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SENATE

{ REPORT
105-340

VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1998

SEPTEMBER 21, 1998.—Ordered to be printed

Mr. SPECTER, from the Committee on Veterans' Affairs,
submitted the following

REPORT

[To accompany S. 1021]

The Committee on Veterans' Affairs, to which was referred the bill (S. 1021) to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes, having considered the same, reports favorably thereon with an amendment in the form of a substitute, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause as follows:

SECTION 1. SHORT TITLE.

■ [This Act may be cited as the "Veterans Employment Opportunities Act of 1997".

SEC. 2. EQUAL ACCESS FOR VETERANS.

■ (a) COMPETITIVE SERVICE.—Section 3304 of title 5, United States Code, is amended by adding at the end the following:

■ "(f)(1) No preference eligible, and no individual (other than a preference eligible) who has been separated from the armed forces under honorable conditions after 3 or more years of active service, shall be denied the opportunity to compete for an announced vacant position within an agency, in the competitive service or the excepted service, by reason of—

■ "(A) not having acquired competitive status; or

■ "(B) not being an employee of such agency.

■ "(2) Nothing in this subsection shall prevent an agency from filling a vacant position (whether by appointment or otherwise) solely from individuals on a priority placement list consisting of individuals who have been separated from the agency due to a reduction in force and surplus employees (as defined under regulations prescribed by the Office)."

■ (b) CIVIL SERVICE EMPLOYMENT INFORMATION.—

[(1) VACANT POSITIONS.—Section 3327(b) of title 5, United States Code, is amended by striking “and” at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

[(2) each vacant position in the agency for which competition is restricted to individuals having competitive status or employees of such agency, excluding any position under paragraph (1), and”.

[(2) ADDITIONAL INFORMATION.—Section 3327 of title 5, United States Code, is amended by adding at the end the following:

[(c) Any notification provided under this section shall, for all positions under subsection (b)(1) as to which section 3304(f) applies and for all positions under subsection (b)(2), include a notation as to the applicability of section 3304(f) with respect thereto.

[(d) In consultation with the Secretary of Labor, the Office shall submit to Congress and the President, no less frequently than every 2 years, a report detailing, with respect to the period covered by such report—

[(1) the number of positions listed under this section during such period;

[(2) the number of preference eligibles and other individuals described in section 3304(f)(1) referred to such positions during such period; and

[(3) the number of preference eligibles and other individuals described in section 3304(f)(1) appointed to such positions during such period.”.

[(c) GOVERNMENTWIDE LISTS.—

[(1) VACANT POSITIONS.—Section 3330(b) of title 5, United States Code, is amended to read as follows:

[(b) The Office of Personnel Management shall cause to be established and kept current—

[(1) a comprehensive list of all announcements of vacant positions (in the competitive service and the excepted service, respectively) within each agency that are to be filled by appointment for more than 1 year and for which applications are being or will soon be accepted from outside the agency’s work force; and

[(2) a comprehensive list of all announcements of vacant positions within each agency for which applications are being or will soon be accepted and for which competition is restricted to individuals having competitive status or employees of such agency, excluding any position required to be listed under paragraph (1).”.

[(2) ADDITIONAL INFORMATION.—Section 3330(c) of title 5, United States Code, is amended by striking “and” at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following:

[(3) for all positions under subsection (b)(1) as to which section 3304(f) applies and for all positions under subsection (b)(2), a notation as to the applicability of section 3304(f) with respect thereto; and”.

[(3) CONFORMING AMENDMENT.—Section 3330(d) of title 5, United States Code, is amended by striking “The list” and inserting “Each list under subsection (b)”.

[(d) PROVISIONS RELATING TO THE UNITED STATES POSTAL SERVICE.—

[(1) IN GENERAL.—Subsection (a) of section 1005 of title 39, United States Code, is amended by adding at the end the following:

[(5)(A) The provisions of section 3304(f) of title 5 shall apply with respect to the Postal Service in the same manner and under the same conditions as if the Postal Service were an agency within the meaning of such provisions.

[(B) Nothing in this subsection shall be considered to require the application of section 3304(f) of title 5 in the case of any individual who is not an employee of the Postal Service if—

[(i) the vacant position involved is to be filled pursuant to a collective-bargaining agreement;

[(ii) the collective-bargaining agreement restricts competition for such position to individuals employed in a bargaining unit or installation within the Postal Service in which the position is located;

[(iii) the collective-bargaining agreement provides that the successful applicant shall be selected on the basis of seniority or qualifications; and

[(iv) the position to be filled is within a bargaining unit.

[(C) The provisions of this paragraph shall not be modified by any program developed under section 1004 of this title or any collective-bargaining agreement entered into under chapter 12 of this title.”.

[(2) CONFORMING AMENDMENT.—The first sentence of section 1005(a)(2) of title 39, United States Code, is amended by striking “title.” and inserting “title, subject to paragraph (5) of this subsection.”.

[SEC. 3. SPECIAL PROTECTIONS FOR PREFERENCE ELIGIBLES IN REDUCTIONS IN FORCE.

[(a) IN GENERAL.—Section 3502 of title 5, United States Code, as amended by section 1034 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 430), is amended by adding at the end the following:

[(“g)(1) A position occupied by a preference eligible shall not be placed in a single-position competitive level if the preference eligible is qualified to perform the essential functions of any other position at the same grade (or occupational level) in the competitive area. In such cases, the preference eligible shall be entitled to be placed in another competitive level for which such preference eligible is qualified. If the preference eligible is qualified for more than one competitive level, such preference eligible shall be placed in the competitive level containing the most positions.

[(“2) For purposes of paragraph (1)—

[(“A) a preference eligible shall be considered qualified to perform the essential functions of a position if, by reason of experience, training, or education (and, in the case of a disabled veteran, with reasonable accommodation), a reasonable person could conclude that the preference eligible would be able to perform those functions successfully within a period of 150 days; and

[(“B) a preference eligible shall not be considered unqualified solely because such preference eligible does not meet the minimum qualification requirements relating to previous experience in a specified grade (or occupational level), if any, that are established for such position by the Office of Personnel Management or the agency.

[(“h) In connection with any reduction in force, a preference eligible whose current or most recent performance rating is at least fully successful (or the equivalent) shall have, in addition to such assignment rights as are prescribed by regulation, the right, in lieu of separation, to be assigned to any position within the agency conducting the reduction in force—

[(“1) for which such preference eligible is qualified under subsection (g)(2)—

[(“A) that is within the preference eligible’s commuting area and at the same grade (or occupational level) as the position from which the preference eligible was released, and that is then occupied by an individual, other than another preference eligible, who was placed in such position (whether by appointment or otherwise) within 6 months before the reduction in force if, within 12 months prior to the date on which such individual was so placed in such position, such individual had been employed in the same competitive area as the preference eligible; or

[(“B) that is within the preference eligible’s competitive area and that is then occupied by an individual, other than another preference eligible, who was placed in such position (whether by appointment or otherwise) within 6 months before the reduction in force; or

[(“2) for which such preference eligible is qualified that is within the preference eligible’s competitive area and that is not more than 3 grades (or pay levels) below that of the position from which the preference eligible was released, except that, in the case of a preference eligible with a compensable service-connected disability of 30 percent or more, this paragraph shall be applied by substituting ‘5 grades’ for ‘3 grades’.

[In the event that a preference eligible is entitled to assignment to more than 1 position under this subsection, the agency shall assign the preference eligible to any such position requiring no reduction (or, if there is no such position, the least reduction) in basic pay. A position shall not, with respect to a preference eligible, be considered to satisfy the requirements of paragraph (1) or (2), as applicable, if it does not last for at least 12 months following the date on which such preference eligible is assigned to such position under this subsection.

[(“i) A preference eligible may challenge the classification of any position to which the preference eligible asserts assignment rights (as provided by, or prescribed by regulations described in, subsection (h)) in an action before the Merit Systems Protection Board.

[(“j)(1) Not later than 90 days after the date of the enactment of the Veterans Employment Opportunities Act of 1997, each Executive agency shall establish an agencywide priority placement program to facilitate employment placement for employees who—

[(“A)(i) are scheduled to be separated from service due to a reduction in force under—

[(“I) regulations prescribed under this section; or

[(“II) procedures established under section 3595; or

[(“ii) are separated from service due to such a reduction in force; and

[(“B)(i) have received a rating of at least fully successful (or the equivalent) as the last performance rating of record used for retention purposes; or

[(ii) occupy positions excluded from a performance appraisal system by law, regulation, or administrative action taken by the Office of Personnel Management.

[(2)(A) Each agencywide priority placement program under this subsection shall include provisions under which a vacant position shall not (except as provided in this paragraph or any other statute providing the right of reemployment to any individual) be filled by the appointment or transfer of any individual from outside of that agency (other than an individual described in subparagraph (B)) if—

[(i) there is then available any individual described in subparagraph (B) who is qualified for the position; and

[(ii) the position—

[(I) is at the same grade or pay level (or the equivalent) or not more than 3 grades (or grade intervals) below that of the position last held by such individual before placement in the new position;

[(II) is within the same commuting area as the individual's last-held position (as referred to in subclause (I)) or residence; and

[(III) has the same type of work schedule (whether full-time, part-time, or intermittent) as the position last held by the individual.

[(B) For purposes of an agencywide priority placement program, an individual shall be considered to be described in this subparagraph if such individual—

[(i) (I) is an employee of such agency who is scheduled to be separated, as described in paragraph (1)(A)(i); or

[(II) is an individual who became a former employee of such agency as a result of a separation, as described in paragraph (1)(A)(ii), excluding any individual who separated voluntarily under subsection (f); and

[(ii) satisfies clause (i) or (ii) of paragraph (1)(B).

