states''—all located in the Western U.S.* In four states, the federal government owns more than half the land—Idaho, Nevada, Oregon and Utah. In Colorado, more than one-third of the land is owned by the Federal government.

Most of these federal land holdings in the West are managed by the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service, making the BLM and the Forest service the de factor planning and zoning board for much of the rural West. Result: Issues that anywhere else in the nation would be state of local issues—like locating a road or bike path or building a water system or camping facilities—are federal issues in the West. Examples: BLM or Forest Service managers decide how many cows will graze, where they will graze and at what time of year—or where a pipeline or road must go.

Over the past decade Center-sponsored studies and forums, Congressional hearings and media reports have documented increasing dissatisfaction with ''one-size fits-all'' federal policies that guide the management of federal lands and the highly-intrusive administrative practices of federal land managers. A major concern is that land use decisions by federal authorities can have a strong bearing on jobs and economic opportunity in the small towns and rural areas adjacent to federal lands. Increasingly, Westerners and, to be fair, some federal land managers, have called for major reforms in federal land management policies—and especially for policies and practices that would allow greater decentralization of decision-making within the federal system and more local participation and administrative flexibility in this system of federal control.

The bottom line: Both Westerners and many outside the West are dissatisfied with the way the federal government managers its land holdings in the West—including national parks, wilderness and other federal lands—and the concern is highest among those most affected. These include tourists and other visitors to the West, farmers, ranchers and small business people who live and work in the rural West, and economic development professionals who struggle to make things work in the transition to America's New Economy.

In addition, there is growing concern in Congress about how President Clinton uses executive power—and especially the willingness of this executive branch to usurp and Constitution authority of Congress (violating the separation of powers among co-equal branches of government) and the states (violating the principles of federalism). The concern came to a head in October when Western members of Congress initiated a resolution to block the Clinton administration from designating 570,000 acres near the Grand Canyon as a national monument and to restrict the administration's ability to lock up other land holdings without subjecting its proposals to legislative review.

These are initial moves of an increasingly assertive Western Congressional delegation determined to restrict the power of the president to withdraw millions of acres of public land from multiple use without public participation or comment by bikers, climbers, builders of camp sites and explorers for oil and gas and other natural resources, These are among the most effected individuals and groups whose access to the land is often restricted or prohibited.

These concerns, and the timing of these moves by Western members of Congress, reflect a backlash from President Clinton's 1996 election year designation of 1.7 million acres in Utah as the Escalante/Grand Staircase National Monument, a stealth decision without Congressional review and without broad consultation with state and local elected leaders or the public.

By contrast, when the process of restricting public use of the land includes broad intergovernmental consultation and public participation, good things happen. Example: October's designation of the Black Canyon National Park in Western Colorado. This designation of America's newest national park was supported by Sen. Ben Nighthorse Campbell, Rep. Scott McInnis and other members of Colorado's Congressional delegation and by most state and local elected leaders and the public in Colorado.

*The 11 public lands states, located in the lower 48, are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

OMISSION FROM THE CONGRESSIONAL RECORD OF WEDNESDAY, MARCH 8, 2000

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. PASCRELL (at the request of Mr. GEPHARDT) on account of official business in the district.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. EDDIE BERNICE JOHNSON of Texas (at the request of Mr. GEPHARDT) for today after 4:00 p.m. on account of official business.

Mr. SCHAFFER (at the request of Mr. ARMEY) for today on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. JACKSON-LEE of Texas) to revise and extend their remarks and include extraneous material:)

Mr. PALLONE, for 5 minutes, today.

Mr. LEVIN, for 5 minutes, today.

Mrs. MINK of Hawaii, for 5 minutes, today.

(The following Members (at the request of Mr. HANSEN) to revise and extend their remarks and include extraneous material:)

Mr. METCALF, for 5 minutes, today.

Mrs. EMERSON, for 5 minutes, March 14.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 935. An act to authorize research to promote the conversion of biomass into biobased industrial products, and for other purposes; to the Committee on Agriculture; in addition to the Committee on Science for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ADJOURNMENT

Mr. MCINNIS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 20 minutes p.m.), under its previous order, the House adjourned until Monday, March 13, 2000, at 2 p.m.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, February 16, 2000.

