

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5338

To repeal the revised annuity employee and further revised annuity employee categories within the Federal Employees Retirement System, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2014

Ms. EDWARDS (for herself, Mr. CONNOLLY, Mr. CUMMINGS, Ms. NORTON, Ms. KAPTUR, Mr. LYNCH, Mr. ELLISON, and Mr. RANGEL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Oversight and Government Reform and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To repeal the revised annuity employee and further revised annuity employee categories within the Federal Employees Retirement System, 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 “Federal Employee Pen-  
5        sion Fairness Act”.

1 **SEC. 2. REPEAL OF FERS REVISED AND FURTHER REVISED**  
2 **ANNUITANT CATEGORIES.**

3 (a) REPEAL OF ANNUITY COMPUTATION.—Section  
4 8415 of title 5, United States Code, is amended by strik-  
5 ing subsection (d).

6 (b) REPEAL OF ANNUITANT CATEGORIES.—Section  
7 8422(a)(3) of title 5, United States Code, is amended—

8 (1) by striking “other than revised annuity em-  
9 ployees or further revised annuity employees”; and

10 (2) by striking subparagraphs (B) and (C).

11 (c) REPEAL OF GOVERNMENT CONTRIBUTIONS.—

12 Section 8423(a) of title 5, United States Code, is amended  
13 by striking paragraph (2) and inserting the following:

14 “(2) In determining any normal-cost percentage  
15 to be applied under this subsection, amounts pro-  
16 vided for under section 8422 shall be taken into ac-  
17 count.”.

18 (d) CONFORMING AMENDMENTS.—Section 8401 of  
19 title 5, United States Code, is amended—

20 (1) in paragraph (35)(B), by striking the semi-  
21 colon at the end and inserting “; and”;

22 (2) in paragraph (36), by striking “; and” at  
23 the end and inserting a period; and

24 (3) by striking paragraphs (37) and (38).

25 (e) APPLICATION.—

1           (1) IN GENERAL.—The amendments made by  
2 this section shall apply on the first day of the first  
3 pay period beginning after the date of enactment of  
4 this Act.

5           (2) TREATMENT OF FORMER REVISED OR FUR-  
6 THER REVISED ANNUITANTS.—Any individual who,  
7 as of the date of enactment of this Act, was a re-  
8 vised annuity employee or a further revised annuity  
9 employee (but for the amendments made by this sec-  
10 tion) shall be deemed to be an employee or Member  
11 (as those terms are defined in section 8401 of title  
12 5, United States Code) for purposes of chapter 84  
13 of such title.

14 **SEC. 3. REPEAL OF FOREIGN SERVICE REVISED OR FUR-**  
15 **THER REVISED ANNUITY PARTICIPANT CAT-**  
16 **EGORIES.**

17           (a) REPEAL OF ANNUITANT CATEGORIES.—Section  
18 856(a) of the Foreign Service Act of 1980 (22 U.S.C.  
19 4071e(a)) is amended by striking paragraph (2) and in-  
20 serting the following:

21           “(2) The applicable percentage for a participant  
22 other than a revised annuity participant or a further re-  
23 vised annuity participant shall be as follows:

“7.5	Before January 1, 1999.
7.75	January 1, 1999, to December 31, 1999.
7.9	January 1, 2000, to December 31, 2000.
7.55	After January 11, 2003.”.

1 (b) GOVERNMENT CONTRIBUTION.—Section 857 of  
2 the Foreign Service Act of 1980 (22 U.S.C. 4071f) is  
3 amended by striking subsection (c).

4 (c) CONFORMING AMENDMENTS.—Section 852 of  
5 such Act is amended (22 U.S.C. 4071a)—

6 (1) by striking paragraphs (7) and (8); and

7 (2) by redesignating paragraphs (9), (10), and  
8 (11) as paragraphs (7), (8), and (9), respectively.

