SEC. 506. MODIFICATION TO LIMITATIONS ON NUMBER OF OFFICERS FOR WHOM SERVICE-IN-GRADE REQUIREMENTS MAY BE REDUCED FOR RETIREMENT IN GRADE UPON VOLUNTARY RETIREMENT.

Section 1370(a)(2) of title 10, United States Code, is amended—

(1) in subparagraph (E), by inserting “, or two, whichever is greater” before the period at the end; and

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

“(G) Notwithstanding subparagraph (E), during the period ending on September 30, 2017, the total number of brigadier generals and major generals of the Army, Air Force, and Marine Corps, and the total number of rear admirals (lower half) and rear admirals of the Navy, for whom a reduction is made under this section during any fiscal year in the period of service-in-grade otherwise required under this paragraph—

“(i) for officers of the Army, Navy, and Air Force, may not exceed five percent of the authorized active-duty strength for that fiscal year for officers of that armed force in those grades; and

“(ii) for officers of the Marine Corps, may not exceed ten percent of the authorized active-duty strength for that fiscal year for officers in those grades.”.

Section-by-Section Analysis

This proposal will create a temporary discretionary authority for the services to voluntarily retire up to five percent, or ten percent in the case of the Marine Corps, of their total O-7 and O-8 population with fewer than three years service-in-grade. It will also amend the existing permanent authority to allow at least two waivers in each grade below lieutenant general. This change is necessary for the the Marine Corps’ as this particular General Officer population is so small that, under the current subparagraph (E), it is not entitled to any waivers.

While affecting the results of the recently approved General Officer Efficiency Study, the Services are seeking additional, discretionary tools to assist with force shaping. In order to “keep faith” with our general and flag officers, voluntary authorities are preferred. Current law

requires one- and two-star generals and admirals to have three years service-in-grade to retire in-grade; such requirements can be waived by the Secretary of Defense to two years service-in-grade and by the President to fewer than two years service-in-grade in "individual cases involving extreme hardship or exceptional or unusual circumstances." However, service-in-grade waivers can only be applied to two percent of the officers in that grade. Temporarily increasing the provision will increase the allowable limit of voluntary service-in-grade retirement waivers, while "keeping faith" with our general and flag officers.

It is significant to note that, since the Marine Corps only has twenty-two major generals and twenty-three brigadier generals, the current law does not provide the Marine Corps any service-in-grade waiver authorizations (since the mathematical products are less than one for each grade). The proposed legislation allowing ten percent for the Marine Corps (vice five percent for the other services) would provide the Secretary of the Navy the discretion to grant four total service-in-grade waivers for USMC O-7s and USMC O-8s..

Budgetary Implications: Discretionary savings from end strength reductions are already included in the FY 2013 Budget. However, the mandatory costs shown below that result from proposing this provision are not.

Based on promotion opportunity and statutory retirement laws, the Department of Defense (DoD) estimates the following costs:

5-year cost (FY 2013-FY 2018) of $4.1 million
10-year cost (FY 2013-FY 2022) of $3.6 million

FISCAL YEARS ($MILLIONS)										
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Mandatory	0.5	0.9	0.9	0.9	0.9	0.4	-0.2	-0.2	-0.2	-0.2

*The DoD actuaries qualify these estimates by stating that it is "unknown how much Services would make use of this authority." DoD has not identified offsets.

Changes to Existing Law: This proposal would make the following changes to section 1370(a)(2) of title 10, United States Code:

§ 1370. Commissioned officers: general rule; exceptions

(a) RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years.

(B) In the case of an officer to be retired in a general or flag officer grade, authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that officer only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

(D) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

(E) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade, or two, whichever is greater.

(F) Notwithstanding subparagraph (E), during the period ending on December 31, 2007, the number of lieutenant colonels and colonels of the Air Force, and the number of commanders and captains of the Navy, for whom a reduction is made under this section during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed four percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.

(G) Notwithstanding subparagraph (E), during the period ending on September 30, 2017, the total number of brigadier generals and major generals of the Army, Air Force, and Marine Corps, and the total number of rear admirals (lower half) and rear admirals of the Navy, for whom a reduction is made under this section during any fiscal year in the period of service-in-grade otherwise required under this paragraph—

"(i) for officers of the Army, Navy, and Air Force, may not exceed five percent of the authorized active-duty strength for that fiscal year for officers of that armed force in those grades; and

"(ii) for officers of the Marine Corps, may not exceed ten percent of the authorized active-duty strength for that fiscal year for officers in those grades.".

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements

specified in subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

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