Hon. J. DENNIS HASTERT,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to section 4(c)(4) of the Veterans Employment Opportunities Act of 1998 (''VEO'') (2 U.S.C. §1316a(4)) and section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. §1384(b)), I am submitting on behalf of the Office of Compliance, U.S. Congress, this advance notice of proposed rulemaking for publication in the Congressional Record. This advance notice seeks comment on a number of regulatory issues arising under section 4(c) of VEO, which affords to covered employees of the legislative branch the rights and protections of selected provisions of veterans' preference law.

Very truly yours,

GLEN D. NAGER,
Chair of the Board.

OFFICE OF COMPLIANCE

The Veterans Employment Opportunities Act of 1998: Extension of Rights and Protections Relating to Veterans' Preference Under Title 5, United States Code, to Covered Employees of the Legislative Branch

ADVANCE NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance (''Board'') invites comments from employing office, covered employees, and other interested persons on matters arising from the issuance of regulations under section 4(c)(4) of the Veterans Employment Opportunities Act of 1998 (''VEO''), Pub. L. 105–339, 112 Stat. 3186, codified at 2 USC §1316a.

The provisions of section 4(c) will become effective on the effective date of the Board regulations authorized under section 4(c)(4). VEO §4(c)(6). Section 4(c)(4) of the VEO directs the Board to issue regulations to implement section 4. Section 304 of the Congressional Accountability Act of 1995 (''CAA''), Pub. L. 104–1, 109 Stat. 3, prescribes the procedure applicable to the issuance of substantive regulations by the Board. Upon initial review, the Board has concerns that a plain reading of VEO may yield regulations that are the same as the regulations of the executive branch yet provide veterans' preference rights and protections to no currently ''covered employee'' of the legislative branch. If that is the case, questions arise over the nature and scope of the Board's authority to modify the regulations in order to achieve a more effective implementation of veterans' preference rights and protections to ''covered employees.''

The Board issues this Advance Notice of Proposed Rulemaking (''ANPR'') to solicit comments from interested individuals and groups in order to encourage and obtain participation and information in the development of regulations.

Dates: Interested parties may submit comments within 30 days after the date of publication of this Advance Notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, DC 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile machine to (202) 426–1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, DC, Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m. For further information contact: Executive Director, Office of Compliance at (202) 724–9250. This notice is also available in the following formats: large print, Braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Rick Edwards, Director, Central Operations Department, Office of the Senate Sergeant at Arms, (202) 224–2705.

Background

The Veterans Employment Opportunity Act of 1998[1] strengthen[s] and broadens''[2] the rights and remedies available to military veterans who are entitled, under the Veterans' Preference Act of 1944[3] (and its amendments), to preferred consideration in appointment to the federal civil service of the executive branch and in retention during reductions in force (''RIFs''). In addition, and most relevant to this ANPR, VEO affords to ''covered employees'' of the legislative branch (as defined by section 101 of the CAA (2 USC §1301)) the rights and protections of selected provisions of veterans' preference law. VEO §4(c)(2). The selected statutory sections made applicable to such legislative branch employees by VEO may be summarized as follows.

A definitional section prescribes the categories of military veterans who are entitled to preference (''preference eligible''). 5 USC §2108. Generally, a veteran must be disabled or have served on active duty in the Armed Forces during certain specified time periods or in specified military campaigns to be entitled to preference. In addition, certain family members (mainly spouses, widow[er]s, and mothers) of preference eligible veterans are entitled to the same rights and protections.

In the appointment process, a preference eligible individual who is tested or otherwise numerically evaluated for a position in the competitive service is entitled to have either 5 or 10 points added to his/her score, depending on his or her military service, or disabling condition. 5 USC §3309. Where experience is a qualifying element for the job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civic activities. 5 USC §3311. Where physical requirements (age, height, weight) are a qualifying element, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 USC §3312. For certain positions in the competitive service (guards, elevator operators, messengers, custodians), only preference eligible individuals can be considered for hiring, unless no one else is available. 5 USC §3310.