9 (d) APPLICATION.—

10 (1) IN GENERAL.—The amendments made by  
11 this section shall apply on the first day of the first  
12 pay period beginning after the date of enactment of  
13 this Act.

14 (2) TREATMENT OF FORMER REVISED OR FUR-  
15 THER REVISED ANNUITANTS.—Any individual who,  
16 as of the date of enactment of this Act, was a re-  
17 vised annuity participant or a further revised annu-  
18 ity participant (but for the amendments made by  
19 this section) shall be deemed to be a participant (as  
20 that term is defined in section 852 of the Foreign  
21 Service Act of 1980 (22 U.S.C. 4071a)) for pur-  
22 poses of the Foreign Service pension system.

1 **SEC. 4. TREATMENT OF FOREIGN CORPORATIONS MAN-**  
2 **AGED AND CONTROLLED IN THE UNITED**  
3 **STATES AS DOMESTIC CORPORATIONS.**

4 (a) IN GENERAL.—Section 7701 of the Internal Rev-  
5 enue Code of 1986 is amended by redesignating subsection  
6 (p) as subsection (q) and by inserting after subsection (o)  
7 the following new subsection:

8 “(p) CERTAIN CORPORATIONS MANAGED AND CON-  
9 TROLLED IN THE UNITED STATES TREATED AS DOMES-  
10 TIC FOR INCOME TAX.—

11 “(1) IN GENERAL.—Notwithstanding subsection  
12 (a)(4), in the case of a corporation described in  
13 paragraph (2) if—

14 “(A) the corporation would not otherwise  
15 be treated as a domestic corporation for pur-  
16 poses of this title, but

17 “(B) the management and control of the  
18 corporation occurs, directly or indirectly, pri-  
19 marily within the United States,  
20 then, solely for purposes of chapter 1 (and any other  
21 provision of this title relating to chapter 1), the cor-  
22 poration shall be treated as a domestic corporation.

23 “(2) CORPORATION DESCRIBED.—

24 “(A) IN GENERAL.—A corporation is de-  
25 scribed in this paragraph if—

1           “(i) the stock of such corporation is  
2 regularly traded on an established securi-  
3 ties market, or

4           “(ii) the aggregate gross assets of  
5 such corporation (or any predecessor there-  
6 of), including assets under management  
7 for investors, whether held directly or indi-  
8 rectly, at any time during the taxable year  
9 or any preceding taxable year is  
10 \$50,000,000 or more.

11           “(B) GENERAL EXCEPTION.—A corpora-  
12 tion shall not be treated as described in this  
13 paragraph if—

14           “(i) such corporation was treated as a  
15 corporation described in this paragraph in  
16 a preceding taxable year,

17           “(ii) such corporation—

18           “(I) is not regularly traded on an  
19 established securities market, and

20           “(II) has, and is reasonably ex-  
21 pected to continue to have, aggregate  
22 gross assets (including assets under  
23 management for investors, whether  
24 held directly or indirectly) of less than  
25 \$50,000,000, and

1                   “(iii) the Secretary grants a waiver to  
2                   such corporation under this subparagraph.

3                   “(3) MANAGEMENT AND CONTROL.—

4                   “(A) IN GENERAL.—The Secretary shall  
5                   prescribe regulations for purposes of deter-  
6                   mining cases in which the management and  
7                   control of a corporation is to be treated as oc-  
8                   curring primarily within the United States.

9                   “(B) EXECUTIVE OFFICERS AND SENIOR  
10                  MANAGEMENT.—Such regulations shall provide  
11                  that—

12                   “(i) the management and control of a  
13                   corporation shall be treated as occurring  
14                   primarily within the United States if sub-  
15                   stantially all of the executive officers and  
16                   senior management of the corporation who  
17                   exercise day-to-day responsibility for mak-  
18                   ing decisions involving strategic, financial,  
19                   and operational policies of the corporation  
20                   are located primarily within the United  
21                   States, and

22                   “(ii) individuals who are not executive  
23                   officers and senior management of the cor-  
24                   poration (including individuals who are of-  
25                   ficers or employees of other corporations in

1 the same chain of corporations as the cor-  
2 poration) shall be treated as executive offi-  
3 cers and senior management if such indi-  
4 viduals exercise the day-to-day responsibil-  
5 ities of the corporation described in clause  
6 (i).

