

110TH CONGRESS
2D SESSION

S. 3013

To provide for retirement equity for Federal employees in nonforeign areas outside the 48 contiguous States and the District of Columbia, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2008

Mr. AKAKA (for himself, Mr. STEVENS, Mr. INOUE, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for retirement equity for Federal employees in nonforeign areas outside the 48 contiguous States and the District of Columbia, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Non-Foreign Area Re-
5 tirement Equity Assurance Act of 2008” or the “Non-For-
6 eign AREA Act of 2008”.

7 **SEC. 2. EXTENSION OF LOCALITY PAY.**

8 (a) LOCALITY-BASED COMPARABILITY PAYMENTS.—
9 Section 5304(f)(1) of title 5, United States Code, is

1 amended by striking subparagraph (A) and inserting the
2 following:

3 “(A) each General Schedule position in the
4 United States, as defined under section
5 5921(4), and its territories and possessions, in-
6 cluding the Commonwealth of Puerto Rico and
7 the Commonwealth of the Northern Mariana Is-
8 lands shall be included within a pay locality;
9 and”.

10 (b) ALLOWANCES BASED ON LIVING COSTS AND
11 CONDITIONS OF ENVIRONMENT.—Section 5941 of title 5,
12 United States Code, is amended—

13 (1) in subsection (a), by adding after the last
14 sentence “Notwithstanding any preceding provision
15 of this subsection, the cost-of-living allowance rate
16 based on paragraph (1) of this subsection shall be
17 the cost-of-living allowance rate in effect on Decem-
18 ber 31, 2008, except as adjusted under subsection
19 (c).”;

20 (2) by redesignating subsection (b) as sub-
21 section (d); and

22 (3) by inserting after subsection (a) the fol-
23 lowing:

1 “(b) This section shall apply only to areas that are
2 designated as cost-of-living allowance areas as in effect on
3 December 31, 2008.

4 “(c)(1) The cost-of-living allowance rate payable
5 under this section shall be adjusted on the first day of
6 the first applicable pay period beginning on or after—

7 “(A) January 1, 2009; and

8 “(B) on January 1 of each calendar year in
9 which a locality-based comparability adjustment
10 takes effect under section 4 (2) and (3) of the Non-
11 Foreign Area Retirement Equity Assurance Act of
12 2008.

13 “(2)(A) In this paragraph, the term ‘applicable local-
14 ity-based comparability pay percentage’ means, with re-
15 spect to calendar year 2009 and each calendar year there-
16 after, the applicable percentage under section 4 (1), (2),
17 or (3) of Non-Foreign Area Retirement Equity Assurance
18 Act of 2008.

19 “(B) Each adjusted cost-of-living allowance rate
20 under paragraph (1) shall be computed by—

21 “(i) subtracting 65 percent of the applicable lo-
22 cality-based comparability pay percentage from the
23 cost-of-living allowance percentage rate in effect on
24 December 31, 2008; and

1 “(ii) dividing the resulting percentage deter-
2 mined under clause (i) by the sum of—

3 “(I) one; and

4 “(II) the applicable locality-based com-
5 parability payment percentage expressed as a
6 numeral.

7 “(3) No allowance rate computed under paragraph
8 (2) may be less than zero.

9 “(4) Each allowance rate computed under paragraph
10 (2) shall be paid as a percentage of basic pay (including
11 any applicable locality-based comparability payment under
12 section 5304 or similar provision of law and any applicable
13 special rate of pay under section 5305 or similar provision
14 of law).”.

15 **SEC. 3. ADJUSTMENT OF SPECIAL RATES.**

16 (a) IN GENERAL.—Each special rate of pay estab-
17 lished under section 5305 of title 5, United States Code,
18 and payable in an area designated as a cost-of-living allow-
19 ance area under section 5941(a) of that title, shall be ad-
20 justed, on the dates prescribed by section 4 of this Act,
21 in accordance with regulations prescribed by the Director
22 of the Office of Personnel Management under section 9
23 of this Act.

