

111TH CONGRESS  
2D SESSION

# H. R. 5115

To recognize the key contributions of flight support specialists to our Nation's aviation safety by restoring the retirement treatment of flight support specialists whose functions were outsourced by the Federal Government in 2005.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2010

Mr. SCHAUER (for himself and Mr. RUSH) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To recognize the key contributions of flight support specialists to our Nation's aviation safety by restoring the retirement treatment of flight support specialists whose functions were outsourced by the Federal Government in 2005.

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; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “FSS Retirement Fairness Act of 2010”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       this Act is as follows:

Sec. 1. Short title; table of contents.  
 Sec. 2. Definitions.  
 Sec. 3. Applicability.  
 Sec. 4. Provisions relating to persons other than annuitants.  
 Sec. 5. Special rule relating to immediate retirement.  
 Sec. 6. Provisions relating to annuitants.  
 Sec. 7. Regulations.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act—

3 (1) the term “air traffic controller” has the  
 4 meaning given such term under section 2109 of title  
 5 5, United States Code;

6 (2) the term “flight service station controller”  
 7 or “FSS controller” means a civilian employee of the  
 8 Department of Transportation who is—

9 (A) an air traffic controller within the  
 10 meaning of section 2109(1)(A)(ii) of title 5,  
 11 United States Code; or

12 (B) an air traffic controller within the  
 13 meaning of section 2109(1)(B) of title 5,  
 14 United States Code, who supervises air traffic  
 15 controllers described in subparagraph (A);

16 (3) the term “Government retirement system”  
 17 means—

18 (A) the retirement system under sub-  
 19 chapter III of chapter 83 of title 5, United  
 20 States Code (relating to the Civil Service Re-  
 21 tirement System); and

1 (B) the retirement system under chapter  
2 84 of title 5, United States Code (relating to  
3 the Federal Employees' Retirement System);

4 (4) the terms "lump-sum credit", "average  
5 pay", and "Government" have the respective mean-  
6 ings given such terms under the Government retire-  
7 ment system involved; and

8 (5) the term "Civil Service Retirement and Dis-  
9 ability Fund" refers to the fund under section 8348  
10 of title 5, United States Code.

11 **SEC. 3. APPLICABILITY.**

12 (a) IN GENERAL.—This Act shall apply with respect  
13 to any individual who—

14 (1) during the period beginning on February 1,  
15 2005, and ending on October 3, 2005—

16 (A) was separated from Government serv-  
17 ice, either voluntarily or involuntarily (other  
18 than for cause on charges of misconduct or de-  
19 linquency), from a flight service station con-  
20 troller position; or

21 (B) was reassigned or transferred from an  
22 FSS controller position—

23 (i) to a different Government position  
24 (other than as an air traffic controller) in

1           which such individual ceased to be subject  
2           to a Government retirement system; or

3           (ii) to a different Government position  
4           (other than as an air traffic controller) in  
5           which such individual remained subject to  
6           a Government retirement system; and

7           (2) as of the date of the separation described  
8           in paragraph (1)(A) or of the reassignment or trans-  
9           fer (as the case may be) described in paragraph  
10          (1)(B), had completed at least 5 years of service as  
11          an FSS controller which was creditable for purposes  
12          of a Government retirement system.

13          (b) EXCLUSIONS.—Notwithstanding any provision of  
14          subsection (a), this Act shall not apply with respect to—

15               (1) any individual who, as of the date of the en-  
16               actment of this Act, is otherwise entitled (or would,  
17               on proper application, otherwise be entitled) to an  
18               annuity under a Government retirement system (in-  
19               cluding an annuity under section 8414 of title 5,  
20               United States Code) based on the service of such in-  
21               dividual, except as provided in section 6; or

22               (2) any individual—

23                       (A) for purposes of subchapter III of chap-  
24                       ter 83 of title 5, United States Code, if, as of

the date of the enactment of this Act, such individual—

(i) has taken a lump-sum credit under section 8342 of such title 5 which had the effect of terminating all rights under such subchapter based on the service of such individual as an FSS controller; and

(ii) has not made the deposit required in order to have credit for such service restored under such subchapter, as determined by the Office of Personnel Management; or

(B) for purposes of chapter 84 of title 5, United States Code, if, as of the date of the enactment of this Act, such individual has taken a lump-sum credit under section 8424 of such title 5 which had the effect of terminating all rights under such chapter based on the service of such individual as an FSS controller.

