

Calendar No. 179111TH CONGRESS
1ST SESSION**S. 507****[Report No. 111-88]**

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

MARCH 2, 2009

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

OCTOBER 14, 2009

Reported by Mr. LIEBERMAN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Non-Foreign Area Re-
3 tirement Equity Assurance Act of 2009” or the “Non-For-
4 eign AREA Act of 2009”.

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) in subparagraph (B) by striking
21 the period and inserting “; and”; and

22 (iii) by adding after subparagraph (B)
23 the following:

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

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

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

7 (3) in subsection (h)(1)—

8 (A) in subparagraph (B) by striking “and”
9 after the semicolon;

10 (B) by redesignating subparagraph (C) as
11 subparagraph (D);

12 (C) by inserting after subparagraph (B)
13 the following:

14 “(C) a Senior Executive Service position
15 under section 3132 or 3151 *or a senior level po-*
16 *sition under section 5376* stationed within the
17 United States, but outside the 48 contiguous
18 States and the District of Columbia in which
19 the incumbent was an individual who on the
20 day before the date of enactment of the Non-
21 Foreign Area Retirement Equity Assurance Act
22 of 2009 was eligible to receive a cost-of-living
23 allowance under section 5941; and”;

24 (D) in clause (iv) in the matter following
25 subparagraph (D), by inserting “, except for

1 members covered by subparagraph (C)” before
2 the semicolon; and

3 (E) in clause (v) in the matter following
4 subparagraph (D), by inserting “, except for
5 members covered by subparagraph (C)” before
6 the semicolon.

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

10 (1) in subsection (a), by adding after the last
11 sentence “Notwithstanding any preceding provision
12 of this subsection, the cost-of-living allowance rate
13 based on paragraph (1) shall be the cost-of-living al-
14 lowance rate in effect on the date of enactment of
15 the Non-Foreign Area Retirement Equity Assurance
16 Act of 2009, except as adjusted under subsection
17 (c).”;

18 (2) by redesignating subsection (b) as sub-
19 section (d); and

20 (3) by inserting after subsection (a) the fol-
21 lowing:

22 “(b) This section shall apply only to areas that are
23 designated as cost-of-living allowance areas as in effect on
24 December 31, 2009.

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

4 “(A) January 1, 2010; and

5 “(B) January 1 of each calendar year in which
6 a locality-based comparability adjustment takes ef-
7 fect under section 4 (2) and (3) of the Non-Foreign
8 Area Retirement Equity Assurance Act of 2009.

9 “(2)(A) In this paragraph, the term ‘applicable local-
10 ity-based comparability pay percentage’ means, with re-
11 spect to calendar year 2010 and each calendar year there-
12 after, the applicable percentage under section 4 (1), (2),
13 or (3) of Non-Foreign Area Retirement Equity Assurance
14 Act of 2009.

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

17 “(i) subtracting 65 percent of the applicable lo-
18 cality-based comparability pay percentage from the
19 cost-of-living allowance percentage rate in effect on
20 December 31, 2009; and

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

23 “(I) one; and

1 “(II) the applicable locality-based com-
2 parability payment percentage expressed as a
3 numeral.

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

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

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

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

21 (b) AGENCIES WITH STATUTORY AUTHORITY.—

22 (1) IN GENERAL.—Each special rate of pay es-
23 tablished under an authority described under para-
24 graph (2) and payable in a location designated as a
25 cost-of-living allowance area under section

1 5941(a)(1) of title 5, United States Code, shall be
2 adjusted in accordance with regulations prescribed
3 by the applicable head of the agency that are con-
4 sistent with the regulations issued by the Director of
5 the Office of Personnel Management under sub-
6 section (a).

