage is *mandatory* for state and local government employees who are not covered under alternative public retirement systems, with some exceptions.[18] Every state has a mix of state and local government employees with and without Social Security coverage, and the relative share of covered and noncovered workers varies widely by state. By comparison, Medicare coverage is mandatory for state and local government employees.[19]

Alternative Public Retirement Systems

A public retirement system must meet certain requirements to qualify as an alternative to Social Security. For example, the system must provide a minimum level of benefits. In general, an alternative public retirement system is a pension, annuity, retirement, or similar fund or system maintained by a state or local government that provides a retirement benefit to the employee comparable to the benefit provided under the old-age component of the Old-Age, Survivors, and Disability Insurance (Social Security) program.

In general, there are two types of public retirement systems that may meet the minimum benefit requirement: defined benefit retirement systems and defined contribution retirement systems. Defined benefit plans provide lifetime benefits based on a formula, generally taking into account the employee's salary, years of service, and an accrual rate (benefit multiplier).[20] Defined

[17] As noted in SSA's POMS, "Ultimately, it is within the state's discretion to determine for whom, whether, and when to extend Section 218 coverage, subject to the requirements of the [Social Security] Act" (POMS, Section SL 30001.301, Section 218 Agreements, Paragraph C, https://secure.ssa.gov/apps10/poms.nsf/lnx/1930001301#c).

[18] Under Section 210(a) of the Social Security Act (42 U.S.C. §410(a)), certain categories of employees are not subject to mandatory Social Security coverage, including state and local government employees who fall within these categories. For example, services performed by individuals hired to be relieved from unemployment are not subject to mandatory Social Security coverage. For more information, see IRS Publication 963, *Federal-State Reference Guide*, Revised July 2020, Chapter 5: Social Security and Medicare Coverage, pp. 44-45, https://www.irs.gov/pub/irs-pdf/p963.pdf.

[19] Medicare payroll taxes generally apply to all wages (not limited by the taxable maximum) of all state and local government employees hired or re-hired after March 31, 1986, unless specifically excluded under Section 210(p) of the Social Security Act (42 U.S.C. §410(p)). This requirement was mandated by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (P.L. 99-272). See IRS Publication 963, pp. 49-50.

[20] A traditional defined benefit formula would be: annual benefit = an accrual rate of *x*% * the number of years of service * the average of the worker's final *x* years of salary. The accrual rate is a percentage factor typically ranging from 2% to 3% in most traditional defined benefit plans.

contribution plans provide an individual account for each participant. The employer and/or the employee contribute a specific dollar amount or percentage of pay into an account, which is usually invested in stocks and bonds. Upon retirement, the employee receives the balance in the account, which is the sum of all the contributions that have been made plus interest, dividends, and capital gains (or losses), *minus* fees and expenses. Generally, the employee may choose to receive the funds as a series of payments over a period of years (for example, as an annuity) or as a lump sum. In a defined benefit plan, the *employer* bears the financial risk. In a defined contribution plan, the *employee* bears the financial risk. Most state and local government employees are covered by traditional defined benefit plans.[21]

The requirements that public retirement systems (defined benefit, defined contribution, or hybrid plans) must meet to qualify as an alternative to Social Security are explained in Internal Revenue Service (IRS) Publication 963 (*Federal-State Reference Guide*).[22] A defined benefit retirement system, for example, must provide the employee with an annual benefit that is at least equal to the annual primary insurance amount (PIA) the employee would have under Social Security.[23] The benefit must start on or before the employee attains the Social Security full retirement age (FRA),[24] which is 67 for most current workers.[25] A defined benefit plan that provides a benefit that is, for example, at least 1.5% of average compensation during an employee's last three years of employment, multiplied by the employee's years of service, would generally meet the requirement of providing a retirement benefit comparable to Social Security.[26]

Section 218 Agreements

Social Security coverage is extended to state and local government employees through voluntary agreements between the states and SSA, known as Section 218 Agreements.[27] All states have a Section 218 Agreement with SSA. However, the extent of coverage under these agreements varies from state to state.[28] A majority of state and local government employees may be covered by

[21] For data on how pension plan access and participation rates compare among public- and private-sector employees, see CRS Report R43439, *Worker Participation in Employer-Sponsored Pensions: Data in Brief*.

[22] IRS Publication 963, Chapter 6: Social Security and Public Retirement Systems. See also (1) Section 31.3121(b)(7)-2(e) of the IRS Employment Tax Regulations, https://www.ecfr.gov/current/title-26/chapter-I/subchapter-C/part-31/subpart-B/subject-group-ECFR996050e2e4c4937/section-31.3121(b)(7)-2#p-31.3121(b)(7)-2(e); and (2) IRS Revenue Procedure 91-40, which sets forth rules related to the minimum retirement benefit requirement prescribed under Section 31.3121(b)(7)-2 of the IRS Employment Tax Regulations. IRS Revenue Procedure 91-40 is included as an appendix in IRS Publication 963, and it is available at https://www.ssa.gov/slge/revenue_procedure_91-40.htm.

[23] In the Social Security program, the worker's PIA is the benefit payable at full retirement age (FRA), before any applicable adjustments are taken into account.

[24] The Social Security FRA is the age at which full (unreduced) Social Security retirement benefits are first payable. The FRA ranges from 65 to 67, depending on the worker's year of birth. Workers born in 1960 or later have an FRA of 67. Retirement benefits are payable as early as age 62, but benefits claimed between age 62 and the FRA are permanently reduced to take into account "early retirement."

[25] See Section 31.3121(b)(7)-2(e)(2) of the IRS Employment Tax Regulations at https://www.ecfr.gov/current/title-26/chapter-I/subchapter-C/part-31/subpart-B/subject-group-ECFR996050e2e4c4937/section-31.3121(b)(7)-2#p-31.3121(b)(7)-2(e)(2).

[26] IRS Publication 963, p. 54.

[27] Section 218 Agreements are governed by Section 218 of the Social Security Act (42 U.S.C. §418) and the *Code of Federal Regulations* (20 C.F.R. §§404.1200-404.1219). See also SSA's POMS beginning with the section "Introduction to State and Local Coverage Handbook" at https://secure.ssa.gov/apps10/poms.nsf/lnx/1910000000.

[28] The term *state* includes the 50 states, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. It also includes interstate instrumentalities. An interstate instrumentality is an independent legal entity organized by two or more states to carry out one or more governmental functions, such as police power, taxing power, and/or power of eminent domain.

Social Security in one state, while a small percentage of workers may be covered in another state. There can be variation within a state as well. For example, teachers in one county may be covered by Social Security, while teachers in a neighboring county may not be covered.

Section 218 Agreements cover positions, not individuals (i.e., Social Security coverage is tied to a particular job, not to a particular individual). If a position is covered by Social Security under a Section 218 Agreement, generally any current or future employee who fills that position is subject to Social Security payroll taxes.[29] A state's Section 218 Agreement specifies which state and local government positions are covered by Social Security.

Under Section 218 Agreements, Social Security coverage is extended to groups of employee positions known as *coverage groups*. Coverage is not extended on an individual basis. Various laws and regulations govern how coverage may be extended to state and local government positions through referendums held by the state among eligible employees covered by a retirement system. All states are authorized to use a *majority vote* referendum process. Twenty-three states are also authorized to use a *divided vote* referendum process (discussed below). Typically, states allow their political subdivisions (such as a school board) to decide whether to hold a referendum on coverage.

Generally, Section 218 Agreements may be modified to increase (but not reduce) the extent of Social Security coverage. Once coverage is provided, it cannot be terminated, and all future employees in covered positions are required to participate in Social Security.

Each of the 50 states, as well as Puerto Rico and the U.S. Virgin Islands, has a state Social Security administrator (state administrator). The state administrator is a designated state employee who is the main resource for information about Social Security (and Medicare) coverage and reporting issues for state and local government employers and employees under the terms of the state's Section 218 Agreement.[30] Among other duties, the state administrator maintains the state's Section 218 Agreement, prepares modifications to the agreement, and serves as a bridge between (1) state and local government employers and (2) SSA and the IRS.[31]

Legislative History Highlights

The original Social Security Act (1935; P.L. 74-271) did not extend Social Security coverage to state and local government employees. State and local government employees were excluded to avoid the constitutional question of whether the federal government had the authority to impose payroll taxes on state and local governments and their employees. In addition, the objective of the program was to cover employees most in need of coverage, and many state and local government employees were already covered under pension plans. Over time, coverage was extended to state

For example, the New Jersey–New York Port Authority is an interstate instrumentality. Approximately 60 interstate instrumentalities have Section 218 Agreements with SSA (IRS Publication 963, p. 1).

[29] See the discussion below regarding divided vote referendums/divided retirement systems authorized in certain states.