Finally, in prescribing retention rights during RIFs, the sections in subchapter I of chapter 35 of Title 5, USC, with a slightly modified definition of ''preference eligible,'' require that employing agencies give ''due effect'' to the following factors; (a) employment tenure (i.e., type of appointment); (b) veterans' preference; (c) length of service, and, (d) performance ratings. 5 USC §§3501, 3502. Such considerations also apply where RIFs occur in connection with a transfer of agency functions from one agency to another. 5 USC §3503. In addition, where physical requirements (age, height, weight) are a qualifying element for retention, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 USC §3504.

Section 4(c)(4)(A) of the VEO authorizes the Board of Directors of the Office of Compliance established under the CAA to issue regulations to implement section 4(c) of the VEO pursuant to the rulemaking procedures of section 304 of the CAA, 2 USC §1384. Pursuant to that authority, the Board invites comments before promulgating proposed rules under section 4 of the VEO.

Section 4(c)(4)(B) of the VEO specifies that these regulations ''shall be the same as substantive regulations (applicable with respect to the executive branch) promulgated to implement . . . [the referenced statutory provisions] . . . except to the extent that 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 section.'' Section 4(c)(4)(C) further states that the ''regulations issued under subparagraph (A) shall be consistent with section 225 of the Congressional Accountability Act of 1995 (2 USC §1361).''

Interpretative issues

The Board has identified and reviewed the regulations issued by the Office of Personnel Management (OPM) to implement the relevant provisions of the veterans' preference laws. These regulations are integrated into the body of personnel regulations in Title 5 of the Code of Federal Regulations (CFR) issued by OPM under its authority to oversee and regulate civilian employment in the executive branch. See 5 USC §§1103, 1104, 1301, 1302. The Board's review has raised a number of interpretative issues concerning the identity of legislative branch employees affected by the statute and regulations; potential legal and factual bases, if any, for modification of the regulations; and the scope of the Board's statutory authority to promulgate certain of the regulations in place in the executive branch. Before discussing those issues, the Board summarizes below the pertinent executive branch regulations which implement the statutory sections of veterans' preference law made applicable to covered legislative branch employees by VEO.

5 CFR Part 211 implements the definitional section, 5 USC §2108, declaring the requirements that a military veteran or his family member must meet to be considered ''preference eligible.''

5 USC §332.401 and §337.101 implement 5 USC §3309 which, in the appointment process, requires that a preference eligible individual who is tested or otherwise numerically evaluated for a position in the competitive service is entitled to have either 5 or 10 points added in his/her score.

5 CFR §337.101 also implements 5 USC §3311, which provides that, where experience is a qualifying element for the job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civic activities.

Subpart D of Part 330, 5 CFR, implements 5 USC §3310, which restricts to preference eligible individuals the positions of guards, elevator operators, messengers, and custodians in the competitive service.

5 CFR §339.204 and §339.306 implement 5 USC §3312, which provides that, where physical requirements (age, height, weight) are a qualifying element for an examination or appointment in the competitive service, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances.

Finally, Part 351 of 5 CFR implements those provisions of subchapter I of chapter 35 of 5 USC, which prescribed retention rights during RIFs, including those instances where an agency function is transferred to another agency.

First. The statutory rights and protections that are applicable under VEO envision that veterans' preference is to be accorded in appointments to the ''competitive service.'' This presents an interpretative issue for the Board in proposing regulations that ''are the same'' as those in the executive branch because there is a substantial question whether any covered employee, as defined by VEO §4(c)(1), encumbers a position in the ''competitive service.'' The ''competitive service,'' as the term is used in the relevant statutes, is not a generic term descriptive of any personnel system in which applicants vie for appointment. Rather, the competitive service is an integral, specifically defined component of the federal civil service system, in which, for over a century, appointment to employment (mainly in the executive branch) has been determined through competitive examinations.

In the competitive service, Congress has prescribed that the ''selection and advancement shall be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition.'' 5 USC §2301(b)(1). Toward this end, Congress gave the President the authority to prescribe rules ''which shall provide, as nearly as conditions of good administration warrant,for * * * open, competitive examinations for testing applicants for appointment in the *competitive service.* * * *'' 5 USC §3304(a)(1) (emphasis supplied). In addition, OPM has been granted authority, ''subject to rules prescribed by the President under this title for the administration of the competitive service, [to] prescribe rules for, control, supervise, and preserve the records of, examinations for the competitive service.'' 5 USC §1302(a).