[(3)(A) If after a reduction in force the agency has no positions of any type within the local commuting areas specified in this subsection, the individual may designate a different local commuting area where the agency has continuing positions in order to exercise reemployment rights under this subsection. An agency may determine that such designations are not in the interest of the Government for the purpose of paying relocation expenses under subchapter II of chapter 57.

[(B) At its option, an agency may administratively extend reemployment rights under this subsection to include other local commuting areas.

[(4)(A) In selecting employees for positions under this subsection, the agency shall place qualified present and former employees in retention order by veterans' preference subgroup and tenure group.

[(B) An agency may not pass over a qualified present or former employee to select an individual in a lower veterans' preference subgroup within the tenure group, or in a lower tenure group.

[(C) Within a subgroup, the agency may select a qualified present or former employee without regard to the individual's total creditable service.

[(5) An individual is eligible for reemployment priority under this subsection for 2 years from the effective date of the reduction in force from which the individual will be, or has been, separated under this section or section 3595, as the case may be.

[(6) An individual loses eligibility for reemployment priority under this subsection when the individual—

[(A) requests removal in writing;

[(B) accepts or declines a bona fide offer under this subsection or fails to accept such an offer within the period of time allowed for such acceptance; or

[(C) separates from the agency before being separated under this section or section 3595, as the case may be.

[A present or former employee who declines a position with a representative rate (or equivalent) that is less than the rate of the position from which the individual was separated under this section retains eligibility for positions with a higher representative rate up to the rate of the individual's last position.

[(7) Whenever more than one individual is qualified for a position under this subsection, the agency shall select the most highly qualified individual, subject to paragraph (4).

[(8) The Office of Personnel Management shall issue regulations to implement this subsection.”.

[(b) Applicability.—

[(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall apply with respect to—

[(A) reductions in force taking effect after the end of the 90-day period beginning on the date of the enactment of this Act; or

[(B) in the case of the Department of Defense, reductions in force taking effect after the end of the 1-year period beginning on the date of the enactment of this Act.

[(2) ONGOING REDUCTIONS IN FORCE.—If an agency has given written notice of a reduction in force to any of its employees within a competitive area, in accordance with section 3502(d)(1)(A) of title 5, United States Code, before the effective date under subparagraph (A) or (B) of paragraph (1), as applicable, then, for purposes of determining the rights of any employee within such area in connection with such reduction in force, the amendments made by this section shall be treated as if they had never been enacted. Nothing in the preceding sentence shall affect any rights under a priority placement program under section 3502(j) of title 5, United States Code, as amended by this section.

[SEC. 4. IMPROVED REDRESS FOR VETERANS.

[(a) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

[“§ 3330a. Administrative redress

[(a)(1) Any preference eligible or other individual described in section 3304(f)(1) who alleges that an agency has violated such individual's rights under any statute or regulation relating to veterans' preference, or any right afforded such individual by section 3304(f), may file a complaint with the Secretary of Labor.

[(2) A complaint under this subsection must be filed within 60 days after the date of the alleged violation, and the Secretary shall process such complaint in accordance with sections 4322 (a) through (e)(1) and 4326 of title 38.

[(b)(1) If the Secretary of Labor is unable to resolve the complaint within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

[(A) before the 61st day after the date on which the complaint is filed under subsection (a); or

[(B) later than 15 days after the date on which the complainant receives notification from the Secretary of Labor under section 4322(e)(1) of title 38.

[(2) An appeal under this subsection may not be brought unless—

[(A) the complainant first provides written notification to the Secretary of Labor of such complainant's intention to bring such appeal; and

[(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

[(3) Upon receiving notification under paragraph (2)(A), the Secretary of Labor shall not continue to investigate or further attempt to resolve the complaint to which such notification relates.

[(c) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

[“§ 3330b. Judicial redress

[(a) In lieu of continuing the administrative redress procedure provided under section 3330a(b), a preference eligible or other individual described in section 3304(f)(1) may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

[(b) An election under this section may not be made—

[(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(b); or

[(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

[(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

[“§ 3330c. Remedy

[(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be)

shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

“(b) A preference eligible or other individual described in section 3304(f)(1) who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.”

“(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of title 5, United States Code, is amended by adding after the item relating to section 3330 the following:

“3330a. Administrative redress.

“3330b. Judicial redress.

“3330c. Remedy.”

[SEC. 5. EXTENSION OF VETERANS' PREFERENCE.

“(a) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Paragraph (3) of section 2108 of title 5, United States Code, is amended by striking “the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;” and inserting “or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;”.

“(b) AMENDMENTS TO TITLE 3, UNITED STATES CODE.—

“(1) IN GENERAL.—Chapter 2 of title 3, United States Code, is amended by adding at the end the following:

[“§ 115. Veterans' preference

“(a) Subject to subsection (b), appointments under sections 105, 106, and 107 shall be made in accordance with section 2108, and sections 3309 through 3312, of title 5.

“(b) Subsection (a) shall not apply to any appointment to a position the rate of basic pay for which is at least equal to the minimum rate established for positions in the Senior Executive Service under section 5382 of title 5 and the duties of which are comparable to those described in section 3132(a)(2) of such title or to any other position if, with respect to such position, the President makes certification—

“(1) that such position is—

“(A) a confidential or policy-making position; or

“(B) a position for which political affiliation or political philosophy is otherwise an important qualification; and

“(2) that any individual selected for such position is expected to vacate the position at or before the end of the President's term (or terms) of office.

“Each individual appointed to a position described in the preceding sentence as to which the expectation described in paragraph (2) applies shall be notified as to such expectation, in writing, at the time of appointment to such position.”

“(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 2 of title 3, United States Code, is amended by adding at the end the following:

“115. Veterans' preference.”

“(c) LEGISLATIVE BRANCH APPOINTMENTS.—

“(1) DEFINITIONS.—For the purposes of this subsection, the terms “employing office”, “covered employee”, and “Board” shall each have the meaning given such term by section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301).

“(2) RIGHTS AND PROTECTIONS.—The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code, shall apply to covered employees.

“(3) REMEDIES.—

“(A) IN GENERAL.—The remedy for a violation of paragraph (2) shall be such remedy as would be appropriate if awarded under applicable provisions of title 5, United States Code, in the case of a violation of the relevant corresponding provision (referred to in paragraph (2)) of such title.

“(B) PROCEDURE.—The procedure for consideration of alleged violations of paragraph (2) shall be the same as apply under section 401 of the Congressional Accountability Act of 1995 (and the provisions of law referred to therein) in the case of an alleged violation of part A of title II of such Act.

“(4) REGULATIONS TO IMPLEMENT SUBSECTION.—

“(A) IN GENERAL.—The Board shall, pursuant to section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), issue regulations to implement this subsection.

“(B) AGENCY REGULATIONS.—The regulations issued under subparagraph (A) shall be the same as the most relevant substantive regulations (applica-

ble with respect to the executive branch) promulgated to implement the statutory provisions referred to in paragraph (2) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this subsection.

[(C) COORDINATION.—The regulations issued under subparagraph (A) shall be consistent with section 225 of the Congressional Accountability Act of 1995 (2 U.S.C. 1361).

[(5) APPLICABILITY.—Notwithstanding any other provision of this subsection, the term “covered employee” shall not, for purposes of this subsection, include an employee—

[(A) whose appointment is made by the President with the advice and consent of the Senate;

[(B) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress; or

[(C) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code).

[(6) EFFECTIVE DATE.—Paragraphs (2) and (3) shall be effective as of the effective date of the regulations under paragraph (4).

[(d) JUDICIAL BRANCH APPOINTMENTS.—

[(1) IN GENERAL.—Subject to paragraphs (2) through (4), the Judicial Conference of the United States shall prescribe regulations to provide for—

[(A) veterans’ preference in the consideration of applicants for employment, and in the conduct of any reductions in force, within the judicial branch; and

[(B) redress procedures for alleged violations of any rights provided for under subparagraph (A).

[(2) REGULATIONS TO BE BASED ON EXISTING PROVISIONS.—Under the regulations—

[(A) a preference eligible (as defined by section 2108 of title 5, United States Code) shall be afforded preferences similar to those under sections 3309 through 3312, and subchapter I of chapter 35, of such title 5; and

[(B) the redress procedures provided for shall be similar to those under the amendments made by section 4.

[(3) EXCLUSIONS.—Nothing in the regulations shall apply with respect to—

[(A) an appointment made by the President, with the advice and consent of the Senate;

[(B) an appointment as a judicial officer;

[(C) an appointment as a law clerk or secretary to a justice or judge of the United States; or

[(D) an appointment to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code).

[(4) CONSULTATION.—The regulations under this subsection shall be prescribed by the Judicial Conference of the United States, in consultation with—

[(A) the largest congressionally chartered veterans’ service organization;

[(B) 2 congressionally chartered veterans’ service organizations that represent former noncommissioned officers;

[(C) a congressionally chartered veterans’ service organization that represents veterans who have fought in foreign wars;

[(D) a congressionally chartered veterans’ service organization that represents veterans with service-connected disabilities;

[(E) a congressionally chartered veterans’ service organization that represents veterans of the Vietnam era; and

[(F) a congressionally chartered veterans’ service organization that represents veterans of World War II, the Korean conflict, the Vietnam era, and the Persian Gulf War.

[(5) DEFINITIONS.—For purposes of this subsection—

[(A) the term “judicial officer” means a justice, judge, or magistrate judge listed in subparagraph (A), (B), (F), or (G) of section 376(a)(1) of title 28, United States Code; and

[(B) the term “justice or judge of the United States” has the meaning given such term by section 451 of such title 28.