[30] A list of state Social Security administrators is available at http://www.ncsssa.org/statessadminmenu.html. For information on SSA contacts regarding Section 218 Agreements, see "SSA Regional Office State and Local Coverage Specialists" at https://www.ssa.gov/slge/specialists.htm.

[31] See SSA, "State Social Security Administrator," https://www.ssa.gov/slge/state_ssa.htm. For information on the management of Section 218 Agreements, see U.S. Government Accountability Office (GAO), *Social Security Administration: Management Oversight Needed to Ensure Accurate Treatment of State and Local Government Employees*, GAO-10-936, September 2010, http://www.gao.gov/new.items/d10938.pdf.

and local government employees as outlined below.[32] In 1951, certain state and local government employees first became eligible for Social Security coverage.[33] Before 1991, Social Security coverage was optional for all state and local government employees. In 1991, Social Security coverage became mandatory for most state and local government employees who were not covered under public retirement systems.[34]

- **1950**

Among other provisions, the Social Security Act Amendments of 1950 (P.L. 81-734) extended Social Security coverage to various groups of workers, including workers in Puerto Rico and the U.S. Virgin Islands (i.e., those in the general workforce).[35]

It also extended voluntary coverage to state and local government employees *not* covered under retirement systems (an estimated 1.5 million people at the time).[36] State and local government employees covered under retirement systems were excluded from voluntary Social Security coverage. Section 218 was added to the Social Security Act to allow the 48 states that existed at the time plus Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands to elect Social Security coverage for certain state and local government employees through voluntary agreements between the states and the federal government. Coverage became effective January 1, 1951.

The 1950 amendments permitted states to terminate coverage for state and local groups provided the coverage had been in effect for at least five years and notice of intent was given two years in advance. Termination of Social Security coverage was permanent.

- **1954**

Among other provisions, the Social Security Amendments of 1954 (P.L. 83-761) extended voluntary Social Security coverage to state and local government employees covered under retirement systems (except police officers and firefighters).

Under the 1954 amendments, police officers and firefighters covered under retirement systems continued to be excluded from voluntary Social Security coverage. The exclusion was left in place because most of the organizations representing police officers and firefighters were opposed to the coordination of their systems with the Social Security system, even on a voluntary basis.[37]

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[32] For key dates in the history of coverage for state and local government employees, see also IRS Publication 963, p. 2.

[33] For state and local government employee coverage data for 1951-1981, see Bert Kestenbaum, "State and Local Government Employees Covered Under Social Security, 1977-81," *Social Security Bulletin*, vol. 45, no. 12 (December 1982), https://www.ssa.gov/policy/docs/ssb/v45n12/v45n12p11.pdf.

[34] Those who oppose mandatory Social Security coverage for newly hired state and local government employees sometimes argue that it would raise constitutional issues and might be challenged in court. In 1998, the General Accounting Office (now the Government Accountability Office) wrote, "we believe that mandatory coverage is likely to be upheld under current U.S. Supreme Court decisions." See GAO, *Social Security: Implications of Extending Mandatory Coverage to State and Local Employees*, GAO/HEHS-98-196, August 1998, pp. 19-20, http://www.gao.gov/archive/1998/he98196.pdf. A discussion of any potential legal issues associated with mandatory coverage for newly hired state and local government employees is beyond the scope of this CRS report.

[35] Coverage was extended to the U.S. Virgin Islands on an automatic basis. Puerto Rico had to elect coverage. The 1950 amendments permitted coverage to be extended to Puerto Rico provided the governor of Puerto Rico certified to the President of the United States that the legislature of Puerto Rico resolved (via concurrent resolution) to elect the extension. Social Security coverage became effective in Puerto Rico and the U.S. Virgin Islands on January 1, 1951.

[36] Social Security Act Amendments of 1950, P.L. 81-734, §106 (Coverage of State and Local Employees).

[37] Wilbur J. Cohen, Robert M. Ball, and Robert J. Myers, "Social Security Act Amendments of 1954: A Summary and Legislative History," *Social Security Bulletin*, vol. 17, no. 9 (September 1954), p. 4, at https://www.ssa.gov/policy/docs/ssb/v17n9/index.html.

The 1954 amendments specified that state and local government employees covered under retirement systems could elect Social Security coverage if a referendum by secret written ballot was held among the members of the retirement system and a majority of those eligible to vote in the referendum voted in favor of coverage.[38] Coverage became effective January 1, 1955.[39]

The 1954 amendments made Social Security coverage available to about 3.5 million state and local government employees. Social Security coverage was now available to almost all state and local government employees. The only sizable group not eligible for Social Security coverage was about 200,000 police officers and firefighters who had their own retirement systems.[40]

- **1956**

Among other provisions, the Social Security Amendments of 1956 (P.L. 84-880) allowed certain states to divide any state or local retirement system into two divisions: one division for the positions of employees who want Social Security coverage and one division for the positions of employees who do not want Social Security coverage. Each division may be treated as a separate retirement system.[41] Under the 1956 amendments, eight states (Florida, Georgia, New York, North Dakota, Pennsylvania, Tennessee, Washington, and Wisconsin), the then-territory of Hawaii, and their political subdivisions were permitted to operate *divided retirement systems* in which some positions are covered by Social Security and some positions are not covered. When a divided retirement group votes to elect Social Security coverage, coverage is extended only to current employees who choose to participate in the Social Security system. Coverage is not extended to current employees who choose not to participate in Social Security. However, all *future* employees in the group's positions are covered by Social Security on a mandatory basis. Under current law, 23 states are authorized to operate divided retirement systems.[42]

In addition, the 1956 amendments permitted police officers and firefighters covered under retirement systems in five states to elect Social Security coverage (Florida, North Carolina, Oregon, South Carolina, and South Dakota).[43]

- **1983**

Before April 1983, states that elected Social Security coverage had the option to withdraw from the program. A state could terminate coverage for state and local groups provided the coverage had been in effect for at least five years and written notice was given to the Secretary of Health

[38] In a majority vote referendum, a majority of all the eligible employees covered by the retirement system (not a majority of the eligible employees casting votes) must vote in favor of coverage.

[39] Social Security Amendments of 1954, P.L. 83-761, §101(h) (Employees Covered by State or Local Retirement Systems).

[40] James E. Marquis, "Old-Age and Survivors Insurance: Coverage Under the 1954 Amendments," *Social Security Bulletin*, vol. 18, no. 1 (January 1955), p. 7, https://www.ssa.gov/policy/docs/ssb/v18n1/index.html.

[41] Social Security Amendments of 1956, P.L. 84-880, §104(e) (Certain State and Local Employees).

[42] Most recently, Kentucky and Louisiana were added to the list of states authorized to operate divided retirement systems as part of the Social Security Protection Act of 2004 (P.L. 108-203, §416). The 23 states authorized to hold divided vote referendums are listed in Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. §418(d)(6)(C)). In addition, under Section 218(g)(2) of the Social Security Act (42 U.S.C. §418(g)(2)), all interstate instrumentalities may divide a retirement system based on whether the employees in positions under that system want coverage.

[43] Social Security Amendments of 1956, P.L. 84-880, §104(g) (Policemen and Firemen in the States of Florida, North Carolina, Oregon, South Carolina, and South Dakota).

and Human Services two years in advance.[44] There was no requirement in the law that employees be notified when a notice of termination had been filed or when coverage had been terminated.[45]

Among other provisions, the Social Security Amendments of 1983 (P.L. 98-21) prohibited states from terminating coverage for state and local government employees if the termination had not become effective before the date of enactment of the legislation (April 20, 1983).[46] The 1983 amendments also allowed state and local groups whose coverage had already been terminated to elect coverage again. Under prior law, groups whose coverage had been terminated were prohibited from regaining coverage.[47]

The House report accompanying the 1983 legislation explains that the provision was in response to an increase in the number of termination notices, attributed in part to the Social Security system's financing problems in the late 1970s and early 1980s. The House report states:

> The number of governments filing termination notices did increase in conjunction with widespread concern about the financial conditions of social security that preceded the 1977 Amendments. While this rate of filing slowed down after the 1977 Amendments, considerable acceleration in filing for terminations for State and local governments has occurred since 1980, again in conjunction with widespread concern about the financial viability of the trust funds, and about the economy in general.
>
> During the five-year period from 1977 through 1981, when termination activity was greater than in the previous ten years, coverage was terminated for 96,000 State and local government employees; as of December, 1982 coverage had been terminated for 595 State entities employing 190,000 workers. In contrast, for the two-year period of 1983-84, terminations are pending for 634 State and local entities employing 227,000 workers.
>
> [The] Committee strongly feels that the ability to terminate coverage for State and local government employees is inequitable both for the employees who lose coverage and for the vast majority of the nation's workforce who continue to pay into the system.[48]

In addition, the 1983 amendments mandated Social Security coverage for newly hired *federal* employees (i.e., those hired January 1, 1984, or later).