**SEC. 4. PROVISIONS RELATING TO PERSONS OTHER THAN  
ANNUITANTS.**

(a) **QUALIFIED SERVICE.**—For purposes of this Act, the term “qualified service” means—

(1) any service performed as an employee of a contractor described in section 179(a)(1)(A) of the

1       Transportation, Treasury, Housing and Urban De-  
2       velopment, the Judiciary, the District of Columbia,  
3       and Independent Agencies Appropriations Act, 2006  
4       (Public Law 109–115; 119 Stat. 2427); and

5           (2) any service which (disregarding this Act) is  
6       otherwise creditable under subchapter III of chapter  
7       83, or under chapter 84, of title 5, United States  
8       Code, other than as an air traffic controller;

9       except that such term shall not include any service per-  
10      formed by an individual after the last day of the month  
11      in which such individual becomes 56 years of age or, in  
12      the case of service described in paragraph (1), any service  
13      performed on a temporary, intermittent, or other basis  
14      which, if performed as an FSS controller, would not be  
15      creditable, for retirement purposes, by reason of section  
16      8347(g) or 8402(c) of title 5, United States Code, or any  
17      other similar provision of law, as determined by the Office  
18      of Personnel Management.

19       (b) ELECTION.—Any individual to whom this Act ap-  
20      plies may, within such period of time (not less than 12  
21      months in duration) and otherwise in such manner as the  
22      Office of Personnel Management shall by regulation pre-  
23      scribe, make an election under this section.

24       (c) EFFECT OF AN ELECTION.—An individual mak-  
25      ing an election under this section shall be entitled—

1           (1) with respect to qualified service performed  
2           by such individual during the period beginning on  
3           February 1, 2005, and ending on the effective date  
4           of such election—

5                   (A) to have such service treated in the  
6           same manner as if it had been performed as an  
7           FSS controller for purposes of—

8                           (i) any determination of eligibility for  
9                           immediate retirement under section  
10                          8336(e) or 8412(e) of title 5, United  
11                          States Code, or under section 5; and

12                           (ii) any computation of annuity  
13                          under—

14                                   (I) the provisions of section  
15                                   8339(e), or subsection (d) or (e) of  
16                                   section 8415 of title 5, United States  
17                                   Code; or

18                                   (II) any of the provisions re-  
19                                   ferred to in subclause (I), applied in  
20                                   accordance with section 5; except that

21                   (B) no compensation received for service  
22           performed during such period may be taken  
23           into account for purposes of any determination  
24           of such individual's average pay; and

1           (2) with respect to qualified service performed  
2       by such individual after the effective date of such  
3       election—

4           (A) to have such service treated in the  
5       same manner as if it had been performed as an  
6       FSS controller for purposes of—

7           (i) any determination of eligibility for  
8       immediate retirement under section  
9       8336(e) or 8412(e) of title 5, United  
10      States Code, or under section 5; and

11          (ii) any computation of annuity  
12      under—

13           (I) the provisions of section  
14       8339(e), or subsection (d) or (e) of  
15       section 8415 of title 5, United States  
16       Code; or

17           (II) any of the provisions re-  
18       ferred to in subclause (I), applied in  
19       accordance with section 5, and

20          (B) to have basic pay received by such in-  
21       dividual for such service (not to exceed the  
22       amount determined applying the rate of basic  
23       pay last received by the individual while serving  
24       as an FSS controller before the date of such  
25       election) treated in the same manner as if it



1           were basic pay received for service performed as  
2           an FSS controller, for purposes of any deter-  
3           mination of such individual's average pay,  
4           subject to subsection (d).

5           (d) EMPLOYEE CONTRIBUTIONS REQUIRED FOR  
6 POST-ELECTION SERVICE.—

7           (1) IN GENERAL.—The provisions of subsection  
8           (c)(2) shall not apply unless, as part of the election  
9           made by the individual under this section, such indi-  
10          vidual agrees to make contributions to the Civil  
11          Service Retirement and Disability Fund in conform-  
12          ance with the requirements of this subsection.

13          (2) REQUIREMENTS RELATING TO QUALIFIED  
14          SERVICE OTHERWISE SUBJECT TO A GOVERNMENT  
15          RETIREMENT SYSTEM.—Under this subsection, in  
16          the case of any qualified service performed by an in-  
17          dividual in a Government position (other than an  
18          FSS controller position) on the basis of which such  
19          individual is subject to a Government retirement sys-  
20          tem, the employee contribution shall be determined  
21          based on—

22                  (A) the basic pay actually received by such  
23                  individual for such service (determined in a  
24                  manner consistent with the limitation specified

1 in the parenthetical matter contained in sub-  
2 section (c)(2)(B)); and

3 (B) the percentage contribution which  
4 would be required if the individual were serving  
5 in an FSS controller position.