[(6) SUBMISSION TO CONGRESS; EFFECTIVE DATE.—

[(A) SUBMISSION TO CONGRESS.—Within 5 months after the date of the enactment of this Act, the Judicial Conference of the United States shall submit a copy of the regulations prescribed under this subsection to the

Committee on Government Reform and Oversight and the Committee on the Judiciary of the House of Representatives and the Committee on Governmental Affairs and the Committee on the Judiciary of the Senate.

[(B) EFFECTIVE DATE.—The regulations prescribed under this subsection shall take effect 6 months after the date of the enactment of this Act.

[SEC. 6. VETERANS' PREFERENCE REQUIRED FOR REDUCTIONS IN FORCE IN THE FEDERAL AVIATION ADMINISTRATION.

[Section 347(b) of the Department of Transportation and Related Agencies Appropriations Act, 1996 (109 Stat. 460) is amended by striking “and” at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting “; and”, and by adding at the end the following:

[(8) sections 3501—3504, as such sections relate to veterans' preference.”.

[SEC. 7. DEFINITIONAL AMENDMENT.

[Subparagraph (A) of section 2108(1) of title 5, United States Code, is amended by inserting “during a military operation in a qualified hazardous duty area (within the meaning of the first 2 sentences of section 1(b) of Public Law 104–117) and in accordance with requirements that may be prescribed in regulations of the Secretary of Defense,” after “for which a campaign badge has been authorized,”.

[SEC. 8. FAILURE TO COMPLY WITH VETERANS' PREFERENCE REQUIREMENTS TO BE TREATED AS A PROHIBITED PERSONNEL PRACTICE FOR CERTAIN PURPOSES.

[(a) In GENERAL.—Subsection (b) of section 2302 of title 5, United States Code, is amended—

[(1) by striking “or” at the end of paragraph (10);

[(2) by redesignating paragraph (11) as paragraph (12); and

[(3) by inserting after paragraph (10) the following:

[(“(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

[(“B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or”.

[(b) DEFINITION; LIMITATION.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

[(“e)(1) For the purpose of this section, the term ‘veterans' preference requirement’ means any of the following provisions of law:

[(“A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

[(“B) Sections 943(c)(2) and 1784(c) of title 10.

[(“C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.

[(“D) Section 301(c) of the Foreign Service Act of 1980.

[(“E) Sections 106(f), 7281(e), and 7802(5) of title 38.

[(“F) Section 1005(a) of title 39.

[(“G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.

[(“H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

[(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).”.

[(c) REPEALS.—

[(1) PROVISIONS OF TITLE 10, UNITED STATES CODE.—Section 1599c of title 10, United States Code, and the item relating to such section in the table of sections at the beginning of chapter 81 of such title are repealed.

[(2) SECTION 2302(a)(1) of title 5, United States Code.—Subsection (a)(1) of section 2302 of title 5, United States Code, is amended to read as follows:

[(“a)(1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b).”.

[(d) SAVINGS PROVISION.—This section shall be treated as if it had never been enacted for purposes of any personnel action (within the meaning of section 2302 of title 5, United States Code) preceding the date of the enactment of this Act.]

Insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans Employment Opportunities Act of 1998”.

SEC. 2. IMPROVED REDRESS FOR PREFERENCE ELIGIBLES.

(a) IN GENERAL.—subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

“§ 3330a. Preference eligibles; administrative redress

“(a)(1) A preference eligible who alleges that an agency has violated such individual’s rights under any statute or regulation relating to veterans’ preference may file a complaint with the Secretary of Labor.

“(2)(A) A complaint under this subsection must be filed within 60 days after the date of the alleged violation.

“(B) Such complaint shall be in writing, be in such form as the Secretary may prescribe, specify the agency against which the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

“(3) The Secretary shall, upon request, provide technical assistance to a potential complainant with respect to a complaint under this subsection.

“(b)(1) The Secretary of Labor shall investigate each complaint under subsection (a).

“(2) In carrying out any investigation under this subsection, the Secretary’s duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or agency that the Secretary considers relevant to the investigation.

“(3) In carrying out any investigation under this subsection, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

“(4) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or agency to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this subsection and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

“(c)(1)(A) If the Secretary of Labor determines as a result of an investigation under subsection (b) that the action alleged in a complaint under subsection (a) occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the agency specified in the complaint complies with applicable provisions of statute or regulation relating to veterans’ preference.

“(B) The Secretary of Labor shall make determinations referred to in subparagraph (A) based on a preponderance of the evidence.

“(2) If the efforts of the Secretary under subsection (b) with respect to a complaint under subsection (a) do not result in the resolution of the complaint, the Secretary shall notify the person who submitted the complaint, in writing, of the results of the Secretary’s investigation under subsection (b).

“(d)(1) If the Secretary of Labor is unable to resolve a complaint under subsection (a) within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

“(A) before the 61st day after the date on which the complaint is filed; or

“(B) later than 15 days after the date on which the complainant receives written notification from the Secretary under subsection (c)(2).

“(2) An appeal under this subsection may not be brought unless—

“(A) the complainant first provides written notification to the Secretary of such complainant’s intention to bring such appeal; and

“(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

“(3) Upon receiving notification under paragraph (2)(A), the Secretary shall not continue to investigate or further attempt to resolve the complaint to which the notification relates.

“(e)(1) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

“(2) A preference eligible may not pursue redress for an alleged violation described in subsection (a) under this section at the same time the preference eligible pursues redress for such violation under any other law, rule, or regulation.

“§3330b. Preference eligibles; judicial redress

“(a) In lieu of continuing the administrative redress procedure provided under section 3330a(d), a preference eligible may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

“(b) An election under this section may not be made’

“(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(d); or

“(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

“(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

“§3330c. Preference eligibles; remedy

“(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

“(b) A preference eligible who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of title 5, United States Code, is amended by adding after the item relating to section 3330 the following:

“330a. Preference eligibles; administrative redress.

“330b. Preference eligibles; judicial redress.

“330c. Preference eligibles; remedy.”.

SEC. 3. EXTENSION OF VETERANS’ PREFERENCE.

(a) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Paragraph (3) of section 2108 of title 5, United States Code, is amended by striking “the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;” and inserting “or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;”.

(b) AMENDMENTS TO TITLE 3, UNITED STATES CODE.—

(1) IN GENERAL.—Chapter 2 of title 3, United States Code, is amended by adding at the end the following:

“§115. Veterans’ preference

“(a) Subject to subsection (b), appointments under sections 105, 106, and 107 shall be made in accordance with section 2108, and sections 3309 through 3312, of title 5.

“(b) Subsection (a) shall not apply to any appointment to a position the rate of basic pay for which is at least equal to the minimum rate established for positions in the Senior Executive Service under section 5382 of title 5 and the duties of which are comparable to those described in section 3132(a)(2) of such title or to any other position if, with respect to such position, the President makes certification—

“(1) that such position is—

“(A) a confidential or policy-making position; or

“(B) a position for which political affiliation or political philosophy is otherwise an important qualification; and

“(2) that any individual selected for such position is expected to vacate the position at or before the end of the President’s term (or terms) of office.

Each individual appointed to a position described in the preceding sentence as to which the expectation described in paragraph (2) applies shall be notified as to such expectation, in writing, at the time of appointment to such position.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 2 of title 3, United States Code, is amended by adding at the end the following:

“115. Veterans’ preference.”.

(c) LEGISLATIVE BRANCH APPOINTMENTS.—

(1) DEFINITIONS.—For the purposes of this subsection, the terms “covered employee” and “Board” shall each have the meaning given such term by section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301).

(2) RIGHTS AND PROTECTIONS.—The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code, shall apply to covered employees.

(3) REMEDIES.—

(A) IN GENERAL.—The remedy for a violation of paragraph (2) shall be such remedy as would be appropriate if awarded under applicable provisions of title 5, United States Code, in the case of a violation of the relevant corresponding provision (referred to in paragraph (2)) of such title.

(B) PROCEDURE.—The procedure for consideration of alleged violations of paragraph (2) shall be the same as apply under section 401 of the Congressional Accountability Act of 1995 (and the provisions of law referred to therein) in the case of an alleged violation of part A of title II of such Act.

(4) REGULATIONS TO IMPLEMENT SUBSECTION.—

(A) IN GENERAL.—The Board shall, pursuant to section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), issue regulations to implement this subsection.

(B) AGENCY REGULATIONS.—The regulations issued under subparagraph (A) shall be the same as the most relevant substantive regulations (applicable with respect to the executive branch) promulgated to implement the statutory provisions referred to in paragraph (2) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this subsection.

(C) COORDINATION.—The regulations issued under subparagraph (A) shall be consistent with section 225 of the Congressional Accountability Act of 1995 (2 U.S.C. 1361).

(5) APPLICABILITY.—Notwithstanding any other provision of this subsection, the term “covered employee” shall not, for purposes of this subsection, include an employee—

(A) whose appointment is made by the President with the advice and consent of the Senate;

(B) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress; or

(C) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code).

(6) EFFECTIVE DATE.—Paragraphs (2) and (3) shall be effective as of the effective date of the regulations under paragraph (4).

(d) JUDICIAL BRANCH APPOINTMENTS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Judicial Conference of the United States shall prescribe procedures to provide for—

(A) veterans’ preference in the consideration of applicants for employment, and in the conduct of any reductions in force, within the judicial branch; and

(B) redress for alleged violations of any rights provided for under subparagraph (A).

(2) PROCEDURES.—Under the procedures, a preference eligible (as defined by section 2108 of title 5, United States Code) shall be afforded preferences in a manner and to the extent consistent with preferences afforded to preference eligibles in the executive branch.

(3) EXCLUSIONS.—Nothing in the procedures shall apply with respect to an applicant or employee—

(A) whose appointment is made by the President with the advice and consent of the Senate;

(B) whose appointment is as a judicial officer;

(C) whose appointment is required by statute to be made by or with the approval of a court or judicial officer; or

(D) whose appointment is to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code).