24 (b) DEPARTMENT OF VETERANS AFFAIRS.—Each
25 special rate of pay established under section 7455 of title

1 38, United States Code, and payable in a location des-
 2 ignated as a cost-of-living allowance area under section
 3 5941(a)(1) of title 5, United States Code, shall be ad-
 4 justed in accordance with regulations prescribed by the
 5 Secretary of Veterans Affairs that are consistent with the
 6 regulations issued by the Director of the Office of Per-
 7 sonnel Management under subsection (a).

8 (c) TEMPORARY ADJUSTMENT.—Regulations issued
 9 under subsection (a) or (b) may provide that statutory
 10 limitations on the amount of such special rates may be
 11 temporarily raised to a higher level during the transition
 12 period described in section 4 ending on the first day of
 13 the first pay period beginning on or after January 1,
 14 2011, at which time any special rate of pay in excess of
 15 the applicable limitation shall be converted to a retained
 16 rate under section 5363 of title 5, United States Code.

17 **SEC. 4. TRANSITION SCHEDULE FOR LOCALITY-BASED**
 18 **COMPARABILITY PAYMENTS.**

19 Notwithstanding any other provision of this Act or
 20 section 5304 or 5304a of title 5, United States Code, in
 21 implementing the amendments made by this Act, for each
 22 non-foreign area determined under section 5941(b) of that
 23 title, the applicable rate for the locality-based com-
 24 parability adjustment that is used in the computation re-
 25 quired under section 5941(c) of that title shall be adjusted

1 effective on the first day of the first pay period beginning
2 on or after January 1—

3 (1) in calendar year 2009, by using $\frac{1}{3}$ of the
4 locality pay percentage for the rest of United States
5 locality pay area;

6 (2) in calendar year 2010, by using $\frac{2}{3}$ of the
7 otherwise applicable comparability payment approved
8 by the President for each non-foreign area; and

9 (3) in calendar year 2011 and each subsequent
10 year, by using the full amount of the applicable com-
11 parability payment approved by the President for
12 each non-foreign area.

13 **SEC. 5. SAVINGS PROVISION.**

14 (a) IN GENERAL.—The application of this Act to any
15 employee may not result in the amount of the decrease
16 in the amount of pay attributable to special rate pay and
17 the cost-of-living allowance as in effect on the date of en-
18 actment of this Act exceeding the amount of the increase
19 in the locality-based comparability payments paid to that
20 employee.

21 (b) SENSE OF CONGRESS.—It is the sense of Con-
22 gress that the application of this Act to any employee
23 should not result in a decrease in the take home pay of
24 that employee.

1 **SEC. 6. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.**

2 (a) IN GENERAL.—

3 (1) DEFINITION.—In this subsection, the term
4 “covered employee” means—

5 (A) any employee who—

6 (i) on—

7 (I) the day before the date of en-
8 actment of this Act—

9 (aa) was eligible to be paid a
10 cost-of-living allowance under
11 5941 of title 5, United States
12 Code; and

13 (bb) was not eligible to be
14 paid locality-based comparability
15 payments under 5304 or 5304a
16 of that title; or

17 (II) or after the date of enact-
18 ment of this Act becomes eligible to
19 be paid a cost-of-living allowance
20 under 5941 of title 5, United States
21 Code; and

22 (ii) except as provided under para-
23 graph (2), is not covered under—

24 (I) section 5941 of title 5, United
25 States Code (as amended by section 2
26 of this Act); and

1 (II) section 4 of this Act; or

2 (B) any employee who—

3 (i) on the day before the date of en-
4 actment of this Act—

5 (I) was eligible to be paid an al-
6 lowance under section 1603(b) of title
7 10, United States Code;

8 (II) was eligible to be paid an al-
9 lowance under section 1005(b) of title
10 39, United States Code; or

11 (III) was employed by the Trans-
12 portation Security Administration of
13 the Department of Homeland Security
14 and was eligible to be paid an allow-
15 ance based on section 5941 of title 5,
16 United States Code; or

17 (ii) on or after the date of enactment
18 of this Act—

19 (I) becomes eligible to be paid an
20 allowance under section 1603(b) of
21 title 10, United States Code;

22 (II) becomes eligible to be paid
23 an allowance under section 1005(b) of
24 title 39, United States Code; or

1 (III) is employed by the Trans-
 2 portation Security Administration of
 3 the Department of Homeland Security
 4 and becomes eligible to be paid an al-
 5 lowance based on section 5941 of title
 6 5, United States Code.

