

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 370

To amend the Foreign Service Act of 1980 to extend comparability pay adjustments to members of the Foreign Service assigned to posts abroad, and to amend the provision relating to the death gratuity payable to surviving dependents of Foreign Service employees who die as a result of injuries sustained in the performance of duty abroad.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2009

Mr. SMITH of New Jersey (for himself and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Oversight and Government Reform, 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

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## A BILL

To amend the Foreign Service Act of 1980 to extend comparability pay adjustments to members of the Foreign Service assigned to posts abroad, and to amend the provision relating to the death gratuity payable to surviving dependents of Foreign Service employees who die as a result of injuries sustained in the performance of duty abroad.

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 “Foreign Service Over-  
3 seas Pay Equity Act of 2009”.

4 **SEC. 2. OVERSEAS COMPARABILITY PAY ADJUSTMENT.**

5 (a) OVERSEAS COMPARABILITY PAY ADJUSTMENT.—

6 (1) IN GENERAL.—Chapter 4 of the Foreign  
7 Service Act of 1980 (22 U.S.C. 3961 and following)  
8 is amended by adding at the end the following:

9 **“SEC. 415. OVERSEAS COMPARABILITY PAY ADJUSTMENT.**

10 “(a) IN GENERAL.—A member of the Service who is  
11 designated class 1 or below for purposes of section 403  
12 and whose official duty station is neither in the continental  
13 United States nor in a non-foreign area shall receive, in  
14 accordance with the phase-in schedule set forth in sub-  
15 section (c), the same locality-based comparability payment  
16 under section 5304 of title 5, United States Code (stated  
17 as a percentage) as would be payable to such member if  
18 such member’s official duty station were in the District  
19 of Columbia.

20 “(b) TREATMENT AS BASIC PAY.—The amount of  
21 any locality-based comparability payment which is payable  
22 to a member of the Service by virtue of this section—

23 “(1) shall be considered to be part of the basic  
24 pay of such member—

1           “(A) for the same purposes as provided for  
2           under section 5304(c)(2)(A) of title 5, United  
3           States Code; and

4           “(B) for purposes of chapter 8; and

5           “(2) shall be subject to any limitations on pay  
6           applicable to locality-based comparability payments  
7           under section 5304 of title 5, United States Code.

8           “(c) PHASE-IN.—The locality-based comparability  
9           payment payable to a member of the Service under this  
10          section shall—

11           “(1) beginning on the first day of the first pay  
12          period beginning on or after the date that fiscal year  
13          2010 appropriations are made available by enact-  
14          ment of the Department of State, Foreign Oper-  
15          ations, and Related Programs Appropriations Act,  
16          2010, or April 1, 2010, whichever is earlier, be equal  
17          to 33.33 percent of the payment which would other-  
18          wise apply under subsection (a);

19           “(2) beginning on the first day of the first pay  
20          period in fiscal year 2011, be equal to 66.67 percent  
21          of the payment which would otherwise apply under  
22          subsection (a); and

23           “(3) beginning on the first day of the first pay  
24          period in fiscal year 2012 and each subsequent fiscal

1 year, be equal to the payment determined under sub-  
2 section (a).

3 “(d) NON-FOREIGN AREA DEFINED.—For purposes  
4 of this section, the term ‘non-foreign area’ has the same  
5 meaning as is given such term in regulations carrying out  
6 section 5941 of title 5, United States Code.”.

7 (2) CONFORMING AMENDMENT.—The table of  
8 contents set forth in section 2 of such Act is amend-  
9 ed by inserting after the item relating to section 414  
10 the following:

“Sec. 415. Overseas comparability pay adjustment.”.

