H.R. 240, VETERANS' EMPLOYMENT OPPORTUNITIES ACT OF 1997

HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

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

FEBRUARY 26, 1997

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CONTENTS

	Page
Hearing held on February 26, 1997	1
Text of H.R. 240	9
Statement of:	
King, James B., Director, U.S. Office of Personnel Management, accompanied by Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management	49
Naschinski, Emil, assistant director, national economics commission, the American Legion; Charles L. Calkins, national executive secretary, Fleet Reserve Association; Sidney Daniels, director, national veterans' employment assistance service, Veterans of Foreign Wars; and Larry Rhea, deputy director, legislative affairs, Non-Commissioned Officers Association	76
Letters, statements, etc., submitted for the record by:	
Calkins, Charles L., national executive secretary, Fleet Reserve Association, prepared statement of	85
Daniels, Sidney, director, national veterans' employment assistance service, Veterans of Foreign Wars, prepared statement of	93
Holden, Hon. Tim, a Representative in Congress from the State of Pennsylvania, prepared statement of	38
King, James B., Director, U.S. Office of Personnel Management:	
Information concerning employment of veterans by executive departments	57
Prepared statement of	52
Promotion rates for veterans	72
Lindholm, Mary Lou, Associate Director for Employment, Office of Personnel Management, information concerning who is entitled to veterans' preference in appointment	63
Mica, Hon. John L., a Representative in Congress from the State of Florida:	
Letter dated Februry 6, 1997	59
Prepared statement of	4
Naschinski, Emil, assistant director, national economics commission, the American Legion, prepared statement of	78
Norton, Hon. Eleanor Holmes, a Representative in Congress from the District of Columbia, prepared statement of	42
Pappas, Hon. Michael, a Representative in Congress from the State of New Jersey, prepared statement of	40
Rhea, Larry, deputy director, legislative affairs, Non-Commissioned Officers Association:	
Pamphlet entitled, "Veterans Preference—An Earned Right"	114
Prepared statement of	103
Sessions, Hon. Pete, a Representative in Congress from the State of Texas, prepared statement of	45

H.R. 240, VETERANS' EMPLOYMENT OPPORTUNITIES ACT OF 1997

WEDNESDAY, FEBRUARY 26, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:40 p.m., in room 2247, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee), presiding.

Present: Representatives Mica, Pappas, Morella, Sessions, Holden, and Norton.

Staff present: George Nesterczuk, staff director; Garry Ewing, counsel; Susan Mosychuk and Ned Lynch, professional staff members; Caroline Fiel, clerk; and Cedric Hendricks, minority professional staff member.

Mr. MICA. Good afternoon. I would like to call this meeting of the House Civil Service Subcommittee to order, and welcome you to the hearing.

Today we are going to focus on the question of veterans' employment and veterans' preference in the Federal workplace, and in particular on the Veterans' Employment Opportunities Act of 1997. I am going to begin with an opening statement, and I will yield to our members. And then we will begin the hearing with our two panels.

I would also like to welcome Ms. Norton. I think that she has been tied up, and has not been on the panel before. But we are glad that you are here today. Mr. Pappas was introduced last time, and Mrs. Morella, and, of course, our ranking member, Mr. Holden. Again, welcome.

I called this hearing to examine the provisions of the Veterans' Employment Opportunities Act of 1997, H.R. 240. I introduced this bill in order to strengthen veterans' preference in the Federal Government and to increase job opportunities for our veterans.

It is obvious that this bill has had long term bipartisan support, but it is important that we move legislation forward.

I am extremely pleased that our new ranking member, Mr. Holden, a distinguished member of our panel, is also a co-sponsor of this legislation, and others on this panel. I thank them for their support, and also for their efforts in working closely to make this bill a reality.

As many of you know, I introduced similar legislation in the last Congress. That bill, H.R. 3586, passed the House by voice vote. We

passed that twice, in fact, and we passed it also as a revision or an amendment to another piece of legislation.

Unfortunately, the Senate did not act on either bill. And we are still in the situation of our veterans being denied the critical protections that we placed under H.R. 240.

The improvements we have made—and we have made some in the legislation that was introduced last time—hopefully, will make our veterans' preference laws more applicable and more effective.

Last April, I held a hearing to examine the state of veterans' preference in the Federal Government workplace. That examination showed us that veterans' preference had many problems in various Federal agencies, and also its compliance and effectiveness.

We find that veterans' preference is often ignored or circumvented. Evidence also revealed a strong anti-veteran culture in the Federal workplace. For example, the General Accounting Office found Federal agencies much more likely to avoid hiring from a list of eligible candidates when a veteran entitled to preference headed the list.

In short, sometimes bureaucrats overlook the requirements that we have in place, and often a veteran who was eligible for a position was not really allowed to adequately contend for that open job.