In this setting, the ''competitive service'' has a specific meaning. Congress has enacted a three-fold definition: First, the competitive service consists of ''all civil service positions in the *executive branch,*'' with exceptions for (a) positions specifically excepted from the competitive service by statute (known as the excepted service[4]); (b) positions requiring Senate confirmation, and (c) positions in the Senior Executive Service.[5] 5

[1] Pub. L. 105–339 (Oct. 31, 1998).

[2] Sen. Rept. 105–340, 105 Cong., 2d Sess. at 19 (Sept. 21, 1998).

[3] Act of June 27, 1944, ch. 287, 58 Stat. 387, amended and codified in various provisions of Title 5, USC.

[4] Generally, these are positions that are excepted by law, by executive order, or by the action of OPM placing a position or group of positions in what are known as excepted service Schedules A, B, or C. For example, certain entire agencies such as the Postal Service, the Federal Bureau of Investigation, and the Central Intelligence Agency are excepted by law. In other cases, certain jobs or classes of jobs in an agency are excepted by OPM. 5 CFR Part 213. This includes attorneys, chaplains, student trainees, and others.

[5] These generally are high-level, managerial positions in the executive department whose appointment does not require Senate confirmation. See 5 USC §3123(a)(2), which defines the term ''Senior Executive Service position.''

USC §2102(a)(1)(A)–(C) (emphasis added). Second, the competitive service includes ''civil positions not in the executive branch which are specifically included in the competitive service by statute.'' 5 USC §2102(a)(2). Third, the competitive service encompasses those ''positions in the government of the District of Columbia which are specifically included in the competitive service by statute.'' 5 USC §2102(a)(3).

Arguably, the Board should take these statutory definitions into account in promulgating regulations. Under VEO, the regulations issued by the Board must be consistent with section 225 of the CAA (2 USC §1361), which in part requires as a rule of construction that, except where inconsistent with definitions and exemptions provided in the CAA, the definitions and exemptions in the laws made applicable by the CAA shall also apply. Applying this rule of construction to the foregoing definitions arguably yields the following conclusions. The first definition may not be relevant because legislative branch employees are not part of the executive branch. Similarly, the third definition may not be relevant because it pertains to employees of the government of the District of Columbia. In contrast, the second definition is arguably relevant because it includes ''civil positions not in the executive branch,'' within which category falls the legislative branch (and the judicial branch). However, upon an initial review of those legislative offices in which ''covered employees'' as defined by VEO can be employed,[6] it may be that no ''covered employee'' in the legislative branch satisfies the qualification in the second definition that the job position be ''specifically included in the competitive service by statute.'' Accordingly, insofar as the state authorizes the board to propose substantive regulations that are the same as the regulations of the executive branch, the Board could end up proposing regulations that apply to no one.

On the other hand, VEO mirrors the rulemaking provisions of the CAA in directing the Board upon good cause shown to modify executive branch regulations if it would be more ''effective for the implementation of rights and protections'' made applicable to covered employees.[7] Under this approach, the statute may authorize proposing modifications of the executive branch regulations to take account of the void in competitive service positions for covered employees. In other words, if the regulations are essentially ineffective because in practice they afford rights and protections to no one, should the Board authorize modifications that make them effective by applying the rights and protections of veterans' preference laws to some arguably analogous employees? If so, as a factual and legal matter, what modifications to the regulations does the statute authorize?

Second. While the applicable statutory appointment provisions (5 USC §§3309–3312) are directed with particularity to the competitive service, the applicable statutory retention provisions (5 USC chapter 35, subchapter I) with one exception are not. Section 3501(b) states that subchapter I ''applies to each employee in or under an Executive agency'' without singling out the competitive service for specific coverage. Only §3504, which provides for waiver of physical requirements (including age, height, weight) for job retention purposes, is directed specifically to competitive service positions. Nonetheless, OPM has written major portions of the implementing regulations (found principally in 5 CFR Part 351) in terms of the competitive service and the excepted service. See, e.g., 5 CFR §351.501 (order of retention for competitive service), §351.502 (order of retention for excepted service). Were the Board simply to propose regulations that are the same as the executive branch's without modifications, there may not be any covered employees in the legislative branch who are in the competitive service or the excepted service, as defined by statute and regulation. Therefore, once again the issue of whether the statute authorizes a modification of these regulations arises.