- **1990**

Among other provisions, the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) made Social Security coverage mandatory for most state and local government employees not covered under public retirement systems. Students employed by their educational institutions were

[44] At the time, SSA was part of the U.S. Department of Health and Human Services. The Social Security Independence and Program Improvements Act of 1994 (P.L. 103-296) established SSA as an independent agency.

[45] U.S. Congress, House Committee on Ways and Means, *Social Security Act Amendments of 1983*, report to accompany H.R. 1900, 98th Cong., 1st sess., March 4, 1983, H. Rept. 98-25, Part 1, p. 18.

[46] Social Security Amendments of 1983, P.L. 98-21, §103 (Duration of Agreements for Coverage of State and Local Employees).

[47] The State of California challenged the 1983 law prohibiting the termination of coverage on the basis that it deprived states of contractual rights without just compensation, thus violating the Fifth Amendment of the Constitution. The U.S. Supreme Court rejected California's arguments and, on June 19, 1986, ruled that the provision was constitutional under the authority of Congress to provide for the general welfare. Bowen v. Pub. Agencies Opposed to Social Security Entrapments, 477 U.S. 41 (1986).

[48] U.S. Congress, House Committee on Ways and Means, *Social Security Act Amendments of 1983*, report to accompany H.R. 1900, 98th Cong., 1st sess., March 4, 1983, H. Rept. 98-25, Part 1, pp. 18-19.

excluded from mandatory coverage.[49] Coverage became effective for service performed after July 1, 1991.[50]

- **1994**

Among other provisions, the Social Security Independence and Program Improvements Act of 1994 (P.L. 103-296) gave all states the authority through their Section 218 Agreements to provide Social Security and Medicare coverage or Medicare-only coverage for police officer and firefighter positions already covered under retirement systems (effective August 16, 1994). With congressional authorization in place, states could begin modifying the language of their Section 218 Agreements and begin holding referendums to extend coverage to these positions.

Social Security Coverage by State

Data from SSA shows that there were 23.2 million state and local government employees in the United States in 2018. The majority of these workers had Social Security coverage based on their state and local government employment. Specifically, 72% of state and local government employees (16.6 million workers) had Social Security coverage. The remaining 28% (6.6 million workers) did not have Social Security coverage.[51] The largest share of noncovered state and local government employees work at the local level, and most noncovered local government employees are police officers, firefighters, and teachers.[52]

As shown in **Table 1**, the share of state and local government employees with Social Security coverage in 2018 varied widely by state, ranging from 2.7% in Massachusetts and Ohio to 97.2% in Vermont. The following statistics are based on the data shown in **Table 1**.

- In 28 states, 90% or more of state and local government employees had Social Security coverage.
- In eight states, fewer than 50% of state and local government employees had Social Security coverage (Massachusetts, Ohio, Nevada, Louisiana, Colorado, California, Texas, and Alaska).
- Eight states accounted for almost three-fourths (73%) of noncovered state and local government employees (California, Texas, Ohio, Massachusetts, Illinois, Colorado, Louisiana, and Georgia).
- Three states accounted for almost half (48%) of noncovered state and local government employees (California, Texas, and Ohio).

[49] Students employed by educational institutions operated by state or local governments may be covered by Social Security under the terms of a state's Section 218 Agreement with SSA.

[50] Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, §11332 (Coverage of Certain State and Local Employees Under Social Security).

[51] These workers did not have Social Security coverage based on their state and local government employment. In some cases, they may have Social Security coverage based on other employment, or they may have a family connection to a Social Security–covered worker that makes them potentially eligible for Social Security spousal benefits, for example.

[52] IRS Publication 963, p. 1.

Table 1. Social Security Coverage of State and Local Government Employees, by State, in 2018

	State and Local Government Employees	Covered Workers: State and Local Government Employees *With* Social Security Coverage		Noncovered Workers: State and Local Government Employees *Without* Social Security Coverage	
State	**Number**	**Number**	**Percentage**	**Number**	**Percentage**
Alabama	360,900	331,700	91.9%	29,200	8.0%
Alaska	83,300	39,900	47.8%	43,400	52.1%
Arizona	344,600	327,000	94.8%	17,600	5.1%
Arkansas	194,900	176,100	90.3%	18,800	9.6%
California	2,442,300	1,090,000	44.6%	1,352,300	55.3%
Colorado	465,200	134,200	28.8%	331,000	71.1%
Connecticut	268,200	191,200	71.2%	77,000	28.7%
Delaware	67,800	64,100	94.5%	3,700	5.4%
District of Columbia	78,300	65,000	83.0%	13,300	16.9%
Florida	1,107,900	967,700	87.3%	140,200	12.6%
Georgia	671,100	474,500	70.7%	196,600	29.2%
Hawaii	114,700	83,500	72.7%	31,200	27.2%
Idaho	142,700	134,200	94.0%	8,500	5.9%
Illinois	927,200	523,600	56.4%	403,600	43.5%
Indiana	480,300	424,500	88.3%	55,800	11.6%
Iowa	300,100	270,300	90.0%	29,800	9.9%
Kansas	298,200	271,500	91.0%	26,700	8.9%
Kentucky	343,900	256,500	74.5%	87,400	25.4%
Louisiana	304,900	80,000	26.2%	224,900	73.7%
Maine	103,900	55,700	53.6%	48,200	46.3%
Maryland	468,900	426,000	90.8%	42,900	9.1%
Massachusetts	497,600	13,700	2.7%	483,900	97.2%
Michigan	775,200	632,500	81.5%	142,700	18.4%
Minnesota	474,200	438,100	92.3%	36,100	7.6%
Mississippi	258,800	239,500	92.5%	19,300	7.4%
Missouri	459,400	344,300	74.9%	115,100	25.0%
Montana	97,700	89,300	91.4%	8,400	8.5%
Nebraska	152,200	145,300	95.4%	6,900	4.5%
Nevada	158,000	23,200	14.6%	134,800	85.3%
New Hampshire	105,600	93,800	88.8%	11,800	11.1%
New Jersey	650,200	597,300	91.8%	52,900	8.1%
New Mexico	194,300	175,600	90.3%	18,700	9.6%

	State and Local Government Employees	Covered Workers: State and Local Government Employees *With* Social Security Coverage		Noncovered Workers: State and Local Government Employees *Without* Social Security Coverage	
State	**Number**	**Number**	**Percentage**	**Number**	**Percentage**
New York	1,746,900	1,658,100	94.9%	88,800	5.0%
North Carolina	660,600	607,700	91.9%	52,900	8.0%
North Dakota	83,300	74,400	89.3%	8,900	10.6%
Ohio	808,900	22,200	2.7%	786,700	97.2%
Oklahoma	240,300	227,300	94.5%	13,000	5.4%
Oregon	281,100	271,200	96.4%	9,900	3.5%
Pennsylvania	749,900	689,200	91.9%	60,700	8.0%
Puerto Rico	187,300	157,600	84.1%	29,700	15.8%
Rhode Island	52,800	44,000	83.3%	8,800	16.6%
South Carolina	314,800	290,200	92.1%	24,600	7.8%
South Dakota	80,800	75,100	92.9%	5,700	7.0%
Tennessee	485,000	440,900	90.9%	44,100	9.0%
Texas	1,978,800	912,800	46.1%	1,066,000	53.8%
Utah	256,700	233,000	90.7%	23,700	9.2%
Vermont	54,400	52,900	97.2%	1,500	2.7%
Virginia	688,800	639,600	92.8%	49,200	7.1%
Washington	548,800	494,500	90.1%	54,300	9.8%
West Virginia	114,800	106,400	92.6%	8,400	7.3%
Wisconsin	438,700	377,800	86.1%	60,900	13.8%
Wyoming	74,500	70,900	95.1%	3,600	4.8%
Other[a]	7,400	500	6.7%	6,900	93.2%
Total	**23,247,100**	**16,626,100**	**71.5%**	**6,621,000**	**28.4%**

Source: Data from the Social Security Administration obtained by CRS in January 2021.

Notes: Percentages may not sum to 100% due to rounding.

a. Includes people employed by American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands.

Mandatory Coverage Proposals

Over the years, there have been proposals to make Social Security coverage mandatory for newly hired state and local government employees. Generally, such proposals are consistent with actions taken by Congress to expand Social Security (and Medicare) coverage. As outlined above, in 1983, Congress mandated Social Security coverage for newly hired *federal* employees, and Congress prohibited states from terminating coverage for state and local government employees once it had been elected. In 1986, Congress mandated Medicare coverage for newly hired state and local government employees. In 1990, Congress mandated Social Security coverage for most state and local government employees who are not covered under public retirement systems.