We have also learned that new threats to veterans' preference have arisen. In particular, I am very concerned about the increased use of designer RIFs when agencies reorganize or conduct a reduction in force.

These so-called designer RIFs place employees in single position competitive levels. This device ends up eliminating competition for positions at a particular grade level, and often undercuts veterans. In fact, designer RIFs turn the basic idea of a reduction in force upside down.

Under the statute governing RIFs, employees are supposed to compete for retention according to rules that include preference for veterans. But these designer RIFs allow agencies to eliminate that competition and abuse the process by targeting specific individuals.

One of our hearing witnesses described how a designer RIF placed him in a single person competition. Of 50 employees covered by the RIF, this Vietnam veteran, who had been awarded the Distinguished Flying Cross, the Bronze Star, and multiple awards of the Air Medal, was the only one downgraded.

Compounding these problems is the fact of the lack of an effective redress system. In fact, the major veterans' service organizations say that this is one of our key issues and key areas that need revision. Both the American Legion and the Disabled American Veterans testified to the importance of improving the redress mechanism at last year's hearing.

The Veterans' Employment Opportunities Act of 1997 hopefully will cure that problem. It establishes what we consider to be an effective user-friendly redress system. Veterans could appeal alleged violations through an existing administrative remedy or before the courts.

Our legislation also authorizes the special counsel to bring those who knowingly violate veterans' preference laws before the Merit Systems Protection Board for punishment that may include firing, suspension, or possibly a $1,000 fine. Such stiff penalties will en-

sure that the folks who do not want to pay attention to what we are saying, and I use the term "bureaucrats" in this case, will make them really take seriously veterans' preference and veterans' rights.

H.R. 240 also targets designer RIFs. It prevents Federal agencies from using such schemes to unfairly strip veterans of their right to compete for their jobs during a RIF. Veterans who are RIFed will also receive enhanced rights to other jobs.

Also, I have targeted another practice that hurts many former service men and women. Most who serve in today's military are not entitled to veterans' preference, unless they receive a campaign badge. They have no advantage when applying for a Federal job. Worse, too often they cannot even apply. Instead, agencies restrict competition to their own workforce or to current Federal employees. My bill tears down some of these artificial barriers that have been built up and treats anyone who is entitled to veterans' preference or who served honorably in the armed forces for 3 years in what I consider fair terms.

These individuals have performed a valuable service for our Nation. We should honor that service by allowing them to compete fairly and squarely for jobs.

There are other provisions in this bill that are critically important to many veterans, and I will summarize them briefly.

First, it will extend veterans' preference to certain jobs in the legislative branch, and in the judicial branch, and at the White House.

Agencies will also be required to establish priority placement programs for employees affected by a RIF. And Federal agencies must give veterans' preference when rehiring employees.

Another provision is the FAA will be required to apply veterans' preference in a RIF.

And a further provision is that service men and women who serve in Bosnia, Croatia, and Macedonia will qualify also for veterans' preference.

Veterans' preference, and I have said it before, is an earned right, not a gift. Veterans, who are such a hard-working and disciplined group, deserve this small boost.

My family and I have long been concerned with their welfare. Many of you know that my brother served on the Veterans' Committee for many years, and this was one of his concerns. We just feel very strongly that we have an obligation to extend any little boost we can to our veterans' community and population.

I am committed to expanding and protecting these job opportunities for the men and women who fought our Nation's battles, and preserved the peace, and protected our vital interests throughout the world. And a small thing that we can do is make this H.R. 240 the law of the land.

In a minute, I will get into introducing our witnesses. But now I would like to yield with those comments to our ranking member, and recognize Mr. Holden from Pennsylvania.

[The prepared statement of Hon. John L. Mica, and the text of H.R. 240 follow:]

OPENING STATEMENT
CHAIRMAN JOHN L. MICA

HEARING ON H.R. 240
THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997

FEBRUARY 26, 1997, 1:30 P.M.
ROOM 2247, RAYBURN HOB

I CALLED THIS HEARING TO EXAMINE THE PROVISIONS OF THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997, H.R. 240.

I INTRODUCED THIS BILL IN ORDER TO STRENGTHEN VETERANS' PREFERENCE IN THE FEDERAL GOVERNMENT AND TO INCREASE JOB OPPORTUNITIES FOR VETERANS. THIS BILL HAS BIPARTISAN SUPPORT. I AM VERY PLEASED THAT MR. HOLDEN, THE DISTINGUISHED RANKING MEMBER OF THIS SUBCOMMITTEE, IS A COSPONSOR. I THANK HIM FOR HIS SUPPORT, AND I LOOK FORWARD TO WORKING CLOSELY WITH HIM TO MAKE THIS BILL THE LAW OF THE LAND.

