AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

105TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 105–40, Part 1

VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997

MARCH 20, 1997.—Ordered to be printed

Mr. BURTON, from the Committee on Government Reform and Oversight, submitted the following

R E P O R T

[To accompany H.R. 240]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 240) to amend title 5, United States Code, 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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

		Page
I.	Background and Need for the Legislation	9
II.	Legislative Hearings and Committee Actions	13
III.	Committee Hearings and Written Testimony	13
IV.	Explanation of the Bill	16
V.	Compliance with Rule XI	19
VI.	Budget Analysis and Projections	19
VII.	Cost Estimate of the Congressional Budget Office	20
VIII.	Specific Constitutional Authority for this Legislation	22
IX.	Changes in Existing Law	22
X.	Committee Recommendation	34
XI.	Congressional Accountability Act; Public Law 104–1	34

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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:

39–006

"(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 provi-

sions 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) 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.

SHORT SUMMARY OF LEGISLATION

H.R. 240, as amended, strengthens veterans' preference and increases employment opportunities for veterans. It permits preference eligibles and certain other veterans to overcome artificial restrictions on the scope of competition for announced vacancies, establishes an effective redress system for veterans who believe their rights have been violated, makes knowing violations of veterans' preference laws a prohibited personnel practice, provides preference eligibles with increased protections during reductions in force (RIF), requires agencies to establish priority placement programs for employees affected by a RIF and apply veterans' preference when rehiring from the list, extends veterans' preference to certain positions at the White House and in the legislative and judicial branches of government, requires the Federal Aviation Administration to apply veterans' preference in reductions in force, and provides veterans' preference eligibility for service in Bosnia, Croatia, and the Former Yugoslav Republic of Macedonia.

I. BACKGROUND AND NEED FOR THE LEGISLATION

In general, veterans preference laws give certain veterans preference in appointment to civilian employment with the Federal Government based upon their military service. Congress has long recognized that this is an earned benefit, not a gift.

The statutory basis for today's veterans preference is the Veterans' Preference Act of 1944, as subsequently amended. Under that Act, veterans are given "augmented scores" of 5 or 10 points, depending upon their status, in examinations for employment and retention preference in the event of a reduction in force. The Act also prohibited adverse actions against veterans without "cause" and required certain due process protections, such as notice and an opportunity to be heard, as well as appeals.

The Subcommittee on the Civil Service has held two hearings related to this subject. The first hearing, which examined veterans' preference in the Federal workplace, was held during the 104th Congress on April 30, 1996. The second hearing was held on February 26, 1997 to examine H.R. 240.

Testimony at these hearings revealed that veterans' preference in the Federal workplace is often ignored or circumvented and that its continued viability is threatened on several fronts.

Veterans' employment in the Federal workforce is declining at a rapid rate. Indeed, the government is approaching historically low levels since the implementation of veterans' preference. Although 27.5% of the government's employees are veterans, as recently as 1984, veteran representation in the Federal work force was nearly

38%. Veterans have borne a disproportionate brunt of the government's downsizing. In part, this reflects the concentration of veterans in the very defense-related agencies that account for the vast majority of the recent downsizing. The Office of Personnel Management's (OPM) figures show that in September 1996, 65% of all veterans were employed in the three military departments and two other agencies. (In comparison, these agencies accounted for only 54% of the overall Federal civilian workforce.) It may also reflect the greater average age of veterans, who account for over 50% of all retirements from Federal civil service in the last five years. OPM's data also show that the percentage of veterans in the workforce of some agencies, such as the Department of Education and the Department of Health and Human services, is far below the governmentwide figure.

THREATS TO VETERANS PREFERENCE.

