SEC. ___. ONE-YEAR EXTENSION AND EXPANSION OF AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) EXTENSION OF AUTHORITY.—Section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as most recently amended by section 1105 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91), is amended by striking "through 2018" and inserting "through 2019".

(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—Section 1101(b) of such Act is amended to read as follows:

"(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—In applying section 5307 of title 5, United States Code, any payment in addition to basic pay for a period of time during which a waiver under subsection (a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year.".

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on January 1, 2019.

[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 has been a recurring provision for the last several years and is an extension for one additional year of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAAs, most recently section 1105 of the FY 2018 NDAA. The provision is currently in effect through calendar year 2018. The authority under that section is similar to that previously provided in the NDAAs since FY 2006.

This proposal would provide the head of a Federal executive agency with the authority to waive the limitations on the amount of premium pay that may be paid to a Federal civilian employee while the employee performs work in the geographic area of U.S. Central Command (CENTCOM) and former USCENTCOM regions that are now part of U.S. Africa Command and are military operations or in response to a national emergency declared by the President.

Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule. Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2019, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

In addition, the proposal amends section 1101(b), which provides a waiver to the aggregate limitation on pay in section 5307 of title 5. Under the amended language, any payment in addition to basic pay for a period of time during which a premium pay cap waiver under section 1101(a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year. The current section 1101(b) waiver of the aggregate limitation on pay is applicable to *any calendar year* in which an employee is granted a waiver of premium pay limitations under subsection (a). Thus, the section 1101(b) waiver of the aggregate limitation on pay applies regardless of how long an employee is granted a waiver of pay limitations under section 1101(a), and the waiver period could be a small portion of the calendar year. This could lead to a situation where an employee enjoys a waiver of the aggregate pay limitation for an entire calendar year when that employee has only been subject to the premium pay cap waiver under section 1101(a) for a small portion of the calendar year. DoD and the Office of Personnel Management believe this is inappropriate, and the amended section 1101(b) language limits the application of the aggregate pay waiver to only the time an employee has been subject to the premium pay cap waiver under section 1101(a).

This proposal also deletes section 1101(b)(2), which was enacted in the FY 2010 NDAA to deal specifically with the National Security Personnel System (NSPS). NSPS was terminated years ago, rendering section 1101(b)(2) inapplicable.

Budget Implications: The Department of Defense estimates this proposal would cost $2.784 million for FY 2019. This proposal would be funded from the Component and Defense Agency operation and maintenance fund accounts. The limitation relief is for those people who are deployed in support of Overseas Contingency Operations (OCO). The funding is requested in the military departments' Operation and Maintenance OCO budgets by cost breakdown structure category. The number of personnel affected in FY 2018 was approximately 2,760. The number of affected personnel Defense-wide in FY 2019 is estimated to be the same. The resources reflected in the table below are funded within the FY19 President's Budget. Only Defense

Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	$2.05					Operation and Maintenance, Army OCO	01	135	0201195A
Navy	$.248					Operation and Maintenance, Navy OCO	01	1C6C	0201202N
Air Force	$.195					Operation and Maintenance, Air Force OCO	01	015F	0201138F
DLA	$.15					Defense Working Capital Funds, Defense-Wide, OCO	08		
DCMA	$.07					Operation and Maintenance, OCO	04	4GTO	0701113BL
DISA	$.025					Operation and Maintenance, OCO	04	4GT9	0303126K
DCAA	$.007					Operation and Maintenance, OCO	04	4GT6	0901516R
OSD	$.02					Operation and Maintenance, OCO	04	4GTN	0305192D8Z
DFAS	$.006					Defense Working Capital Funds, Defense-Wide , OCO	20		
WHS	$.003					Operation and Maintenance, OCO	04	4GTQ	0901598D8W
Joint Staff	$.003					Operation and Maintenance, OCO	01	1PL1	0804768J
Total	$2.777								

Cost Methodology: The cost of this proposal will ultimately be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2017, the additional cost for overtime in excess of the annual premium pay limitation was approximately $2.7 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2019, but the above scenario illustrates the potential impact, and is a reasonable estimate given the relatively stable rate of assignment of employees over the last several years.

Changes to Existing Law: This proposal would amend section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615) as follows:

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER AUTHORITY.—During calendar years 2009 ~~through 2018~~ through 2019, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

(1) a military operation, including a contingency operation; or

(2) an operation in response to a national emergency declared by the President.

~~(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—~~

~~(1) IN GENERAL.—Section 5307 of title 5, United States Code, shall not apply to any employee in any calendar year in which that employee is granted a waiver under subsection (a).~~

~~(2) OTHER LIMITATIONS.—In the case of any employees who (disregarding subparagraph (A)) would otherwise be subject to a limitation on premium pay similar to one set forth in section 5547 of title 5, United States Code (as determined by the head of the Executive agency in or under which such employees are employed)—~~

~~(A) the agency head may waive that otherwise applicable limitation, to the same extent and in the same manner as would be allowable under subsection (a) if those employees were instead subject to such section 5547; and~~

~~(B) if a waiver under subparagraph (A) is granted with respect to such employees, then, neither section 5307 of title 5, United States Code, nor any other similar limitation (as determined by the agency head) shall apply with respect to such employees for purposes of any calendar year for which such waiver is so granted.~~

(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—In applying section 5307 of title 5, United States Code, any payment in addition to basic pay for a period of time during which a waiver under subsection (a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year.