

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 711
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Equal Treatment of
3 Public Servants Act of 2016”.

**4 SEC. 2. REPLACEMENT OF THE WINDFALL ELIMINATION
5 PROVISION WITH A FORMULA EQUALIZING
6 BENEFITS FOR CERTAIN INDIVIDUALS WITH
7 NON-COVERED EMPLOYMENT.**

8 (a) IN GENERAL.—Section 215(a) of the Social Secu-
9 rity Act (42 U.S.C. 415(a)) is amended by inserting after
10 paragraph (7) the following:

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

14 “(i) who first becomes eligible for an old-age or
15 disability insurance benefit after 2017,

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

1 “(iii) who has earnings derived from noncovered
2 service performed in a year after 1977,
3 the primary insurance amount of such individual shall be
4 computed or recomputed under this paragraph.

5 “(B) The primary insurance amount of an individual
6 described in subparagraph (A), as computed or recom-
7 puted under this paragraph, shall be the product derived
8 by multiplying—

9 “(i) the individual’s primary insurance amount,
10 as determined under paragraph (1) of this sub-
11 section and subparagraph (C) of this paragraph, by

12 “(ii) a fraction—

13 “(I) the numerator of which is the individ-
14 ual’s average indexed monthly earnings (deter-
15 mined without regard to subparagraph (C)),
16 and

17 “(II) the denominator of which is an
18 amount equal to the individual’s average in-
19 dexed monthly earnings (as determined under
20 subparagraph (C)),

21 rounded, if not a multiple of \$0.10, to the next lower mul-
22 tiple of \$0.10.

23 “(C)(i) For purposes of determining an individual’s
24 primary insurance amount pursuant to clauses (i) and
25 (ii)(II) of subparagraph (B), the individual’s average in-

1 dexed monthly earnings shall be determined by treating
2 all recorded noncovered earnings (as defined in clause
3 (ii)(I)) derived by the individual from noncovered service
4 performed in each year after 1977 as ‘wages’ (as defined
5 in section 209 for purposes of this title), which shall be
6 treated as included in the individual’s adjusted total cov-
7 ered earnings (as defined in clause (ii)(II)) for such cal-
8 endar year together with amounts consisting of ‘wages’ (as
9 so defined without regard to this subparagraph) paid dur-
10 ing such calendar year and self-employment income (as
11 defined in section 211(b)) for taxable years ending with
12 or during such calendar year.

13 “(ii) For purposes of this subparagraph—

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

21 “(II) The term ‘adjusted total covered earnings’
22 means, in connection with an individual for any cal-
23 endar year, the sum of the wages paid to the indi-
24 vidual during such calendar year (as adjusted under
25 subsection (b)(3)) plus the self-employment income

1 derived by the individual during any taxable year
2 ending with or during such calendar year (as ad-
3 justed under subsection (b)(3)).

4 “(iii) The Commissioner of Social Security shall pro-
5 vide by regulation or other public guidance for methods
6 for determining whether satisfactory evidence is available
7 in the records of the Commissioner for earnings for non-
8 covered service (other than noncovered service as a mem-
9 ber of a uniformed service (as defined in section 210(m))
10 to be treated as recorded noncovered earnings. Such meth-
11 ods shall provide for reliance on earnings information
12 which is provided to the Commissioner by employers and
13 which, as determined by the Commissioner, constitute a
14 reasonable basis for treatment of earnings for noncovered
15 service as recorded noncovered earnings. In making deter-
16 minations under this clause, the Commissioner shall also
17 take into account any documentary or other evidence of
18 earnings derived from noncovered service by an individual
19 which is provided by the individual to the Commissioner
20 and which the Commissioner considers appropriate as a
21 reasonable basis for treatment of such earnings as re-
22 corded noncovered earnings.

23 “(D) Upon the death of an individual whose primary
24 insurance amount is computed or recomputed under this
25 paragraph, such primary insurance amount shall be com-

1 puted or recomputed under paragraph (1) of this sub-
2 section.

3 “(E) In the case of any individual whose primary in-
4 surance amount would be computed under this paragraph
5 who first becomes entitled after 1985 to a monthly peri-
6 odic payment made by a foreign employer or foreign coun-
7 try that is based in whole or in part upon noncovered serv-
8 ice, the primary insurance amount of such individual shall
9 be computed or recomputed under paragraph (7) or para-
10 graph (1), as applicable, for months beginning with the
11 first month of the individual’s initial entitlement to such
12 monthly periodic payment.”.