(4) DEFINITIONS.—For purposes of this subsection, the term “judicial officer” means a justice, judge, or magistrate judge listed in subparagraph (A), (B), (F), or (G) of section 376(a)(1) of title 28, United States Code.

(5) SUBMISSION TO CONGRESS; EFFECTIVE DATE.—

(A) SUBMISSION TO CONGRESS.—Not later than 12 months after the date of enactment of this Act, the Judicial Conference of the United States shall submit a copy of the procedures prescribed under this subsection to the Committee on Government Reform and Oversight and the Committee on the Judiciary of the House of Representatives and the Committee on Governmental Affairs and the Committee on the Judiciary of the Senate.

(B) EFFECTIVE DATE.—The procedures prescribed under this subsection shall take effect 13 months after the date of enactment of this Act.

SEC. 4. VETERANS' PREFERENCE REQUIRED FOR REDUCTIONS IN FORCE IN THE FEDERAL AVIATION ADMINISTRATION.

Section 347(b) of the Department of Transportation and Related Agencies Appropriations Act, 1996 (109 Stat. 460) is amended—

(1) by striking “and” at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting “; and”; and

(3) by adding at the end the following:

“(8) sections 3501–3504, as such sections relate to veterans’ preference.”.

SEC. 5. FAILURE TO COMPLY WITH VETERANS' PREFERENCE REQUIREMENTS TO BE TREATED AS A PROHIBITED PERSONNEL PRACTICE FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Subsection (b) of section 2302 of title 5, United States Code, is amended—

(1) by striking “or” at the end of paragraph (10);

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10) the following:

“(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans’ preference requirement; or

“(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans’ preference requirement; or”.

(b) DEFINITION; LIMITATION.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1) For the purpose of this section, the term ‘veterans’ preference requirement’ means any of the following provisions of law:

“(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

“(B) Sections 943(c)(2) and 1784(c) of title 10.

“(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.

“(D) Section 301(c) of the Foreign Service Act of 1980.

“(E) Sections 106(f), 7281(e), and 7802(5) of title 38.

“(F) Section 1005(a) of title 39.

“(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans’ preference requirement for the purposes of this subsection.

“(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

“(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).”.

(c) REPEALS.—

(1) SECTION 1599C OF TITLE 10, UNITED STATES CODE.—

(A) REPEAL.—Section 1599c of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by striking out the item relating to section 1599c.

(2) SECTION 2302(A)(1) OF TITLE 5, UNITED STATES CODE.—Subsection (a)(1) of section 2302 of title 5, United States Code, is amended to read as follows:

“(a)(1) For the purpose of this title, ‘prohibited personnel practice’ means any action described in subsection (b).”.

(d) SAVINGS PROVISION.—This section shall be treated as if it had never been enacted for purposes of any personnel action (within the meaning of section 2302 of title 5, United States Code) preceding the date of enactment of this Act.

SEC. 6. EXPANSION AND IMPROVEMENT OF VETERANS' EMPLOYMENT EMPHASIS UNDER FEDERAL CONTRACTS.

(a) COVERED VETERANS.—Section 4212 of title 38, United States Code, is amended—

(1) in subsection (a), by striking out “special disabled veterans and veterans of the Vietnam era” and inserting in lieu thereof “special disabled veterans, veterans of the Vietnam era, and covered veterans of the Persian Gulf War”;

(2) in subsection (b), by striking out “special disabled veteran or veteran of the Vietnam era” and inserting in lieu thereof “special disabled veteran, veteran of the Vietnam era, or covered veteran of the Persian Gulf War”;

(3) in subsection (d)(1), by striking out “veterans of the Vietnam era or special disabled veterans” both places it appears and inserting in lieu thereof “special disabled veterans, veterans of the Vietnam era, or covered veterans of the Persian Gulf War”; and

(4) by adding at the end the following:

“(e) For purposes of this section, the term ‘covered veteran of the Persian Gulf War’ means any veteran who served in the active military, naval, or air service in the Southwest Asia theater of operations during the period beginning on August 2, 1990, and ending on January 2, 1992.”.

(b) PROHIBITION ON CONTRACTING WITH ENTITIES NOT MEETING REPORTING REQUIREMENTS.—(1) Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end the following:

“§ 1354. Limitation on use of appropriated funds for contracts with entities not meeting veterans’ employment reporting requirements

“(a)(1) Subject to paragraph (2), no agency may obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract described in section 4212(a) of title 38 with a contractor from which a report was required under section 4212(d) of that title with respect to the preceding fiscal year if such contractor did not submit such report.

“(2) Paragraph (1) shall cease to apply with respect to a contractor otherwise covered by that paragraph on the date on which the contractor submits the report required by such section 4212(d) for the fiscal year concerned.

“(b) The Secretary of Labor shall take appropriate actions to notify agencies in a timely manner of the contractors covered by subsection (a).”.

(2) The table of sections at the beginning of chapter 13 of such title is amended by adding at the end the following:

“1354. Limitation on use of appropriated funds for contracts with entities not meeting veterans’ employment reporting requirements.”.

SEC. 7. REQUIREMENT FOR ADDITIONAL INFORMATION IN ANNUAL REPORTS FROM FEDERAL CONTRACTORS ON VETERANS EMPLOYMENT.

Section 4212(d)(1) of title 38, United States Code, as amended by 6(a)(3), is further amended—

(1) by striking out “and” at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof “; and”; and

(3) by adding at the end the following:

“(C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.”.

INTRODUCTION

On July 16, 1997, Senator Chuck Hagel introduced S. 1021 with the cosponsorship of Senator Max Cleland, Committee Member Y. Tim Hutchinson, Senator Byron L. Dorgan, Senator Conrad Burns, Senator William V. Roth, Jr., Senator Lauch Faircloth, Senator Jesse Helms, Senator Daniel Patrick Moynihan, Senator Mary L. Landrieu, Senator Harry Reid, and Committee Member Ben Nighthorse Campbell. S. 1021 would have provided that consideration could not be denied to preference eligibles applying for certain positions in the competitive service.

On March 24, 1998, the Committee held a hearing on S. 1021. Testimony was received from Senator Chuck Hagel, Senator Max Cleland, and Representative John Mica, who introduced a counter-

part to S. 1021, H.R. 240, in the U.S. House of Representatives. Testimony was also received from four veterans' service organizations: The American Legion, the Veterans of Foreign Wars, AMVETS, and the Non-Commissioned Officers Association of the United States; two executive branch agencies: the Department of Labor and the Office of Personnel Management; the General Accounting Office; the United States Postal Service; and two labor unions: the National Treasury Employees Union and the American Federation of Government Employees. Written testimony for the record was also received from an additional 11 organizations.

COMMITTEE MEETING

After carefully reviewing the testimony and record from the March 24, 1998, hearing, the Committee met in open session on July 28, 1998, and voted unanimously to report S. 1021, as amended with an amendment in the nature of a substitute.

SUMMARY OF S. 1021 AS REPORTED

S. 1021 as reported (hereinafter referred to as the "Committee bill") contains freestanding provisions and amendments to titles 3, 5 and 38, United States Code, that would:

1. Establish new administrative and judicial redress procedures and remedies for preference-eligible veterans who assert that their veterans' preference rights have been violated in a hiring decision or during a reduction-in-force (section 2).

2. Remove an exemption previously in force with respect to the General Accounting Office (GAO) and thereby allow preference-eligible veterans to assert that status with respect to GAO personnel actions (section 3(a)).

3. Require that veterans' preference laws be applied with respect to personnel actions involving positions in the Executive Office of the President, except those which the President certifies are confidential or policy-making positions, political positions, or positions that will be vacated at or before the end of the President's term or terms (section 3(b)).

4. Require that veterans' preference principles be applied with respect to personnel actions involving positions in the legislative branch, except those made by the President, those made by a Member of Congress, those made to a committee or subcommittee staff, and those made to positions with duties which are equivalent to those of a Senior Executive Service position (section 3(c)).

5. Require that veterans' preference principles be applied with respect to personnel actions involving positions in the judicial branch, except those made by the President, those which are judicial officer positions (i.e., a justice, a judge, or a magistrate judge), those whose appointment is required to be made by or with the approval of a court or judicial officer, and those with duties which are equivalent to those of a Senior Executive Service position (section 3(d)).

6. Require the Federal Aviation Administration (FAA) to recognize veterans' preference status during reductions-in-force (section 4).

7. Designate a knowing violation of veterans' preference requirements a prohibited personnel practice (section 5).

8. Expand veterans' employment opportunities with Federal contractors by including Persian Gulf War theater veterans in the definition of veterans to whom Federal contractors will conduct outreach activities; by prohibiting Federal agencies from contracting with entities which have not complied with Department of Labor reporting requirements with respect to the hiring of Vietnam-era, disabled, and Persian Gulf War veterans; and by expanding Department of Labor reporting requirements with respect to the hiring of veterans (sections 6 and 7).

DISCUSSION

The Committee bill, which is derived from S. 1021, would make various changes in law, as outlined below.

Background

The Veterans' Preference Act, which dates to 1944, facilitates the readjustment of wartime and disabled veterans to civilian life by providing preferences to those who seek employment by the Nation's largest single employer: the executive branch of the Federal Government. Pursuant to the act, veterans who are disabled or who served in military campaigns during specified time periods are "preference eligible" veterans. Such veterans are entitled to preference over non-veterans (and over non-preference-eligible veterans) in decisions involving who will be hired by the Federal Government, and who will be retained in Federal reductions-in-force (RIF's). 5 U.S.C. §§ 2108, § 3502. Veterans' preferences are given substance by the awarding of "points" to be taken into account in scoring calculations which determine outcomes in Federal hiring or retention decision making.