AS MANY OF YOU KNOW, I INTRODUCED SIMILAR LEGISLATION, H.R. 3586, DURING THE LAST CONGRESS. THAT BILL PASSED THE HOUSE BY VOICE VOTE. IN FACT, THE HOUSE PASSED IT TWICE BY VOICE VOTE, ONCE AS H.R. 3586, AND A REVISED VERSION AS AN AMENDMENT TO S. 868. UNFORTUNATELY, THE SENATE DID NOT ACT ON EITHER BILL. THUS, OUR NATIONS' VETERANS ARE STILL WITHOUT THE CRITICAL PROTECTIONS THAT H.R. 240 WILL PROVIDE.

THE IMPROVEMENTS H.R. 240 WILL MAKE TO OUR VETERANS' PREFERENCE LAWS ARE SORELY NEEDED AND LONG OVERDUE. LAST APRIL I HELD A HEARING TO EXAMINE THE STATE OF VETERANS' PREFERENCE IN THE FEDERAL GOVERNMENT. THAT EXAMINATION SHOWED VETERANS' PREFERENCE TO BE UNDER FIRE.

WE FOUND THAT VETERANS' PREFERENCE IS OFTEN IGNORED OR CIRCUMVENTED. EVIDENCE ALSO REVEALED A STRONG ANTIVETERAN CULTURE IN THE FEDERAL BUREAUCRACY. FOR EXAMPLE, THE GENERAL ACCOUNTING OFFICE FOUND FEDERAL AGENCIES MUCH MORE LIKELY TO AVOID HIRING FROM A LIST OF ELIGIBLE CANDIDATES WHEN A VETERAN ENTITLED TO PREFERENCE HEADS THE LIST. IN SHORT, BUREAUCRATS FREQUENTLY LOOKED FOR OTHER ALTERNATIVES WHEN THEY SHOULD HAVE HIRED A VETERAN, EVEN IF THAT MEANT LEAVING A JOB OPEN.

WE HAVE ALSO LEARNED THAT NEW THREATS TO VETERANS' PREFERENCE HAVE ARISEN. IN PARTICULAR, I AM VERY CONCERNED ABOUT THE INCREASED USE OF "DESIGNER RIFS" WHEN AGENCIES REORGANIZE OR CONDUCT A REDUCTION IN FORCE. THESE "DESIGNER RIFS" PLACE EMPLOYEES IN SO-CALLED "SINGLE-POSITION COMPETITIVE LEVELS." THIS DEVICE ELIMINATES COMPETITION FOR POSITIONS AT A PARTICULAR GRADE-LEVEL, AND UNDERCUTS VETERANS' PREFERENCE. IN FACT, "DESIGNER RIFS" TURN THE BASIC IDEA OF A REDUCTION IN FORCE UPSIDE DOWN. UNDER THE STATUTES GOVERNING RIFS, EMPLOYEES ARE SUPPOSED TO COMPETE FOR RETENTION ACCORDING TO RULES THAT INCLUDE PREFERENCE FOR VETERANS. BUT "DESIGNER RIFS" ALLOW AGENCIES TO ELIMINATE THAT COMPETITION AND ABUSE THE PROCESS BY TARGETING SPECIFIC INDIVIDUALS.

ONE OF OUR HEARING WITNESSES DESCRIBED HOW A "DESIGNER RIF" PLACED HIM IN A SINGLE-PERSON COMPETITION. OF 50 EMPLOYEES COVERED BY THE RIF, THIS VIETNAM VETERAN -- WHO HAD BEEN AWARDED THE DISTINGUISHED FLYING CROSS, THE BRONZE STAR, AND MULTIPLE AWARDS OF THE AIR MEDAL -- WAS THE ONLY ONE DOWNGRADED.

COMPOUNDING THESE PROBLEMS IS THE LACK OF AN EFFECTIVE REDRESS SYSTEM. IN FACT, THE MAJOR VETERANS' SERVICE ORGANIZATIONS SAY THIS IS THE KEY ISSUE. BOTH THE AMERICAN LEGION AND THE DISABLED AMERICAN VETERANS TESTIFIED TO THE IMPORTANCE OF IMPROVING THE REDRESS MECHANISM AT LAST YEAR'S HEARING.

THE VETERANS' EMPLOYMENT OPPORTUNITIES ACT OF 1997 CURES THAT PROBLEM. IT ESTABLISHES AN EFFECTIVE, USER-FRIENDLY REDRESS SYSTEM. VETERANS COULD APPEAL ALLEGED VIOLATIONS THROUGH AN EXISTING ADMINISTRATIVE REMEDY OR BEFORE THE COURTS. MY BILL ALSO AUTHORIZES THE SPECIAL COUNSEL TO BRING THOSE WHO KNOWINGLY VIOLATE VETERANS' PREFERENCE LAWS BEFORE THE MERIT SYSTEMS PROTECTION BOARD FOR PUNISHMENT THAT MAY INCLUDE FIRING, SUSPENSION, OR A $1,000 FINE. SUCH STIFF PENALTIES WILL MAKE BUREAUCRATS TAKE VETERANS' RIGHTS SERIOUSLY.