Many in the veterans community have cited a variety of strategies recently used by agencies that threaten veterans' preference, whether that is their intended effect or not. A prime example is increased usage of single position competitive levels [1] in RIFs. In addition, evidence suggests a deep-rooted resistance to veterans' preference in the bureaucracy. A 1992 GAO study of veterans' preference revealed that certificates (the list of candidates from which agencies may hire) headed by a veteran entitled to preference were returned unused at almost 1.4 times the return rate of certificates headed by nonveterans.[2] According to another GAO study, one quarter of selecting officials who returned a certificate unused to their personnel office in 1992 did so when they could not hire the candidate they wanted because a preference-eligible [3] veteran was ranked higher.[4]

The use of single-position competitive levels poses a threat to veterans' preference because it effectively eliminates the preference eligible's ability to compete for retention at his or her grade level. The case of John Davis, a decorated Vietnam veteran who testified at the subcommittee's April 30, 1996 hearing, provides an example. Mr. Davis was placed in a single-position competitive level during a RIF at the Army Corps of Engineers, and consequently released from his position. Many in the veterans' community believe the use of this device undercut Mr. Davis's veterans' preference rights,

[1] A "competitive level" consists of all positions in the "competitive area" that are essentially interchangeable. Jobs are considered interchangeable if they are in the same grade level and classification series and the individuals holding them could move from one position to another "without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee." A "competitive area" is the organizational unit and geographic area in which a RIF is conducted.

[2] GAO, Federal Hiring: Does Veterans' Preference Need Updating?, (March 1992), at 27. 70.6% of certificates headed by veterans were returned unused versus only 50.8% of those headed by nonveterans.

[3] "Preference eligibles" are veterans entitled to preference. The term is defined to mean disabled veterans, those who served in the military during wars, during specified periods of time, or in a campaign or expedition for which a campaign badge has been authorized. In addition, under certain circumstances, the spouses of disabled veterans, unmarried widows or widowers of veterans, and the mothers of individuals killed while in the military or of individuals with service-connected permanent and total disabilities are considered "preference eligibles." Special rules also apply to military retirees. 5 U.S.C. §§ 2108, 3501.

[4] GAO, Federal Hiring: Reconciling Managerial Flexibility With Veterans' Preference, at 32 (June 1995).

even though both the Merit Systems Protection Board and the U.S. Court of Appeals for the Federal Circuit upheld the agency's action.

On occasions the use of single-position competitive levels is appropriate because positions are so truly unique that employees cannot move between them without disrupting productivity. However the potential for abuse is always present, and agencies can use them to target individual employees and circumvent veterans' preference. Unfortunately, use of this device has proliferated in recent years. For example, in a RIF recently conducted by the U.S. Geological Survey 97.2% of 1,100 scientific or technical positions were placed in unique competitive levels.

The Committee also believes it is necessary to provide eligible veterans with stronger rights to move into other positions if they are released from their own jobs during a RIF. Again, the John Davis cases illustrates why such increased protection is necessary. In that case, the evidence shows that before it conducted the RIF the agency actually restructured some positions to allow other employees to qualify for them and escape the RIF.[5]

This legislation addresses these problems by making it more difficult for agencies to place preference eligibles in single-position competitive levels. Under it, preference eligibles cannot be placed in such a competitive level if by reason of their education, training, or experience a reasonable person could conclude they would be able successfully to perform another job at the same grade and in the same competitive level within 150 days. In such cases, the preference eligible is to be placed in another competitive level for which he or she qualifies. And if the preference eligible qualifies for more than one competitive level, he or she is entitled to be placed in the competitive level with the most positions. In addition, the legislation provides preference eligibles with enhanced assignment rights to other positions and requires agencies to establish priority placement programs for preference eligibles who are separated or scheduled to be separated as a result of a RIF.

EQUAL ACCESS FOR VETERANS

Not all of those who have served in the military are entitled to veterans preference, even though they are commonly thought of as veterans. Only those who meet the statutory definition of "preference eligible" are entitled to veterans preference. Today, most become eligible for veterans' preference by receiving a campaign badge. Consequently, many who have served in the armed forces do not have an advantage when competing for Federal jobs. Even worse, however, because agencies frequently restrict competition for positions to "status" candidates (primarily those who are already Federal civilian employees) or, more narrowly, to those in the agency's own workforce, these veterans are excluded from competition for many government jobs.

