SEC. ___. ELIMINATION OF THE FOREIGN EXEMPTION PROVISION IN REGARDS TO OVERTIME FOR FEDERAL CIVILIAN EMPLOYEES TEMPORARILY ASSIGNED TO A FOREIGN AREA.

(a) IN GENERAL.—Section 5542 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(h) Notwithstanding section 13(f) of the Fair Labor Standards Act (29 U.S.C. 213(f)), an employee who is working at a location in a foreign country, or in a territory under the jurisdiction of the United States covered by such section 13(f), in temporary duty travel status while maintaining an official duty station or worksite in an area of the United States not covered by such section 13(f) shall, for all purposes, not be considered to be exempted from section 7 of such Act on the basis of the employee performing work at such a location.".

(b) FEDERAL WAGE SYSTEM EMPLOYEES.—Section 5544 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(d) Notwithstanding section 13(f) of the Fair Labor Standards Act (29 U.S.C. 213(f)), an employee whose overtime pay is determined in accordance with subsection (a) who is working at a location in a foreign country, or in a territory under the jurisdiction of the United States covered by such section 13(f), in temporary duty travel status while maintaining an official duty station or worksite in an area of the United States not covered by such section 13(f) shall, for all purposes, not be considered to be exempted from section 7 of such Act on the basis of the employee performing work at such a location.".

(c) CONFORMING REPEAL.—Section 5542(a) of title 5, United States Code, is amended by striking paragraph (6).

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend sections 5542 and 5544 of title 5, United States Code, to allow overtime pay equal to one and one-half times the hourly rate of basic pay for nonexempt Federal civilian employees assigned to temporary duty travel in exempt areas as defined by the Fair Labor Standards Act (FLSA) of 1938.

The foreign exemption provision provides that employees in foreign countries and certain U.S. territories are not covered by the overtime provisions of the FLSA. In 2011, the Department of the Navy (DON) proposed and received an exemption to allow payment of overtime to non-exempt General Schedule (GS) employees in a temporary duty (TDY) travel status working on a U.S. nuclear-powered aircraft carrier forward-deployed to Yokosuka, Japan. When these same employees are at their normal duty station, they receive one and one-half times their hourly rate of basic pay for all hours worked over 40 hours in a week which, prior to January 2011, they were not receiving while TDY in Yokosuka. This special pay authority, codified in 5 U.S.C. 5542(a)(6), now allows the same overtime rate to be paid to these employees while on TDY in Japan. This exemption does not apply to wage-grade employees covered by the Federal Wage System (FWS). The authority is set to expire September 30, 2017.

The fact that only one group of Federal employees in one foreign area receives this authority has created an inequity. We seek to revise the authority to include all nonexempt GS and nonexempt FWS employees in a temporary duty travel status in an exempt area.

Budget Implications: The totals for FY 2009 through FY 2012 show an average increase in overtime costs of 23 percent per year with the proposed legislation. The costs projected below ($M) for future years are calculated using a trend analysis with that percentage. Under the National Defense Authorization Act for FY 2015 (P.L. 113-291), the Navy is already authorized and utilizes this overtime authority and therefore it has indicated that this proposal would not inflate current civilian personnel costs. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force	0.022	0.027	0.031	0.036	0.040	Operation and Maintenance, Air Force	01	011C	
Air Force	0.005	0.006	0.007	0.008	0.009	Operation and Maintenance, Air Force	02	021Z	
Air Force	0.008	0.010	0.012	0.013	0.015	Operation and Maintenance, Air Force	03	031Z	

Air Force	0.026	0.032	0.037	0.042	0.047	Operation and Maintenance, Air Force	04	041Z	
Army does not intend to use this authority, which would have been funded from the following account: Operation and Maintenance, Army.									
Marine Corps does not intend to use this authority, which would have been funded from the following account: Operation and Maintenance, Marine Corps.									
Navy	.2	.21	.22	.23	.24	Operation and Maintenance, Navy	01	1B4B	
Defense Wide	0.082	0.059	0.036	0.013	0	Operation and Maintenance, Defense-Wide	04	300	
Total	0.343	0.344	0.343	0.342	0.351				

Changes to Existing Law: This proposal would make the following changes to section 5542 of title 5, United States Code, as amended by section 1103 of the NDAA for FY 2016:

TITLE 5, UNITED STATES CODE

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) or the hourly rate of basic pay of the employee, and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS–14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of-

(A) one and one-half times the minimum hourly rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee,

and all that amount is premium pay.

(5) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Interior or the United States Forest Service in the Department of Agriculture engaged in emergency wildland fire suppression activities, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

~~(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and who would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.~~

~~(B) Subparagraph (A) shall expire on September 30, 2017.~~

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(h) Notwithstanding section 13(f) of the Fair Labor Standards Act (29 U.S.C. 213(f)), an employee who is working at a location in a foreign country, or in a territory under the jurisdiction of the United States covered by such section 13(f), in temporary duty travel status while maintaining an official duty station or worksite in an area of the United States not covered by such section 13(f) shall, for all purposes, not be considered to be exempted from section 7 of such Act on the basis of the employee performing work at such a location.

§ 5544. Wage-board overtime and Sunday rates; computation

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(d) Notwithstanding section 13(f) of the Fair Labor Standards Act (29 U.S.C. 213(f)), an employee whose overtime pay is determined in accordance with subsection (a) who is working at a location in a foreign country, or in a territory under the jurisdiction of the United States covered by such section 13(f), in temporary duty travel status while maintaining an official duty station or worksite in an area of the United States not covered by such section 13(f) shall, for all purposes, not be considered to be exempted from section 7 of such Act on the basis of the employee performing work at such a location.