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2D SESSION

S. 3013

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2008

Referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Veterans' 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

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

6 (a) LOCALITY-BASED COMPARABILITY PAYMENTS.—
7 Section 5304 of title 5, United States Code, is amended—

8 (1) in subsection (f)(1), by striking subpara-
9 graph (A) and inserting the following:

10 “(A) each General Schedule position in the
11 United States, as defined under section
12 5921(4), and its territories and possessions, in-
13 cluding the Commonwealth of Puerto Rico and
14 the Commonwealth of the Northern Mariana Is-
15 lands, shall be included within a pay locality;”;

16 (2) in subsection (g)—

17 (A) in paragraph (2)—

18 (i) in subparagraph (A), by striking
19 “and” after the semicolon;

20 (ii) by redesignating subparagraph
21 (B) as subparagraph (C);

22 (iii) by inserting after subparagraph
23 (A) the following:

24 “(B) positions under subsection (h)(1)(D)
25 not covered by appraisal systems certified under
26 section 5382; and”; and

1 (iv) in subparagraph (C) (as redesignig-
2 nated by this paragraph), by striking
3 “under subsection (h)(1)(D)” and insert-
4 ing “under subsection (h)(1)(E)”; and
5 (B) by adding at the end the following:

6 “(3) The applicable maximum under this sub-
7 section shall be level II of the Executive Schedule for
8 positions under subsection (h)(1)(D) covered by ap-
9 praisal systems certified under section 5307(d).”;
10 and

11 (3) in subsection (h)(1)—

12 (A) in subparagraph (C) by striking “and”
13 after the semicolon;

14 (B) by redesignating subparagraph (D) as
15 subparagraph (E);

16 (C) by inserting after subparagraph (C)
17 the following:

18 “(D) a Senior Executive Service position
19 under section 3132 stationed within the United
20 States, but outside the 48 contiguous States
21 and the District of Columbia in which the in-
22 cumbent the day before the date of enactment
23 of the Non-Foreign Area Retirement Equity As-
24 surance Act of 2008 was eligible to receive a

1 cost-of-living allowance under section 5941;
2 and”; and

3 (D) in clause (iii) in the matter following
4 subparagraph (D), by inserting “stationed in
5 the 48 contiguous States and the District of
6 Columbia, or stationed within the United
7 States, but outside the 48 contiguous States
8 and the District of Columbia, in which the in-
9 cumbent the day before the date of enactment
10 of the Non-Foreign Area Retirement Equity As-
11 surance Act of 2008 was not eligible to receive
12 a cost-of-living allowance under section 5941;
13 and” before the semicolon.

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

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

24 (2) by redesignating subsection (b) as sub-
25 section (d); and

1 (3) by inserting after subsection (a) the fol-
2 lowing:

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

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

9 “(A) January 1, 2009; and

10 “(B) on January 1 of each calendar year in
11 which a locality-based comparability adjustment
12 takes effect under section 4 (2) and (3) of the Non-
13 Foreign Area Retirement Equity Assurance Act of
14 2008.

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

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

23 “(i) subtracting 65 percent of the applicable lo-
24 cality-based comparability pay percentage from the

1 cost-of-living allowance percentage rate in effect on
 2 December 31, 2008; and

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

5 “(I) one; and

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

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

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

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

18 (a) IN GENERAL.—Each special rate of pay estab-
 19 lished under section 5305 of title 5, United States Code,
 20 and payable in an area designated as a cost-of-living allow-
 21 ance area under section 5941(a) of that title, shall be ad-
 22 justed, on the dates prescribed by section 4 of this Act,
 23 in accordance with regulations prescribed by the Director
 24 of the Office of Personnel Management under section 8
 25 of this Act.