The Committee believes this is wrong. In his memorial day speech at Arlington National Cemetery on May 27, 1996, President Clinton observed, "As we honor the brave sacrifices in battle that grace our nation's history, let us also remember to honor those who

[5] *Davis* v. *Department of the Army,* DC–0351–93–0543–I–2, initial decision at 15 (MSPB February 4, 1994).

served in times of peace, who preserve the peace, protect our interests and project our values. Though they are the best-trained, best-equipped military in the world, they, too, face their share of dangers." Accordingly, the Committee believes that it is incumbent upon the Federal Government to recognize the valuable Federal service those veterans have performed.

In order to address this problem, the legislation provides that preference eligibles and other veterans who have served honorably for at least three years cannot be prevented from competing for government jobs because they do not have "status" or are not employees of the hiring agency. This section of the bill (section 2) does not confer a preference on anyone not otherwise entitled to one. Agencies are also permitted to hire from a re-employment priority list consisting solely of surplus and displaced employees without outside competition.

This bill does not interfere with collectively bargained job bidding and assignment procedures in the Postal Service. It is not the Committee's intent to interfere with the reassignment or transfer rights of postal employees. The Committee recognizes that such employees have the right to transfer to new locations, and that individuals who suffer involuntary reassignment continue to be protected under the respective collective-bargaining agreements. The Committee also recognizes that postal employees who suffer job-related disabilities have the right to "limited duty" positions, and individuals who are injured off the job have the right to "light duty" positions. This bill is not intended to impair or diminish these rights.

LACK OF AN ADEQUATE REDRESS MECHANISM

Compounding the concerns of many veterans and veterans groups is the lack of an adequate redress mechanism for veterans whose rights are violated. There is a widespread consensus in the veterans' community that existing redress procedures do not provide real relief to affected veterans. Indeed, testimony at the subcommittee's hearings identified this as the central defect in veterans' preference today.

H.R. 240 corrects this problem by creating an effective, yet user-friendly redress system for veterans. Veterans who believe their veterans' preference rights or their right to compete for positions under this Act have been violated may file a complaint with the Secretary of Labor. The Secretary is to investigate and attempt to resolve the complaint under procedures established in the Uniformed Services Employment and Reemployment Rights Act of 1994. The complainant may file an appeal with the Merit Systems Protection Board if the Secretary is unable to resolve the complaint or to do so within 60 days. The veteran is required to exhaust administrative remedies before the Board for a period of at least 120 days. However, after 120 days, but before the Board has issued a judicially reviewable decision on the merits of the case, the veteran may terminate the administrative proceeding and file a complaint in an appropriate United States district court. Under this procedure, a veteran can escape the administrative process if it becomes mired down, but cannot engage in forum shopping or obtain more than "one bite at the apple."

In addition, under this bill knowing violations of veterans' preference become a prohibited personnel practice for the purpose of disciplinary actions. This authorizes the Special Counsel to file a complaint against an employee who is alleged to have knowingly violated veterans' preference laws with the Merit Systems Protection Board. If the Merit Systems Protection Board sustains these allegations, the employee is subject to penalties that include removal, suspension, or a $1,000 fine.

OTHER CONCERNS

Many positions at the White House and in the legislative and judicial branches of government are not covered by current veterans' preference laws. The Committee believes this is wrong. The debt our Nation owes to those who have fought its battles should be acknowledged by all branches of government. Accordingly, the legislation applies veterans' preference to nonpolitical positions in the White House and the legislative branch, as well as to many positions in the judicial branch.

Under the Department of Transportation and Related Agencies Appropriations Act of 1996, the Federal Aviation Administration was permitted to establish an alternative personnel system. Although that Act required the FAA to follow veterans' preference in hiring, it did not require it to do so in RIFs. This has been of great concern to many veterans at the FAA, and the Committee believes there is no reason to deprive those veterans of the preference in RIFs they have earned. Accordingly, the legislation requires the FAA to observe veterans' preference in RIFs.

Finally, this legislation also extends veterans' preference to those who serve in Bosnia, Croatia, and the Former Yugoslav Republic of Macedonia.