Testimony at the Committee's hearing on March 24, 1998, revealed that veterans' preference laws appear to have been effective in fostering the hiring, and retention, of preference-eligible veterans in Federal employment. The General Accounting Office testified that, from 1990 to 1997, the percentage of veterans deemed "preference eligible" in the Federal workforce was about twice as large as the percentage of such persons in the civilian workforce. GAO's testimony revealed, further, that Federal employees who are not "preference eligible" were four times more likely to lose their jobs during a reduction-in-force than were those who had veterans' preference status.

The Committee's hearing also revealed, however, that while veterans as a group appear to be faring well in Federal employment, individual cases reveal that there is a pressing need for a uniform redress mechanism for the enforcement of veterans' preference laws in both hiring and reductions-in-force decisions. In addition, it revealed that there are areas of Federal employment—employment at GAO, in the Executive Office of the President, and in the legislative and judicial branches—to which veterans' preference principles could reasonably be extended. Finally, the Committee's hearing revealed that Federal programs designed to encourage the hiring of veterans by Federal contractors, and contractor reporting requirements, are more limited in scope than they should be. The Commit-

tee bill, the provisions of which are outlined below, is intended to address these shortcomings of current law.

Committee bill

Section 1. Short Title. Section 1 of the Committee bill would title the bill the “Veterans Employment Opportunities Act of 1998”.

Section 2. Improved Redress for Preference Eligibles. Current provisions for the redress of violations of veterans’ preference laws are confusing, from the veteran’s standpoint, since different mechanisms are provided to address perceived hiring and RIF violations. Veterans who believe that their rights have been violated in hiring are directed to the Department of Labor (DOL), which investigates the claim and then sends the results of its investigation to the Office of Personnel Management (OPM) for resolution. Veterans who believe their preference rights have been violated in a reduction-in-force are directed to the Merit Systems Protection Board (MSPB) which itself renders a decision and remedial order which is, in turn, appealable at the appropriate United States District Court. See 5 U.S.C. §7701.

Current veterans’ preference procedures are not merely confusing; they are unequal in the sense of procedural opportunities presented. MSPB will resolve a RIF complaint after it has afforded the complainant an opportunity to a hearing. DOL provides no such opportunity to veterans who allege veterans’ preference violations in a hiring context.

Section 2 of the Committee bill would amend title 5 to create a uniform redress mechanism, modeled after the procedures established in the Uniformed Services Employment and Reemployment Rights Act of 1994 for redress of alleged violations of veterans’ reemployment rights. Preference-eligible veterans contending that their rights have been violated in either a hiring or RIF setting would be directed to file a complaint with DOL. DOL would conduct a formal investigation and would have authority to subpoena witnesses or documents. If DOL had not resolved the complaint within 60 days, the complainant could then appeal to the MSPB. If MSPB had not issued a decision within 120 days, the aggrieved veteran could then appeal to the appropriate United States District Court.

Insofar as remedies are concerned, the Committee bill provides that if MSPB, or a District Court, determines that an agency has violated veterans’ preference laws, MSPB or the court would be empowered to order compliance, to award compensation to the veteran for any loss of wages or benefits suffered, and to award reasonable attorney’s fees and other litigation expenses. In cases where the MSPB or court found a willful violation, they would be authorized to award an amount equal to back pay as liquidated damages.

Section 3. Extension of Veterans’ Preference. GAO is currently exempted from veterans’ preference laws. In addition, employment opportunities in the Executive Office of the President are not subject to veterans’ preference laws. Similarly, Federal employment in the legislative and judicial branches is not covered by veterans’ preference laws.

The entire government should participate, as possible, in assisting preference-eligible veterans in making the transition to civilian

life. It is vital that the Federal Government open to veterans as many employment opportunities as possible, particularly in an era of Federal downsizing.

Section 3 of the Committee bill would require that veterans' preference laws be applied to positions in the General Accounting Office, and to non-confidential, non-policy, and non-political positions in the Executive Office of the President. It would also require that principles of veterans' preference laws be applied to positions in the legislative branch with respect to non-policy positions, and in the judicial branch with respect to non-judicial officer positions and positions appointed by such officers. The Committee notes that the requirement that veterans' preference principles be extended to the legislative and judicial branches does not mandate the creation of civil service-type evaluation or scoring systems by these hiring entities. It does require, however, that they create systems that are consistent with the underlying principles of veterans' preference laws.

Section 4. Veterans' Preference Required for Reductions In Force in the Federal Aviation Administration. The Department of Transportation and Related Agencies Appropriations Act of 1996, Public Law 104-50, authorized the Federal Aviation Administration (FAA) to establish an alternative Federal system to govern its personnel operations, separate from the personnel system which governs other executive agencies. Even so, Public Law 104-50 requires that FAA adhere to veterans' preference laws in hiring. It does not require, however, that FAA do so during reductions-in-force.

Section 4 of the Committee bill would also require that FAA adhere to veterans' preference laws during RIF's. It is inconsistent to afford the full range of veterans' preference rights to persons who seek to be hired by FAA and not to those who have been hired and who later face potential reduction-in-force actions.

Section 5. Prohibited Personnel Practices. Currently, the actions of Federal employees, as they apply to personnel decisions, may not deny fair treatment on the basis of race, color, religion, sex, marital status, age, handicap or political affiliation. Acts which deny fairness on these grounds are "prohibited personnel practices." 5 U.S.C. §2302. Persons found by the MSPB to have knowingly committed such practices may be removed or suspended from Federal employment, or fined. 5 U.S.C. §1215.

Section 5 of the Committee bill would amend 5 U.S.C. §2302 to add violations of veterans' preference laws to the listing of prohibited personnel practices. Thus, persons who knowingly fail to comply with veterans' preference requirements could be disciplined in accordance with standards applicable to prohibited personnel practices.

Sections 6 and 7. Expansion and Improvement of Veterans' Employment Emphasis Under Federal Contracting, and Requirement for Additional Information in Annual Reports from Federal Contractors on Veterans Employment. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. §4212, requires employers with Federal contracts or subcontracts valued at \$10,000 or more take steps to employ and advance Vietnam-era and disabled veterans. Covered contractors are required to list job openings with appropriate State and local employment service of-

fices which, in turn, provide Vietnam-era veterans and disabled veterans priority referrals to such employment opportunities. In addition, Federal contractors are required to submit an annual report, the "VETS 100 form," to the Department of Labor providing data with respect to compliance with these requirements.

Section 6 of the Committee bill would amend the Vietnam-era Veterans' Readjustment Assistance Act to require that Federal contractors take steps to assist not just Vietnam Era and disabled veterans, but also veterans who served in active military, naval, or air service in the Southwest Asia theater of operations during the period beginning August 2, 1990, and ending on January 2, 1992. These veterans are no less deserving of assistance than Vietnam-era veterans.

Section 6 of the Committee bill would further amend 38 U.S.C. §4212 to improve the tools by which the Department of Labor secures the compliance of Federal contractors with their reporting obligations under the statute. Federal agencies would be barred from obligating or expending funds to enter into contracts with entities which had not complied with their reporting obligations. Thus, potential contractors would be provided with added incentive to comply with the law in a timely manner. Finally, section 7 would require the filing of information concerning the contractor's total employee base so that the Department of Labor could view currently supplied data on the number of veterans employed and hired in proper perspective.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill would not likely be significant. The bill would not affect the budgets of State, local, or tribal governments.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 1998.

Hon. ARLEN SPECTER,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1021, the Veterans' Employment Opportunities Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

S. 1021—Veterans' Employment Opportunities Act of 1998

Summary: S. 1021 would strengthen and broaden the applicability of a set of laws popularly known as veterans' preference, which afford certain veterans preferential treatment in obtaining and keeping federal employment. Enacting this bill would probably increase personnel and management costs of the federal government, but CBO cannot estimate the amount of the added costs. For most agencies, any increase in spending would be subject to the availability of appropriated funds. The bill could also increase direct spending by agencies not funded through annual appropriations. Therefore, pay-as-you-go procedures would apply to the bill. With the possible exception of costs for the U.S. Postal Service, the bill's impact on direct spending is not likely to be significant. Spending by the Postal Service is classified as off-budget and is not subject to pay-as-you-go procedures.

S. 1021 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: Several provisions of S. 1021 would increase the costs to the federal government to administer and enforce the laws governing veterans' preference. However, because we have no way of predicting the number of veterans who would be affected by the bill's provisions, particularly the number of veterans who might seek redress under the bill's expanded procedures, CBO cannot estimate the amount of these additional costs. Areas of potential costs resulting from the bill are described below.

The largest potential budgetary impact of the bill would result from provisions that would allow veterans to appeal hiring and reduction-in-force decisions to the Merit Systems Protection Board (MSPB) and then to a district court, and that would increase the amount of redress that an eligible veteran could receive for an affirmed violation. By expanding the number of veterans eligible to appeal hiring decisions, enacting S. 1021 could significantly increase the workload—and hence, the expenses—of the Department of Labor, which would receive the initial complaints, as well as the MSPB and the federal judiciary, which would handle any subsequent appeals.

In cases where the complainant prevails, the bill would require that the individual receive reasonable attorney fees, expert witness fees, and other litigation expenses. Currently, successful complainants are awarded only attorney fees. In cases where a violation is deemed as willful, S. 1021 would require the MSPB or district court to award damages in addition to any lost wages or benefits. The amount of damages would be limited to the amount of back pay owed by the agency. Thus, S. 1021 would likely result in the appeal of more cases, particularly those related to grievances over hiring decisions, and in the awarding of higher monetary judgments. CBO has no basis for estimating the number or cost of these additional appeals.