7 “(C) CORPORATIONS PRIMARILY HOLDING  
8 INVESTMENT ASSETS.—Such regulations shall  
9 also provide that the management and control  
10 of a corporation shall be treated as occurring  
11 primarily within the United States if—

12 “(i) the assets of such corporation (di-  
13 rectly or indirectly) consist primarily of as-  
14 sets being managed on behalf of investors,  
15 and

16 “(ii) decisions about how to invest the  
17 assets are made in the United States.”.

18 (b) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning on or  
20 after the date which is 2 years after the date of the enact-  
21 ment of this Act, whether or not regulations are issued  
22 under section 7701(p)(3) of the Internal Revenue Code  
23 of 1986, as added by this section.



1 **SEC. 5. MODIFICATIONS TO RULES RELATING TO IN-**  
2 **VERTED CORPORATIONS.**

3 (a) IN GENERAL.—Subsection (b) of section 7874 of  
4 the Internal Revenue Code of 1986 is amended to read  
5 as follows:

6 “(b) INVERTED CORPORATIONS TREATED AS DO-  
7 MESTIC CORPORATIONS.—

8 “(1) IN GENERAL.—Notwithstanding section  
9 7701(a)(4), a foreign corporation shall be treated for  
10 purposes of this title as a domestic corporation if—

11 “(A) such corporation would be a surro-  
12 gate foreign corporation if subsection (a)(2)  
13 were applied by substituting ‘80 percent’ for  
14 ‘60 percent’, or

15 “(B) such corporation is an inverted do-  
16 mestic corporation.

17 “(2) INVERTED DOMESTIC CORPORATION.—For  
18 purposes of this subsection, a foreign corporation  
19 shall be treated as an inverted domestic corporation  
20 if, pursuant to a plan (or a series of related trans-  
21 actions)—

22 “(A) the entity completes after May 8,  
23 2014, the direct or indirect acquisition of—

24 “(i) substantially all of the properties  
25 held directly or indirectly by a domestic  
26 corporation, or

1           “(ii) substantially all of the assets of,  
2           or substantially all of the properties consti-  
3           tuting a trade or business of, a domestic  
4           partnership, and

5           “(B) after the acquisition, either—

6           “(i) more than 50 percent of the stock  
7           (by vote or value) of the entity is held—

8           “(I) in the case of an acquisition  
9           with respect to a domestic corpora-  
10          tion, by former shareholders of the  
11          domestic corporation by reason of  
12          holding stock in the domestic corpora-  
13          tion, or

14          “(II) in the case of an acquisition  
15          with respect to a domestic partner-  
16          ship, by former partners of the do-  
17          mestic partnership by reason of hold-  
18          ing a capital or profits interest in the  
19          domestic partnership, or

20          “(ii) the management and control of  
21          the expanded affiliated group which in-  
22          cludes the entity occurs, directly or indi-  
23          rectly, primarily within the United States,  
24          and such expanded affiliated group has  
25          significant domestic business activities.

1           “(3) EXCEPTION FOR CORPORATIONS WITH  
2           SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN  
3           COUNTRY OF ORGANIZATION.—A foreign corporation  
4           described in paragraph (2) shall not be treated as an  
5           inverted domestic corporation if after the acquisition  
6           the expanded affiliated group which includes the en-  
7           tity has substantial business activities in the foreign  
8           country in which or under the law of which the enti-  
9           ty is created or organized when compared to the  
10          total business activities of such expanded affiliated  
11          group. For purposes of subsection (a)(2)(B)(iii) and  
12          the preceding sentence, the term ‘substantial busi-  
13          ness activities’ shall have the meaning given such  
14          term under regulations in effect on May 8, 2014, ex-  
15          cept that the Secretary may issue regulations in-  
16          creasing the threshold percent in any of the tests  
17          under such regulations for determining if business  
18          activities constitute substantial business activities for  
19          purposes of this paragraph.