13 (b) ANNUAL LUMP SUM PAYMENTS FOR CURRENT
14 BENEFICIARIES.—Section 215(a)(7) of such Act (42
15 U.S.C. 415(a)(7)) is amended by adding at the end the
16 following:

17 “(F)(i) In the month of December of each calendar
18 year beginning with 2018, the Commissioner of Social Se-
19 curity shall make a lump sum payment under this title
20 to each eligible individual entitled to a benefit under this
21 title in an amount equal to—

22 “(I) the number of such eligible individual’s
23 lump sum base months in the applicable base month
24 calculation year; multiplied by

1 “(II) the applicable percentage for such cal-
2 endar year (determined under clause (iv)); multiplied
3 by

4 “(III) the amount by which the primary insur-
5 ance amount computed or recomputed under sub-
6 paragraph (B)), as applicable in November in the
7 base month calculation year, is exceeded by the pri-
8 mary insurance amount that would be determined
9 without regard to this paragraph, for November in
10 the base month calculation year.

11 “(ii) For eligible individuals who are entitled to a
12 monthly insurance benefit under subsections (b), (c), (d),
13 (e), (g), or (h) of section 202, based on a primary insur-
14 ance amount computed or recomputed under subpara-
15 graph (B) before January 2018, such lump sum payment
16 as described in clause (i) shall be reduced by one half.

17 “(iii) For purposes of this subparagraph, the term
18 ‘lump sum base month’ means a month in which such eli-
19 gible individual received a monthly insurance benefit dur-
20 ing the applicable ‘base month calculation year’.

21 “(I) A lump sum base month shall not be cred-
22 ited for any month in which an eligible individual
23 was not due a monthly insurance benefit due to sub-
24 section 202(x) or subparagraph 223(e)(1).

1 “(II) A lump sum base month shall be credited
2 for any month in which an eligible individual was en-
3 titled but did not receive a monthly insurance ben-
4 efit due to a reduction described in subsections (a)
5 or (b) of section 203, section 224(a), or 202(k)(5).

6 “(iv) For purposes of this subparagraph, the term
7 ‘base month calculation year’ means the months of De-
8 cember through November that immediately precede to the
9 month in which the Commissioner of Social Security
10 makes such lump sum payment.

11 “(v) For purposes of this subparagraph, the term ‘eli-
12 gible individual’ means an individual who is entitled to a
13 benefit under this title based on a primary insurance
14 amount that was computed or recomputed under subpara-
15 graph (B) before January 2018.

16 “(vi)(I) The applicable percentage determined under
17 this clause for a calendar year shall be the percentage (but
18 not more than 50 percent), determined by the Commis-
19 sioner for such calendar year, sufficient to achieve outlay
20 neutrality for the applicable period described in subclause
21 (II) between the total amount of payments made under
22 clause (i) during such applicable period and the total
23 amount of net savings generated during such applicable
24 period as a result of the amendment made by section 2(a)
25 of the Equal Treatment of Public Servants Act of 2016.

1 “(II) For purposes of subclause (I), the applicable pe-
2 riod is—

3 “(aa) for calendar years 2018 through 2026,
4 the period beginning on January 1, 2018, and end-
5 ing on December 31, 2026; and

6 “(bb) for each calendar year after 2026, such
7 calendar year.

8 “(III) The Commissioner shall determine and pro-
9 mulgate applicable percentages for each calendar year
10 under this clause on or before October 1 of each such cal-
11 endar year, based upon all actual available data, including
12 the most recent actuarial estimates then available. In de-
13 termining applicable percentages for calendar years 2019
14 through 2026, the Commissioner shall take into account
15 any corrections necessary to offset applicable percentages
16 determined under this clause for previous calendar years
17 to achieve outlay neutrality for the applicable period.

18 “(vii) Such lump sum payment shall be adjusted in
19 accordance with paragraphs (2) and (3) of subsection
20 202(k), and subsections (q) and (w) of section 202, as if
21 such payment were a monthly insurance benefit.

22 “(viii) Such lump sum payment shall be reduced in
23 accordance with paragraph 202(k)(5) and subsection
24 203(b) as if such payment were added to the monthly in-
25 surance amount payable for the month of November im-

1 mediate prior to the month of December in which such
2 payment is made.

3 “(ix) Subsection 203(a) shall not apply to such lump
4 sum payment.

5 “(x) Such lump sum payment shall not be regarded
6 as income and shall not be regarded as a resource for the
7 month of receipt and the following 9 months, for purposes
8 of determining the eligibility of the recipient (or the recipi-
9 ent’s spouse or family) for benefits or assistance, or the
10 amount or extent of benefits or assistance, under any Fed-
11 eral program or under any State or local program financed
12 in whole or in part with Federal funds.

13 “(xi) Such lump sum payment shall not be considered
14 for purposes of subsection 224(a).

15 “(xii) Except as provided under this subparagraph,
16 such lump sum shall be considered a Social Security pay-
17 ment under this title.”.

18 (c) CONFORMING AMENDMENTS.—Section
19 215(a)(7)(A) of such Act (42 U.S.C. 415 (a)(7)(A)) is
20 amended—

21 (1) by striking “after 1985” each place it ap-
22 pears and inserting “after 1985 and before 2018”;
23 and

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

4 **SEC. 3. EFFECTIVE DATE.**

5 The amendments made by section 2 shall apply with
6 respect to monthly insurance benefits payable on or after
7 January 1, 2018.