1 (b) DEPARTMENT OF VETERANS AFFAIRS.—Each
 2 special rate of pay established under section 7455 of title
 3 38, United States Code, and payable in a location des-
 4 ignated as a cost-of-living allowance area under section
 5 5941(a)(1) of title 5, United States Code, shall be ad-
 6 justed in accordance with regulations prescribed by the
 7 Secretary of Veterans Affairs that are consistent with the
 8 regulations issued by the Director of the Office of Per-
 9 sonnel Management under subsection (a).

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

19 **SEC. 4. TRANSITION SCHEDULE FOR LOCALITY-BASED**
 20 **COMPARABILITY PAYMENTS.**

21 Notwithstanding any other provision of this Act or
 22 section 5304 or 5304a of title 5, United States Code, in
 23 implementing the amendments made by this Act, for each
 24 non-foreign area determined under section 5941(b) of that
 25 title, the applicable rate for the locality-based com-

1 parability adjustment that is used in the computation re-
2 quired under section 5941(c) of that title shall be adjusted
3 effective on the first day of the first pay period beginning
4 on or after January 1—

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

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

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

15 **SEC. 5. SAVINGS PROVISION.**

16 (a) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that the application of this Act to any employee
18 should not result in a decrease in the take home pay of
19 that employee.

20 (b) SENSE OF CONGRESS.—It is the sense of Con-
21 gress that the Bureau of Labor Statistics will conduct sep-
22 arate surveys pursuant to the establishment by the Presi-
23 dent's Pay Agent of 1 new locality area for the entire
24 State of Hawaii and 1 new locality area for the entire state
25 of Alaska, and that upon the completion of the phase in

1 period no employee shall receive less than the Rest of the
2 U.S. locality pay rate.

3 (c) SAVINGS PROVISIONS.—

4 (1) IN GENERAL.—During the period described
5 under section 4 of this Act, an employee paid a spe-
6 cial rate under 5305 of title 5, United States Code,
7 who the day before the date of enactment of this Act
8 was eligible to receive a cost-of-living allowance
9 under section 5941 of title 5, United States Code,
10 and who continues to be officially stationed in an al-
11 lowance area, shall receive an increase in the em-
12 ployee's special rate consistent with increases in the
13 applicable special rate schedule. For employees in al-
14 lowance areas, the minimum step rate for any grade
15 of a special rate schedule shall be increased at the
16 time of an increase in the applicable locality rate
17 percentage for the allowance area by not less than
18 the dollar increase in the locality-based com-
19 parability payment for a non-special rate employee
20 at the same minimum step provided under section 4
21 of this Act, and corresponding increases shall be
22 provided for all step rates of the given pay range.

23 (2) CONTINUATION OF COST OF LIVING ALLOW-
24 ANCE RATE.—If an employee, who the day before
25 the date of enactment of this Act was eligible to re-

1 ceive a cost-of-living allowance under section 5941 of
2 title 5, United States Code, would receive a rate of
3 basic pay and applicable locality-based comparability
4 payment which is in excess of the maximum rate
5 limitation set under section 5304(g) of title 5,
6 United States Code, for his position (but for that
7 maximum rate limitation) due to the operation of
8 this Act, the employee shall continue to receive the
9 cost-of-living allowance rate in effect on December
10 31, 2008 without adjustment until—

11 (A) the employee leaves the allowance area
12 or pay system; or

13 (B) the employee is entitled to receive
14 basic pay (including any applicable locality-
15 based comparability payment or similar supple-
16 ment) at a higher rate,

17 but, when any such position becomes vacant, the pay
18 of any subsequent appointee thereto shall be fixed in
19 the manner provided by applicable law and regula-
20 tion.

21 (3) LOCALITY-BASED COMPARABILITY PAY-
22 MENTS.—Any employee covered under paragraph (2)
23 shall receive any applicable locality-based com-
24 parability payment extended under section 4 of this
25 Act which is not in excess of the maximum rate set

1 under section 5304(g) of title 5, United States Code,
 2 for his position including any future increase to stat-
 3 utory pay caps under 5318 of title 5, United States
 4 Code. Notwithstanding paragraph (2), to the extent
 5 that an employee covered under that paragraph re-
 6 ceives any amount of locality-based comparability
 7 payment, the cost-of-living allowance rate under that
 8 paragraph shall be reduced accordingly, as provided
 9 under section 5941(c)(2)(B) of title 5, United States
 10 Code.