II. Legislative Hearings and Committee Actions

H.R. 240 was introduced on January 7, 1997 by the Honorable John L. Mica (R–FL), Chairman of the House Subcommittee on the Civil Service. The bill was referred to the Committee on Government Reform and Oversight on January 7, 1997, and it was referred to the Subcommittee on the Civil Service on January 22, 1997. The subcommittee held a hearing and mark up on February 26, 1997. No amendments were offered, and the measure was ordered favorably reported to the full Committee by a voice vote. On March 12, 1997, the Committee on Government Reform and Oversight met to consider the bill. Representative Mica offered an amendment in the nature of a substitute, which was approved by voice vote. The Committee favorably reported the bill, as amended, to the full House by voice vote.

III. Committee Hearings and Written Testimony

On February 26, 1997, the Subcommittee on the Civil Service held formal hearings on H.R. 240. Witnesses at that hearing were the Honorable James B. King, Director of the Office of Personnel Management; Emil Naschinski, Assistant Director, National Economics Commission, The American Legion; Sidney Daniels, Director, National Veterans Employment Assistance Service, Veterans of

Foreign Wars of the United States; Charles L. Calkins, National Executive Secretary, The Fleet Reserve Association; Larry D. Rhea, Deputy Director of Legislative Affairs, Non Commissioned Officers Association of the United States of America. In addition, a written statement was submitted by Ronald W. Drach, National Employment Director, Disabled American Veterans.

Director King emphasized the Administration's strong support for the principle of veterans' preference and agreed that "[s]trengthening employment opportunities for veterans is a worthy goal." He lauded the success of the Clinton Administration in hiring veterans during a time of government downsizing. Director King also indicated that he had suggested to veterans's service organizations an alternative to H.R. 240's RIF provisions. That alternative would have allowed unlimited "bumping" and "retreating" rights for veterans only. However, he also indicated that he would support any approach that the organizations believed would work towards the goal of strengthening veterans' preference in RIFs. Finally, Director King recommended that Congress allow OPM sufficient time to promulgate regulations implementing any changes in RIF laws and to prevent against the disruption of RIFs that are underway on the effective date of the legislation.

Mr. Naschinski testified that The American Legion supports H.R. 240, which he called "long overdue." He emphasized the importance of the bill's redress mechanism to veterans in providing an "effective, efficient and user friendly" appeals system for veterans. The American Legion, according to Mr. Naschinski, "firmly believes that the major problem with veterans' preference is that veterans do not have an adequate redress system for instances of discrimination." The American Legion also supports the bill because it would protect veterans from such unfair personnel practices as single-person competitive levels during RIFs and would provide veterans with enhanced opportunities to find another job if RIFed. Mr. Naschinski also took issue with the claim that veterans' preference is unfair to women and minorities, pointing out that it is completely neutral with regard to the veterans' gender and ethnicity. He also testified that the percentage of minorities serving in the armed forces is double the percentage of minorities in the population. Finally, Mr. Naschinski emphasized that veterans are among the more stable and productive members of society, being familiar with leadership and having an excellent work record.

Mr. Daniels testified that the VFW strongly supports H.R. 240, which is a priority item on the organization's legislative agenda for 1997. In the view of the VFW, this legislation is especially important to veterans who may be facing job loss due to continuing downsizing of the Federal Government. In particular, the VFW supports the legislation's curbs on the use of single-position competitive levels and enhanced assignment rights for preference eligibles, which will discourage the use of "designer RIFs" that threaten veterans' preference. Mr. Daniels also testified that the equal access provisions of the bill will greatly assist many highly qualified veterans who are potential candidates for Federal employment to apply and compete for Federal jobs. Allowing qualified veterans to compete for jobs that are currently open only to insiders, he emphasized, will not only result in more women and minority veter-

ans obtaining employment, but also increase the pool of highly qualified candidates and enhance the overall quality of the Federal workforce. The VFW also fully supports the redress mechanism in the legislation and making violations of veterans' preference a prohibited personnel practice in all Federal agencies.

