SEC. ___. AUTHORITY FOR OFFICERS TO OPT-OUT OF PROMOTION BOARD CONSIDERATION.

(a) ACTIVE-DUTY LIST OFFICERS.—Section 619 of title 10, United States Code, is amended—

(1) by adding at the end of subsection (d) the following new paragraph:

"(6) An officer excluded under subsection (e)."; and

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

"(e) AUTHORITY TO ALLOW OFFICERS TO OPT OUT OF SELECTION BOARD CONSIDERATION.—The Secretary of Defense may authorize the Secretary of a military department to provide that an officer under the jurisdiction of that Secretary may, upon the officer's request and with the approval of the Secretary concerned, be excluded from consideration by a selection board convened under section 611(a) of this title to consider officers for promotion to the next higher grade. The Secretary concerned may only approve such a request if—

"(1) the basis for the request is to allow an officer to complete a broadening assignment, advanced education, another assignment of significant value to the Department, or a career progression requirement delayed by the assignment or education;

"(2) the Secretary concerned determines the exclusion from consideration is in the best interest of the military department concerned; and

"(3) the officer has not previously failed of selection for promotion to the grade for which the officer requests the exclusion from consideration.".

(b) RESERVE ACTIVE-STATUS LIST OFFICERS.—Section 14301 of such title is amended—

(1) in subsection (c)—

(A) In the subsection heading, by striking "PREVIOUSLY SELECTED OFFICERS NOT ELIGIBLE" and inserting "CERTAIN OFFICERS NOT"; and

(B) by adding at the end the following new paragraph:

"(6) An officer excluded under subsection (j)."; and

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

"(j) AUTHORITY TO ALLOW OFFICERS TO OPT OUT OF SELECTION BOARD CONSIDERATION.—The Secretary of Defense may authorize the Secretary of a military department to provide that an officer under the jurisdiction of that Secretary may, upon the officer's request and with the approval of the Secretary concerned, be excluded from consideration by a selection board convened under section 14101(a) of this title to consider officers for promotion to the next higher grade. The Secretary concerned may only approve such a request if—

"(1) the basis for the request is to allow an officer to complete a broadening assignment, advanced education, another assignment of significant value to the Department, or a career progression requirement delayed by the assignment or education;

"(2) the Secretary concerned determines the exclusion from consideration is in the best interest of the military department concerned; and

"(3) the officer has not previously failed of selection for promotion to the grade for which the officer requests the exclusion from consideration.".

Section-by-Section Analysis

This proposal would amend sections 619 and 14301 of title 10, United States Code, to authorize the Secretary of Defense to allow the Secretaries of the military departments, based on the request of an officer and when deemed to be the best interests of the Service, to remove an officer from consideration by a selection board for promotion to the next higher grade.

The Department would be able to provide an officer more flexibility in determining his or her own career path by allowing the officer to perform career broadening assignments that are in the best interests of the Service without the jeopardizing promotion consideration by allowing him or her to request to "opt out" of consideration by a selection board for promotion to the next higher grade. In an effort to improve talent development and management within the Department, this proposal will ensure that officers, with the approval of the Secretary concerned, is given the flexibility to explore educational and other career broadening opportunities, without being penalized for not meeting the promotion-eligibility criteria in the usual time allotted.

This proposal would not be mandatory, but would provide Secretaries of the Military Departments greater flexibility in managing talent within their Services.

Budget Implications: There are no budget implications to this proposal. Any use of this authority would be conducted within the Military Departments existing budgetary authorities and therefore would not increase Federal outlays.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2018	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Navy	0	0	0	0	0				
Marine Corps	0	0	0	0	0				
Air Force	0	0	0	0	0				
Total	0	0	0	0	0	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

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§ 619. Eligibility for consideration for promotion: time-in-grade and other requirements

(a) TIME-IN-GRADE REQUIREMENTS.—(1) An officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of ensign or lieutenant (junior grade) may not be promoted to the next

higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of a first lieutenant or lieu-tenant (junior grade), except that the minimum period of service in effect under this subparagraph before October 1, 2008, shall be eighteen months.

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

(3) When the needs of the service require, the Secretary of the military department concerned may prescribe a longer period of service in grade for eligibility for promotion, in the case of officers to whom paragraph (1) applies, or for eligibility for consideration for promotion, in the case of officers to whom paragraph (2) applies.

(4) The Secretary of the military department concerned may waive paragraph (2) to the extent necessary to assure that officers described in subparagraph (A) of such paragraph have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(5) In computing service in grade for purposes of this section, service in a grade held as a result of assignment to a position is counted as service in the grade in which the officer would have served except for such assignment or appointment.