H.R. 240 ALSO TARGETS DESIGNER RIFS. IT PREVENTS FEDERAL AGENCIES FROM USING SUCH SCHEMES TO UNFAIRLY STRIP VETERANS OF THEIR RIGHT TO COMPETE FOR THEIR JOBS DURING A RIF. VETERANS WHO ARE RIFED WILL ALSO RECEIVE ENHANCED RIGHTS TO OTHER JOBS.

I HAVE ALSO TARGETED ANOTHER PRACTICE THAT HURTS MANY FORMER SERVICEMEN AND WOMEN. MOST WHO SERVE IN TODAY'S MILITARY ARE NOT ENTITLED TO VETERANS' PREFERENCE UNLESS THEY RECEIVE A CAMPAIGN BADGE. THEY HAVE NO ADVANTAGE WHEN APPLYING FOR A FEDERAL JOB. WORSE, TOO OFTEN THEY CAN'T EVEN APPLY. INSTEAD, AGENCIES RESTRICT COMPETITION TO THEIR OWN WORKFORCE OR CURRENT FEDERAL EMPLOYEES. MY BILL TEARS DOWN THESE ARTIFICIAL BARRIERS FOR ANYONE ENTITLED TO VETERANS' PREFERENCE OR WHO SERVED HONORABLY IN THE ARMED FORCES FOR THREE YEARS.

THESE INDIVIDUALS HAVE PERFORMED A VALUABLE SERVICE FOR OUR NATION. WE SHOULD HONOR THAT SERVICE BY ALLOWING THEM TO COMPETE FAIRLY FOR JOBS.

THERE ARE OTHER PROVISIONS IN THIS BILL THAT ARE CRITICALLY IMPORTANT TO MANY VETERANS. I WILL SUMMARIZE THEM BRIEFLY:

- IT WILL EXTEND VETERANS' PREFERENCE TO CERTAIN JOBS IN THE LEGISLATIVE BRANCH, IN THE JUDICIAL BRANCH, AND AT THE WHITE HOUSE.
- AGENCIES WILL BE REQUIRED TO ESTABLISH PRIORITY PLACEMENT PROGRAMS FOR EMPLOYEES AFFECTED BY A RIF -- FEDERAL AGENCIES MUST GIVE VETERANS PREFERENCE WHEN REHIRING EMPLOYEES.
- THE FAA WILL BE REQUIRED TO APPLY VETERANS' PREFERENCE IN A RIF.
- SERVICE MEN AND WOMEN WHO SERVE IN BOSNIA, CROATIA, AND MACEDONIA WILL QUALIFY FOR VETERANS' PREFERENCE.

VETERANS' PREFERENCE IS AN EARNED RIGHT, NOT A GIFT. VETERANS ARE ALSO A HARD-WORKING, DISCIPLINED GROUP. MY FAMILY AND I HAVE LONG BEEN CONCERNED WITH THEIR WELFARE. MY BROTHER DAN SERVED IN THE HOUSE BEFORE ME, AND HE WORKED HARD TO IMPROVE THE LIVES OF VETERANS AS A MEMBER OF THE VETERANS' AFFAIRS COMMITTEE. MY FATHER WAS A VETERAN WHO DIED IN A CROWDED VA HOSPITAL. I HAVE TALKED TO MANY VETERANS AND SERVICEMEN AND WOMEN IN MY DISTRICT AND THEIR FAMILIES. I UNDERSTAND THE SACRIFICES THEY HAVE MADE FOR OUR COUNTRY, SACRIFICES THAT CREATE A MORAL OBLIGATION TO RECOGNIZE THE VALUE OF THEIR SERVICE.

I AM COMMITTED TO PROTECTING AND EXPANDING JOB OPPORTUNITIES FOR THE MEN AND WOMEN WHO HAVE FOUGHT OUR NATION'S BATTLES, PRESERVED THE PEACE, AND PROTECTED OUR VITAL INTERESTS THROUGHOUT THE WORLD. AND FOR ALL OF THOSE WHO WILL DO SO IN THE FUTURE. WE OWE IT TO THEM TO MAKE THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997 THE LAW OF THE LAND.

WE ARE FORTUNATE TODAY TO HAVE DISTINGUISHED WITNESSES BEFORE US WHO ARE VERY FAMILIAR WITH VETERANS' PREFERENCE ISSUES. OUR FIRST WITNESS IS THE HONORABLE JAMES B. KING, THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT.