Mr. Calkins testified that the Fleet Reserve Association supports this legislation because it reinforces the Nation's commitment to its veterans. He testified that while some Federal agencies support veterans' preference in principle, they circumvent it in practice and answer to no one. He pointed out that an unsuccessful applicant who suspects discrimination based on race, sex, or religion can appeal to the Equal Employment Opportunity Commission for a remedy, but a bypassed veteran now has no similar recourse. The Fleet Reserve Association also supports making violations of veterans' preference a prohibited personnel practice for disciplinary purposes because it strengthens the enforcement of veterans' preference laws. Mr. Calkins also rebutted the argument that veterans' preference is unfair to women and minorities by pointing out that more women and minorities are now recruited for the armed services and that women are no longer restricted to traditional roles outside of the combat theater.

Mr. Rhea testified that enacting this legislation is a high priority of the Non Commissioned Officers Association (NCOA). The NCOA believes this bill will provide key ingredients that have been missing from veterans' preference law for 50 years, an adequate and fair enforcement mechanism and protection for veterans during RIFs. Veterans' preference, Mr. Rhea testified, has become an "'unfilled earned right' simply because veterans' preference laws lack an effective enforcement mechanism." He also emphasized that veterans' preference creates a preference based upon honorable military service for veterans of either sex.

In his written statement, Mr. Drach emphasized the support of the Disabled American Veterans for the legislation's equal access provisions and redress mechanism. With respect to the equal access provision, he pointed out that veterans were in fact Federal employees while in the military and made many personal sacrifices to be a Federal employee. Accordingly, the legislation appropriately prevents agencies from barring many veterans from competing for civilian jobs simply because they are not currently civilian employees. He also argued that neither veterans nor veterans' service organizations have ever had access to a meaningful redress system and characterized the redress mechanism established in this bill as an "extremely important provision."

During the previous Congress the subcommittee held a hearing on April 30, 1996 to examine whether the employment preferences accorded veterans by law are being faithfully applied by the Federal Government and ways in which opportunities can be improved. The testimony from that hearing is described in House Report 104–675.

IV. Explanation of the Bill as Reported: Section-by-Section Analysis

SECTION 1. SHORT TITLE

The short title of this Act is "The Veterans' Employment Opportunities Act of 1997."

SECTION 2. EQUAL ACCESS FOR VETERANS

Subsection (a) amends 5 U.S.C. § 3304 by adding a new subsection (f), which provides that a preference eligible or a veteran who has been honorably discharged after three years' service in the armed forces may not be barred from competition for announced vacancies in the competitive or excepted service because he or she has not acquired competitive status or is not an employee of a particular agency. However, agencies are not prohibited from filling vacant positions solely from a priority placement list consisting of former employees who were separated from the agency due to a reduction in force and surplus employees.

Subsection (b) amends 5 U.S.C. § 3327 to require OPM to maintain and publicize to state employment services all vacancies for which a veteran may apply under this section.

Subsection (c) amends 5 U.S.C. § 3330(b) to require OPM to maintain a comprehensive governmentwide list of vacant positions for which veterans may apply and to make clear that OPM may contract for this function.

Subsection (d) makes clear that the provisions of this section do not interfere with the filling of vacancies under collectively bargained job bidding and assignment procedures in the Postal Service. Such collectively bargained rights of postal employees as the right to transfer to new locations, the right to be protected under the respective collective-bargaining agreements in the event of an involuntary reassignment, rights to "limited duty" or "light duty" positions, and promotions of part time flexible employees are not impaired or diminished.

SECTION 3. SPECIAL PROTECTIONS FOR PREFERENCE ELIGIBLES IN REDUCTIONS IN FORCE

Subsection (a). This subsection provides special protections for preference eligible employees when their agency is conducting a RIF. Because Congress recognizes that single-position competitive levels pose a threat to veterans' preference in RIFs, agencies are prohibited from placing any position occupied by a preference eligible in such a competitive level if the preference eligible is qualified (as defined in this Act) to perform the essential functions of any other position at the same grade and in the same competitive area. In such cases the preference eligible is entitled to be placed in another competitive level, and if the preference eligible is qualified for more than one other competitive level, he or she is entitled to be placed in the competitive level containing the most positions.