Mandatory Social Security coverage for newly hired state and local government employees has been proposed in a variety of contexts, ranging from the recommendations of presidential commissions to legislation introduced by Members of Congress. In 2010, for example, President Barack Obama established the National Commission on Fiscal Responsibility and Reform.[53] The commission (also known as the "Fiscal Commission" or the "Simpson-Bowles Commission" after co-chairs Alan Simpson and Erskine Bowles) was directed to make recommendations to improve the nation's fiscal outlook. In its final report, the commission included a number of recommendations that would have had a direct effect on Social Security tax revenues and benefits. Among other provisions, the commission recommended that newly hired state and local government employees be covered under the Social Security system. The commission noted that, as states face prolonged fiscal challenges and an aging workforce, maintaining separate retirement systems outside of Social Security could pose risks for plan sponsors and participants. In the commission's view, mandatory Social Security coverage could mitigate these risks, as well as a potential future bailout risk for the federal government.[54]

In another example, Senator Bob Corker and Senator Lamar Alexander introduced the Fiscal Sustainability Act of 2013 (S. 11, 113th Congress). Among other provisions, the legislation would have made Social Security coverage mandatory for newly hired state and local government employees starting in 2021. There was no congressional action on the measure.

Issues Surrounding Mandatory Coverage

Proposals to mandate Social Security coverage for newly hired state and local government employees have been part of the Social Security policy debate for years. Such proposals draw strong support and opposition from stakeholders. There are a number of issues to consider with respect to mandatory coverage for newly hired state and local government employees. This section highlights some of the major issues:

- projected effect on the Social Security trust funds;
- projected effect on federal revenues;
- comparability of noncovered pensions and Social Security benefits;
- Social Security Windfall Elimination Provision (WEP) and Government Pension Offset (GPO);
- special considerations for certain occupational groups (such as police officers and firefighters);
- Social Security protections for workers and family members (disability insurance protection, portability, benefits for dependents and survivors, cost-of-living adjustments (COLAs), progressive benefit formula); and
- effect on state and local plans (administrative and cost issues, funding status of state and local plans).

[53] Executive Order 13531, "National Commission on Fiscal Responsibility and Reform," 75 *Federal Register* 7927, February 18, 2010, https://www.federalregister.gov/documents/2010/02/23/2010-3725/national-commission-on-fiscal-responsibility-and-reform.

[54] *The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform*, December 1, 2010, p. 52.

Projected Effect on the Social Security Trust Funds

Under current law, the Social Security system is facing a projected funding shortfall. The Social Security trust funds are projected to be unable to pay full scheduled benefits in a timely manner in less than two decades. In its 2021 Annual Report, the Social Security Board of Trustees projects that, based on its intermediate assumptions, program costs will exceed income by about 26% on average over the next 75-year period.[55]

When considering Social Security policy changes, lawmakers take into account many factors, including the proposal's projected effect on the Social Security trust funds. SSA's Office of the Chief Actuary (OCACT) projects that mandatory Social Security coverage for newly hired state and local government employees would have a net positive effect on the Social Security trust funds on average over the next 75-year period. OCACT projects that the policy change would close 5% of the system's projected long-range funding shortfall (based on the intermediate assumptions of the 2020 Trustees Report). The largest positive effect on the trust funds would occur during the initial period following implementation.[56]

Projected Effect on Federal Revenues

Social Security operates with a trust fund financing mechanism. As required by law, the Social Security payroll taxes paid by covered workers and their employers are (1) *deposited* into the General Fund of the U.S. Treasury, where they are available for spending on general government operations, and (2) *credited* to the Social Security trust funds in the form of special-issue U.S. Treasury securities. The holdings of the Social Security trust funds represent the amount of money the U.S. Treasury's General Fund owes to the Social Security trust funds. There is no separate pool of cash set aside for Social Security purposes.[57]

Work that is not covered by Social Security represents foregone payroll tax revenues to the federal government. A Congressional Budget Office (CBO) report on options for reducing federal budget deficits includes the option of making Social Security coverage mandatory for state and local government employees hired after December 31, 2020. Revenue estimates for this option show that it would generate $101 billion in revenues over 10 years (2021-2030).[58] This option would have little effect on Social Security spending in the short-term because most state and local government employees who would be hired during this period would not begin receiving benefits for many years. Therefore, the estimates do not include any effects on outlays. However, beyond the 10-year window, an increase in Social Security spending would partly offset the additional revenues generated by newly covered state and local government employees. CBO estimates that making Social Security coverage mandatory for newly hired state and local government employees would result in a net increase in payroll tax revenues.

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[55] The 2021 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, August 31, 2021, https://www.ssa.gov/oact/TR/2021/index.html. See Table IV.B5 (page 74) for the projected difference between the summarized income rate and summarized cost rate for OASDI under the intermediate assumptions for the period 2021-2095. For more information on the projected financial outlook for the Social Security program, see CRS In Focus IF10522, *Social Security's Funding Shortfall*.

[56] OCACT, *Proposed Provision F1: Starting in 2021, Cover Newly Hired State and Local Government Employees*, https://www.ssa.gov/oact/solvency/provisions/charts/chart_run315.html.

[57] For more information, see CRS In Focus IF10564, *Social Security Trust Fund Investment Practices*.

[58] CBO, *Options for Reducing the Deficit: 2021 to 2030*, December 2020, p. 76, https://www.cbo.gov/publication/56783.

Comparability of Noncovered Pensions and Social Security

To qualify as an alternative to Social Security, public retirement systems must provide noncovered workers with a minimum level of benefits. In general, they must provide retirement benefits that are comparable to Social Security retirement benefits. To help plans determine if they are in compliance with the minimum standards needed to qualify as an alternative to Social Security, the IRS has established safe harbor provisions (design parameters) for defined benefit plans and defined contribution plans. Safe harbor designs are outlined in IRS Employment Tax Regulations and IRS Revenue Procedure 91-40.[59]

A recent study by the Center for Retirement Research at Boston College (CRR) looked at whether state and local pension plans currently satisfy these standards, given that many public pensions have grown less generous in recent years and a few plans could exhaust their assets.[60] The CRR researchers used Social Security coverage data from surveys of plan administrators and benefit data from plan actuarial valuation reports. Based on the 12 states in the sample, the CRR study found that virtually all plans satisfy the safe harbor requirements and that participation in a safe harbor plan produces about the same level of benefits at age 67 as Social Security.[61]

The CRR researchers also compared the value of *lifetime* benefits. They looked at whether state and local pension plans for noncovered employees provide Social Security–equivalent resources throughout retirement, given differences in public pensions and Social Security that affect lifetime retirement resources. For example, the CRR researchers point out that state and local plans often set long vesting periods[62] and are increasingly unlikely to grant full COLAs after retirement. On the other hand, they allow members to collect full benefits at much younger ages than Social Security.[63]

Accounting for those differences, the CRR study found that "a significant portion of noncovered state and local plans fall short of Social Security for some of their members, with the extent of the shortfall depending on workers' characteristics and specific benefit plan designs. Moreover, underfunding and the possibility of a few plans exhausting their trust fund assets reinforce the findings regarding benefit generosity."[64] At the same time, the study acknowledges that Social Security also faces projected funding shortfalls, which can complicate comparisons of benefit generosity. With respect to ensuring Social Security–equivalent protections for all state and local government employees, the CRR researchers note that one option would be to update the safe harbor requirements for defined benefit plans to specify "reasonable" vesting periods and provide

[59] See Section 31.3121(b)(7)-2(e) of the IRS Employment Tax Regulations at https://www.ecfr.gov/current/title-26/chapter-I/subchapter-C/part-31/subpart-B/subject-group-ECFR996050e2e4c4937/section-31.3121(b)(7)-2#p-31.3121(b)(7)-2(e). See IRS Revenue Procedure 91-40 at https://www.ssa.gov/slge/revenue_procedure_91-40.htm. For example, IRS Revenue Procedure 91-40 outlines a set of safe harbor formulas for defined benefit retirement systems. Benefits calculated under one of these formulas are deemed to meet the minimum retirement benefit requirement. In addition, procedures are set out by which an employer may determine whether retirement benefits calculated under other formulas meet the minimum retirement benefit requirement of the regulations with respect to an employee.

[60] Laura D. Quinby, Jean-Pierre Aubry, and Alicia H. Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," Center for Retirement Research at Boston College, April 2021, https://crr.bc.edu/briefs/do-public-workers-without-social-security-get-comparable-benefits/. The analysis and findings discussed in this CRR brief are in relation to new hires in defined benefit plans. Most state and local government employees are covered by traditional defined benefit plans.