In addition, the bill would extend veterans' preference to certain, nonpolitical positions in the White House, the General Accounting Office, the judicial branch, and the legislative branch. In the case

of the courts, it would exclude those appointments that are required by statute to be made by or with the approval of a court or judicial officer. For those agencies—such as CBO and the Capitol Police—that support the Congress, such an application would be difficult to implement. (The provision would not apply to the Library of Congress.) Because the employees of these agencies are not part of the Civil Service and since the agencies do not administer a test or use a numerical rating system that lends itself to factoring in the additional points required by law for preference-eligible veterans, it is uncertain how these agencies would comply with the bill. If the extension of veterans' preference caused the agencies to institute a new system for judging and hiring applicants, the associated costs could be significant.

For the judicial branch, the bill would require that the Judicial Conference of the United States prescribe regulations that are similar to those governing the executive branch. The bill also would direct the Office of Compliance and the Judicial Conference of the United States to establish procedures to provide veterans employed in the legislative and judicial branch with redress procedures similar to those available to executive branch employees. Thus, those agencies could also face new, potentially costly litigation related to grievances filed under this provision.

Finally, the bill would add veterans of the Persian Gulf War to the list of veterans for whom contractors must agree to take certain affirmative actions in order to receive federal contracts of \$10,000 or more. It would also require contractors to include additional information in reports they currently file annually with federal agencies. While these requirements could increase the costs of federal contracts, CBO estimates that any increase in costs would be largely one-time and probably not significant.

Pay-as-you-go considerations: The Balanced Budget Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Because S. 1021 could increase direct spending by agencies not funded through annual appropriations, pay-as-you-go procedures would apply. With the possible exception of costs for the U.S. Postal Service, the bill's impact on direct spending is not likely to be significant. Spending by the Postal Service is classified as off-budget and is not subject to pay-as-you-go procedures.

Intergovernmental and private-sector impact: S. 1021 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: John R. Righter.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of individuals or businesses or result in any significant impact on the per-

sonal privacy of any individuals, and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its July 28, 1998, meeting. On that date, the Committee, by unanimous voice vote, ordered S. 1021, as amended, reported favorably to the Senate.

AGENCY REPORT

On March 24, 1998, the Committee held a hearing on S. 1021. Testimony was received from two executive branch agencies, the Department of Labor and the Office of Personnel Management. Those statements are reprinted below:

STATEMENT OF ESPIRIDION (AL) BORREGO, ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING SERVICE, DEPARTMENT OF LABOR, MARCH 24, 1998

Mr. Chairman and Distinguished Members of the Senate Veterans' Affairs Committee. It is an honor for me to be here to present the views of the Veterans' Employment and Training Service (VETS) regarding veterans' preference, priority of referral in the Federal contractor program and the proposed Veterans' Employment Opportunities Act of 1997, S. 1021.

Today, Veterans' preference serves as a recruitment tool that provides Federal agencies with a resource to find well-trained employee candidates. Veterans having veterans' preference rights, do not, however, have any guarantee to employment. Veterans' preference means that a fully qualified veteran may be given preference in obtaining a position over other eligible and qualified non-veteran candidates. Section 5 U.S.C. 2108 defines Preference Eligible veterans. Disabled veterans and other special veterans are given consideration over veterans who are not preference eligible.

Section 4214 of title 38 requires action of agencies to "promote the maximum of employment and job advancement opportunities within the Federal government for disabled veterans and certain veterans of the Vietnam era," to provide placement consideration under special non-competitive hiring authorities for 30 percent or more disabled veterans, ensure that all veterans are considered for employment and advancement under Merit System rules, and establish an affirmative action plan for the hiring, placement and advancement of disabled veterans.

By law, Section 5 U.S.C. 2108, United States veterans are entitled to employment preference for Federal Civil Service jobs, under certain eligibility conditions and criteria based on time of service, duration of service, and service-connected disability status. Veterans' preference

entitles a veteran to the addition of 5 or 10 points to examination scores if specific eligibility requirements are met.

An excellent source of information on veterans' preference is available on-line. The Veterans' Preference Adviser can be accessed by clicking on "elaws" on the Department of Labor's home page at www.dol.gov. By answering certain questions, a user can learn whether he or she may be eligible for veterans' preferences and the rights proceeding therefrom.

Within the current system, not all vacancies are subject to the posting requirements of 5 U.S.C. 3327 (b). This provision requires an agency to post with the State Employment Service vacancies for which it "seeks applications from persons outside the Federal service." Job vacancies open to the public are entered daily into OPM's Federal Job Opportunities List (FJOL) data base and are made available to each State Employment office through the America's Job Bank (AJB). The AJB no longer receives, or provides to the states, the OPM Federal Job Opportunity list. This information is now provided on the Internet. The OPM site is www.usajobs.opm.gov. (Merit promotion vacancies open to status candidates are not included in this listing; they are listed separately with OPM and publicized through printed reports in OPM's Job Information Centers, on OPM's electronic bulletin board, and on automated telephone lines.)

Many of the elements of the proposed bill will reenforce existing law, and enhance the ability of veterans to compete within the labor market. This change in Preference does not constitute a guarantee of employment. As under current law, a fully qualified veteran may be given preference in obtaining a position over other equally qualified non-veteran candidates.

Under present law today, the Office of Personnel Management (OPM) is the enforcement authority and VETS is the monitoring authority. In administering the veteran redress process, VETS provides direct assistance to veterans when they have encountered difficulties in gaining preference during the Federal hiring employment process, or have had their preference entitlement violated by a Federal employer. Upon receipt of a veterans' preference complaint, VETS will look into the complaint to determine its validity and contact the agency involved to attempt to achieve informal resolution. If the situation is not resolved informally, VETS refers the case to the Office of Personnel Management for formal investigation.

OPM is directly responsible for the policy issues governing veterans' preference in the Federal government. OPM and VETS have an established partnership to deal directly with these issues. These procedures are spelled out in a March 1996 Memorandum of Understanding between VETS and OPM.

The administrative redress provisions of S. 1021 would have an impact on the VETS. The investigative role now handled by OPM would be turned over to VETS.

The administrative redress provisions in section 3330a of S. 1021 would provide that a preference-eligible may file a complaint with the Secretary of Labor if the individual believes that an agency has violated that person's rights under any statute or regulation relating to veterans' preference. The legislation's redress procedures increase the investigator's powers. The Secretary would provide technical assistance to a potential complainant and, upon receipt of a formal complaint, conduct a formal investigation that parallels in scope the investigations currently conducted under the Uniformed Services Employment and Reemployment Rights Act (USERRA, chapter 43 of Title 38). In conducting the investigation, the Secretary would have authority to require by subpoena the production of witnesses or documents.

VETS has accumulated experience in investigating employment claims through its administration of USERRA. I believe that current VETS staff can handle about 200 to 300 additional cases which may fall under VETS' jurisdiction if S. 1021 is passed. With the availability of our new information tracking system, VETS could report to you on the status of these cases.

Under S. 1021, a claimant would have the right to appeal to the Merit Systems Protection Board (MSPB) if the Secretary of Labor has not resolved a claim within 60 days after it is filed. Likewise, if the Secretary notifies a claimant that the case cannot be resolved, the individual would have the right to file an appeal with the MSPB. If the MSPB issues a reviewable decision, or if the case is not resolved within 120 days after appeal to the MSPB, the claimant would have the right to file an action with the United States district court having jurisdiction.

The legislation would provide that redress for the Legislative branch of government be provided under the Congressional Accountability Act (Title 2). With respect to the Judicial branch, the Judicial Conference of the United States would be required to prescribe regulations providing for veterans' preference and comparable redress procedures.

S. 1021 would provide that either the MSPB or the district court, upon finding for the claimant, shall order the agency involved to comply with the provision(s) violated and award compensation for lost wages or benefits. If the violation is found to be willful, the agency can be ordered to pay an amount equal to back wages as liquidated damages. Additionally, a claimant who prevails shall be awarded reasonable attorney and witness fees and other court costs.

Under current law there are three tenure groups. Within each group, there are subgroups based on veteran status:

Compensable service-connected disability of 30 percent or more;

Employees with derived preference; and

All employees not eligible for veterans' preference.

S. 1021 would provide additional retention rights for employees who are considered preference eligible employees as defined in 5 U.S.C. 2108.

S. 1021 further would require that an agency must place the preference eligible veterans in a competitive level for which the individual is qualified. If qualified for more than one competitive level, the agency must place the individual in the level containing the most positions.

At this point in my testimony, I would like to shift my focus to a matter of interest to the committee. This is the Federal Contractor Program (FCP). The purpose of the FCP is two-fold: to provide Federal contractor award information to the VETS field staff, the State lead for FCP, and the DVOPs/LVERs and, secondly, to receive the annual VETS-100 reports from Federal contractors. The VETS-100 provides numbers of special disabled and Vietnam-era veterans who are identified affirmative action by Federal Contractors. The VETS-100 reports are used to assist the Office of Federal Contract Compliance Programs (OFCCP) in its role of enforcement and to provide information for the Annual Report to Congress. Any employer who receives a Federal contract or sub-contract in the amount of \$10,000 or more in a given year is subject to the provisions of the Federal Contractor Program.

For the most recent reporting period ending March 31, 1997, Federal contractor VETS-100 reports submitted showed a total 55,238 special disabled veterans and 1,147,271 Vietnam-era veterans noted as current employees. Among the new hires reported by Federal contractors, 4161 were special disabled veterans and 109,715 were Vietnam-era veterans.