7 (2) STATUTORY AUTHORITY.—The authority re-
8 ferred to under paragraph (1), is any statutory au-
9 thority that—

10 (A) is similar to the authority exercised
11 under section 5305 of title 5, United States
12 Code;

13 (B) is exercised by the head of an agency
14 when the head of the agency determines it to be
15 necessary in order to obtain or retain the serv-
16 ices of persons specified by statute; and

17 (C) authorizes the head of the agency to
18 increase the minimum, intermediate, or max-
19 imum rates of basic pay authorized under appli-
20 cable statutes and regulations.

21 (c) TEMPORARY ADJUSTMENT.—Regulations issued
22 under subsection (a) or (b) may provide that statutory
23 limitations on the amount of such special rates may be
24 temporarily raised to a higher level during the transition
25 period described in section 4 ending on the first day of

1 the first pay period beginning on or after January 1,
2 2012, at which time any special rate of pay in excess of
3 the applicable limitation shall be converted to a retained
4 rate under section 5363 of title 5, United States Code.

5 **SEC. 4. TRANSITION SCHEDULE FOR LOCALITY-BASED**
6 **COMPARABILITY PAYMENTS.**

7 Notwithstanding any other provision of this Act or
8 section 5304 or 5304a of title 5, United States Code, in
9 implementing the amendments made by this Act, for each
10 non-foreign area determined under section 5941(b) of that
11 title, the applicable rate for the locality-based com-
12 parability adjustment that is used in the computation re-
13 quired under section 5941(c) of that title shall be adjusted
14 effective on the first day of the first pay period beginning
15 on or after January 1—

16 (1) in calendar year 2010, by using $\frac{1}{3}$ of the
17 locality pay percentage for the rest of United States
18 locality pay area;

19 (2) in calendar year 2011, by using $\frac{2}{3}$ of the
20 otherwise applicable comparability payment approved
21 by the President for each non-foreign area; and

22 (3) in calendar year 2012 and each subsequent
23 year, by using the full amount of the applicable com-
24 parability payment approved by the President for
25 each non-foreign area.

1 **SEC. 5. SAVINGS PROVISION.**

2 (a) SENSE OF CONGRESS.—It is the sense of Con-
3 gress that—

4 (1) the application of this Act to any employee
5 should not result in a decrease in the take home pay
6 of that employee;

7 (2) in calendar year 2012 and each subsequent
8 year, no employee shall receive less than the Rest of
9 the U.S. locality pay rate;

10 (3) concurrent with the surveys next conducted
11 under the provisions of section 5304(d)(1)(A) of title
12 5, United States Code, beginning after the date of
13 the enactment of this Act, the Bureau of Labor Sta-
14 tistics should conduct separate surveys to determine
15 the extent of any pay disparity (as defined by sec-
16 tion 5302 of that title) that may exist with respect
17 to positions located in the State of Alaska, the State
18 of Hawaii, and the United States territories, includ-
19 ing American Samoa, Guam, Commonwealth of the
20 Northern Mariana Islands, Commonwealth of Puerto
21 Rico, and the United States Virgin Islands;

22 (4) if the surveys under paragraph (3) indicate
23 that the pay disparity determined for the State of
24 Alaska, the State of Hawaii, or any 1 of the United
25 States territories including American Samoa, Guam,
26 Commonwealth of the Northern Mariana Islands,

1 Commonwealth of Puerto Rico, and the United
2 States Virgin Islands exceeds the pay disparity de-
3 termined for the locality which (for purposes of sec-
4 tion 5304 of that title) is commonly known as the
5 “Rest of the United States”, the President’s Pay
6 Agent should take appropriate measures to provide
7 that each such surveyed area be treated as a sepa-
8 rate pay locality for purposes of that section; and

9 (5) the President’s Pay Agent will establish 1
10 locality area for the entire State of Hawaii and 1 lo-
11 cality area for the entire State of Alaska.