7 (2) APPLICATION TO COVERED EMPLOYEES.—

8 (A) IN GENERAL.—Notwithstanding any
 9 provision of title 5, United States Code, for
 10 purposes of this Act (including the amendments
 11 made by this Act) any covered employee shall
 12 be treated as an employee to whom section
 13 5941 of title 5, United States Code (as amend-
 14 ed by section 2 of this Act), and section 4 of
 15 this Act apply.

16 (B) PAY FIXED BY STATUTE.—Pay to cov-
 17 ered employees under section 5304 or 5304a of
 18 title 5, United States Code, as a result of the
 19 application of this Act shall be considered to be
 20 fixed by statute.

21 (C) PERFORMANCE APPRAISAL SYSTEM.—

22 With respect to a covered employee who is sub-
 23 ject to a performance appraisal system no part
 24 of pay attributable to locality-based com-
 25 parability payments as a result of the applica-

1 tion of this Act including section 5941 of title
 2 5, United States Code (as amended by section
 3 2 of this Act), may be reduced on the basis of
 4 the performance of that employee.

5 (b) POSTAL SERVICE EMPLOYEES IN NONFOREIGN
 6 AREAS.—Section 1005(b) of title 39, United States Code,
 7 is amended by inserting “and the Non-Foreign Area Re-
 8 tirement Equity Assurance Act of 2008” after “Section
 9 5941 of title 5”.

10 **SEC. 7. ELECTION OF ADDITIONAL BASIC PAY FOR ANNU-**
 11 **ITY COMPUTATION BY EMPLOYEES.**

12 (a) DEFINITION.—In this section the term “covered
 13 employee” means any employee—

14 (1) to whom section 4 applies;

15 (2) who is separated from service by reason of
 16 retirement under chapter 83 or 84 of title 5, United
 17 States Code, during the period of January 1, 2009,
 18 through December 31, 2011; and

19 (3) who files and election with the Office of
 20 Personnel Management under subsection (b).

21 (b) ELECTION.—

22 (1) IN GENERAL.—An employee described
 23 under subsection (a) (1) and (2) may file an election
 24 with the Office of Personnel Management to be cov-
 25 ered under this section.

1 (2) DEADLINE.—An election under this sub-
2 section may be filed not later than December 31,
3 2011.

4 (c) COMPUTATION OF ANNUITY.—For purposes of
5 the computation of an annuity of a covered employee any
6 cost-of-living allowance under section 5941 of title 5,
7 United States Code, paid to that employee during the first
8 applicable pay period beginning on or after January 1,
9 2009 through the first applicable pay period ending on
10 or after December 31, 2011, shall be considered basic pay
11 as defined under section 8331(3) or 8401(4) of that title.

12 (d) CIVIL SERVICE RETIREMENT AND DISABILITY
13 RETIREMENT FUND.—

14 (1) EMPLOYEE CONTRIBUTIONS.—A covered
15 employee shall pay into the Civil Service Retirement
16 and Disability Retirement Fund—

17 (A) an amount equal to the difference be-
18 tween—

19 (i) employee contributions that would
20 have been deducted and withheld from pay
21 under section 8334 or 8422 of title 5,
22 United States Code, during the period de-
23 scribed under subsection (c) of this section
24 if that subsection had been in effect during
25 that period; and

1 (ii) employee contributions that were
2 actually deducted and withheld from pay
3 under section 8334 or 8422 of title 5,
4 United States Code, during that period;
5 and

6 (B) interest as prescribed under section
7 8334(e) of title 5, United States Code, based on
8 the amount determined under subparagraph
9 (A).