[61] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 2.

[62] A vesting period is the minimum period an employee is required to work to be eligible for a future retirement benefit.

[63] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 4.

[64] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 4.

full COLAs. Another option would be to bring all state and local government employees into the Social Security system.[65]

Windfall Elimination Provision and Government Pension Offset

The Social Security program includes two provisions that affect beneficiaries who receive pensions from work that was not covered by Social Security: the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO). These provisions were enacted by Congress to address equity issues created by the exclusion of some state and local government employees from Social Security coverage. The WEP, which was enacted in 1983, affects the Social Security benefits that a person receives based on his or her own work record (as a retired or disabled worker) as well as the benefits paid to his or her eligible family members. The GPO, which was enacted in 1977 and modified in 1983, affects the Social Security benefits that a person receives as the spouse or surviving spouse of a Social Security–covered worker.[66]

Windfall Elimination Provision (WEP)

The WEP affects people who have worked in both covered and noncovered employment. If a person is receiving a pension from noncovered employment, his or her Social Security benefits are subject to reduction under the WEP if he or she has fewer than 30 years of substantial earnings in covered employment.[67] Under the WEP, the worker's Social Security benefits are computed using an alternative benefit formula (the "windfall formula") rather than the regular benefit formula. The windfall formula results in a lower initial monthly benefit. The amount of the reduction in the initial monthly benefit is limited to one-half the monthly amount of the worker's noncovered pension.

The regular benefit formula has a progressive structure intended to help workers with long careers in covered employment at lower wages. That is, compared to higher earners, lower-wage workers receive initial monthly benefits that replace a larger percentage of their career-average earnings.[68] The windfall formula is designed to remove an unintended advantage that the regular benefit formula would otherwise provide to workers with less than a full career in covered employment (sometimes at higher wages) because they also worked in noncovered employment and receive a pension based on noncovered work. In December 2020, about 1.9 million Social Security beneficiaries (about 3% of beneficiaries) were affected by the WEP.[69]

Government Pension Offset (GPO)

The GPO affects people who have worked in noncovered employment and also qualify for Social Security benefits as the spouse or surviving spouse of a Social Security–covered worker. If a person is receiving a pension from noncovered employment, his or her Social Security spousal or

[65] Quinby, Aubry, and Munnell, "Do Public Workers Without Social Security Get Comparable Benefits?," p. 5.

[66] The WEP was enacted as part of the Social Security Amendments of 1983 (P.L. 98-21). The GPO was enacted as part of the Social Security Amendments of 1977 (P.L. 95-216) and modified as part of the Social Security Amendments of 1983 (P.L. 98-21).

[67] The reduction under the WEP is phased out for workers with between 21 and 30 years of substantial earnings in covered employment. Workers with 30 or more years of substantial earnings in covered employment are exempt from the WEP.

[68] For more information, see CRS In Focus IF11747, *Social Security: Benefit Calculation Overview*.

[69] For more information on the WEP, see CRS In Focus IF10203, *Social Security: The Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO)*.

widow(er) benefits are subject to reduction under the GPO. The person's Social Security spousal or widow(er) benefits are reduced by an amount equal to two-thirds of his or her noncovered pension (a two-thirds offset). Depending on the relative amounts of the two benefits, the Social Security spousal or widow(er) benefits may be reduced to zero. In December 2020, about 717,000 Social Security beneficiaries (about 1% of beneficiaries) were affected by the GPO.[70]

The GPO is intended to replicate the Social Security dual entitlement rule, which affects people who have worked in *covered* employment and also qualify for Social Security benefits as the spouse or surviving spouse of a Social Security–covered worker. Under the dual entitlement rule, the person's Social Security spousal or widow(er) benefits are reduced by the full amount of his or her own Social Security worker benefits (a 100% offset). Depending on the relative amounts of the two benefits, the Social Security spousal or widow(er) benefits may be reduced to zero.

Issues Related to the WEP and the GPO

Approximately two-thirds of WEP and GPO cases involve former state and local government employees.[71] A person who is applying for benefits, or a person who is already receiving benefits, must inform SSA that he or she is receiving a pension from noncovered employment and the amount of the pension so that the WEP and the GPO can be applied to the Social Security benefit computation. (One or both provisions may apply depending on the circumstances.) SSA must generally rely on self-reported data to administer the WEP and the GPO for state and local government employees, which can make enforcement of the provisions difficult and can result in overpayments.[72] In addition, inconsistent reporting by individuals can raise equity issues. If individuals do not accurately report their noncovered pension information to SSA, they may receive higher Social Security benefits than they are due under current law. A recent study found that the number of state and local government employees in jobs not covered by Social Security increased from 4.2 million in the 1994-1998 period to 4.7 million in the 2014-2018 period. This trend suggests an increase in SSA workloads in the future to administer the WEP and the GPO.[73]

In addition, critics point out that these provisions are not well understood by the people who are affected by them.[74] They further point out that affected individuals consider the provisions to be unfair and somewhat arbitrary with respect to how the benefit reductions are computed. Lawmakers regularly introduce legislation that would repeal or modify these provisions. Mandatory Social Security coverage for newly hired state and local government employees would eventually eliminate the need for the WEP and GPO provisions.

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[70] For more information on the GPO, see CRS In Focus IF10203, *Social Security: The Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO)*.

[71] Glenn R. Springstead, "The Social Security Windfall Elimination Provision: Issues and Replacement Alternatives," *Social Security Bulletin*, vol. 79, no. 3 (August 2019), pp. 1-19, https://www.ssa.gov/policy/docs/ssb/v79n3/.

[72] SSA has a data matching agreement with the U.S. Office of Personnel Management to use CSRS data for purposes of administering the WEP and the GPO for affected federal employees.

[73] Patrick Purcell, "Trends in Noncovered Employment and Earnings Among Employees of State and Local Governments, 1994 to 2018," SSA Briefing Paper No. 2021-01, August 2021, https://www.ssa.gov/policy/docs/briefing-papers/bp2021-01.html.

[74] The Social Security Protection Act of 2004 (P.L. 108-203) requires state and local government employers to disclose the effect of the WEP and the GPO to employees hired on or after January 1, 2005, in jobs that are not covered by Social Security (see Section 419(c) of P.L. 108-203). The law requires newly hired employees to sign a statement acknowledging that they are aware of a possible reduction in their future Social Security benefit entitlement. For more information, see SSA, *State and Local Government Employers—Information*, https://www.ssa.gov/slge/.

Special Considerations for Certain Occupational Groups

Under the Social Security program, reduced retirement benefits are first payable at age 62. Full (unreduced) retirement benefits are first payable at the full retirement age (age 67 for most current workers). In addition, Social Security benefits are computed using the worker's highest 35 years of wage-indexed earnings in covered employment. If a worker has fewer than 35 years in covered employment, zero earnings are counted in the benefit computation for the "missing" years, resulting in lower initial monthly benefits.[75]

Unlike Social Security, some public pension plans have eligibility rules and other design features that are tailored to workers in certain occupations—such as police officers and firefighters—to reflect the circumstances of those occupations, including rigorous physical demands and higher disability rates. Public pension plans for police officers and firefighters, for example, typically provide full pension benefits at younger ages and with fewer years of service compared to other public pension plans and Social Security.

Critics of mandatory coverage for newly hired state and local government employees maintain that such differences could present challenges with respect to integrating public pensions with Social Security. They point out that, while Social Security may provide enhanced benefit protections for some state and local government employees, certain groups may be better off in separate retirement systems (i.e., outside of Social Security).

This view was reflected in the 1950s when Congress extended voluntary coverage to state and local government employees already covered under retirement systems as part of the Social Security Amendments of 1954 (P.L. 83-761). In 1954, police officers and firefighters covered under retirement systems were explicitly excluded from voluntary Social Security coverage at the request of various police and firefighter organizations throughout the country. The 1954 Senate report on the legislation states:

> The bill continues the present exclusion of policemen and firemen who are covered by a State or local retirement system. Policemen and firemen, because of the special demands made by their work, usually have special provisions in their retirement systems (retirement at age 50 or 55, for example) and most of them believe that it would be unwise to attempt to coordinate these provisions with the provisions of the old-age and survivors insurance system.[76]

Similarly, during House floor debate on the legislation, Representative Jere Cooper addressed a question about why police officers and firefighters were excluded from voluntary Social Security coverage by the House Ways and Means Committee. Representative Cooper replied:

> The firemen and policemen requested to be left out.... The very nature of their employment is such that they do not continue as firemen and policemen until they are 65 in many cases and in many instances it was pointed out that they have retirement systems of their own which they prefer and they requested to be left out.[77]

With respect to occupational groups that may require special considerations, the integration of newly hired *federal* employees into Social Security in the 1980s can provide a relevant example.