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

12 (a) IN GENERAL.—

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

15 (A) any employee who—

16 (i) on—

17 (I) the day before the date of en-
 18 actment of this Act—

19 (aa) was eligible to be paid a
 20 cost-of-living allowance under
 21 5941 of title 5, United States
 22 Code; and

23 (bb) was not eligible to be
 24 paid locality-based comparability

1 payments under 5304 or 5304a
2 of that title; or

3 (II) or after the date of enact-
4 ment of this Act becomes eligible to
5 be paid a cost-of-living allowance
6 under 5941 of title 5, United States
7 Code; and

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

10 (I) section 5941 of title 5, United
11 States Code (as amended by section 2
12 of this Act); and

13 (II) section 4 of this Act; or

14 (B) any employee who—

15 (i) on the day before the date of en-
16 actment of this Act—

17 (I) was eligible to be paid an al-
18 lowance under section 1603(b) of title
19 10, United States Code;

20 (II) was eligible to be paid an al-
21 lowance under section 1005(b) of title
22 39, United States Code; or

23 (III) was employed by the Trans-
24 portation Security Administration of
25 the Department of Homeland Security

1 and was eligible to be paid an allow-
2 ance based on section 5941 of title 5,
3 United States Code; or

4 (ii) on or after the date of enactment
5 of this Act—

6 (I) becomes eligible to be paid an
7 allowance under section 1603(b) of
8 title 10, United States Code;

9 (II) becomes eligible to be paid
10 an allowance under section 1005(b) of
11 title 39, United States Code; or

12 (III) is employed by the Trans-
13 portation Security Administration of
14 the Department of Homeland Security
15 and becomes eligible to be paid an al-
16 lowance based on section 5941 of title
17 5, United States Code.

18 (2) APPLICATION TO COVERED EMPLOYEES.—

19 (A) IN GENERAL.—Notwithstanding any
20 other provision of law, for purposes of this Act
21 (including the amendments made by this Act)
22 any covered employee shall be treated as an em-
23 ployee to whom section 5941 of title 5, United
24 States Code (as amended by section 2 of this
25 Act), and section 4 of this Act apply.

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

6 (C) PERFORMANCE APPRAISAL SYSTEM.—
 7 With respect to a covered employee who is sub-
 8 ject to a performance appraisal system no part
 9 of pay attributable to locality-based com-
 10 parability payments as a result of the applica-
 11 tion of this Act including section 5941 of title
 12 5, United States Code (as amended by section
 13 2 of this Act), may be reduced on the basis of
 14 the performance of that employee.

15 (b) POSTAL EMPLOYEES IN NON-FOREIGN AREAS.—

16 (1) IN GENERAL.—Section 1005(b) of title 39,
 17 United States Code, is amended—

18 (A) by inserting “(1)” after “(b)”;

19 (B) by striking “Section 5941,” and in-
 20 serting “Except as provided under paragraph
 21 (2), section 5941”;

22 (C) by striking “For purposes of such sec-
 23 tion,” and inserting “Except as provided under
 24 paragraph (2), for purposes of section 5941 of
 25 that title,”; and

1 (D) by adding at the end the following:

2 “(2) On and after the date of enactment of the
3 Non-Foreign Area Retirement Equity Assurance Act
4 of 2008—

5 “(A) the provisions of that Act and section
6 5941 of title 5 shall apply to officers and em-
7 ployees covered by section 1003(b) and (c)
8 whose duty station is in a nonforeign area; and

9 “(B) with respect to officers and employees
10 of the Postal Service (other than those officers
11 and employees described under subparagraph
12 (A)) section 6(b)(2) of that Act shall apply.”.