Preference eligibles are also provided enhanced assignment rights. A preference eligible whose current or most recent performance rating is fully successful or better shall have assignment rights to:

(1) any position for which he or she is qualified (as defined in this Act) at the same grade level within the agency conducting the RIF that is in the commuting area and that is currently held by someone (other than another preference eligible) who was placed in the position within six months before the reduction in force if, within 12 months prior to such placement, that person had been employed in the same competitive area as the preference eligible;

(2) any position in the competitive area for which the preference eligible is qualified (as defined in this Act) and that is then held by an individual, other than another preference eligible, who was placed in the position within 6 months before the RIF; or

(3) any position in the competitive area that is not more than 3 grades or pay levels (5 grades or pay levels in the case of a preference eligible with a service-connected disability of 30% or more) below the position from which the preference eligible was released. The special test for determining qualifications defined in this Act does not apply in this situation.

These assignment rights are in addition to any assignment rights positions prescribed by regulations issued by the Office of Personnel Management.

For the purposes of determining whether a position may be put in a single-position competitive level or certain assignment rights of a preference eligible, the preference eligible shall be considered qualified for another position if by reason of experience, training, or education a reasonable person could conclude that the preference eligible would be able to perform the essential functions of the position successfully within a period of 150 days.

A preference eligible may challenge the classification of any position to which he asserts assignment rights in an action before the Merit Systems Protection Board (MSPB).

Agencies are also required to establish agency wide priority placement programs for employees who are scheduled to be separated or are actually separated by a RIF and whose current or most recent performance rating was at least fully successful or the equivalent. The agency may not fill any vacancy by appointment or transfer of any person from outside or inside the agency (other than surplus or displaced employees) if there is a qualified employee on the reemployment priority placement list. Veterans" preference must be applied in filling positions from the list. An individual may remain on the list for a maximum of 2 years, but may be removed earlier under conditions specified in this section. These conditions include the rejection of a bona fide offer of employment.

Subsection (b). The amendments made by this section apply to RIFs taking effect more than 90 days (1 year in the case of the Department of Defense) after the date of enactment. To avoid disruption of ongoing RIFs, the amendments will not apply to reductions in force for which the agency has issued specific written notices in accordance with 5 U.S.C. § 3502(D)(1)(A) to employees in a competitive area before the effective dates specified in this subsection.

SECTION 4. IMPROVED REDRESS FOR VETERANS

This section amends chapter 33 of title 5 by adding three new sections (sections 3331–3333) to create a redress system that is user-friendly, yet effective. This redress mechanism covers preference eligibles and, for violations of the right to compete created in section 2 of this Act, individuals honorably discharged from the armed forces after three years" service. Under this system, the individual first must file a complaint with the Secretary of Labor within 60 days of the alleged violation. The Secretary will investigate and attempt to resolve the complaint in accordance with provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4322(a)–(e)(1), 4326. The individual may file an appeal with the MSPB if the Secretary is unable to resolve the complaint within 60 days or if the Secretary notifies the individual that he is unable to resolve the complaint. An individual who elects to file an appeal with the MSPB must notify the Secretary of this election, and the Secretary is to discontinue his efforts to investigate or resolve the complaint.

An individual who files an appeal with the MSPB under this section must exhaust that remedy for at least 120 days. At any time after that point, but before the MSPB issues a judicially reviewable decision on the merits, the individual may terminate the administrative proceeding and file an action with the appropriate United States district court.

An individual who prevails is entitled to "make-whole" relief and, if the MSPB or district court determines that the agency's violation was willful, liquidated damages equal to the amount of back pay awarded. The MSPB or district court shall award reasonable attorney's fees and litigation expenses to an individual who prevails.

SECTION 5. EXTENSION OF VETERANS' PREFERENCE

This section extends veterans' preference to certain positions in the judicial branch and to non-political jobs at the White House and in the legislative branch.

Subsection (a) amends 5 U.S.C. §2108 to require the General Accounting Office to apply veterans' preference in hiring. (GAO is already covered by veterans' preference with respect to RIFs.)

Subsection (b) amends title 3 of the United States Code by adding a new section 115 to positions at the White House. Positions that are equivalent to positions in the Senior Executive Service are exempt, as are positions that the President certifies are confidential or policy-making positions or for which political affiliation or political philosophy is otherwise an important qualification.

