

Calendar No. 370

117TH CONGRESS
2^D SESSION

S. 407

[Report No. 117–113]

To provide redress to the employees of Air America.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2021

Mr. RUBIO (for himself, Mr. WARNER, Mrs. GILLIBRAND, Mrs. SHAHEEN, Mrs. FEINSTEIN, Mrs. MURRAY, Mr. CORNYN, Ms. ROSEN, Ms. KLOBUCHAR, Mr. BRAUN, Mr. MENENDEZ, Mr. CARDIN, Mr. ROUNDS, Mr. CASEY, Mr. VAN HOLLEN, Mr. SCHUMER, Ms. SMITH, Mr. BOOKER, Ms. HIRONO, Mr. CASSIDY, Mr. HAWLEY, Ms. SINEMA, Mr. MANCHIN, Mr. DURBIN, Ms. CORTEZ MASTO, Ms. BALDWIN, Mr. TESTER, Mr. COTTON, Mr. PADILLA, Ms. HASSAN, Mr. KELLY, Ms. DUCKWORTH, Mr. BLUMENTHAL, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MAY 19 (legislative day, MAY 17), 2022

Reported by Mr. PETERS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To provide redress to the employees of Air America.

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 “Air America Act of
3 2021”.

4 **SEC. 2. AIR AMERICA.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) Air America, Incorporated (referred to in
7 this section as “Air America”) and its related cover
8 corporate entities were wholly owned and controlled
9 by the United States Government and directed and
10 managed by the Department of Defense, the Depart-
11 ment of State, and the Central Intelligence Agency
12 from 1950 to 1976.

13 (2) Air America, a corporation owned by the
14 Government of the United States, constituted a
15 “Government corporation”, as defined in section 103
16 of title 5, United States Code.

17 (3) It is established that the employees of Air
18 America and the other entities described in para-
19 graph (1) were Federal employees.

20 (4) The employees of Air America were retro-
21 actively excluded from the definition of the term
22 “employee” under section 2105 of title 5, United
23 States Code, on the basis of an administrative policy
24 change in paperwork requirements implemented by
25 the Office of Personnel Management 10 years after
26 the service of the employees had ended and, by ex-

1 tension, were retroactively excluded from the defini-
 2 tion of the term “employee” under section 8331 of
 3 title 5, United States Code, for retirement credit
 4 purposes.

5 (5) The employees of Air America were paid as
 6 Federal employees, with salaries subject to—

7 (A) the General Schedule under subchapter
 8 III of chapter 53 of title 5, United States Code;
 9 and

10 (B) the rates of basic pay payable to mem-
 11 bers of the Armed Forces.

12 (6) The service and sacrifice of the employees
 13 of Air America included—

14 (A) suffering a high rate of casualties in
 15 the course of employment;

16 (B) saving thousands of lives in search and
 17 rescue missions for downed United States air-
 18 men and allied refugee evacuations; and

19 (C) lengthy periods of service in chal-
 20 lenging circumstances abroad.

21 (b) DEFINITIONS.—In this section—

22 (1) the term “affiliated company”, with respect
 23 to Air America, includes Air Asia Company Limited,
 24 CAT Incorporated, Civil Air Transport Company

1 Limited, and the Pacific Division of Southern Air
 2 Transport; and

3 ~~(2) the term “qualifying service” means service~~
 4 ~~that—~~

5 ~~(A) was performed by a United States cit-~~
 6 ~~izen as an employee of Air America or an affili-~~
 7 ~~ated company during the period beginning on~~
 8 ~~January 1, 1950, and ending on December 31,~~
 9 ~~1976; and~~

10 ~~(B) is documented in the attorney-certified~~
 11 ~~corporate records of Air America or any affili-~~
 12 ~~ated company.~~

13 ~~(c) TREATMENT AS FEDERAL EMPLOYMENT.—Any~~
 14 ~~period of qualifying service—~~

15 ~~(1) is deemed to have been service of an em-~~
 16 ~~ployee (as defined in section 2105 of title 5, United~~
 17 ~~States Code) with the Federal Government; and~~

18 ~~(2) shall be treated as creditable service by an~~
 19 ~~employee for purposes of subchapter III of chapter~~
 20 ~~83 of title 5, United States Code.~~

21 ~~(d) RIGHTS.—An individual who performed quali-~~
 22 ~~fying service, or a survivor of such an individual, shall be~~
 23 ~~entitled to the rights, retroactive as applicable, provided~~
 24 ~~to employees and their survivors for creditable service~~
 25 ~~under the Civil Service Retirement System under sub-~~

1 chapter III of chapter 83 of title 5, United States Code,
 2 with respect to that qualifying service.

3 (c) ~~DEDUCTION, CONTRIBUTION, AND DEPOSIT RE-~~
 4 ~~QUIREMENTS.~~—The deposit of funds in the Treasury of
 5 the United States made by Air America in the form of
 6 a lump-sum payment apportioned in part to the Civil Serv-
 7 ice Disability & Retirement Fund in 1976 is deemed to
 8 satisfy the deduction, contribution, and deposit require-
 9 ments under section 8334 of title 5, United States Code,
 10 with respect to all periods of qualifying service.

11 (f) ~~APPLICATION TIME LIMIT.~~—Section 8345(i)(2) of
 12 title 5, United States Code, shall be applied with respect
 13 to the death of an individual who performed qualifying
 14 service by substituting “2 years after the effective date
 15 under section 2(g) of the Air America Act of 2021” for
 16 “30 years after the death or other event which gives rise
 17 to title to the benefit”.