Third. A survey of the regulations indicates that some of the rules promulgated by OPM[8] derive not from the statutory sections concerning veterans' preference that have been made applicable to the legislative branch through VEO but from OPM's overarching statutory authority to regulate and supervise civilian employment policies and practices in the executive branch pursuant to 5 USC §§1302–04. This latter supervisory authority arguably has not been bestowed upon the Board with respect to personnel management in the legislative branch. Therefore, a question is presented whether the Board's authority over veterans' preference is coextensive with OPM's authority to regulate personnel management in the executive branch. The Board must identify what parts of the veterans' preference regulations are an exercise of OPM's supervisory authority that arguably has not been bestowed upon the Board with respect to personnel management in the legislative branch, or determine that the statute authorizes the Board to exercise authority coextensive with OPM's authority to promulgate regulations governing the statutory sections made applicable through VEO.

Fourth. There is some indication that the Senate Committee on Veterans' Affairs was aware of the problem of applying the rights and protections of veterans' preference, including the regulations, to the legislative branch. The Senate Committee Report that accompanied the VEO bill included the following comment: ''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.*''[9]

But in enacting the legislation Congress took no further steps to codify this precatory statement nor did it (or the Committee) provide any explanation of the intent of this highly general comment.[10] Therefore, the question is presented whether the statute requires the creation of ''systems that are consistent with the underlying principles of veterans' preference laws''? If so, how is this to be effectuated? If not, what effect if any does this Committee comment have?

Fifth. By virtue of the selectivity with which Congress made veterans' preference laws applicable, there are regulations relating to veterans' preferences in Title 5 CFR that are not being considered because they are linked to statutory provisions not made applicable by VEO. Examples include regulations in Part 302 pertaining to the excepted service,[11] which were promulgated to implement 5 USC §3320; those regulations in Part 332 that implement 5 USC §3314 and §3315, which afford rights to preference eligible individuals who either have resigned or have been separated or furloughed without delinquency or misconduct; and those regulations in Subpart D of Part 315 that implement 5 USC §3316, which addresses the reinstatement rights of preference eligible individuals. The task of promulgating regulations that are the ''same'' as those of the executive branch will entail in part identifying and excluding those whose statutory underpinning has not been made applicable by VEO to the legislative branch.

Request for comment

In order to promulgate regulations that properly fulfill the directions and intent of these statutory provisions, especially in light of the foregoing analysis, the Board needs comprehensive information and comment on a variety of topics. The Board has determined that, before publishing proposed regulations for notice and comment, it will provide all interested parties and persons with this opportunity to submit comments, with supporting data, authorities and argument, as to the content of and bases for any proposed regulations. The Board wishes to emphasize, as it did in the development of the regulations issued to implement sections 202, 203, 204, 205, and 220 of the CAA, that commentors who propose a modification of the regulations promulgated by OPM for the executive branch, based upon an assertion of ''good cause,'' should provide specific and detailed information and the rationale necessary to meet the statutory requirements for good cause to depart from the executive branch's regulations. It is not enough for commentors simply to propose a revision to the executive branch's regulations or to request guidance on an issue; rather, if commentors desire a change in the executive branch's regulations, they must explain the legal and factual basis for the suggested change. The Board must have these explanations and information if it is to be able to evaluate proposed regulations and make proposed regulatory changes. Failure to provide such information and authorities will greatly impede, if not prevent, adoption of proposals suggested by commentors.

So that it may make more fully informed decisions regarding the promulgation and issuance of regulations, in addition to inviting and encouraging comments on all relevant matters, the Board specifically requests comments on the following issues:

(1) What positions, if any, of the legislative branch encumbered by ''covered employees''

[6] The definition of ''covered employee'' under section VEO §4(c)(1) has the same meaning as the term under section 101 of the CAA, 2 USC §1302, which includes any employee of the House of Representatives, the Senate, the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, or the Office of Technology Assessment. Under VEO §4(c)(5), the following employees are excluded from the term ''covered employee'': (A) presidential appointees confirmed by the Senate, (B) employees appointed by a Member of Congress or by a committee or subcommittee of either House of Congress, and (C) employees holding positions the duties of which are equivalent to those in Senior Executive Service.

