SEC. 1104. AUTHORITY TO WAIVE ANNUAL LIMITATIONS ON PREMIUM AND AGGREGATE PAY FOR CERTAIN FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER OF LIMITATION ON PREMIUM PAY.—Section 5547 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(e)(1) Subsection (a) shall not apply to an employee who performs work while assigned to duty in a designated zone of armed conflict.

"(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in subsection (a) to the extent that the aggregate of the basic pay and premium pay under those provisions for such employee would, in any calendar year, exceed the annual rate of salary payable to the Vice President under section 104 of title 3.

"(3) To the extent that a waiver under paragraph (1) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551.

"(4) The Office of Personnel Management may prescribe regulations to ensure appropriate consistency among heads of Executive agencies in the exercise of the authority granted by this subsection.

"(5) For the purpose of this subsection—

"(A) 'assigned to duty in' refers to an employee who is officially assigned to work or duty (including serving on temporary duty) in a designated zone of armed conflict,

which may include short periods away from the zone to perform work in connection with the assignment, subject to any limitations or requirements established by regulation or official policy;

"(B) 'designated zone of armed conflict' means a foreign country or other foreign geographic area outside of the United States (as that term is defined in section 202(7) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(7)) that is designated by the Secretary of State, in coordination with the Secretary of Defense, as an area where there are exceptional levels of armed violence. In making such a designation, the Secretary of State may consider—

"(i) whether the Armed Forces of the United States are involved in hostilities in the country or area;

"(ii) whether the incidence of civil insurrection, civil war, terrorism, or wartime conditions threatens physical harm or imminent danger to the health or well-being of United States civilian employees in the country or area;

"(iii) whether the country or area has been designated a combat zone by the President under section 112(c) of the Internal Revenue Code of 1986;

"(iv) whether a contingency operation involving combat operations directly affects civilian employees in the country or area; or

"(v) any other relevant conditions and factors.

"(6) The authority under this subsection expires at the close of December 31, 2015.".

(b) WAIVER OF LIMITATION ON AGGREGATE PAY.—Section 5307 of such title is amended—

(1) in subsection (a)(1), by striking "or as otherwise provided under subsection (d)" and inserting "or as otherwise provided by this section"; and

(2) by adding at the end the following new subsection:

"(e)(1) The preceding subsections of this section shall not apply to payments in addition to basic pay earned by an employee during a calendar year for performing work while assigned to duty in a designated zone of armed conflict (as such terms are defined in section 5547(e)(5)(A) and (B)).

"(2) For the purpose of this subsection, the term 'basic pay' includes any applicable locality-based comparability payment under section 5304, any applicable special rate supplement under section 5305, and any similar payment under any other provision of law.

"(3) The Office of Personnel Management may prescribe regulations to implement this subsection.

"(4) The authority in paragraph (1) shall not apply to calendar years after 2015.".

(c) DEPARTMENT OF DEFENSE HIGHLY QUALIFIED EXPERTS.—Section 9903(d) of such title is amended—

(1) in subparagraph (1) by striking "12-month period" and inserting "calendar year"; and

(2) in subparagraph (2)(B) by striking "in support of a contingency operation (as defined by section 101 (a)(13) of title 10" and inserting "to duty in a designated zone of armed conflict (as such terms are defined in section 5547(e)(5)(A) and (B)".

(d) EFFECTIVE DATE.—(1) The amendments made by subsection (a) shall apply to premium payments payable on or after January 1, 2013.

(2) The amendments made by subsections (b) and (c) shall take effect on January 1, 2013.

Section-by-Section Analysis

This proposal would provide for waiver of certain pay limitations in the calendar years 2013 through 2015 for employees assigned to duty in a designated zone of armed conflict—i.e., a geographic location which the Secretary of State, in coordination with the Secretary of Defense, designates as an area where there are exceptional levels of armed violence. The proposed waiver authority is not limited to employees performing work in overseas locations in support of any specific Combatant Command (CoCOM) area of responsibility meeting this criterion. Rather, the authority would allow premium and aggregate pay limitation waivers for employees deployed to locations where there are exceptional levels of armed violence and assigned in any CoCOM. The proposal would further amend 5 U.S.C. 9903(d) to update existing authority which provides for allowances and any other payments under chapter 59 for highly qualified experts in support of a contingency operation (as defined in section 101(a)(13) of title 10). The proposed revision would allow highly qualified experts to receive chapter 59 allowances and payments based on duty in a designated zone of armed conflict, instead of duty in support of a contingency operation. 5 U.S.C. 9903(d) is further revised so that the total amount of additional payments made under this section are tied to any calendar year rather than any 12-month period since an aggregate compensation level is tied to the calendar year.