Subsection (c) extends veterans' preference to positions in the legislative branch. Positions for which the appointment is made by the President with the advice and consent of the Senate, appointments by Members of Congress, and positions equivalent to Senior Executive Service positions are exempt. The Board of Directors of the Office of Compliance is required to establish a redress system for the legislative branch that is substantially similar to the system established under section 4 of this Act.

Subsection (d) applies veterans' preference to positions in the judicial branch. It exempts positions for which the appointment is

made by the President with the advice and consent of the Senate, judicial officers, appointments as law clerks or secretaries to judges or Justices, and positions equivalent to Senior Executive Service positions. The Judicial Conference, in consultation with certain veterans' service organizations, is required to prescribe regulations providing veterans with preferences in employment and RIFs similar to those in the executive branch and to establish a redress system for the judicial branch that is similar to the system established under section 4 of this Act. These regulations are to be submitted to appropriate congressional committees within 5 months of the date of enactment of this Act and are to take effect one month later.

SECTION 6. VETERANS' PREFERENCE REQUIRED FOR RIFS IN THE FAA

This section amends section 347(b) of the Department of Transportation and Related Agencies Appropriations Act, 1996 (109 Stat. 460) to require the Federal Aviation Administration to apply veterans' preference in reductions in force. Current law requires the FAA to apply veterans' preference in hiring.

SECTION 7. VETERANS' PREFERENCE FOR SERVICE IN BOSNIA, CROATIA, OR THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

This section provides veterans' preference for service in Bosnia, Croatia, and the Former Yugoslav Republic of Macedonia while such areas are considered a "qualified hazardous duty area."

SECTION 8. VIOLATION OF VETERANS' PREFERENCE A PROHIBITED PERSONNEL PRACTICE FOR DISCIPLINARY ACTIONS

This section permits the Special Counsel to bring a disciplinary action before the Merit Systems Protection Board under 5 U.S.C. §1215 against any Federal employee who knowingly violates veterans' preference laws.

V. Compliance With Rule XI

Pursuant to rule XI, clause 2(l)(3)(A) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from committee oversight activities are incorporated in the bill and this report.

VI. Budget Analysis and Projections

H.R. 240, as amended, provides for no new authorization, budget authority, or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act of 1974 are not applicable.

VII. Cost Estimate of the Congressional Budget Office

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 18, 1997.

Hon. Daniel Burton,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 240, the Veterans' Employment Opportunities Act of 1997.

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.

H.R. 240—Veterans' Employment Opportunities Act of 1997

CBO estimates that enacting this bill would increase personnel and management costs of the federal government, though we 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, however, is classified as off-budget and is not subject to pay-as-you-go procedures.

H.R. 240 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

H.R. 240 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. For instance, the bill would strengthen the ability of veterans to seek redress for any alleged violations. The bill also would provide a federal agency from excluding a veteran who was honorably discharged after three years of service from competing for announced vacancies because that veteran does not already work for the hiring agency or have competitive status. Finally, the bill would extend veterans' preference to certain positions in the judicial branch and to non-political positions at the White House and in the legislative branch.

Several provisions of H.R. 240 would increase the costs to the federal 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, first, 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 H.R. 240 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, H.R. 240 also 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, H.R. 240 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.

Second, the bill would require agencies to ensure that eligible veterans, as defined by the bill, are not excluded from competing for announced vacancies because they do not already work for the hiring agency or have competitive status. The provision would result in agencies adding to the Federal Job Opportunities List positions that otherwise would be filled by employees who work for the agency or elsewhere in the federal government. Thus, the bill would require agencies to transmit additional information to the Office of Personnel Management and would force agencies to delay hiring individuals for positions that they typically fill quickly. The extra time needed to provide veterans with a reasonable opportunity to apply and to process and consider additional applicants could lengthen the time positions remain vacant, and could impair the ability of some agencies to administer their programs and operations. For some agencies, this delay could result in extra overtime or contact costs; for others, the delay could reduce the amount spent on salaries and expenses.