[7] Compare VEO §4(c)(3)(B) with CAA §§202(d)(2), 203(c)(2), 204(c)(2), 205(c)(2), 206(c)(2), 210(e)(2), 215(d)(2), 220(d)(2)(A).

[8] See, e.g. 5 CFR §351.205 (''The Office of Personnel Management may establish further guidance and instructions for planning preparation, conduct and review of reduction in force through the Federal Personnel Manual System. OPM may examine an agency's preparations for reduction in force at any stage.'').

[9] Sen. Rept. 105–340, 105 Cong., 2d Sess. at 17 (Sept. 21, 1998).

[10] Compare Administrative Office of the United States Courts Personnel Act of 1990, Pub. L. 101–474, 104 Stat. 1097, §3. Individuals in this office of the judicial branch are afforded the right to veterans' preference ''in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.'' §3(a)(11). However, the Congress also empowered the Director of the Administrative Office to establish by regulation a personnel management system that parallels many of the features of the executive branch's personnel system regulated by OPM. VEO contains no comparable provisions giving similar powers to the Board or any other legislative branch entity.

[11] For a description of the ''excepted service,'' see note 4 infra.

(as defined by §4(c)(1) of VEO) fall within the meaning of the ''competitive service'' as the latter term is used in 5 USC §§3309–3312?

(2) In the absence of any such ''competitive service'' positions in the legislative branch, what, if any, positions held by ''covered employees'' are subject to a merit-based system of appointment (which may include examinations, testing, evaluation, scoring and such other elements that are common to the ''competitive service'' of the executive branch)?

(3) Does VEO authorize the Board to extend the rights and protections of veterans' preference for purposes of appointment to those positions identified in (2) above notwithstanding they are not technically ''competitive service'' positions?

(4) In order to provide for effective implementation of veterans' preference rights, could the Board, under the ''good cause'' provision of §4(c)(4)(B) and VEO, modify the most relevant substantive regulations of the executive branch pertaining to veterans' preference in the appointment of ''covered employees'' so as to make them applicable to the legislative branch without reference to the ''competitive service''?

(5) How would the rights and protections of subchapter I of chapter 35, Title 5 USC (pertaining to retention during RIFs), be applied to ''covered employees'' (as defined by §4(c)(1) of VEO)?

(6) Does VEO authorize the Board to extend the rights and protections of veterans' preference for purposes of retention during reductions in force to ''covered employees'' holding positions that are not technically within the ''competitive service'' or the ''excepted service''?

(7) In order to provide for effective implementation of veterans' preference rights, could the Board, under the ''good cause'' provision of §4(c)(4)(B) of VEO, modify the most relevant substantive regulations of the executive branch pertaining to veterans' preference in the retention of ''covered employees'' during reductions in force so as to make them applicable to the legislative branch without reference to the ''competitive service'' or the ''excepted service''?

(8) In view of the fact that VEO does not explicitly grant the Board the authority exercised by OPM under 5 USC §§1103, 1104, 1301 and 1302 to execute, administer, and enforce the federal civil service system, does the Board have the authority to propose regulations that would vest the Board with responsibilities similar to OPM's over employment practices involving covered employees in the legislative branch?

(9) Is the Board empowered by the statute to give effect to the comment in the legislative history that employing offices of the legislative branch should ''create systems that are consistent with the underlying principles of veterans' preference laws,'' as discussed by the Senate Report accompanying the bill enacted as VEO (Sen. Rept. 105–340, 105th Cong., 2d Sess., at 17 (Sept. 21, 1998)? If so, how should such effect be given?

(10) Under VEO, what steps, if any, must employing offices of the legislative branch take to ''create systems that are consistent with the underlying principles of veterans' preference laws,'' as discussed by the Senate Report accompanying the bill enacted as VEO (Sen. Rept. 105–340 (105th Cong., 2d Sess. Sept. 21, 1998), at 17)?

