

## **RS 00605.364 Determining Pension Applicability, Eligibility Date and Monthly Amount**

### **A. POLICY - DETERMINING IF PAYMENTS ARE A PENSION**

#### **1. Pension Contains Employee and Employer Contributions**

- a. If employer contributions or employer and employee contributions are used to determine the payment, it is generally a pension subject to WEP.
- b. If only employee contributions are involved and the payment amount is based on employee contributions plus interest, i.e. a savings plan, it is subject to WEP only if it is the primary retirement plan. (See [RS 00605.364A.2](#) & [RS 00605.364A.3](#)).

#### **2. Lump Sum Payments and Withdrawals**

- a. Withdrawals of the employee's own contributions and interest made before the employee is eligible to receive a pension are not pensions for WEP purposes if the employee forfeits all rights to the pension.
- b. Withdrawals of the employee's own contributions and interest made after the employee is eligible to receive a pension are considered a lump-sum pension for WEP purposes.
- c. Any separation payment, withdrawal, or refund consisting of both employer and employee contributions is a pension for WEP purposes whether made before or after the employee is eligible to receive a pension.

#### **3. Payment from Savings Plans**

- a. Payments received from a 401(k) or 457 plan based on non-covered employment are considered a pension subject to WEP regardless of the source of contributions (employer only, employee only or a combination of both), if the plan is the primary retirement plan. If the plan is a supplemental plan, the payments are subject to WEP when the plan payments contain employer or both employer and employee contributions.
- b. Payments from optional savings plans (e.g., the Federal TSP for CSRS employees) are not considered a pension for WEP. For payments to qualify for this exclusion, the savings plan must be separate from the retirement plan and yield only the amount the employee paid in (plus interest and dividends), rather than an amount calculated based upon certain conditions such as age, earnings and length of service.

- c. Voluntary employee contributions to the pension or optional savings plans that are separate and in addition to pension payments are not subject to WEP.

#### **4. Payments Based on Another Individual's Earnings**

- a. When a pension is based on work and earnings of another individual in addition to the work and earnings of the NH, only that portion of the pension attributable to the NH's non-covered earnings after 1956 should be considered for WEP.
- b. Prorate the pension to determine the portion of the pension that is based on the NH's non-covered earnings. Use the pension paying agency's measuring methods (credits, months, etc.) to define the proration factors.
- c. Use instructions in [RS 00605.370B.2](#) for pensions with partial non-covered situations. The numerator is the NH's non-covered service and the denominator is the total service.

## **B. POLICY - ELIGIBILITY DATE**

### **1. Date First Eligible**

- a. An individual first becomes eligible for a monthly pension or a lump sum in lieu of a monthly pension the first month he/she meets all requirements for payment except stopping work and applying for the payment.
- b. The date of eligibility for the non-covered pension is usually determined by the pension-paying agency. All service used by the pension paying agency is used to determine whether an individual could have been eligible before 1986 for a pension based on non-covered employment.
- c. Service credits that the worker purchased for the plan are included in determining the pension eligibility date regardless of when the service credits are purchased. This includes credits for military service for a Federal pension even if the employee did not waive the military pension. (See [RS 00605.366](#) for proofs required.)

### **2. Employment or Vesting before WEP Effective Date**

Employment or vesting in a company before 1986 does not in itself constitute pension eligibility. The worker must have been **eligible to receive payment** from the pension plan before 1986 for the WEP exemption to apply.

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