13 (2) CONTINUATION OF COST OF LIVING ALLOW-
14 ANCE.—

15 (A) IN GENERAL.—Notwithstanding any
16 other provision of this Act, any employee of the
17 Postal Service (other than an employee covered
18 by section 1003 (b) and (c) of title 39, United
19 States Code, whose duty station is in a nonfor-
20 eign area) who is paid an allowance under sec-
21 tion 1005(b) of that title shall be treated for all
22 purposes as if the provisions of this Act (includ-
23 ing the amendments made by this Act) had not
24 been enacted, except that the cost-of-living al-
25 lowance rate paid to that employee—

(i) may result in the allowance exceeding 25 percent of the rate of basic pay of that employee; and

(ii) shall be the greater of—

(I) the cost-of-living allowance rate in effect on December 31, 2008 for the applicable area; or

(II) the applicable locality-based comparability pay percentage under section 4.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) provide for an employee described under subparagraph (A) to be a covered employee as defined under subsection (a); or

(ii) authorize an employee described under subparagraph (A) to file an election under section 7 of this Act.

SEC. 7. ELECTION OF ADDITIONAL BASIC PAY FOR ANNUITY COMPUTATION BY EMPLOYEES.

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

(1) to whom section 4 applies;

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

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

7 (b) ELECTION.—

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

12 (2) DEADLINE.—An election under this sub-
13 section may be filed not later than December 31,
14 2011.

15 (c) COMPUTATION OF ANNUITY.—

16 (1) IN GENERAL.—Except as provided under
17 paragraph (2), for purposes of the computation of
18 an annuity of a covered employee any cost-of-living
19 allowance under section 5941 of title 5, United
20 States Code, paid to that employee during the first
21 applicable pay period beginning on or after January
22 1, 2009 through the first applicable pay period end-
23 ing on or after December 31, 2011, shall be consid-
24 ered basic pay as defined under section 8331(3) or
25 8401(4) of that title.

1 (2) LIMITATION.—The amount of the cost-of-
2 living allowance which may be considered basic pay
3 under paragraph (1) may not exceed the amount of
4 the locality-based comparability payments the em-
5 ployee would have received during that period for
6 the applicable pay area if the limitation under sec-
7 tion 4 of this Act did not apply.

8 (d) CIVIL SERVICE RETIREMENT AND DISABILITY
9 RETIREMENT FUND.—

10 (1) EMPLOYEE CONTRIBUTIONS.—A covered
11 employee shall pay into the Civil Service Retirement
12 and Disability Retirement Fund—

13 (A) an amount equal to the difference be-
14 tween—

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

22 (ii) employee contributions that were
23 actually deducted and withheld from pay
24 under section 8334 or 8422 of title 5,

1 United States Code, during that period;
2 and

3 (B) interest as prescribed under section
4 8334(e) of title 5, United States Code, based on
5 the amount determined under subparagraph
6 (A).

7 (2) AGENCY CONTRIBUTIONS.—

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

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

17 (3) REGULATIONS.—The Office of Personnel
18 Management may prescribe regulations to carry out
19 this section.

20 **SEC. 8. REGULATIONS.**

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

24 (1) rules for special rate employees described
25 under section 3;

1 (2) rules for adjusting rates of basic pay for
2 employees in pay systems administered by the Office
3 of Personnel Management when such employees are
4 not entitled to locality-based comparability payments
5 under section 5304 of title 5, United States Code,
6 without regard to otherwise applicable statutory pay
7 limitations during the transition period described in
8 section 4 ending on the first day of the first pay pe-
9 riod beginning on or after January 1, 2011; and

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

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

22 **SEC. 9. EFFECTIVE DATES.**

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

1 (b) LOCALITY PAY AND SCHEDULE.—The amend-
2 ments made by section 2 and the provisions of section 4
3 shall take effect on the first day of the first applicable
4 pay period beginning on or after January 1, 2009.

Passed the Senate October 1 (legislative day, Sep-
tember 17), 2008.

Attest:

NANCY ERICKSON,
Secretary.