Finally, the bill would extend veterans' preference to certain positions in the judicial branch and to non-political positions at the White House and the legislative branch. For those agencies, such as CBO, the Library of Congress, and the Capitol Police, that support the Congress, such an application would be difficult to implement. 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 resulted in the agencies instituting 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 similar to those available to executive branch employees. Thus, the agencies could also face new, potentially costly litigation related to grievances filed under this provision.

The CBO staff contact for this estimate is John R. Righter. The estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VIII. Specific Constitutional Authority for This Legislation

Clauses 1, 12, and 18 of Article 1, section 8 of the Constitution grant Congress the power to enact this law.

IX. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the 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 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) "veteran" means an individual who—

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, *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,* during the period beginning April 28, 1952, and ending July 1, 1955; or

* * * * * * *

(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;*

* * * * * * *

CHAPTER 23—MERIT SYSTEM PRINCIPLES

* * * * * * *

§ 2302. Prohibited personnel practices

[(a)(1) For purposes of this title, "prohibited personnel practice" means the following:

[(A) Any action described in subsection (b) of this section.

[(B) Any action or failure to act that is designated as a prohibited personnel action under section 1599c(a) of title 10.]

(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)* take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

* * * * * * *

(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).

* * * * * * *

Subpart B—Employment and Retention

* * * * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

3301. Civil service; generally.
3302. Competitive service; rules.

* * * * * * *

3330a. Administrative redress.
3330b. Judicial redress.
3330c. Remedy.

* * * * * * *

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

* * * * * * *

§ 3304. Competitive service; examinations

(a) * * *

* * * * * * *

(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).

* * * * * * *

§ 3327. Civil service employment information

(a) * * *

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, **[**and**]**

(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)**]** *(3)* the period during which applications will be accepted.

As used in this subsection, "agency" means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service.

(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.

* * * * * * *

§ 3330. Government-wide list of vacant positions

(a) * * *

[(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant

positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency's work force.]

(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).

(c) Included for any position listed shall be—

(1) * * *

(2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; [and]

(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)] *(4)* any other information which the Office considers appropriate.

(d) [The list] *Each list under subsection (b)* shall be available to members of the public.

* * * * * * *

§ 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.

* * * * * * *

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

* * * * * * *

SUBCHAPTER I—RETENTION PREFERENCE

* * * * * * *

§ 3502. Order of retention

(a) * * *

* * * * * * *

(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.

SECTION 1005 OF TITLE 39, UNITED STATES CODE

§ 1005. Applicability of laws relating to Federal employees

(a)(1) * * *

(2) The provisions of title 5 relating to a preference eligible (as that term is defined under section 2108(3) of such title) shall apply to an applicant for appointment and any officer or employee of the Postal Service in the same manner and under the same conditions as if the applicant, officer, or employee were subject to the competitive service under such [title.] *title, subject to paragraph (5) of this subsection.* 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.

* * * * * * *

(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.

* * * * * * *

TITLE 3, UNITED STATES CODE

* * * * * * *

CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

Sec.

101. Commencement of term of office.

* * * * * * *

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.

* * * * * * *

SECTION 347 OF THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

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) chapters 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.

* * * * * * *

TITLE 10, UNITED STATES CODE

* * * * * * *

Subtitle A—General Military Law

* * * * * * *

PART II—PERSONNEL

* * * * * * *

CHAPTER 81—CIVILIAN EMPLOYEES

Sec.
1581. Foreign National Employees Separation Pay Account.

* * * * * * *

[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(f), 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.**]**

* * * * * * *

X. COMMITTEE RECOMMENDATION

On March 12, 1997, a quorum being present, the Committee on Government Reform and Oversight ordered the bill, as amended, favorably reported.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT—105TH CONGRESS ROLLCALL

Date: March 12, 1997.
Final Passage of H.R. 240, as amended.
Offered by: Hon. Dan Burton (IN).
Voice Vote: Yea.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104–1; SECTION 102(B)(3)

H.R. 240, as amended by the committee, requires the legislative branch to apply veterans' preference in hiring and reductions in force.

○