Information on Federal contracts awarded and modified is received from the Commerce Business Daily. To improve VETS data collection and compliance with the law, we are adding information gained from the Federal Procurement Data System to our database. This information is provided to VETS field staff and DVOPs/LVERs. The VETS field staff use the information to determine if priority of service is being provided by staff of the local employment service office for targeted veterans. The DVOPs and LVERs use the information to contact Federal contractors to remind them that they are required to list job openings, with the exception of executive or top management positions, with the local employment service and that the employment office can provide qualified targeted veterans to fill job openings. As Federal contractors provide job openings to the local employment service, qualified targeted veterans receive priority referral to these job openings. Priority referral means that targeted veterans are referred to job openings listed by Federal contractors before non-veterans.

This process increases employment opportunities for Special Disabled veterans and veterans of the Vietnam Era.

Since we have discussed here benefits that veterans have been accorded in Federal employment and with respect to Federal contractors, I would like to take this opportunity to remind the Committee that VETS is engaged in a program to inform the Congress, all Federal departments and agencies, the veterans service organizations, veterans and employers of the protections in employment that veterans are accorded pursuant to Section 4311 of USERRA.

Section 4311 of USERRA states that “[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service or obligation.” The Federal government was called on to serve as a “model employer” under the Act.

Deputy Secretary Kathryn Higgins made a USERRA presentation at the March meeting of the President’s Management Council, which is comprised the Chief Operating Officers of all Cabinet level departments, usually the Deputy Secretaries.

This presentation is being followed up by distribution of a memo from Secretary of Labor Alexis M. Herman to Department of Labor employees, veterans service organization and Federal departments and agencies, reminding them of the provisions of Section 4311 and VETS’ obligations to enforce the law. VETS will further educate the public and private sector and veterans about the anti-discrimination provisions of USERRA and do all it can to provide veterans with the benefits of employment to which they are uniquely deserving. Information on USERRA is available online and can also be accessed on “elaws” (USERRA Advisor) on the DOL home page at www.dol.gov.

This legislation would have an impact on protected veterans including the following:

- Provide that a preference eligible or other protected veteran not be denied the opportunity to compete for a competitive or excepted position in a Federal agency by reason of either not having acquired competitive status or not being an employee of the hiring agency;

- Provide expanded “bumping” rights for preference eligibles in a reduction in force; and

- Provide more favorable criteria to determine a preference eligible’s qualifications to perform in a new position in event of a RIF.

Thank you for the opportunity to speak about several programs that are so vital to our nation’s veterans.

STATEMENT OF MARY LOU LINDHOLM, ASSOCIATE DIRECTOR
FOR EMPLOYMENT, OFFICE OF PERSONNEL MANAGEMENT,
MARCH 24, 1998

Mr. Chairman and Members of the Committee: Thank you for inviting me here today to discuss veterans' preference in the Federal Government and S. 1021, the "Veterans' Employment Opportunities Act of 1998." I welcome the opportunity to restate the Clinton Administration's firm support for the principle of veterans' preference embodied in the Veterans' Preference Act of 1944 and in this bill.

The Office of Personnel Management (OPM) has long been at the forefront of efforts to preserve and protect veterans' preference in Federal employment. We share your view that the Nation owes a debt of gratitude to its veterans. Veterans' preference provides a measure of compensation to those brave men and women who left the comforts of home, family, and employment to answer the Nation's call to arms.

On many occasions, President Clinton has reaffirmed his Administration's commitment to preserving and protecting veterans' preference. Certainly, the Government has every right to be proud of its record of hiring and retaining veterans. For example, the Federal Government employs approximately twice the percentage of veterans as in the civilian labor force, 3 times the percentage of Vietnam-era veterans, 5 times the percentage of disabled veterans and 8 times the percentage of 30 percent or more disabled veterans.

Despite factors such as the reduction of more than 350,000 Federal jobs in just the past few years, the shrinkage of our military forces and the continuing drop in the percentage of veterans in the labor force, the employment of veterans in the Federal service has remained remarkably constant: it declined only from 28.8 percent in Fiscal Year 1992 to 26.2 percent in Fiscal Year 1997. The good news is that agencies seem to realize that hiring veterans is just good business. In FY 1997 fully 31.4 percent of new permanent full-time hires were veterans.

OPM monitors the application of veterans' preference very closely. We audit all the certificates issued to ensure that veterans' preference has been properly applied, and carefully control the delegated examining authority granted to agencies.

As part of our oversight responsibility, OPM audits agency application of our rules and regulations, including veterans' preference. Where we find a violation of veterans' preference, OPM requires agencies to take prompt corrective action. For example, last year we discovered during a review that one small agency was purposely manipulating the examining system in order to appoint favored candidates. OPM immediately decertified the agency's delegated examining unit, stripped the agency of authority to

make any appointments at all, and referred all evidence of prohibited personnel practices to the Office of the Special Counsel. At present, we are closely monitoring the agency as it offers jobs to the more than 50 veterans who were denied consideration by this unlawful practice. Although we obviously cannot monitor every personnel action before it occurs, our prompt, decisive action will have a chilling effect on any other officials who might be tempted to evade the law.

I want to emphasize, however, that such cases are definitely the exception; Federal employees are generally very conscientious about applying veterans' preference properly. What errors we do find—and they are relatively few—are usually due to misunderstandings of the law or regulations. To help correct these, last year we issued a very comprehensive policy handbook called *VetGuide* to give agency personnelists detailed guidance on how to apply veterans' preference. The reception from agencies has been very enthusiastic. Also, OPM will soon issue a companion *VetInfo Guide* aimed at veterans themselves. It will tell them how the Federal employment system operates and how veterans' preference and special authorities such as the Veterans' Readjustment Appointment (VRA) operate. This is potentially very helpful because we have found that, too often, veterans do not understand their entitlements and how the Federal employment system works.

To ensure that veterans have access to a convenient, quick, and impartial system for resolving complaints that agencies did not properly accord them their preference, OPM established a complaint procedure through a Memorandum of Understanding with the Department of Labor. This procedure allows the veteran to file a complaint with the local veterans' Federal employment representative in the State employment office. That office will gather the facts and present them to the agency for a decision. If the veteran is not satisfied with the decision, the complaint is referred to OPM for final decision. This procedure allows prompt resolution of a complaint in a fair, cost-effective manner that works very well.

Under existing law, veterans also have protection during reductions in force, or RIFs, and these have worked well to protect veterans during the ongoing downsizing of the Government. For example, when the General Accounting Office recently reviewed several RIFs within the U.S. Geological Survey, it reported that veterans were significantly less likely to be separated than nonveterans. The GAO report showed that because of their preference entitlements, only about 2.5 percent of the veterans employed in the Geological Division of the agency were separated by RIF compared to about 10 percent of the agency's nonveteran population.

Your letter of invitation asked how S. 1021 would affect veterans and non-veterans. This proposed legislation would benefit veterans primarily in the area of RIF be-

cause it would give them even greater protections than they enjoy under existing law. I note that the Federal Aviation Administration (FAA) will provide the Committee with details of how this legislation would affect its efforts to implement veterans' preference under FAA's reformed personnel system.

I would note that any change to RIF procedures should allow agencies, both Defense and non-Defense, adequate time for implementation. In its action on this bill, the House of Representatives provided different time frames for implementation of the reduction in force and reemployment priority provisions of this legislation in Defense and non-Defense agencies. These provisions are effective within 90 days for non-Defense agencies and only after one year for Defense agencies. We believe that these effective dates should be established at one year for all agencies.

Since RIFs may be underway should the bill be enacted in its present form, agencies will need this phase-in period. Otherwise they would have to stop ongoing RIFs and start over again, causing great disruption and increased administrative expense.

Finally, you asked what the future trends for Federal employment will be, and how these trends may affect veterans.

There is no question that the percentage of veterans in the Federal service has been in a slow decline for many years and this decline may accelerate with the retirement of the Vietnam-era employees. This is due to a number of factors—primarily the corresponding reduction of veterans in the civilian labor force due to the retirement of the World War II and Korean veterans and the overall reduction of our military forces.

It is important to note, however, that the Defense Authorization Act for FY 1998, which was signed into law by President Clinton on November 18, 1997, contains two provisions that will greatly expand veterans' preference.

The first grants preference to everyone who served on active duty during the Gulf War regardless of where they served or for how long, provided they are otherwise eligible. The Department of Defense estimates that approximately 2 million present and former members of the Armed Forces will gain eligibility for preference under this provision alone. Since the law also authorizes the Armed Forces Expeditionary Medal for individuals who have served in Bosnia since November 1995, these recipients automatically acquire veterans' preference.

At the very least, these two provisions represent a major increase in the numbers of veterans eligible for preference in civil service employment and will have a significant impact on the representation of veterans in the future workforce.

Mr. Chairman, thank you very much and I will be glad to answer any questions you may have.

CHANGES IN EXISTING LAW MADE BY S. 1021 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Committee bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 3, UNITED STATES CODE

* * * * *

**CHAPTER 2—OFFICE AND COMPENSATION OF
PRESIDENT**

Sec.
101. * * *

* * * * *

115. *Veterans' preference.*

* * * * *

§ 115. Veterans' preference

(a) *Subject to subsection (b), appointments under sections 105, 106, and 107 shall be made in accordance with section 2108, and sections 3309 through 3312, of title 5.*

(b) *Subsection (a) shall not apply to any appointment to a position the rate of basic pay for which is at least equal to the minimum rate established for positions in the Senior Executive Service under section 5382 of title 5 and the duties of which are comparable to those described in section 3132(a)(2) of such title or to any other position if, with respect to such position, the President makes certification—*

(1) *that such position is—*

(A) *a confidential or policy-making position; or*

(B) *a position for which political affiliation or political philosophy is otherwise an important qualification; and*

(2) *that any individual selected for such position is expected to vacate the position at or before the end of the President's term (or terms) of office.*

Each individual appointed to a position described in the preceding sentence as to which the expectation described in paragraph (2) applies shall be notified as to such expectation, in writing, at the time of appointment to such position.