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[75] For more information, see CRS Report R42035, *Social Security Primer*.

[76] U.S. Congress, Senate Committee on Finance, *Social Security Amendments of 1954*, report to accompany H.R. 9366, 83rd Cong., 2nd sess., July 27, 1954, S. Rept. 1987, p. 6.

[77] *Congressional Record*, June 1, 1954, House, p. 7433.

FERS Accommodations for Certain Occupational Groups

The Federal Employees' Retirement System (FERS) can serve as an example of how to integrate an existing public pension plan tailored to workers in certain occupations with Social Security, given differences in eligibility requirements (such as retirement age and years of service) and other plan features.

In 1983, Congress mandated Social Security coverage for federal employees hired January 1, 1984, or later. At the time, federal employees were covered under CSRS, which does not have a Social Security component. FERS was created as a separate retirement system for federal employees hired in 1984 or later, and it includes Social Security as one of three components: the FERS basic retirement annuity and the FERS supplement; Social Security; and the Thrift Savings Plan.[78]

Under FERS, certain categories of workers—including federal law enforcement officers, federal firefighters, and air traffic controllers—are permitted to retire earlier and accrue pension benefits at higher rates than regular civilian federal employees.[79] Law enforcement personnel, for example, can retire at age 50 with 20 years of service or at any age with 25 years of service.[80]

FERS also provides a temporary supplemental benefit (the FERS supplement) for workers who retire from federal service before age 62 (i.e., before they become eligible for permanently reduced Social Security retirement benefits). The FERS supplement is available to regular civilian federal employees who retire at (1) age 55 or older with 30 or more years of service, or (2) age 60 with 20 or more years of service. Workers in certain occupational groups are eligible for the supplement at earlier ages. The supplement is available to federal law enforcement officers, federal firefighters, and air traffic controllers who retire at age 50 or older with 20 or more years of service. The FERS supplement is equal to the worker's estimated Social Security benefit based on his or her federal government employment. It is payable only up to age 62, regardless of whether the person claims Social Security benefits.[81]

The accommodations under FERS for federal employees in certain occupational groups can provide an *example* of how state and local pension plans tailored to certain occupational groups could be integrated with Social Security. For any given coverage group, the effect on participants would depend on the design features of the new or modified plan that incorporates a Social Security component relative to the design features of the existing plan.

Protections for Workers and Family Members

Mandatory Social Security coverage for newly hired state and local government employees could simplify retirement planning and benefit coordination for workers who divide their careers between covered and noncovered employment. In addition, it would prevent gaps in Social Security or pension coverage, resulting in better retirement, survivor, and disability insurance protections for workers who move between covered and noncovered positions. The following

[78] For more information, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

[79] CSRS also incorporates special rules for certain categories of workers, including federal law enforcement personnel.

[80] Law enforcement personnel are subject to mandatory retirement at age 57 or as soon as 20 years of service have been completed after age 57. See 5 U.S.C. §8335(b) for CSRS and 5 U.S.C. §8425(b) for FERS.

[81] For more information on special rules that apply to federal law enforcement officers, federal firefighters, and air traffic controllers under CSRS and FERS, see CRS Report R42631, *Retirement Benefits for Federal Law Enforcement Personnel*.

sections highlight some of the protections provided by Social Security for workers and family members that are generally not available under state and local pension plans.

Disability Insurance Protection

Workers who move between jobs covered by Social Security and noncovered positions can experience gaps in disability protection. To be eligible for Social Security disability benefits, among other requirements, a worker must meet a *duration work test* (to show a sufficient connection to covered employment for fully insured status) and a *recent work test* (to show a recent connection to covered employment). Under both tests, the requirements vary depending on the worker's age.[82] Under the duration work test, for example, workers who become disabled at age 42 or later generally need five years or more of covered employment. Under the recent work test, for example, workers aged 31 or older must generally have worked in covered employment for at least five years in the 10-year period immediately before becoming disabled.

When a young worker leaves covered employment and moves to a noncovered state or local government position, his or her insured status under Social Security may lapse. It may take five years or more to become insured under the public pension plan, resulting in a period with no disability insurance protection. Similarly, when a worker leaves a noncovered state or local government position and moves to a job covered by Social Security, he or she may have to wait five years or more before gaining insured status under the Social Security program.[83]

Portability

Most jobs in the United States are covered by Social Security. When a worker moves from one covered job to another, he or she continues (1) to accrue Social Security quarters of coverage needed to gain insured status under the program and (2) to build upon an earnings record that determines the amount of future benefits. The portability of Social Security allows workers to maintain coverage under the system as they switch jobs throughout their careers. In addition, a worker's earnings (up to age 60) are indexed to wage growth as part of the benefit computation process. Indexing past earnings to wage growth allows Social Security benefits to reflect the general rise in the standard of living that occurred during the person's working years.

By contrast, the portability of state and local defined benefit plans is usually limited to positions within the same public pension system. Benefits are generally based on some measure of final salary and years of service. A worker who changes jobs frequently may not stay in a state or local government position long enough to become vested in the pension plan. For workers who do stay long enough to qualify for benefits in the future, benefits are generally based on the worker's earnings when he or she left the job. Many plans do not index earnings as part of the benefit computation process (i.e., earnings are counted at face value). This can result in substantially lower benefits for a worker who leaves the job years before claiming benefits.[84]

Benefits for Dependents and Survivors

Generally, Social Security provides better benefit protections for the worker's dependents and survivors (including children and spouses) compared to state and local pension plans. For example, Social Security provides a spousal benefit equal to 50% of the worker's basic monthly

[82] SSA, Number of Credits Needed for Disability Benefits, https://www.ssa.gov/benefits/retirement/planner/credits.html#h3. For more information, see CRS In Focus IF10506, *Social Security Disability Insurance (SSDI)*.

[83] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," pp. 7-8.

[84] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," p. 8.

benefit (the worker's PIA), subject to adjustment based on the spouse's age when claiming benefits and other applicable factors. Spousal benefits are payable to the worker's current spouse and to any former (divorced) spouses who meet the eligibility requirements. Benefits paid to current and/or former spouses do not affect the worker's monthly benefit amount. In addition, Social Security provides a widow(er) benefit equal to 100% of the deceased worker's PIA, subject to any applicable adjustments. Widow(er) benefits are payable to the deceased worker's surviving spouse and to any former surviving spouses who meet the eligibility requirements.[85]

State and local pension plans generally do not provide comparable benefits for dependents and survivors. For example, most state and local pension plans do not provide benefits for the spouse of a retired worker while the worker is alive. In addition, most plans provide only modest benefits to a surviving spouse when the worker dies before retirement (such as a refund of the worker's contributions or a lump sum, whichever is greater). When the worker dies after retirement, benefits are provided for a surviving spouse only if the worker chooses a joint-and-survivor annuity option. A joint-and-survivor annuity is payable for the lifetime of the worker or the worker's spouse, whichever is longer. Generally, the worker accepts lower payments under this option because payments continue for a longer period.[86]

Cost-of-Living Adjustments (COLAs)

Generally, Social Security provides better inflation protection compared to state and local pension plans. Social Security provides an automatic, annual COLA based on the change in prices measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). COLAs are based on a formula specified in the Social Security Act and are not subject to a cap. Automatic annual COLAs help Social Security benefits maintain their purchasing power over time.[87]

State and local pension plans generally provide some cost-of-living adjustments, and plans that operate outside of the Social Security system tend to have greater inflation protection. In some cases, however, COLAs may be provided on an ad hoc basis or they may be subject to a cap.[88]

Progressive Benefit Formula

The Social Security benefit formula has a progressive structure in which lower-wage workers receive a higher *replacement rate* from Social Security compared to higher-wage workers, meaning that their initial monthly Social Security benefits replace a higher percentage of their pre-retirement earnings. For higher-wage workers, initial monthly Social Security benefits replace a lower percentage of their pre-retirement earnings. With its progressive benefit structure, Social Security redistributes income from workers with higher career-average earnings to workers with lower career-average earnings.[89]

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[85] For more information on Social Security benefits for the worker's dependents and survivors, including basic eligibility requirements, see Table 3 (Social Security Benefits for the Worker's Family Members) in CRS Report R42035, *Social Security Primer*.

[86] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," p. 8.

[87] For more information, see CRS Report 94-803, *Social Security: Cost-of-Living Adjustments*.

[88] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," pp. 8-9. There is wide variation in the design of COLA provisions in state and local pension plans. For more information, including a description of COLA provisions in selected state retirement plans, see National Association of State Retirement Administrators, "Cost-of-Living Adjustments," June 2021, https://www.nasra.org/files/Issue%20Briefs/NASRACOLA%20Brief.pdf.