(b) CONTINUED ELIGIBILITY FOR CONSIDERATION FOR PROMOTION OF OFFICERS WHO HAVE PREVIOUSLY FAILED OF SELECTION.—(1) Except as provided in paragraph (2), an officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(2) Paragraph (1) does not apply to a regular officer who is ineligible for consideration for promotion under section 631(c) of this title or to a reserve officer who has failed of selection for promotion to the grade of captain or, in the case of an officer of the Navy, lieutenant for the second time.

(c) OFFICERS TO BE CONSIDERED BY PROMOTION BOARDS.—(1) Each time a selection board is convened under section 611(a) of this title for consideration of officers in a competitive

category for promotion to the next higher grade, each officer in the promotion zone (except as provided under paragraph (2)), and each officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

(2) The Secretary of the military department concerned--

(A) may, in accordance with standards and procedures prescribed by the Secretary of Defense in regulations which shall apply uniformly among the military departments, limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion;

(B) may, by regulation, prescribe a period of time, not to exceed one year, from the time an officer is placed on the active-duty list during which the officer shall be ineligible for consideration for promotion; and

(C) may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, an officer who has an established separation date that is within 90 days after the date the board is convened.

(3) (A) The Secretary of Defense may authorize the Secretaries of the military departments to preclude from consideration by selection boards for promotion to the grade of brigadier general or rear admiral (lower half) officers in the grade of colonel or, in the case of the Navy, captain who—

(i) have been considered and not selected for promotion to the grade of brigadier general or rear admiral (lower half) by at least two selection boards; and

(ii) are determined, in accordance with standards and procedures prescribed pursuant to subparagraph (B), as not being exceptionally well qualified for promotion.

(B) If the Secretary of Defense authorizes the Secretaries of the military departments to have the authority de-scribed in subparagraph (A), the Secretary shall prescribe by regulation the standards and procedures for the exercise of such authority. Those regulations shall apply uniformly among the military departments and shall include the following provisions:

(i) A requirement that the Secretary of a military department may exercise such authority in the case of a particular selection board only if the Secretary of Defense approves the exercise of that authority for that board.

(ii) A requirement that an officer may be precluded from consideration by a selection board under this paragraph only upon the recommendation of a preselection board of officers convened by the Secretary of the military department concerned and composed of at least three officers all of whom are serving in a grade higher than the grade of such officer.

(iii) A requirement that such a preselection board may not recommend that an officer be precluded from such consideration unless the Secretary concerned has given the officer advance written notice of the convening of such board and of the military records that will be considered by the board and has given the officer a reasonable period before the convening of the board in which to submit comments to the board.

(iv) A requirement that the Secretary convening such a preselection board shall provide general guidance to the board in accordance with standards and procedures prescribed by the Secretary of Defense in those regulations.

(v) A requirement that the preselection board may recommend that an officer be precluded from consideration by a selection board only on the basis of the general guidance provided by the Secretary of the military department concerned, information in

the officer's official military personnel records that has been described in the notice provided the officer as required pursuant to clause (iii), and any communication to the board received from that officer before the board convenes.

(d) CERTAIN OFFICERS NOT TO BE CONSIDERED.— A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of his selection for promotion to that grade by an earlier selection board convened under that section.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under that section, in the case of such a report that has not yet been approved by the President.

(3) An officer of the Marine Corps who is an officer designated for limited duty and who holds a grade above major.

(4) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 624(a)(3) of this title.

(5) An officer in the grade of captain or, in the case of the Navy, lieutenant who is not a citizen of the United States.

(6) An officer excluded under subsection (e).

(e) AUTHORITY TO ALLOW OFFICERS TO OPT OUT OF SELECTION BOARD CONSIDERATION.—The Secretary of Defense may authorize the Secretary of a military department to provide that an officer under the jurisdiction of that Secretary may, upon the officer's request and with the approval of the Secretary concerned, be excluded from consideration by a selection board convened under section 611(a) of this title to consider officers for promotion to the next higher grade. The Secretary concerned may only approve such a request if—

(1) the basis for the request is to allow an officer to complete a broadening assignment, advanced education, another assignment of significant value to the Department, or a career progression requirement delayed by the assignment or education;

(2) the Secretary concerned determines the exclusion from consideration is in the best interest of the military department concerned; and

(3) the officer has not previously failed of selection for promotion to the grade for which the officer requests the exclusion from consideration.

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§ 14301. Eligibility for consideration for promotion: general rules

(a) ONE-YEAR RULE.—An officer is eligible under this chapter for consideration for promotion by a promotion board convened under section 14101(a) of this title only if—

(1) the officer is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps; and

(2) during the one-year period ending on the date of the convening of the promotion board the officer has continuously performed service on either the reserve active-status list or the active-duty list (or on a combination of both lists).