* * * * *

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

* * * * *

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

(1) * * *

* * * * *

(3) “preference eligible” means, except as provided in paragraph (4) of this section—

(A) * * *

* * * * *

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, [the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;] *or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;*

(4) * * *

* * * * *

§ 2302. Prohibited personnel practices

[(a)(1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b) of this section.]

(a)(1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b).

* * * * *

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) * * *

* * * * *

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; [or]

(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans’ preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans’ preference requirement; or

[(11)] (12) * * *

* * * * *

(e)(1) *For the purpose of this section, the term “veterans’ preference requirement” means any of the following provisions of law:*

(A) *Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.*

(B) *Sections 943(c)(2) and 1784(c) of title 10.*

(C) *Section 1308(b) of the Alaska National Interest Lands Conservation Act.*

(D) *Section 301(c) of the Foreign Service Act of 1980.*

(E) *Sections 106(f), 7281(e), and 7802(5) of title 38.*

(F) *Section 1005(a) of title 39.*

(G) *Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans’ preference requirement for the purposes of this subsection.*

(H) *Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.*

(2) *Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).*

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

Subchapter I—Examination, Certification, and Appointment

Sec.

3301. * * *

* * * * *

3330a. *Preference eligibles; administrative redress.*

3330b. *Preference eligibles; judicial redress.*

3330c. *Preference eligibles; remedy.*

* * * * *

Subchapter I—Examination, Certification, and Appointment

* * * * *

§3330a. *Preference eligibles; administrative redress*

(a)(1) *A preference eligible who alleges that an agency has violated such individual’s rights under any statute or regulation relating to veterans’ preference may file a complaint with the Secretary of Labor.*

(2)(A) *A complaint under this subsection must be filed within 60 days after the date of the alleged violation.*

(B) *Such complaint shall be in writing, be in such form as the Secretary may prescribe, specify the agency against which the com-*

plaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(3) The Secretary shall, upon request, provide technical assistance to a potential complainant with respect to a complaint under this subsection.

(b)(1) The Secretary of Labor shall investigate each complaint under subsection (a).

(2) In carrying out any investigation under this subsection, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or agency that the Secretary considers relevant to the investigation.

(3) In carrying out any investigation under this subsection, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(4) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or agency to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this subsection and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(c)(1)(A) If the Secretary of Labor determines as a result of an investigation under subsection (b) that the action alleged in a complaint under subsection (a) occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the agency specified in the complaint complies with applicable provisions of statute or regulation relating to veterans' preference.

(B) The Secretary of Labor shall make determinations referred to in subparagraph (A) based on a preponderance of the evidence.

(2) If the efforts of the Secretary under subsection (b) with respect to a complaint under subsection (a) do not result in the resolution of the complaint, the Secretary shall notify the person who submitted the complaint, in writing, of the results of the Secretary's investigation under subsection (b).

(d)(1) If the Secretary of Labor is unable to resolve a complaint under subsection (a) within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

(A) before the 61st day after the date on which the complaint is filed; or

(B) later than 15 days after the date on which the complainant receives written notification from the Secretary under subsection (c)(2).

(2) An appeal under this subsection may not be brought unless—

(A) the complainant first provides written notification to the Secretary of such complainant's intention to bring such appeal; and

(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

(3) Upon receiving notification under paragraph (2)(A), the Secretary shall not continue to investigate or further attempt to resolve the complaint to which the notification relates.

(e)(1) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

(2) A preference eligible may not pursue redress for an alleged violation described in subsection (a) under this section at the same time the preference eligible pursues redress for such violation under any other law, rule, or regulation.

§ 3330b. Preference eligibles; judicial redress

(a) In lieu of continuing the administrative redress procedure provided under section 3330a(d), a preference eligible may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

(b) An election under this section may not be made—

(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(d); or

(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

§ 3330c. Preference eligibles; remedy

(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

(b) A preference eligible who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.

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TITLE 10, UNITED STATES CODE

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PART II—PERSONNEL

* * * * *

CHAPTER 81—CIVILIAN EMPLOYEES

Sec.

[1580. Repealed]

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[1599c. Veterans' preference requirements: Department of Defense failure to comply treated as a prohibited personnel practice.]

* * * * *

[§ 1599c. Veterans' preference requirements: Department of Defense failure to comply treated as a prohibited personnel practice

[(a) PROHIBITED PERSONNEL PRACTICE.—It is a prohibited personnel practice for a person referred to in subsection (b) who has authority described in that subsection—

[(1) knowingly to take, recommend, or approve any personnel action with respect to such authority if the taking of such action violates a veterans' preference; or

[(2) knowingly to fail to take, recommend, or approve any personnel action with respect to such authority, if the failure to take such action violates a veterans' preference.

[(b) PERSONS COVERED.—Subsection (a) applies with respect to—

[(1) an officer or employee of the Department of Defense who has authority to take, direct others to take, recommend, or approve a personnel action with respect to an employee of the Department of Defense; and

[(2) a member of the armed forces who has such authority.

[(c) VETERANS' PREFERENCE DEFINED.—(1) In this section, the term “veterans' preference” means any of the following provisions of law:

[(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) of title 5 and (with respect to a preference eligible referred to in section 7511(a)(1)(B) of such title) subchapter II of chapter 75 and section 7701 of such title.

[(B) Sections 943(c)(2) and 1784(c) of this title.

[(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3198(b)).

[(D) Section 301(c) of the Foreign Service Act of 1980 (22 U.S.C. 3941(c)).

[(E) Section 3(a)(11) of the Administrative Office of the United States Courts Personnel Act of 1990 (28 U.S.C. 602 note).

[(F) Sections 106(e), 7281(e), and 7802(5) of title 38.

[(G) Section 1005(a) of title 39.

[(H) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference for the purposes of this section.

[(2) For the purposes of this section, such term includes any regulation prescribed under subsection (b) or (c) of section 1302 of title 5 and any other regulation that implements a provision of law referred to in paragraph (1).

[(d) PERSONNEL ACTION DEFINED.—In this section, the term “personnel action” has the meaning given that term in section 2302 of title 5.]

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TITLE 31, UNITED STATES CODE

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CHAPTER 13—APPROPRIATIONS

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Subchapter III—Limitations, Exceptions, and Penalties

1341. * * *

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1354. *Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements.*

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Subchapter III—Limitations, Exceptions, and Penalties

* * * * *

§ 1354. *Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements*

(a)(1) *Subject to paragraph (2), no agency may obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract described in section 4212(a) of title 38 with a contractor from which a report was required under section 4212(d) of that title with respect to the preceding fiscal year if such contractor did not submit such report.*

(2) *Paragraph (1) shall cease to apply with respect to a contractor otherwise covered by that paragraph on the date on which the contractor submits the report required by such section 4212(d) for the fiscal year concerned.*

(b) *The Secretary of Labor shall take appropriate actions to notify agencies in a timely manner of the contractors covered by subsection (a).*

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TITLE 38, UNITED STATES CODE

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PART III—READJUSTMENT AND RELATED BENEFITS

CHAPTER 42—EMPLOYMENT AND TRAINING OF VETERANS

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§ 4212. Veterans' employment emphasis under Federal contracts

(a) Any contract in the amount of \$10,000 or more entered into by any department or agency for the procurement of personal property and non-personal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified [special disabled veterans and veterans of the Vietnam era] *special disabled veterans, veterans of the Vietnam era, and covered veterans of the Persian Gulf War*. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and non-personal services (including construction) for the United States. In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall implement the provisions of this section by promulgating regulations which shall require that (1) each such contractor undertake in such contract to list immediately with the appropriate local employment service office all of its employment openings except that the contractor may exclude openings for executive and top management positions, positions which are to be filled from within the contractor's organization, and positions lasting three days or less, and (2) each such local office shall give such veterans priority in referral to such employment openings.

(b) If any [special disabled veteran or veteran of the Vietnam era] *special disabled veterans, veterans of the Vietnam era, or covered veterans of the Persian Gulf War* believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

(c) * * *

(d)(1) Each contractor to whom subsection (a) of this section applies shall, in accordance with regulations which the Secretary of Labor shall prescribe, report at least annually to the Secretary of Labor on—

(A) the number of employees in the work force of such contractor, by job category and hiring location, who are veterans of the Vietnam era or special disabled veterans; [and]

(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are [veterans of the Vietnam era or spe-

cial disabled veterans] *special disabled veterans, veterans of the Vietnam era, or covered veterans of the Persian Gulf War*【.】; and

(C) *the maximum number and the minimum number of employees of such contractor during the period covered by the report.*

(2) The Secretary of Labor shall ensure that the administration of the reporting requirement under paragraph (1) of this subsection is coordinated with respect to any requirement for the contractor to make any other report to the Secretary of Labor.

(e) *For purposes of this section, the term “covered veteran of the Persian Gulf War” means any veteran who served in the active military, naval, or air service in the Southwest Asia theater of operations during the period beginning on August 2, 1990, and ending on January 2, 1992.*

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DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

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TITLE III

GENERAL PROVISIONS

(INCLUDING TRANSFERS OF FUNDS)

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SEC. 347. (a) * * *

(b) The provisions of Title 5, United States Code, shall not apply to the new personnel management system developed and implemented pursuant to subsection (a), with the exception of—

(1) * * *

* * * * *

(6) chapter 81, relating to compensation for work injury;
【and】

(7) chapter 83–85, 87, and 89, relating to retirement, unemployment compensation, and insurance coverage【.】; and

(8) *sections 3501–3504, as such sections relate to veterans’ preference.*

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