[89] For more information, see CRS In Focus IF11747, *Social Security: Benefit Calculation Overview*.

Most state and local government employees are covered by traditional defined benefit plans. Under defined benefit plans, an employee's benefits are based on a formula that generally takes into account the employee's salary, years of service, and an accrual rate (benefit multiplier). While the specific benefit formula will vary by plan, the benefit formula in traditional defined benefit plans does not have redistributive features.

An individual's earning level could be considered an additional factor in the degree to which mandatory Social Security coverage could provide enhanced benefit protections for noncovered workers and their family members. With its progressive benefit structure, Social Security could be particularly advantageous for noncovered workers with lower earnings.

Other Considerations

Coverage under Social Security may be a factor in determining eligibility for other future benefits. For example, the Family and Medical Insurance Leave Act (FAMILY Act; S. 248 and H.R. 804, 117th Congress) proposes to use a worker's insured status for Social Security Disability Insurance (SSDI) as an eligibility criterion for a new paid family and medical leave benefit. If such a proposal were to be enacted, workers who are not covered under Social Security (i.e., those who are not subject to the Social Security payroll tax and any new related tax) would not be able to obtain SSDI insured status and thus would not be eligible for the new paid family and medical leave benefit.

Net Effect on Total Benefits

Mandatory Social Security coverage for newly hired state and local government employees could improve protections for workers and their family members. Specific outcomes would depend on a variety of factors, including how state and local governments would modify existing public pension plans in response to the mandate. For example, state and local governments could reduce some pension benefits that are currently available under state and local plans to keep overall pension costs down. Workers could also be required to pay higher contributions under a new or modified plan that incorporates a Social Security component. In addition, Congress could enact changes to Social Security's contribution and benefit structure to address the system's projected funding shortfall and other policy objectives. Such changes could result in higher payroll taxes and lower benefits for Social Security–covered workers compared to current law. The net effect on a worker's total benefits would depend on a variety of factors, many of which remain to be determined, and specific outcomes would vary across state and local plans depending on the response of plan sponsors.

Effect on State and Local Plans

Most state and local governments offer a traditional defined benefit plan for their employees. If Congress were to mandate Social Security coverage for newly hired state and local government employees, it is not clear how plan sponsors would respond to the mandate. For example, state and local governments could move away from defined benefit plans toward defined contribution plans, thereby shifting the financial risk from the employer to the employee.[90] When newly hired federal employees were mandatorily covered by Social Security in the 1980s, the federal government closed the existing federal retirement system (CSRS, a defined benefit plan) to new

[90] Defined benefit plans guarantee a monthly benefit in retirement for life. In defined contribution plans, employees use the funds in their accounts as a source of income in retirement. Defined contribution plans do not provide guarantees of lifetime income unless participants purchase an annuity. In any case, these plans do not guarantee a certain level of account assets or monthly annuity payable from the account.

participants and created a new federal retirement system (FERS) that has both defined benefit and defined contribution components. FERS has three elements: (1) the FERS basic retirement annuity and the FERS supplement; (2) Social Security; and (3) the Thrift Savings Plan.

If Congress were to mandate Social Security coverage for newly hired state and local government employees, the basic options for state and local governments would include (1) maintaining the current pension structure for newly hired employees, (2) providing a different (presumably lower) benefit structure for newly hired employees within an existing pension plan, (3) closing the existing pension plan to new participants (making it a "closed system") and creating a new pension plan for newly hired employees with a different (presumably lower) benefit structure, and (4) eliminating pension benefits (apart from Social Security) for newly hired employees.

State and local governments would have to decide what pension benefits to offer newly hired employees who would be covered by Social Security. Generally, some of the changes that states and localities might consider include changes to the defined benefit formula (such as counting more years in the calculation of the worker's final average salary and lowering the accrual rate), altering early retirement benefits, creating defined contribution plans, or creating hybrid plans that offer a combination of defined benefit and defined contribution pension benefits. The amount of contributions that employers and employees would be required to pay under the new arrangements would have to be determined. It could take several years to determine and fully implement the changes.

"Closed System" Option

The "closed system" option referenced above—closing the existing pension plan to new participants (i.e., contributors) and creating a new pension plan for newly hired employees—may raise funding concerns for the existing pension plan. The resulting decrease in contributions could add financial strain to pension systems that are currently underfunded and do not have sufficient assets on hand. For example, a plan that is underfunded and ceases to have new participants will find that plan assets will have been used up and that some benefits for some participants do not have a funding source. Sponsors of pension plans that are not fully funded would have to eventually make up for the funding shortfalls that exist within their plans.

Potential sources of funding to make up for shortfalls include state or local general revenues, increased contributions from current employees, and greater returns on pension plan investments. Currently, many states and localities are facing revenue shortfalls and may be reluctant to set aside funds to cover pension benefits payable several years in the future. It may be difficult or impossible to require increased employee contributions from current employees. Pension plan sponsors may be tempted to increase the riskiness of their investments to capture market gains. However, in the event of a market downturn, riskier pension fund investments would lose value, worsening the situation.

As an example from the federal government, CSRS is a closed system, and FERS is open to new participants. FERS annuities are fully funded by the sum of employee and employer contributions and interest earned by the Treasury bonds held by the Civil Service Retirement and Disability Fund (CSRDF). The federal government makes supplemental payments into the CSRDF on behalf of employees covered by CSRS, because employee and agency contributions and interest earnings do not meet the full cost of the benefits earned by employees covered by that system.[91]

[91] For more information, see CRS Report RL30023, *Federal Employees' Retirement System: Budget and Trust Fund Issues*.

Administrative and Cost Issues

State and local governments would have to negotiate with employee representatives and legislatures on the redesign of existing retirement systems in response to a Social Security coverage mandate. When Congress mandated Social Security coverage for newly hired federal employees in the 1980s, it took three years to establish a new federal retirement system (FERS) for affected employees.[92] The General Accounting Office (now the Government Accountability Office) has suggested that four years might be required to complete negotiations among employee representatives and legislatures on adapting existing plans to Social Security coverage.[93]

Some argue that a Social Security coverage mandate would impose ongoing administrative burdens and costs on state and local governments. For example, state and local governments would potentially have to administer existing retirement systems that operate outside of Social Security alongside new retirement systems for employees required to participate in the program. For example, when Social Security coverage was mandated for federal employees hired in 1984 or later, Congress created a new retirement system (FERS). The federal government administers the existing retirement system (CSRS) and the related CSRS offset program alongside FERS. The federal government will continue to operate CSRS and the CSRS offset program until the death of the last worker or survivor covered under the program, which the U.S. Office of Personnel Management estimates will occur around 2090.[94]

The congressional mandate to make Social Security coverage mandatory for newly hired *federal* employees affected one major pension system. By comparison, a coverage mandate for newly hired state and local government employees could affect many public pension plans within a state. The number of public pension plans in a state can vary considerably, as does the extent of Social Security coverage among state and local government employees under current law. Among the states, the share of state and local government employees *with* Social Security coverage ranged from 3% to 97% in 2018. In 28 states, 90% or more of state and local government employees had Social Security coverage. In eight states, fewer than 50% of state and local government employees had Social Security coverage. In some states, a coverage mandate could affect many public pension plans with different plan sponsors and different plan features.

In addition, state and local governments could experience higher costs associated with employer contributions under the new pension plans integrated with Social Security. Overall costs to state and local governments and their employees could increase, decrease, or remain the same depending on the type of pension benefit structure states and localities adopt in response to mandatory participation in Social Security. Factors affecting potential costs include the 6.2% Social Security payroll tax that employers and employees would each be required to pay (for a combined 12.4% Social Security payroll tax) and the amount of other employer and employee contributions required under the plans.

One study on the impact of mandatory Social Security coverage on state and local budgets points out that cost is the main reason public employers and employees oppose mandatory coverage. The study states:

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[92] Congress enacted the mandatory coverage provision in April 1983, effective for federal employees hired January 1, 1984, or later. Congress enacted the Federal Employees' Retirement System Act of 1986 (P.L. 99-335) in June 1986.

[93] GAO, *Social Security: Implications of Extending Mandatory Coverage to State and Local Employees*, GAO/HEHS 98-196, August 1998, http://www.gao.gov/archive/1998/he98196.pdf.