(b) REQUIREMENT FOR CONSIDERATION OF ALL OFFICERS IN AND ABOVE THE ZONE.—Whenever a promotion board (other than a vacancy promotion board) is convened under section 14101(a) of this title for consideration of officers in a competitive category who are eligible under this chapter for consideration for promotion to the next higher grade, each officer in the promotion zone, and each officer above the promotion zone, for that grade and competitive category shall be considered for promotion.

(c) ~~PREVIOUSLY SELECTED OFFICERS NOT ELIGIBLE~~ CERTAIN OFFICERS NOT TO BE CONSIDERED.—A promotion board convened under section 14101(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of recommendation for promotion to that grade by an earlier selection board convened under that section or section 14502 of this title or under chapter 36 of this title.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under a provision referred to in paragraph (1), in the case of such a report that has not yet been approved by the President.

(3) An officer who has been approved for Federal recognition by a board convened under section 307 of title 32 and nominated by the President for promotion to that grade as a reserve of the Army or of the Air Force as the case may be, if that nomination is pending before the Senate.

(4) An officer who has been nominated by the President for promotion to that grade under any other provision of law, if that nomination is pending before the Senate.

(5) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 14308(b)(4) of this title.

(6) An officer excluded under subsection (j).

(d) OFFICERS BELOW THE ZONE.—The Secretary of the military department concerned may, by regulation, prescribe procedures to limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion. The regulations shall include criteria for determining which officers below the promotion zone are exceptionally well qualified for promotion.

(e) CERTAIN RESERVE OFFICERS OF THE AIR FORCE.—A reserve officer of the Air Force who (1) is in the Air National Guard of the United States and holds the grade of lieutenant colonel, colonel, or brigadier general, or (2) is in the Air Force Reserve and holds the grade of colonel or brigadier general, is not eligible for consideration for promotion by a mandatory promotion board convened under section 14101(a) of this title.

(f) NONCONSIDERATION OF OFFICERS SCHEDULED FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—The Secretary of the military department concerned may, by regulation, provide for the exclusion from consideration for promotion by a promotion board of any officer

otherwise eligible to be considered by the board who has an established date for removal from the reserve active-status list that is not more than 90 days after the date on which the selection board for which the officer would otherwise be eligible is to be convened.

(g) BRIGADIER GENERALS.—(1) An officer who is a reserve component brigadier general of the Army or the Air Force who is not eligible for consideration for promotion under subsection (a) because the officer is not on the reserve active status list (as required by paragraph (1) of that subsection for such eligibility) is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) as of the date of the convening of the promotion board, the officer has been in an inactive status for less than one year; and

(B) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list) for at least one year.

(2) An officer who is a reserve component brigadier general of the Army or the Air Force who is on the reserve active status list but who is not eligible for consideration for promotion under subsection (a) because the officer's service does not meet the one-year-of-continuous-service requirement under paragraph (2) of that subsection is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) the officer was transferred from an inactive status to the reserve active status list during the one-year period preceding the date of the convening of the promotion board;

(B) immediately before the date of the officer's most recent transfer to an active status, the officer had been in an inactive status for less than one year; and

(C) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served for at least one year on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list).

(h) OFFICERS ON EDUCATIONAL DELAY.—An officer on the reserve active-status list is ineligible for consideration for promotion, but shall remain on the reserve active-status list, while the officer—

(1) is pursuing a program of graduate level education in an educational delay status approved by the Secretary concerned; and

(2) is receiving from the Secretary financial assistance in connection with the pursuit of that program of education while in that status.

(i) RESERVE OFFICERS EMPLOYED AS MILITARY TECHNICIAN (DUAL STATUS).—A reserve officer of the Army or Air Force employed as a military technician (dual status) under section 10216 of this title who has been retained beyond the mandatory removal date for years of service pursuant to subsection (f) of such section or section 14702(a)(2) of this title is not eligible for consideration for promotion by a mandatory promotion board convened under section 14101(a) of this title.

(j) AUTHORITY TO ALLOW OFFICERS TO OPT OUT OF SELECTION BOARD CONSIDERATION.—The Secretary of Defense may authorize the Secretary of a military department to provide that an officer under the jurisdiction of that Secretary may, upon the officer's request and with the approval of the Secretary concerned, be excluded from consideration by a selection board convened under section 14101(a) of this title to consider officers for promotion to the next higher grade. The Secretary concerned may only approve such a request if—

(1) the basis for the request is to allow an officer to complete a broadening assignment, advanced education, another assignment of significant value to the Department, or a career progression requirement delayed by the assignment or education

(2) the Secretary concerned determines the exclusion from consideration is in the best interest of the military department concerned; and

(3) the officer has not previously failed of selection for promotion to the grade for which the officer requests the exclusion from consideration.

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