10 (2) AGENCY CONTRIBUTIONS.—

11 (A) IN GENERAL.—The employing agency
12 of a covered employee shall pay into the Civil
13 Service Retirement and Disability Retirement
14 Fund an amount for applicable agency con-
15 tributions based on payments made under para-
16 graph (1).

17 (B) SOURCE.—Amounts paid under this
18 paragraph shall be contributed from the appro-
19 priation or fund used to pay the employee.

20 (3) REGULATIONS.—The Office of Personnel
21 Management may prescribe regulations to carry out
22 this section.

1 **SEC. 8. ELECTION OF COVERAGE BY EMPLOYEES.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
 3 sion of this Act, an employee may make an irrevocable
 4 election in accordance with this section, if—

5 (1) that employee is paid an allowance under
 6 section 5491 of title 5, United States Code, during
 7 a pay period in which the date of the enactment of
 8 this Act occurs; or

9 (2) that employee—

10 (A) is a covered employee as defined under
 11 section 6(a)(1); and

12 (B) during a pay period in which the date
 13 of the enactment of this Act occurs is paid an
 14 allowance—

15 (i) under section 1603(b) of title 10,
 16 United States Code;

17 (ii) under section 1005(b) of title 39,
 18 United States Code; or

19 (iii) based on section 5941 of title 5,
 20 United States Code.

21 (b) FILING ELECTION.—Not later than 60 days after
 22 the date of enactment of this Act, an employee described
 23 under subsection (a) may file an election with the Office
 24 of Personnel Management to be treated for all purposes—

25 (1) in accordance with the provisions of this Act
 26 (including the amendments made by this Act); or

1 (2) as if the provisions of this Act (including
2 the amendments made by this Act) had not been en-
3 acted, except that the cost-of-living allowance rate
4 paid to that employee shall be the cost-of-living al-
5 lowance rate in effect on December 31, 2008, for
6 that employee without any adjustment after that
7 date.

8 (c) FAILURE TO FILE.—Failure to make a timely
9 election under this section shall be treated in the same
10 manner as an election made under subsection (b)(1) on
11 the last day authorized under that subsection.

12 (d) NOTICE.—To the greatest extent practicable, the
13 Office of Personnel Management shall provide timely no-
14 tice of the election which may be filed under this section
15 to employees described under subsection (a).

16 **SEC. 9. REGULATIONS.**

17 (a) IN GENERAL.—The Director of the Office of Per-
18 sonnel Management shall prescribe regulations to carry
19 out this Act, including—

20 (1) rules for special rate employees described
21 under section 3;

22 (2) rules for adjusting rates of basic pay for
23 employees in pay systems administered by the Office
24 of Personnel Management when such employees are
25 not entitled to locality-based comparability payments

1 under section 5304 of title 5, United States Code,
 2 without regard to otherwise applicable statutory pay
 3 limitations during the transition period described in
 4 section 4 ending on the first day of the first pay pe-
 5 riod beginning on or after January 1, 2011; and

6 (3) rules governing establishment and adjust-
 7 ment of saved or retained rates for any employee
 8 whose rate of pay exceeds applicable pay limitations
 9 on the first day of the first pay period beginning on
 10 or after January 1, 2011.

11 (b) OTHER PAY SYSTEMS.—With the concurrence of
 12 the Director of the Office of Personnel Management, the
 13 administrator of a pay system not administered by the Of-
 14 fice of Personnel Management shall prescribe regulations
 15 to carry out this Act with respect to employees in such
 16 pay system, consistent with the regulations issued by the
 17 Office under subsection (a).

18 **SEC. 10. EFFECTIVE DATES.**

19 (a) IN GENERAL.—Except as provided by subsection
 20 (b), this Act (including the amendments made by this Act)
 21 shall take effect on the date of enactment of this Act.

22 (b) LOCALITY PAY AND SCHEDULE.—The amend-
 23 ments made by section 2 and the provisions of section 4

- 1 shall take effect on the first day of the first applicable
- 2 pay period beginning on or after January 1, 2009.