Currently, pursuant to section 1101(a) of Duncan Hunter National Defense Authorization Act for Fiscal Year (FY) 2009 (P.L. 110-417, 122 Stat. 4615) for the calendar year 2009, as most recently amended by section 1104 of the National Defense Authorization Act (NDAA) for FY 2012 (P.L. 112-81, 125 Stat. 1612), heads of Executive agencies have temporary authority to waive the annual limitation on premium pay and the aggregate limitation on pay for Federal civilian employees working overseas in direct support of, or directly related to a military operation or national emergency. This authority is limited to employees who perform work in an overseas location that is in the area of responsibility of the Commander of the United States Central Command (CENTCOM) or was formerly in the CENTCOM area of responsibility but has been moved to the area of responsibility of the Commander of the United States Africa Command (AFRICOM). This authority will expire on December 31, 2012.

The temporary waiver authority in current law was first authorized in section 1101(a) of Duncan Hunter National Defense Authorization Act for FY 2009 (P.L. 110-417, 122 Stat. 4615) for the calendar year 2009. (A similar premium pay waiver was first enacted in 2005 and renewed through 2008.) The authority has been extended annual in subsequent NDAAs in one-year increments, with the most recent one-year extension in section 1103 of the NDAA for FY 2012. Because of the temporary nature of the authority, legislative provisions must be introduced each year to ensure agencies may continue to use this authority for employees who perform work in an overseas location that meet the established legislative criteria. Further, legislative authority as has been provided in the past specific to individual Combatant Commands does not allow use for other contingency operations. Authority such as requested would allow for the Executive branch to make timely decisions with regard to the discretionary application of the waiver authority when their employees are deployed to locations that meet the criteria for such waivers. This includes CoCOM areas of responsibility other than CENTCOM and AFRICOM that may emerge in support of a military operation or other operation in a geographic location in which there are exceptional levels of armed violence.

This proposal would amend 5 U.S.C. 5547 by adding at the end a new subsection (e) relating to the waiver of the normal limitation on premium pay. Currently, agencies have the discretionary authority to waive the normal annual premium pay limitation (the greater of the locality rate for GS-15, step 10, or EX level V = $145,700 in 2012) and apply a higher annual premium pay limitation equal to the Vice President's salary ($230,700 in 2012). The proposal would also amend 5 U.S.C. 5307 by inserting a new subsection (e) relating to the waiver of the aggregate limitation on pay, and would provide for a waiver of that limitation using the same eligibility conditions that govern application of the premium pay cap waiver.

The most recent legislative authority, as well as the data used to describe the costs associated with it, is unique to CENTCOM, as the authority to waive the annual limitation on premium pay for contingency operations had never before existed. In point of fact, it did not exist for CENTCOM either until several years after civilians began working in the CENTCOM AOR. The Department now has a clearer understanding of the nature of civilian involvement in support of contingency operations and the hours that are worked therein, as well as an understanding of how long it takes to obtain such authority legislatively. It is clear that we will need it again for both current and future contingency operations in zones of armed conflict, and that since contingency operations by their nature are unplanned, waiting years for legislative relief does a disservice to those civilians who volunteer to serve.

Budget Implications: The Department estimates this section would cost about $7 million per year for FY2013 and FY2014. This proposal affects all agencies, although the Department may be the agency with the most affected employees. The cost estimate, below, is for the Department only. There are no funding offsets for this proposal because it is already being funded by the military departments' Operation and Maintenance Base/OCO budgets by cost breakdown structure category.