12 (b) SAVINGS PROVISIONS.—

13 (1) IN GENERAL.—During the period described
14 under section 4 of this Act, an employee paid a spe-
15 cial rate under 5305 of title 5, United States Code,
16 who the day before the date of enactment of this Act
17 was eligible to receive a cost-of-living allowance
18 under section 5941 of title 5, United States Code,
19 and who continues to be officially stationed in an al-
20 lowance area, shall receive an increase in the em-
21 ployee’s special rate consistent with increases in the
22 applicable special rate schedule. For employees in al-
23 lowance areas, the minimum step rate for any grade
24 of a special rate schedule shall be increased at the
25 time of an increase in the applicable locality rate

1 percentage for the allowance area by not less than
2 the dollar increase in the locality-based com-
3 parability payment for a non-special rate employee
4 at the same minimum step provided under section 4
5 of this Act, and corresponding increases shall be
6 provided for all step rates of the given pay range.

7 (2) CONTINUATION OF COST OF LIVING ALLOW-
8 ANCE RATE.—If an employee, who the day before
9 the date of enactment of this Act was eligible to re-
10 ceive a cost-of-living allowance under section 5941 of
11 title 5, United States Code, would receive a rate of
12 basic pay and applicable locality-based comparability
13 payment which is in excess of the maximum rate
14 limitation set under section 5304(g) of title 5,
15 United States Code, for his position (but for that
16 maximum rate limitation) due to the operation of
17 this Act, the employee shall continue to receive the
18 cost-of-living allowance rate in effect on December
19 31, 2009 without adjustment until—

20 (A) the employee leaves the allowance area
21 or pay system; or

22 (B) the employee is entitled to receive
23 basic pay (including any applicable locality-
24 based comparability payment or similar supple-
25 ment) at a higher rate,

1 but, when any such position becomes vacant, the pay
2 of any subsequent appointee thereto shall be fixed in
3 the manner provided by applicable law and regula-
4 tion.

5 (3) LOCALITY-BASED COMPARABILITY PAY-
6 MENTS.—Any employee covered under paragraph (2)
7 shall receive any applicable locality-based com-
8 parability payment extended under section 4 of this
9 Act which is not in excess of the maximum rate set
10 under section 5304(g) of title 5, United States Code,
11 for his position including any future increase to stat-
12 utory pay limitations under 5318 of title 5, United
13 States Code. Notwithstanding paragraph (2), to the
14 extent that an employee covered under that para-
15 graph receives any amount of locality-based com-
16 parability payment, the cost-of-living allowance rate
17 under that paragraph shall be reduced accordingly,
18 as provided under section 5941(c)(2)(B) of title 5,
19 United States Code.

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

21 (a) IN GENERAL.—

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

24 (A) any employee who—

1 (i) on the day before the date of en-
2 actment of this Act—

3 (I) was eligible to be paid a cost-
4 of-living allowance under 5941 of title
5 5, United States Code; and

6 (II) was not eligible to be paid lo-
7 cality-based comparability payments
8 under 5304 or 5304a of that title; or

9 (ii) on or after the date of enactment
10 of this Act becomes eligible to be paid a
11 cost-of-living allowance under 5941 of title
12 5, United States Code; or

13 (B) any employee who—

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

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

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

22 (III) was employed by the Trans-
23 portation Security Administration of
24 the Department of Homeland Security
25 and was eligible to be paid an allow-

1 ance based on section 5941 of title 5,
2 United States Code; or

3 (IV) was eligible to be paid under
4 any other authority a cost-of-living al-
5 lowance that is equivalent to the cost-
6 of-living allowance under section 5941
7 of title 5, United States Code; or

8 (ii) on or after the date of enactment
9 of this Act—

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

13 (II) becomes eligible to be paid
14 an allowance under section 1005(b) of
15 title 39, United States Code;

16 (III) is employed by the Trans-
17 portation Security Administration of
18 the Department of Homeland Security
19 and becomes eligible to be paid an al-
20 lowance based on section 5941 of title
21 5, United States Code; or

22 (IV) is eligible to be paid under
23 any other authority a cost-of-living al-
24 lowance that is equivalent to the cost-

1 of-living allowance under section 5941
2 of title 5, United States Code.