18 (g) ~~EFFECTIVE DATE.~~—This section shall take effect
 19 on the date that is 30 days after the date of enactment
 20 of this Act.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Air America Act of*
 23 *2022”.*

24 **SEC. 2. AIR AMERICA.**

25 (a) *FINDINGS.*—Congress finds the following:

1 (1) *Air America, Incorporated* (referred to in
 2 this section as “*Air America*”) and its related cover
 3 corporate entities were wholly owned and controlled
 4 by the United States Government and directed and
 5 managed by the Department of Defense, the Depart-
 6 ment of State, and the Central Intelligence Agency
 7 from 1950 to 1976.

8 (2) *Air America*, a corporation owned by the
 9 Government of the United States, constituted a “Gov-
 10 ernment corporation”, as defined in section 103 of
 11 title 5, United States Code.

12 (3) *The service and sacrifice of the employees of*
 13 *Air America included—*

14 (A) *suffering a high rate of casualties in the*
 15 *course of employment;*

16 (B) *saving thousands of lives in search and*
 17 *rescue missions for downed United States airmen*
 18 *and allied refugee evacuations; and*

19 (C) *lengthy periods of service in challenging*
 20 *circumstances abroad.*

21 (b) *DEFINITIONS.—In this section—*

22 (1) *the term “affiliated company”, with respect*
 23 *to Air America, includes Air Asia Company Limited,*
 24 *CAT Incorporated, Civil Air Transport Company*

1 *Limited, and the Pacific Division of Southern Air*
 2 *Transport;*

3 (2) *the term “qualifying service” means service*
 4 *that—*

5 (A) *was performed by a United States cit-*
 6 *izen as an employee of Air America or an affili-*
 7 *ated company during the period beginning on*
 8 *January 1, 1950, and ending on December 31,*
 9 *1976; and*

10 (B) *is documented in the attorney-certified*
 11 *corporate records of Air America or any affili-*
 12 *ated company;*

13 (3) *the term “survivor”, with respect to an indi-*
 14 *vidual who performed qualifying service, means—*

15 (A) *a widow or widower of the individual*
 16 *who performed qualifying service; or*

17 (B) *an individual who, at any time during*
 18 *or since the period of qualifying service, was a*
 19 *dependent or child of the individual who per-*
 20 *formed qualifying service; and*

21 (4) *the terms “widow”, “widower”, “dependent”,*
 22 *and “child” have the meanings given those terms in*
 23 *section 8341(a) of title 5, United States Code, except*
 24 *that that section shall be applied by substituting “in-*

1 *dividual who performed qualifying service” for “em-*
 2 *ployee or Member”.*

3 (c) *CREDITABLE SERVICE.*—*Any period of qualifying*
 4 *service shall be treated as creditable service for purposes of*
 5 *subchapter III of chapter 83 of title 5, United States Code.*

6 (d) *RIGHTS.*—

7 (1) *IN GENERAL.*—*An individual who performed*
 8 *qualifying service or a survivor of such an indi-*
 9 *vidual—*

10 (A) *shall be entitled to the rights, retro-*
 11 *active as applicable, provided to employees and*
 12 *their survivors for creditable service under the*
 13 *Civil Service Retirement System under sub-*
 14 *chapter III of chapter 83 of title 5, United States*
 15 *Code, with respect to that qualifying service; and*

16 (B) *may submit an application for benefits*
 17 *based on the qualifying service to the Office of*
 18 *Personnel Management not later than 2 years*
 19 *after the effective date under section 2(g) of this*
 20 *Act.*

21 (2) *INDIVIDUALS DECEASED BEFORE DATE OF*
 22 *ENACTMENT.*—*A survivor of an individual who per-*
 23 *formed qualifying service and became eligible, by rea-*
 24 *son of this Act, for benefits based on the qualifying*
 25 *service under subchapter III of chapter 83 of title 5,*

1 *United States Code (but became deceased before the*
2 *date of enactment of this Act)—*

3 *(A) may submit an application for benefits*
4 *based on the qualifying service to the Office of*
5 *Personnel Management not later than 2 years*
6 *after the effective date under section 2(g) of this*
7 *Act, disregarding any requirement that an em-*
8 *ployee have filed an application while living;*
9 *and*

10 *(B) upon submission of the application*
11 *under subparagraph (A), shall be eligible for a*
12 *survivor annuity under section 8341 of title 5,*
13 *United States Code, equal to 55 percent (or 50*
14 *percent if the deceased individual retired before*
15 *October 11, 1962) of the self-only annuity (as de-*
16 *finied in section 838.103 of title 5, Code of Fed-*
17 *eral Regulations (or any successor regulation))*
18 *that otherwise would have been paid to the de-*
19 *ceased individual.*

20 *(e) DEDUCTION, CONTRIBUTION, AND DEPOSIT RE-*
21 *QUIREMENTS.—The deposit of funds in the Treasury of the*
22 *United States made by Air America in the form of a lump-*
23 *sum payment apportioned in part to the Civil Service Dis-*
24 *ability and Retirement Fund in 1976 is deemed to satisfy*
25 *the deduction, contribution, and deposit requirements under*

1 *section 8334 of title 5, United States Code, with respect to*
2 *all periods of qualifying service.*

3 (f) *RULE OF CONSTRUCTION.—Nothing in this Act*
4 *shall be construed to set any type of precedent for purposes*
5 *of civil service retirement credit with the Civil Service Re-*
6 *tirement and Disability Fund or any successor fund.*

7 (g) *EFFECTIVE DATE.—This Act shall take effect on*
8 *the date that is 30 days after the date of enactment of this*
9 *Act.*

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