NUMBER OF PERSONNEL AFFECTED								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army	3,592	3,592				O&M, Army		Base/OCO-CIV Pay
Navy	17	17				O&M, Navy		Base/OCO-CIV Pay
Air Force	89	89				O&M, Air Force		Base/OCO-CIV Pay
Defense Agencies/ Field Activities	1,403	1,403				O&M, DW		Base/OCO-CIV Pay
Total	5,101	5,101						

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY	**FY**	**FY**	**FY**	**FY**	**Appropriation**	**Budget**	**Dash-1**

	2013	2014	2015	2016	2017	From	Activity	Line Item
Army	$3.7	$3.8				O&M, Army		Base/OCO-CIV Pay
Navy	$1.7	$1.8				O&M, Navy		Base/OCO-CIV Pay
Air Force	$1.1	$1.1				O&M, Air Force		Base/OCO-CIV Pay
Defense Agencies/ Field Activities	$.54	$.55				O&M, DW		Base/OCO-CIV Pay
Total	$7.0	$7.3						

Cost Methodology: The cost of this section will ultimately be determined by the number of employees affected and the average salary of DoD civilians that deploy. Based on available payroll data for eligible employees in 2011, the additional cost for providing a waiver of the normal premium pay cap (up to the Vice President's salary) through 2014 is approximately $14.3 million. The actual numbers of employees, their salaries, and tours of duty will vary, but the above scenario illustrates the potential impact.

Reviewing Budget/Comptroller POCs:

Service/Component	Name	Phone
Army	Ms. Lisa Antonio	703-692-2422
Navy	Ms. Janet Vernon	703-692-4821
Air Force	Mr. Ed Johnson	703-614-5948
Defense Agencies/Field Activities	Mr. Philip Anderson	703-767-2247

Changes to Existing Law: This proposal would make the following changes to sections 5547, 5307, and 9903 of title 5, United States Code:

§ 5547. Limitation on premium pay

(a) An employee may be paid premium pay under sections 5542, 5545 (a), (b), and (c), 5545a, and 5546 (a) and (b) only to the extent that the payment does not cause the aggregate of basic pay and such premium pay for any pay period for such employee to exceed the greater of—

(1) the maximum rate of basic pay payable for GS–15 (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

(2) the rate payable for level V of the Executive Schedule.

(b)(1) Subject to regulations prescribed by the Office of Personnel Management, subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property, including work performed in the aftermath of such an emergency.

(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS–15 in effect at the end of such calendar year (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 rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(3) Subject to regulations prescribed by the Office of Personnel Management, the head of an agency may determine that subsection (a) shall not apply to an employee who is paid premium pay to perform work that is critical to the mission of the agency. Such employees may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would not, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS–15 in effect at the end of such calendar year (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 rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(c) The Office of Personnel Management shall prescribe regulations governing the methods of applying subsection (b)(2) and (b)(3) to employees who receive premium pay under section 5545 (c) or 5545a, or to firefighters covered by section 5545b who receive overtime pay for hours in their regular tour of duty, and the method of payment to such employees. Such regulations may limit the payment of such premium pay on a biweekly basis.

(d) This section shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a.

<u>(e)(1) Subsection (a) shall not apply to an employee who performs work while assigned to duty in a designated zone of armed conflict.</u>

<u>(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in subsection (a) to the extent that the aggregate of the basic pay and premium pay under those provisions for such employee would, in any calendar year, exceed the annual rate of salary payable to the Vice President under section 104 of title 3.</u>

<u>(3) To the extent that a waiver under paragraph (1) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551.</u>

(4) The Office of Personnel Management may prescribe regulations to ensure appropriate consistency among heads of Executive agencies in the exercise of the authority granted by this subsection.

(5) For the purpose of this subsection—

"(A) 'assigned to duty in' refers to an employee who is officially assigned to work or duty (including serving on temporary duty) in a designated zone of armed conflict, which may include short periods away from the zone to perform work in connection with the assignment, subject to any limitations or requirements established by regulation or official policy;

"(B) 'designated zone of armed conflict' means a foreign country or other foreign geographic area outside of the United States (as that term is defined in section 202(7) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(7)) that is designated by the Secretary of State, in coordination with the Secretary of Defense, as an area where there are exceptional levels of armed violence. In making such a designation, the Secretary of State may consider—

"(i) whether the Armed Forces of the United States are involved in hostilities in the country or area;

"(ii) whether the incidence of civil insurrection, civil war, terrorism, or wartime conditions threatens physical harm or imminent danger to the health or well-being of United States civilian employees in the country or area;

"(iii) whether the country or area has been designated a combat zone by the President under section 112(c) of the Internal Revenue Code of 1986;

"(iv) whether a contingency operation involving combat operations directly affects civilian employees in the country or area; or

"(v) any other relevant conditions and factors.