3 (2) APPLICATION TO COVERED EMPLOYEES.—

4 (A) IN GENERAL.—Notwithstanding any
5 other provision of law, for purposes of this Act
6 (including the amendments made by this Act)
7 any covered employee shall be treated as an em-
8 ployee to whom section 5941 of title 5, United
9 States Code (as amended by section 2 of this
10 Act), and section 4 of this Act apply.

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

16 (C) PERFORMANCE APPRAISAL SYSTEM.—
17 With respect to a covered employee who is sub-
18 ject to a performance appraisal system no part
19 of pay attributable to locality-based com-
20 parability payments as a result of the applica-
21 tion of this Act including section 5941 of title
22 5, United States Code (as amended by section
23 2 of this Act), may be reduced on the basis of
24 the performance of that employee.

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

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

3 (A) by inserting “(1)” after “(b)”;

4 (B) by striking “Section 5941,” and in-
5 serting “Except as provided under paragraph
6 (2), section 5941”;

7 (C) by striking “For purposes of such sec-
8 tion,” and inserting “Except as provided under
9 paragraph (2), for purposes of section 5941 of
10 that title,”; and

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

12 “(2) On and after the date of enactment of the
13 Non-Foreign Area Retirement Equity Assurance Act
14 of 2009—

15 “(A) the provisions of that Act and section
16 5941 of title 5 shall apply to officers and em-
17 ployees covered by section 1003 (b) and (c)
18 whose duty station is in a nonforeign area; and

19 “(B) with respect to officers and employees
20 of the Postal Service (other than those officers
21 and employees described under subparagraph
22 (A)) section 6(b)(2) of that Act shall apply.”.

23 (2) CONTINUATION OF COST OF LIVING ALLOW-
24 ANCE.—

1 (A) IN GENERAL.—Notwithstanding any
2 other provision of this Act, any employee of the
3 Postal Service (other than an employee covered
4 by section 1003 (b) and (c) of title 39, United
5 States Code, whose duty station is in a nonfor-
6 eign area) who is paid an allowance under sec-
7 tion 1005(b) of that title shall be treated for all
8 purposes as if the provisions of this Act (includ-
9 ing the amendments made by this Act) had not
10 been enacted, except that the cost-of-living al-
11 lowance rate paid to that employee—

12 (i) may result in the allowance exceed-
13 ing 25 percent of the rate of basic pay of
14 that employee; and

15 (ii) shall be the greater of—

16 (I) the cost-of-living allowance
17 rate in effect on December 31, 2009
18 for the applicable area; or

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

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

24 (i) provide for an employee described
25 under subparagraph (A) to be a covered

1 employee as defined under subsection (a);
 2 or
 3 (ii) authorize an employee described
 4 under subparagraph (A) to file an election
 5 under section 7 of this Act.

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

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

10 (1) to whom section 4 applies;

11 (2) who is separated from service by reason of
 12 retirement under chapter 83 or 84 of title 5, United
 13 States Code, during the period of January 1, 2010,
 14 through December 31, 2012; and

15 (3) who files an election with the Office of Per-
 16 sonnel Management under subsection (b).

17 (b) ELECTION.—

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

22 (2) DEADLINE.—An election under this sub-
 23 section may be filed not later than December 31,
 24 2012.

25 (c) COMPUTATION OF ANNUITY.—

1 (1) IN GENERAL.—Except as provided under
2 paragraph (2), for purposes of the computation of
3 an annuity of a covered employee any cost-of-living
4 allowance under section 5941 of title 5, United
5 States Code, paid to that employee during the first
6 applicable pay period beginning on or after January
7 1, 2010 through the first applicable pay period end-
8 ing on or after December 31, 2012, shall be consid-
9 ered basic pay as defined under section 8331(3) or
10 8401(4) of that title.