6 (3) REQUIREMENTS RELATING TO QUALIFIED  
7 SERVICE NOT OTHERWISE SUBJECT TO ANY GOV-  
8 ERNMENT RETIREMENT SYSTEM.—Under this sub-  
9 section, in the case of any qualified service which is  
10 not covered by paragraph (2), the electing individual  
11 shall pay currently into the Civil Service Retirement  
12 and Disability Fund, in accordance with arrange-  
13 ments acceptable to the Office of Personnel Manage-  
14 ment, the employee contributions which would be de-  
15 termined, under applicable provisions of subchapter  
16 III of chapter 83, or of chapter 84, of title 5, United  
17 States Code, as the case may be, based on—

18 (A) the basic pay actually received by such  
19 individual for such service (determined in a  
20 manner consistent with the limitation specified  
21 in the parenthetical matter contained in sub-  
22 section (c)(2)(B)); and

23 (B) the percentage contribution which  
24 would be required if the individual were serving  
25 in an FSS controller position,

1       treating the pay received by such individual for such  
2       service as if it were basic pay within the meaning of  
3       subchapter III of chapter 83, or of chapter 84, of  
4       title 5, United States Code (whichever Government  
5       retirement system applied at the time of the individ-  
6       ual's separation described in section 3(a)(1)(A) or  
7       reassignment or transfer described in section  
8       3(a)(1)(B), as the case may be).

9       (e) GOVERNMENT CONTRIBUTIONS.—Nothing in this  
10      section shall be considered—

11           (1) to affect the amount of any contributions  
12       which (but for this Act) would otherwise be payable  
13       by an employing Governmental entity under section  
14       8334 or 8423 of title 5, United States Code, with  
15       respect to any Government service actually per-  
16       formed by such employee during any period of time  
17       to which subsection (c)(1) or (c)(2) applies; or

18           (2) to create any obligation on the part of any  
19       non-Governmental entity to make any employer con-  
20       tributions to the Civil Service Retirement and Dis-  
21       ability Fund with respect to any service performed  
22       during any period of time to which either subsection  
23       (c)(1) or subsection (c)(2) applies.

1 **SEC. 5. SPECIAL RULE RELATING TO IMMEDIATE RETIRE-**  
2 **MENT.**

3 (a) IN GENERAL.—In the case of an individual who  
4 makes an election under section 4, any determination of  
5 eligibility for or the amount of any annuity to which such  
6 individual is entitled under subchapter III of chapter 83  
7 or under chapter 84 of title 5, United States Code, shall  
8 be made in accordance with the provisions of law that  
9 would otherwise apply, subject to the following:

10 (1) In addition to any other combination of age  
11 and service for entitlement to an immediate annuity  
12 which might otherwise apply, any such individual is  
13 entitled to an immediate annuity—

14 (A) if the individual is an individual who,  
15 as of the effective date of such individual's elec-  
16 tion under section 4, is not performing service  
17 which is subject to a Government retirement  
18 system, beginning on the later of—

19 (i) the last day of the month in which  
20 such individual attains 56 years of age; or

21 (ii) the effective date of such election;  
22 except if the individual has become (and as of  
23 the date specified in clause (i) or (ii), whichever  
24 would otherwise apply, remains) a Government  
25 employee subject to a Government retirement  
26 system, in which case entitlement commences

1 on the date described in subparagraph (B)(ii);  
2 or

3 (B) if the individual is an individual who  
4 is not covered by subparagraph (A), beginning  
5 on the later of—

6 (i) the last day of the month in which  
7 such individual attains 56 years of age; or

8 (ii) the date on which such individual  
9 separates from Government service or  
10 transfers to a position which is not subject  
11 to a Government retirement system.

12 (2) The annuity of a former FSS controller who  
13 becomes entitled to an immediate annuity pursuant  
14 to this subsection shall, under regulations prescribed  
15 by the Office of Personnel Management, be com-  
16 puted—

17 (A) with respect to service subject to sub-  
18 chapter III of chapter 83 of title 5, United  
19 States Code, in the same manner as would  
20 apply under section 8339(e) of such title if such  
21 controller had retired under section 8336(e) of  
22 such title; and

23 (B) with respect to service subject to chap-  
24 ter 84 of title 5, United States Code—

1 (i) in the same manner as would apply  
2 under section 8415(d) of such title if such  
3 controller had retired under section  
4 8412(e) of such title; except that

5 (ii) the total service used in com-  
6 puting such annuity may not exceed—

7 (I) the total service that would  
8 (but for this Act) otherwise have been  
9 used; plus

10 (II) any qualified service which is  
11 creditable for that purpose by reason  
12 of section 4.

13 (3) The average pay used in any computation  
14 under paragraph (2) shall be determined in accord-  
15 ance with the provisions of law that (disregarding  
16 this Act) would otherwise apply, subject to para-  
17 graphs (1)(B) and (2)(B) of section 4(c).