ON OUR SECOND PANEL ARE REPRESENTATIVES OF MAJOR VETERANS' SERVICE ORGANIZATIONS, ALL OF WHOM HAVE BEEN ACTIVELY INVOLVED IN ADVISING ME ON THIS BILL. THEY ARE: EMIL NASCHINSKI (NA - SHIN- SKI) OF THE AMERICAN LEGION, SID DANIELS OF THE VETERANS OF FOREIGN WARS, AND LARRY RHEA (RAY) OF THE NON COMMISSIONED OFFICERS ASSOCIATION.

I

105TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. MICA (for himself, Mr. SOLOMON, Mr. STUMP, and Mr. EVERETT) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on House Oversight, the Judiciary, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Veterans Employment
5 Opportunities Act of 1997".

1 **SEC. 2. EQUAL ACCESS FOR VETERANS.**

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

5 "(f)(1) No preference eligible, and no individual
6 (other than a preference eligible) who has been separated
7 from the armed forces under honorable conditions after
8 3 or more years of active service, shall be denied the op-
9 portunity to compete for an announced vacant position
10 within an agency, in the competitive service or the ex-
11 cepted service, by reason of—

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

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

14 "(2) Nothing in this subsection shall prevent an agen-
15 cy from filling a vacant position (whether by appointment
16 or otherwise) solely from individuals on a priority place-
17 ment list consisting of individuals who have been sepa-
18 rated from the agency due to a reduction in force and sur-
19 plus employees (as defined under regulations prescribed
20 by the Office).".

21 (b) CIVIL SERVICE EMPLOYMENT INFORMATION.—

22 (1) VACANT POSITIONS.—Section 3327(b) of
23 title 5, United States Code, is amended by striking
24 "and" at the end of paragraph (1), by redesignating
25 paragraph (2) as paragraph (3), and by inserting
26 after paragraph (1) the following:

1 "(2) each vacant position in the agency for
2 which competition is restricted to individuals having
3 competitive status or employees of such agency, ex-
4 cluding any position under paragraph (1), and".
5 (2) ADDITIONAL INFORMATION.—Section 3327
6 of title 5, United States Code, is amended by adding
7 at the end the following:
8 "(c) Any notification provided under this section
9 shall, for all positions under subsection (b)(1) as to which
10 section 3304(f) applies and for all positions under sub-
11 section (b)(2), include a notation as to the applicability
12 of section 3304(f) with respect thereto.
13 "(d) In consultation with the Secretary of Labor, the
14 Office shall submit to Congress and the President, no less
15 frequently than every 2 years, a report detailing, with re-
16 spect to the period covered by such report—
17 "(1) the number of positions listed under this
18 section during such period;
19 "(2) the number of preference eligibles and
20 other individuals described in section 3304(f)(1) re-
21 ferred to such positions during such period; and
22 "(3) the number of preference eligibles and
23 other individuals described in section 3304(f)(1) ap-
24 pointed to such positions during such period.".
25 (c) GOVERNMENTWIDE LISTS.—

1 (1) VACANT POSITIONS.—Section 3330(b) of
2 title 5, United States Code, is amended to read as
3 follows:
4 "(b) The Office of Personnel Management shall cause
5 to be established and kept current—
6 "(1) a comprehensive list of all announcements
7 of vacant positions (in the competitive service and
8 the excepted service, respectively) within each agency
9 that are to be filled by appointment for more than
10 1 year and for which applications are being or will
11 soon be accepted from outside the agency's work
12 force; and
13 "(2) a comprehensive list of all announcements
14 of vacant positions within each agency for which ap-
15 plications are being or will soon be accepted and for
16 which competition is restricted to individuals having
17 competitive status or employees of such agency, ex-
18 cluding any position required to be listed under
19 paragraph (1).".
20 (2) ADDITIONAL INFORMATION.—Section
21 3330(c) of title 5, United States Code, is amended
22 by striking "and" at the end of paragraph (2), by
23 redesignating paragraph (3) as paragraph (4), and
24 by inserting after paragraph (2) the following:

1 "(3) for all positions under subsection (b)(1) as
2 to which section 3304(f) applies and for all positions
3 under subsection (b)(2), a notation as to the applica-
4 bility of section 3304(f) with respect thereto; and".
5 (3) CONFORMING AMENDMENT.—Section
6 3330(d) of title 5, United States Code, is amended
7 by striking "The list" and inserting "Each list
8 under subsection (b)".
9 (d) PROVISIONS RELATING TO THE UNITED STATES
10 POSTAL SERVICE.—
11 (1) IN GENERAL.—Subsection (a) of section
12 1005 of title 39, United States Code, is amended by
13 adding at the end the following:
14 "(5)(A) The provisions of section 3304(f) of title 5
15 shall apply with respect to the Postal Service in the same
16 manner and under the same conditions as if the Postal
17 Service were an agency within the meaning of such provi-
18 sions.
19 "(B) Nothing in this subsection shall be considered
20 to require the application of section 3304(f) of title 5 in
21 the case of any individual who is not an employee of the
22 Postal Service if—
23 "(i) the vacant position involved is advertised
24 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:

1 "(g)(1) A position occupied by a preference eligible
2 shall not be placed in a single-position competitive level
3 if the preference eligible is qualified to perform the essen-
4 tial functions of any other position at the same grade (or
5 occupational level) in the competitive area. In such cases,
6 the preference eligible shall be entitled to be placed in an-
7 other competitive level for which such preference eligible
8 is qualified. If the preference eligible is qualified for more
9 than one competitive level, such preference eligible shall
10 be placed in the competitive level containing the most posi-
11 tions.

12 "(2) For purposes of paragraph (1)—

13 "(A) a preference eligible shall be considered
14 qualified to perform the essential functions of a posi-
15 tion if, by reason of experience, training, or edu-
16 cation (and, in the case of a disabled veteran, with
17 reasonable accommodation), a reasonable person
18 could conclude that the preference eligible would be
19 able to perform those functions successfully within a
20 period of 150 days; and

21 "(B) a preference eligible shall not be consid-
22 ered unqualified solely because such preference eligi-
23 ble does not meet the minimum qualification require-
24 ments relating to previous experience in a specified

1 grade (or occupational level), if any, that are estab-
2 lished for such position by the Office of Personnel
3 Management or the agency.
4 "(h) In connection with any reduction in force, a
5 preference eligible whose current or most recent perform-
6 ance rating is at least fully successful (or the equivalent)
7 shall have, in addition to such assignment rights as are
8 prescribed by regulation, the right, in lieu of separation,
9 to be assigned to any position within the agency conduct-
10 ing the reduction in force—
11 "(1) for which such preference eligible is quali-
12 fied under subsection (g)(2)—
13 "(A) that is within the preference eligible's
14 commuting area and at the same grade (or oc-
15 cupational level) as the position from which the
16 preference eligible was released, and that is
17 then occupied by an individual, other than an-
18 other preference eligible, who was placed in
19 such position (whether by appointment or oth-
20 erwise) within 6 months before the reduction in
21 force if, within 12 months prior to the date on
22 which such individual was so placed in such po-
23 sition, such individual had been employed in the
24 same competitive area as the preference eligible;
25 or

1 "(B) that is within the preference eligible's
2 competitive area and that is then occupied by
3 an individual, other than another preference eli-
4 gible, who was placed in such position (whether
5 by appointment or otherwise) within 6 months
6 before the reduction in force; or
7 "(2) for which such preference eligible is quali-
8 fied that is within the preference eligible's competi-
9 tive area and that is not more than 3 grades (or pay
10 levels) below that of the position from which the
11 preference eligible was released, except that, in the
12 case of a preference eligible with a compensable
13 service-connected disability of 30 percent or more,
14 this paragraph shall be applied by substituting '5
15 grades' for '3 grades'.
16 In the event that a preference eligible is entitled to assign-
17 ment to more than 1 position under this subsection, the
18 agency shall assign the preference eligible to any such po-
19 sition requiring no reduction (or, if there is no such posi-
20 tion, the least reduction) in basic pay. A position shall not,
21 with respect to a preference eligible, be considered to sat-
22 isfy the requirements of paragraph (1) or (2), as applica-
23 ble, if it does not last for at least 12 months following
24 the date on which such preference eligible is assigned to
25 such position under this subsection.

1 "(i) A preference eligible may challenge the classifica-
2 tion of any position to which the preference eligible asserts
3 assignment rights (as provided by, or prescribed by regula-
4 tions described in, subsection (h)) in an action before the
5 Merit Systems Protection Board.

6 "(j)(1) Not later than 3 months after the date of the
7 enactment of this subsection, each Executive agency shall
8 establish an agencywide priority placement program to fa-
9 cilitate employment placement for employees who—

10 "(A)(i) are scheduled to be separated from serv-
11 ice due to a reduction in force under—

12 "(I) regulations prescribed under this sec-
13 tion; or

14 "(II) procedures established under section
15 3595; or

16 "(ii) are separated from service due to such a
17 reduction in force; and

18 "(B)(i) have received a rating of at least fully
19 successful (or the equivalent) as the last perform-
20 ance rating of record used for retention purposes; or

21 "(ii) occupy positions excluded from a perform-
22 ance appraisal system by law, regulation, or admin-
23 istrative action taken by the Office of Personnel
24 Management.