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

18 (d) CIVIL SERVICE RETIREMENT AND DISABILITY
19 RETIREMENT FUND.—

20 (1) EMPLOYEE CONTRIBUTIONS.—A covered
21 employee shall pay into the Civil Service Retirement
22 and Disability Retirement Fund—

23 (A) an amount equal to the difference be-
24 tween—

1 (i) employee contributions that would
2 have been deducted and withheld from pay
3 under section 8334 or 8422 of title 5,
4 United States Code, during the period de-
5 scribed under subsection (c) of this section
6 if the cost-of-living allowances described
7 under that subsection had been treated as
8 basic pay under section 8331(3) or
9 8401(4) of title 5, United States Code; and

10 (ii) employee contributions that were
11 actually deducted and withheld from pay
12 under section 8334 or 8422 of title 5,
13 United States Code, during that period;
14 and

15 (B) interest as prescribed under section
16 8334(e) of title 5, United States Code, based on
17 the amount determined under subparagraph
18 (A).

19 (2) AGENCY CONTRIBUTIONS.—

20 (A) IN GENERAL.—The employing agency
21 of a covered employee shall pay into the Civil
22 Service Retirement and Disability Retirement
23 Fund an amount for applicable agency con-
24 tributions based on payments made under para-
25 graph (1).

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

4 (3) REGULATIONS.—The Office of Personnel
5 Management may prescribe regulations to carry out
6 this section.

7 **SEC. 8. REGULATIONS.**

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

11 (1) rules for special rate employees described
12 under section 3;

13 (2) rules for adjusting rates of basic pay for
14 employees in pay systems administered by the Office
15 of Personnel Management when such employees are
16 not entitled to locality-based comparability payments
17 under section 5304 of title 5, United States Code,
18 without regard to otherwise applicable statutory pay
19 limitations during the transition period described in
20 section 4 ending on the first day of the first pay pe-
21 riod beginning on or after January 1, 2012; and

22 (3) rules governing establishment and adjust-
23 ment of saved or retained rates for any employee
24 whose rate of pay exceeds applicable pay limitations

1 on the first day of the first pay period beginning on
2 or after January 1, 2012.

3 ~~(b) OTHER PAY SYSTEMS.—With the concurrence of~~
4 ~~the Director of the Office of Personnel Management, the~~
5 ~~administrator of a pay system not administered by the Of-~~
6 ~~ice of Personnel Management shall prescribe regulations~~
7 ~~to carry out this Act with respect to employees in such~~
8 ~~pay system, consistent with the regulations issued by the~~
9 ~~Office under subsection (a).~~

10 *(b) OTHER PAY SYSTEMS.—With the concurrence of*
11 *the Director of the Office of Personnel Management, the ad-*
12 *ministrator of a pay system not administered by the Office*
13 *of Personnel Management shall prescribe regulations to*
14 *carry out this Act with respect to employees in such pay*
15 *system, consistent with the regulations prescribed by the Of-*
16 *ice under subsection (a). With respect to employees not en-*
17 *titled to locality-based comparability payments under sec-*
18 *tion 5304 of title 5, United States Code, regulations pre-*
19 *scribed under this subsection may provide for special pay-*
20 *ments or adjustments for employees who were eligible to re-*
21 *ceive a cost-of-living allowance under section 5941 of that*
22 *title on the date before the date of enactment of this Act.*

1 **SEC. 9. EFFECTIVE DATES.**

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

5 (b) LOCALITY PAY AND SCHEDULE.—The amend-
6 ments made by section 2 and the provisions of section 4
7 shall take effect on the first day of the first applicable
8 pay period beginning on or after January 1, 2010.

Calendar No. 179

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1ST Session

S. 507

[Report No. 111-88]

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.

OCTOBER 15, 2009

Reported with amendments