18 (4) In the case of an individual described in  
19 paragraph (1)(A), such individual shall, for purposes  
20 of any determination of eligibility for an annuity  
21 under subchapter III of chapter 83 of title 5, United  
22 States Code, by reason of this subsection, be consid-  
23 ered to have satisfied the requirement of section  
24 8333(b) of such title if such individual would have  
25 satisfied such requirement had such individual sepa-

1 rated from service on the date of such individual's  
2 separation under section 3(a)(1)(A) or reassignment  
3 or transfer under section 3(a)(1)(B), as the case  
4 may be.

5 (b) FEHBP.—In the case of an individual who be-  
6 comes entitled to an immediate annuity by reason of sub-  
7 section (a), the condition for continued enrollment in a  
8 health benefits plan under section 8905(b) of title 5,  
9 United States Code, shall be considered met if—

10 (1) in the case of an individual whose entitle-  
11 ment arises pursuant to a separation from Govern-  
12 ment service (including a reassignment or transfer  
13 to a position in which such individual ceases to be  
14 subject to a Government retirement system), such  
15 condition is met by such individual either—

16 (A) at the time of separation; or

17 (B) at the time of such individual's separa-  
18 tion (as described in section 3(a)(1)(A)) or re-  
19 assignment or transfer (as described in section  
20 3(a)(1)(B)); or

21 (2) in the case of an individual whose entitle-  
22 ment arises in a manner other than as described in  
23 paragraph (1), such condition is met by such indi-  
24 vidual at the time described in paragraph (1)(B).

1 An individual who becomes eligible for continued enroll-  
2 ment in a health benefits plan by reason of this subsection  
3 may do so by filing an application at the time and under  
4 the conditions prescribed by the Office of Personnel Man-  
5 agement in regulations. Continued enrollment under this  
6 subsection shall be implemented based on the individual's  
7 enrollment as of the time specified in paragraph (1) or  
8 (2), as the case may be, except that nothing in this sub-  
9 section shall be considered to allow coverage to be obtained  
10 for any goods or services received, or to require that any  
11 individual or Government contributions for coverage be  
12 made with respect to any period ending, before the date  
13 on which the individual enrolls in a health benefits plan  
14 under the preceding sentence.

15 **SEC. 6. PROVISIONS RELATING TO ANNUITANTS.**

16 (a) IN GENERAL.—The annuity of any individual who  
17 is excluded from the application of the preceding provi-  
18 sions of this Act by reason of section 3(b)(1) shall, upon  
19 application filed by such individual within the time and  
20 in the manner prescribed under section 4(b), be recom-  
21 puted, effective with respect to amounts accruing for  
22 months beginning on or after the date of such application,  
23 so that the amount of such annuity is equal to the amount  
24 that would then be payable if—



1           (1) any qualified service performed by such in-  
2           dividual during the period beginning on February 1,  
3           2005, and ending on the effective date of the appli-  
4           cation had been credited under subchapter III of  
5           chapter 83 of title 5, United States Code, or chapter  
6           84 of such title, as the case may be, as if FSS con-  
7           troller service;

8           (2) such individual had separated from service  
9           on the latest of—

10                   (A) the separation date on which such in-  
11                   dividual's annuity would otherwise be based;

12                   (B) the effective date of the application; or

13                   (C) the last day of qualified service per-  
14                   formed by such individual, if earlier than the  
15                   date under subparagraph (B); and

16           (3) as of the separation date determined under  
17           paragraph (2), such individual was entitled to—

18                   (A) retire under section 8336(e) of title 5,  
19                   United States Code, and computation of annu-  
20                   ity under section 8339(e) of such title; or

21                   (B) retire under section 8412(e) of title 5,  
22                   United States Code, and computation of annu-  
23                   ity under section 8415(d) of such title,

24           as the case may be, subject to the condition specified  
25           in section 4(c)(1)(B).

1 (b) SURVIVORS.—In the case of an individual eligible  
2 to submit an application under subsection (a) who dies  
3 before the end of the period allowable under section 4(b),  
4 an application under this section may, for purposes of any  
5 survivor annuity, be made—

6 (1) by a survivor of the individual; and

7 (2) if submitted by—

8 (A) the deadline that would apply under  
9 subsection (a); or

10 (B) if later, the date occurring 12 months  
11 after the individual's date of death.

12 (c) DEFINITION.—For purposes of subsection (b), the  
13 term “effective date of the application” means the first  
14 day of the first month beginning on or after the date on  
15 which such application is duly filed.

16 **SEC. 7. REGULATIONS.**

17 The Office of Personnel Management may prescribe  
18 any regulations necessary to carry out this Act, including  
19 provisions for determining “basic pay” in connection with  
20 service performed for a non-Government entity.

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