(6) The authority under this subsection expires at the close of December 31, 2015.

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§ 5307. Limitation on certain payments

(a)(1) Except as otherwise permitted by or under law, or as otherwise provided ~~under subsection (d)~~ by this section, no allowance, differential, bonus, award, or other similar cash payment under this title may be paid to an employee in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such employee for service performed in such calendar year as an employee in the executive branch (or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year.

(2) This section shall not apply to any payment under—

(A) subchapter III or VII of chapter 55 or section 5596;

(B) chapter 57 (other than section 5753, 5754, 5755, or 5757); [1] or

(C) chapter 59 (other than section 5925, 5928, 5941 (a)(2), or 5948).

(b)(1) Any amount which is not paid to an employee in a calendar year because of the limitation under subsection (a) shall be paid to such employee in a lump sum at the beginning of the following calendar year.

(2) Any amount paid under this subsection in a calendar year shall be taken into account for purposes of applying the limitations under subsection (a) with respect to such calendar year.

(c) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section (subject to subsection (d)), including regulations (consistent with section 5582) concerning how a lump-sum payment under subsection (b) shall be made with respect to any employee who dies before an amount payable to such employee under subsection (b) is made.

(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting "the total annual compensation payable to the Vice President under section 104 of title 3" for "the annual rate of basic pay payable for level I of the Executive Schedule" in the case of any employee who—

(A) is paid under section 5376 or 5383 of this title or section 332 (f), 603, or 604 of title 28; and

(B) holds a position in or under an agency which is described in paragraph (2).

(2) An agency described in this paragraph is any agency which, for purposes of applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance.

(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

(B) The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months, except that such certification may be terminated at any time upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).

<u>(e)(1) The preceding subsections of this section shall not apply to payments in addition to basic pay earned by an employee during a calendar year for performing work while assigned to duty in a designated zone of armed conflict (as such terms are defined in 5 U.S.C. 5547(e)(5)(A) and (B)).</u>

(2) For the purpose of this subsection, the term “basic pay” includes any applicable locality-based comparability payment under section 5304, any applicable special rate supplement under section 5305, and any similar payment under any other provision of law.

(3) The Office of Personnel Management may issue regulations to implement this subsection at its discretion.

(4) The authority in paragraph (1) shall not apply to calendar years after 2015.

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§9903. Attracting highly qualified experts

(a) In General.—The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.

(b) Authority.—Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376, as increased by locality-based comparability payments under section 5304, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limits applicable to the employee under subsection (d).

(c) Limitation on Term of Appointment.—(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 1 additional year if the Secretary determines that such action is necessary to promote the Department of Defense's national security missions.

(d) Limitations on Additional Payments.—(1) The total amount of the additional payments paid to an employee under this section for any ~~12-month period~~ calendar year may not exceed the lesser of the following amounts:

(A) $50,000 in fiscal year 2004, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay. For purposes of this paragraph, the term “base quarter” has the meaning given such term by section 5302(3).

(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service except for—

(A) payments authorized under this section; and

(B) in the case of an employee who is assigned ~~in support of a contingency operation (as defined in section 101 (a)(13)~~to duty in a designated zone of armed conflict (as such terms are defined in section 5547(e)(5)(A) and (B)), allowances and any other payments authorized under chapter 59.

(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3. In computing an employee's total annual compensation for purposes of the preceding sentence, any payment referred to in paragraph (2)(B) shall be excluded.

(e) Limitation on Number of Highly Qualified Experts.—The number of highly qualified experts appointed and retained by the Secretary under subsection (b)(1) shall not exceed 2,500 at any time.

(f) Savings Provisions.—In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—

(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—

(A) the period for which the employee was appointed; or

(B) the period to which the employee's service is limited under subsection (c), including any extension made under this section before the termination of the program; and

(2) the rate of basic pay prescribed for the position under this section may not be reduced as long as the employee continues to serve in the position without a break in service.