[94] For more information, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

> While virtually all recent proposals to extend coverage apply only to new hires, opponents recognize that once the transition is complete state and local governments would face the full impact of the cost. Lost in the fervor is the notion that any increase in ultimate cost of the combined Social Security/public pension system depends crucially on how plan sponsors respond to the introduction of Social Security.[95]

Funding Status of State and Local Plans

Many state and local government employers and employees oppose mandatory Social Security coverage based on concerns that mandatory coverage could increase pension system costs significantly at a time when many state and local pension systems are underfunded. When a plan is underfunded, the value of the plan's assets is less than accrued pension liabilities for current workers and retirees. Recent analysis by the Center for Retirement Research at Boston College (CRR) on the current funded status of public pension plans found that the aggregate actuarial funded ratio increased by 2 percentage points from 73% in FY2020 to 75% in FY2021 (based on their projections). The aggregate actuarial funded ratio is the aggregate ratio of assets to liabilities for all public pension plans analyzed in the study. Despite the projected improvement, the CRR researchers point out that the funded ratio in 2021 is still about 1 percentage point below levels reported more than a decade ago in 2010.[96]

Another recent study on state and local government pension plans describes the funding status of state and local plans as follows:

> Before 2001, nearly all public-sector pension plans were fully funded, according to the Governmental Accounting Standards Board (GASB). Specifically, nearly all plans were projected to have sufficient assets to cover plan liabilities, assuming an 8 percent investment return. By 2013, however, almost every plan reported significant underfunding. Two key factors drove the underfunding. The first affected the economy as a whole: financial crises occurred in 2001 and from 2007 to 2009, with the latter especially significant. The second factor was intrinsic to the plans themselves: insufficient contributions and overly optimistic actuarial assumptions.[97]

The study looked at recent pension reforms aimed at reducing pension costs. It focused on traditional defined benefit pensions in 14 states that employ a majority of noncovered state and local government employees. Specifically, the study looked at three design parameters commonly featured in pension reforms in recent years: the vesting period, the period used to calculate the worker's final average salary (the FAS period), and the accrual rate (benefit multiplier). The study found that as states have sought to reduce pension expenses, they have (1) tightened eligibility requirements by increasing vesting periods and (2) lowered benefits by increasing the FAS period and reducing the accrual rate used in the benefit formula. In addition, it found that the changes did not affect all categories of state and local government employees equally. For example, changes in the FAS period affected public safety workers and general government employees at the local level more than teachers.[98]

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[95] Munnell, Aubry, and Belbase, "The Impact of Mandatory Coverage on State and Local Budgets," p. 9.

[96] Jean-Pierre Aubry and Kevin Wandrei, "2021 Update: Public Plan Funding Improves as Workforce Declines," Center for Retirement Research at Boston College, June 2021, https://crr.bc.edu/briefs/2021-update-public-plan-funding-improves-as-workforce-declines/.

[97] Glenn R. Springstead, "Vesting Requirements and Key Benefit-Formula Features of State and Local Government Pension Plans," *Social Security Bulletin*, vol. 81, no. 1 (February 2021), p. 5, https://www.ssa.gov/policy/docs/ssb/v81n1/index.html.

[98] Springstead, "Vesting Requirements and Key Benefit-Formula Features," p. 21.

In the context of state and local plan underfunding, mandatory Social Security coverage for newly hired state and local government employees could be viewed unfavorably on the basis that it would place added administrative and cost burdens on state and local governments and their employees. Alternatively, as noted by the 2010 Fiscal Commission, it could be viewed as a way to mitigate risks for plan sponsors and employees. The commission further noted that it could mitigate potential future bailout risks for the federal government.[99]

From the worker's perspective, mandatory Social Security coverage could be viewed as providing an added level of benefit protection for people whose future noncovered pensions may be at risk. Unlike private-sector employers, state and local pension plans do not participate in a pension insurance system. Most private-sector employers participate in the Pension Benefit Guaranty Corporation (PBGC), which is a government-run insurance company that pays pension benefits to retirees in bankrupt private-sector pension plans.[100] State and local pension plans cannot transfer pension plan liabilities to a PBGC-like entity if they cannot pay benefits. Unlike private-sector employers, however, state and local governments can raise taxes or reduce spending in other areas to fund state and local pensions.

Overall Impact on State and Local Plans

If Congress were to mandate Social Security coverage for newly hired state and local government employees, the overall impact on state and local plans would depend on a variety of factors, many of which remain to be determined. For example, the specific design features of a new or modified pension plan with a Social Security component would affect costs. In addition, any future increases in Social Security payroll taxes enacted by Congress to address the system's projected funding shortfall would be a factor. The impact of mandatory Social Security coverage on state and local plans would vary depending on how plan sponsors would respond to the mandate.

Key Points (Part II): Recap

Proposals to mandate Social Security coverage for newly hired state and local government employees are generally consistent with actions taken by Congress over the years to expand coverage. Some states would be more affected than others, as only three states accounted for almost half of all noncovered state and local government employees. Arguments on both sides of the debate include:

- Supporters maintain that mandatory coverage would prevent gaps in Social Security or pension coverage, resulting in better retirement, survivor, and disability insurance protections for workers who move between covered and noncovered positions. In addition, compared to state and local pension plans in general, Social Security has features that are advantageous for the worker and eligible family members, such as better inflation protection, disability benefits, benefits for dependents and survivors, and a progressive benefit formula. Benefit protections provided by Social Security could be particularly important for noncovered workers in states and localities with underfunded pension plans and whose future pensions may be at risk.
- Opponents maintain that mandatory coverage could pose administrative and cost burdens on state and local governments and their employees at a time when many state and local pension systems are underfunded. Moreover, it could threaten or undermine existing retirement systems, particularly those tailored to workers in certain occupations. For example, public pension plans for police officers and firefighters typically provide full pension benefits at younger ages and with fewer years of service compared to other public pension plans and Social Security. In addition, plan sponsors could shift away from defined benefit plans toward defined contribution plans, thereby shifting risk from the employer to the employee.

The overall impact on state and local plans and the net effect on total benefits would vary across plans and across individuals depending on a variety of factors, such as how state and local governments would respond to a coverage mandate and any future legislative changes to Social Security.

[99] *The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform*, p. 52.

[100] For more information, see CRS In Focus IF10492, *An Overview of the Pension Benefit Guaranty Corporation (PBGC)*.

Conclusion

Over the years, Congress has expanded Social Security coverage to include most workers in the United States, creating a nearly universal system. Unlike most employers, state and local governments are not required to participate in Social Security if they offer public retirement systems that meet certain requirements. For these workers, Social Security coverage is an option, not a requirement. While a majority of state and local government employees participate in Social Security (72% in 2018), a sizable segment of these workers are not covered by Social Security through their government employment (28% in 2018). Proposals to mandate coverage for newly hired state and local government employees have been part of the Social Security policy debate for years. There is strong support and opposition to such proposals for a variety of reasons.

For some, mandatory coverage of newly hired state and local government employees is a question of equity—in their view, noncovered state and local government employees should participate in Social Security given the program's role in keeping members of society out of poverty and the system's legacy costs. Some supporters argue that mandatory coverage would improve the financial status of the Social Security trust funds, have a net positive effect on federal revenues, and provide better benefit protections for workers and their family members. The benefit protections provided by Social Security could be particularly important for noncovered workers in states and localities with underfunded pension plans and whose future pensions may be at risk.

Opponents of mandatory coverage for newly hired state and local government employees maintain that it could pose administrative and cost burdens on state and local governments at a time when many state and local pension plans face funding issues. They maintain that a Social Security coverage mandate could threaten or undermine existing retirement systems, particularly those that are tailored to workers in certain occupations such as police officers and firefighters.

The overall impact on state and local plans and the net effect on total benefits would vary across plans and across individuals, depending on how state and local governments would respond to a coverage mandate and the relative differences between existing plans and new or modified plans incorporating Social Security, among other factors. Any future legislative changes to Social Security payroll taxes and benefits would also be a factor.

Every state has a mix of state and local government employees with and without Social Security coverage, so every state would be affected by a Social Security coverage mandate. Some states would be affected to a larger degree than others given the variation in coverage rates among the states under current law. In 2018, the share of state and local government employees *with* Social Security coverage ranged from 3% to 97% among the states. Overall, eight states accounted for almost three-fourths (73%) of noncovered state and local government employees, and three states accounted for almost half (48%) of noncovered state and local government employees.

Additional Resources

The following resources are available on the website of the Social Security Administration:

- *State and Local Government Employers—Information*
  https://www.ssa.gov/slge/index.htm
- *Introduction to State and Local Coverage Handbook* in the Program Operations Manual System
  https://secure.ssa.gov/apps10/poms.nsf/lnx/1910000000

The following resources are available on the website of the Internal Revenue Service:

- *State and Local Government Employees Social Security and Medicare Coverage* https://www.irs.gov/government-entities/federal-state-local-governments/state-and-local-government-employees-social-security-and-medicare-coverage
- IRS Publication 963, *Federal-State Reference Guide* https://www.irs.gov/pub/irs-pdf/p963.pdf

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