1 "(2)(A) Each agencywide priority placement program
2 under this subsection shall include provisions under which
3 a vacant position shall not (except as provided in this
4 paragraph or any other statute providing the right of re-
5 employment to any individual) be filled by the appoint-
6 ment or transfer of any individual from outside of that
7 agency (other than an individual described in subpara-
8 graph (B)) if—
9 "(i) there is then available any individual de-
10 scribed in subparagraph (B) who is qualified for the
11 position; and
12 "(ii) the position—
13 "(I) is at the same grade or pay level (or
14 the equivalent) or not more than 3 grades (or
15 grade intervals) below that of the position last
16 held by such individual before placement in the
17 new position;
18 "(II) is within the same commuting area
19 as the individual's last-held position (as referred
20 to in subclause (I)) or residence; and
21 "(III) has the same type of work schedule
22 (whether full-time, part-time, or intermittent)
23 as the position last held by the individual.

1 "(B) For purposes of an agencywide priority place-
2 ment program, an individual shall be considered to be de-
3 scribed in this subparagraph if such individual—
4 "(i)(I) is an employee of such agency who is
5 scheduled to be separated, as described in paragraph
6 (1)(A)(i); or
7 "(II) is an individual who became a former em-
8 ployee of such agency as a result of a separation, as
9 described in paragraph (1)(A)(ii), excluding any in-
10 dividual who separated voluntarily under subsection
11 (f); and
12 "(ii) satisfies clause (i) or (ii) of paragraph
13 (1)(B).
14 "(3)(A) If after a reduction in force the agency has
15 no positions of any type within the local commuting areas
16 specified in this subsection, the individual may designate
17 a different local commuting area where the agency has
18 continuing positions in order to exercise reemployment
19 rights under this subsection. An agency may determine
20 that such designations are not in the interest of the Gov-
21 ernment for the purpose of paying relocation expenses
22 under subchapter II of chapter 57.
23 "(B) At its option, an agency may administratively
24 extend reemployment rights under this subsection to in-
25 clude other local commuting areas.

1 "(4)(A) In selecting employees for positions under
2 this subsection, the agency shall place qualified present
3 and former employees in retention order by veterans' pref-
4 erence subgroup and tenure group.

5 "(B) An agency may not pass over a qualified present
6 or former employee to select an individual in a lower veter-
7 ans' preference subgroup within the tenure group, or in
8 a lower tenure group.

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

12 "(5) An individual is eligible for reemployment prior-
13 ity under this subsection for 2 years from the effective
14 date of the reduction in force from which the individual
15 will be, or has been, separated under this section or section
16 3595, as the case may be.

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

19 "(A) requests removal in writing;

20 "(B) accepts or declines a bona fide offer under
21 this subsection or fails to accept such an offer within
22 the period of time allowed for such acceptance, or

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

1 A present or former employee who declines a position with
2 a representative rate (or equivalent) that is less than the
3 rate of the position from which the individual was sepa-
4 rated under this section retains eligibility for positions
5 with a higher representative rate up to the rate of the indi-
6 vidual's last position.

7 "(7) Whenever more than one individual is qualified
8 for a position under this subsection, the agency shall select
9 the most highly qualified individual, subject to paragraph
10 (4).

11 "(8) The Office of Personnel Management shall issue
12 regulations to implement this subsection.".

13 (b) EFFECTIVE DATE.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by this section
16 shall take effect on the date of the enactment of this
17 Act.

18 (2) EXCEPTION.—The amendments made by
19 this section shall take effect with respect to the De-
20 partment of Defense at the end of the 1-year period
21 beginning on the date of the enactment of this Act.

22 **SEC. 4. IMPROVED REDRESS FOR VETERANS.**

23 (a) IN GENERAL.—Subchapter I of chapter 33 of title
24 5, United States Code, is amended by adding at the end
25 the following:

1 **"§ 3330a. Administrative redress**

2 "(a)(1) Any preference eligible or other individual de-
3 scribed in section 3304(f)(1) who alleges that an agency
4 has violated such individual's rights under any statute or
5 regulation relating to veterans' preference, or any right
6 afforded such individual by section 3304(f), may file a
7 complaint with the Secretary of Labor.

8 "(2) A complaint under this subsection must be filed
9 within 60 days after the date of the alleged violation, and
10 the Secretary shall process such complaint in accordance
11 with sections 4322 (a) through (e)(1) and 4326 of title
12 38.

13 "(b)(1) If the Secretary of Labor is unable to resolve
14 the complaint within 60 days after the date on which it
15 is filed, the complainant may elect to appeal the alleged
16 violation to the Merit Systems Protection Board in accord-
17 ance with such procedures as the Merit Systems Protec-
18 tion Board shall prescribe, except that in no event may
19 any such appeal be brought—

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

22 "(B) later than 15 days after the date on which
23 the complainant receives notification from the Sec-
24 retary of Labor under section 4322(e)(1) of title 38.