(11) With respect to positions restricted to preference eligible individuals under 5 USC §3310, namely guards, elevator operators, messengers, and custodians, the Board seeks information and comment on the following issues and questions:

(a) The identity, in the legislative branch, of guard, elevator operator, messenger, and custodian positions within the meaning of these terms under 5 USC §3310.

(b) The identity of covered employing offices responsible for personnel decisions affecting employees who fill positions of guard, elevator operator, messenger, and custodian within the meaning of 5 USC §3310 and the implementing regulations.

(c) Would police officers and other employees of the United States Capitol Police be considered ''guards'' under the application of the rights and protections of this section to covered employees under VEO?

(d) Whether the current methods of hiring include an entrance examination within the meaning of 5 CFR §330.401 and, if not, whether the affected employing offices believe that the statute mandates the creation of such an examination and/or allows such an examination to be required of the employing offices?

(e) What changes, if any, in the regulations are required to effectuate the rights and protections of 5 USC §3310 as applied by VEO?

(12) Which executive branch regulations, if any, should not be adopted because they are promulgated to implement inapplicable statutory provisions of veterans' preference law or are otherwise inapplicable to the legislative branch?

(13) What modification, if any, of the executive branch regulations would make them more effective for the implementation of the rights and protections made applicable under VEO as provided by VEO §4(c)(4)(B)?

Signed at Washington, DC, on this 16th day of February, 2000.

GLEN D. NAGER,
Chair of the Board,
Office of Compliance.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

6520. A letter from the Under Secretary, Research Education, and Economics, Department of Agriculture, transmitting the Department's final rule —Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds (RIN: 0584–AA23) received February 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6521. A letter from the Under Secretary, Acquisition and Technology, Department of Defense, transmitting the annual report detailing test and evaluation activities of the Foreign Comparative Testing Program during FY 1999, pursuant to 10 U.S.C. 2350a(g); to the Committee on Armed Services.

6522. A letter from the Assistant Secretary of Defense, Health Affairs, Department of Defense, transmitting Final Report Chiropractic Health Care Demonstration Program; to the Committee on Armed Services.

6523. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the 2000 ''International Narcotics Control Strategy Report,'' pursuant to 22 U.S.C. 2291(b)(2); to the Committee on International Relations.

6524. A letter from the Acting Deputy Associate Administrator for Acquisition Policy, Office of Governmentwide Policy, GSA, Department of Defense, transmitting the Department's final rule—Federal Acquisition Regulation; Foreign Acquisition (Part 25 Rewrite) [FAC 97–15; FAR Case 97–024; Item II] (RIN: 9000–AH30) received January 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

6525. A letter from the Director, Executive Office of the President, Office of Administration, transmitting the Integrity Act reports for each of the Executive Offices of the President, as required by the Federal Managers' Financial Integrity Act; to the Committee on Government Reform.

6526. A letter from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2000 [I.D. 122299B] received January 21, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6527. A letter from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Pacific Yellow Tuna Fisheries; Closure of U.S. Purse Seine Fishery for Yellowfin Tuna in the Eastern Pacific Ocean [Docket No. 991207319–9319–01; I.D. 120899A] received January 21, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6528. A letter from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Gulf of Alaska [Docket No. 991223348–9348–01; I.D. 122399A] received January 21, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6529. A letter from the Chief Justice, Supreme Court of the United States, transmitting a copy of the Report of the Proceedings of the Judicial Conference of the United States, held in Washington D.C., on September 15, 1999, pursuant to 28 U.S.C. 331; to the Committee on the Judiciary.

6530. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Establishment of Class E Airspace; Garrison, ND [Airspace Docket No. 99–AGL–51] received February 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6531. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Amendment to Class E Airspace; Burlington, VT [Airspace Docket No. 99–ANE–93] received February 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6532. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Amendment to Class E Airspace; Burlington, VT [Airspace Docket No. 99–ANE–94] received February 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6533. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Amendment to Class E Airspace; O'Neill, NE [Airspace Docket No. 99–ACE–55] received February 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6534. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Amendment to Class E Airspace; Grand Island, NE [Airspace Docket No. 99–ACE–56] received February 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6535. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Amendment to Class E Airspace; Ord, NE [Airspace Docket No. 00–ACE–2] received February 24, 2000, pursuant to 5 U.S.C. 801(a)(1)(A); to the