20           “(4) MANAGEMENT AND CONTROL.—For pur-  
21          poses of paragraph (2)(B)(ii)—

22           “(A) IN GENERAL.—The Secretary shall  
23          prescribe regulations for purposes of deter-  
24          mining cases in which the management and  
25          control of an expanded affiliated group is to be

1 treated as occurring, directly or indirectly, pri-  
2 marily within the United States. The regula-  
3 tions prescribed under the preceding sentence  
4 shall apply to periods after May 8, 2014.

5 “(B) EXECUTIVE OFFICERS AND SENIOR  
6 MANAGEMENT.—Such regulations shall provide  
7 that the management and control of an ex-  
8 panded affiliated group shall be treated as oc-  
9 ccurring, directly or indirectly, primarily within  
10 the United States if substantially all of the ex-  
11 ecutive officers and senior management of the  
12 expanded affiliated group who exercise day-to-  
13 day responsibility for making decisions involving  
14 strategic, financial, and operational policies of  
15 the expanded affiliated group are based or pri-  
16 marily located within the United States. Indi-  
17 viduals who in fact exercise such day-to-day re-  
18 sponsibilities shall be treated as executive offi-  
19 cers and senior management regardless of their  
20 title.

21 “(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-  
22 TIES.—For purposes of paragraph (2)(B)(ii), an ex-  
23 panded affiliated group has significant domestic  
24 business activities if at least 25 percent of—

1           “(A) the employees of the group are based  
2           in the United States,

3           “(B) the employee compensation incurred  
4           by the group is incurred with respect to employ-  
5           ees based in the United States,

6           “(C) the assets of the group are located in  
7           the United States, or

8           “(D) the income of the group is derived in  
9           the United States,

10          determined in the same manner as such determina-  
11          tions are made for purposes of determining substan-  
12          tial business activities under regulations referred to  
13          in paragraph (3) as in effect on May 8, 2014, but  
14          applied by treating all references in such regulations  
15          to ‘foreign country’ and ‘relevant foreign country’ as  
16          references to ‘the United States’. The Secretary may  
17          issue regulations decreasing the threshold percent in  
18          any of the tests under such regulations for deter-  
19          mining if business activities constitute significant  
20          domestic business activities for purposes of this  
21          paragraph.”.

22          (b) CONFORMING AMENDMENTS.—

23                 (1) Clause (i) of section 7874(a)(2)(B) of such  
24          Code is amended by striking “after March 4, 2003,”

1 and inserting “after March 4, 2003, and before May  
2 9, 2014,”.

3 (2) Subsection (c) of section 7874 of such Code  
4 is amended—

5 (A) in paragraph (2)—

6 (i) by striking “subsection  
7 (a)(2)(B)(ii)” and inserting “subsections  
8 (a)(2)(B)(ii) and (b)(2)(B)(i)”, and

9 (ii) by inserting “or (b)(2)(A)” after  
10 “(a)(2)(B)(i)” in subparagraph (B),

11 (B) in paragraph (3), by inserting “or  
12 (b)(2)(B)(i), as the case may be,” after  
13 “(a)(2)(B)(ii)”,

14 (C) in paragraph (5), by striking “sub-  
15 section (a)(2)(B)(ii)” and inserting “sub-  
16 sections (a)(2)(B)(ii) and (b)(2)(B)(i)”, and

17 (D) in paragraph (6), by inserting “or in-  
18 verted domestic corporation, as the case may  
19 be,” after “surrogate foreign corporation”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxable years ending after May  
22 8, 2014.

○