11 (b) CONFORMING AMENDMENTS RELATING TO THE  
12 FOREIGN SERVICE RETIREMENT SYSTEMS.—

13 (1) CONTRIBUTIONS TO THE FUND.—Effective  
14 as of the first pay period beginning on or after Octo-  
15 ber 1, 2011, section 805(a) of the Foreign Service  
16 Act of 1980 (22 U.S.C. 4045(a)) is amended—

17 (A) in paragraph (1)—

18 (i) in the first sentence, by striking  
19 “7.25 percent” and inserting “7 percent”;  
20 and

21 (ii) in the second sentence, by striking  
22 “The contribution by the employing agen-  
23 cy” through “and shall be made” and in-  
24 serting “An equal amount shall be contrib-  
25 uted by the employing agency”;

1 (B) in paragraph (2)—

2 (i) in subparagraph (A), by striking “,  
3 plus an amount equal to .25 percent of  
4 basic pay”; and

5 (ii) in subparagraph (B), by striking  
6 “, plus an amount equal to .25 percent of  
7 basic pay”; and

8 (C) in paragraph (3), by striking all that  
9 follows “Code” and inserting a period.

10 (2) COMPUTATION OF ANNUITIES.—Section  
11 806(a)(9) of such Act (22 U.S.C. 4046(a)(9)) is  
12 amended by striking “is outside the continental  
13 United States shall” and inserting “was outside the  
14 continental United States during the period begin-  
15 ning on December 29, 2002, and ending on the day  
16 before the first day of the first pay period beginning  
17 on or after October 1, 2011 (or during any portion  
18 thereof) shall, to the extent that such computation  
19 is based on the salary or pay of such member for  
20 such period (or portion thereof),”.

21 (3) ENTITLEMENT TO ANNUITY.—Section  
22 855(a)(3) of such Act (22 U.S.C. 4071d(a)(3)) is  
23 amended—

24 (A) by striking “section 8414” and insert-  
25 ing “section 8415”; and

1 (B) by striking “is outside the continental  
 2 United States shall” and inserting “was outside  
 3 the continental United States during the period  
 4 beginning on December 29, 2002, and ending  
 5 on the day before the first day of the first pay  
 6 period beginning on or after October 1, 2011  
 7 (or during any portion thereof) shall, to the ex-  
 8 tent that such computation is based on the sal-  
 9 ary of such member for such period (or portion  
 10 thereof),”.

11 (4) DEDUCTIONS AND WITHHOLDINGS FROM  
 12 PAY.—Section 856(a)(2) of such Act (22 U.S.C.  
 13 4071e(a)(2)) is amended to read as follows:

14 “(2) The applicable percentage under this sub-  
 15 section shall be as follows:

| <b>“Percentage</b> | <b>Time Period</b>   |
|--------------------|--|
| 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               | January 11, 2003, to the day before the first day of the first pay period beginning on or after October 1, 2011. |
| 7.5                | Beginning on the first day of the first pay period beginning on or after October 1, 2011.”.                      |

16 (c) REPORTING REQUIREMENTS.—

17 (1) IN GENERAL.—Not later than October 1,  
 18 2011, the Secretary of State shall submit to the ap-  
 19 propriate congressional committees an assessment of  
 20 all allowances provided to members of the Foreign  
 21 Service under the Foreign Service Act of 1980 or

1 under title 5, United States Code, and in particular,  
2 how such allowances have been or will be affected by  
3 the amendments to the Foreign Service Act of 1980  
4 made by this Act.

5 (2) DEFINITION.—For purposes of this sub-  
6 section, the term “appropriate congressional commit-  
7 tees” means the Committee on Foreign Affairs of  
8 the House of Representatives and the Committee on  
9 Foreign Relations of the Senate.

10 **SEC. 3. DEATH GRATUITY.**

11 The first sentence of section 413(a) of the Foreign  
12 Service Act of 1980 (22 U.S.C. 3973(a)) is amended by  
13 striking “at the time of death” and inserting “at level II  
14 of the Executive Schedule under section 5313 of title 5,  
15 United States Code, at the time of death, except that for  
16 employees compensated under local compensation plans  
17 established under section 408, the amount shall be equal  
18 to the greater of 1 year’s salary at the time of death or  
19 1 year’s salary at the highest step of the highest grade  
20 on the local compensation plan from which the employee  
21 was being paid at the time of death”.

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