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

1 "(A) the complainant first provides written no-
2 tification to the Secretary of Labor of such com-
3 plainant's intention to bring such appeal; and
4 "(B) appropriate evidence of compliance with
5 subparagraph (A) is included (in such form and
6 manner as the Merit Systems Protection Board may
7 prescribe) with the notice of appeal under this sub-
8 section.
9 "(3) Upon receiving notification under paragraph
10 (2)(A), the Secretary of Labor shall not continue to inves-
11 tigate or further attempt to resolve the complaint to which
12 such notification relates.
13 "(c) This section shall not be construed to prohibit
14 a preference eligible from appealing directly to the Merit
15 Systems Protection Board from any action which is ap-
16 pealable to the Board under any other law, rule, or regula-
17 tion, in lieu of administrative redress under this section.
18 **"§ 3330b. Judicial redress**
19 "(a) In lieu of continuing the administrative redress
20 procedure provided under section 3330a(b), a preference
21 eligible or other individual described in section 3304(f)(1)
22 may elect, in accordance with this section, to terminate
23 those administrative proceedings and file an action with
24 the appropriate United States district court not later than
25 60 days after the date of the election.

1 "(b) An election under this section may not be
2 made—
3 "(1) before the 121st day after the date on
4 which the appeal is filed with the Merit Systems
5 Protection Board under section 3330a(b); or
6 "(2) after the Merit Systems Protection Board
7 has issued a judicially reviewable decision on the
8 merits of the appeal.
9 "(c) An election under this section shall be made, in
10 writing, in such form and manner as the Merit Systems
11 Protection Board shall by regulation prescribe. The elec-
12 tion shall be effective as of the date on which it is received,
13 and the administrative proceeding to which it relates shall
14 terminate immediately upon the receipt of such election.
15 **"§ 3330c. Remedy**
16 "(a) If the Merit Systems Protection Board (in a pro-
17 ceeding under section 3330a) or a court (in a proceeding
18 under section 3330b) determines that an agency has vio-
19 lated a right described in section 3330a, the Board or
20 court (as the case may be) shall order the agency to com-
21 ply with such provisions and award compensation for any
22 loss of wages or benefits suffered by the individual by rea-
23 son of the violation involved. If the Board or court deter-
24 mines that such violation was willful, it shall award an
25 amount equal to backpay as liquidated damages.

1 "(b) A preference eligible or other individual de-
2 scribed in section 3304(f)(1) who prevails in an action
3 under section 3330a or 3330b shall be awarded reasonable
4 attorney fees, expert witness fees, and other litigation ex-
5 penses.".

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

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

10 **SEC. 5. EXTENSION OF VETERANS' PREFERENCE.**

11 (a) AMENDMENT TO TITLE 5, UNITED STATES
12 CODE.—Paragraph (3) of section 2108 of title 5, United
13 States Code, is amended by striking "the Federal Bureau
14 of Investigation and Drug Enforcement Administration
15 Senior Executive Service, or the General Accounting Of-
16 fice;" and inserting "or the Federal Bureau of Investiga-
17 tion and Drug Enforcement Administration Senior Execu-
18 tive Service;".

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

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

1 **"§ 115. Veterans' preference**

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

6 "(b) Subsection (a) shall not apply to any appoint-
7 ment to a position the rate of basic pay for which is at
8 least equal to the minimum rate established for positions
9 in the Senior Executive Service under section 5382 of title
10 5 and the duties of which are comparable to those de-
11 scribed in section 3132(a)(2) of such title or to any other
12 position if, with respect to such position, the President
13 makes certification—

14 "(1) that such position is—

15 "(A) a confidential or policy-making posi-
16 tion; or

17 "(B) a position for which political affili-
18 ation or political philosophy is otherwise an im-
19 portant qualification; and

20 "(2) that any individual selected for such posi-
21 tion is expected to vacate the position at or before
22 the end of the President's term (or terms) of office.
23 Each individual appointed to a position described in the
24 preceding sentence as to which the expectation described

1 in paragraph (2) applies shall be notified as to such expec-
2 tation, in writing, at the time of appointment to such posi-
3 tion.".

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions at the beginning of chapter 2 of title 3, United
6 States Code, is amended by adding at the end the
7 following:

"115. Veterans' preference.".

8 (c) LEGISLATIVE BRANCH APPOINTMENTS.—

9 (1) DEFINITIONS.—For the purposes of this
10 subsection, the terms "employing office", "covered
11 employee", and "Board" shall each have the mean-
12 ing given such term by section 101 of the Congres-
13 sional Accountability Act of 1995 (2 U.S.C. 1301).

14 (2) RIGHTS AND PROTECTIONS.—The rights
15 and protections established under section 2108, sec-
16 tions 3309 through 3312, and subchapter I of chap-
17 ter 35, of title 5, United States Code, shall apply to
18 covered employees.

19 (3) REMEDIES.—

20 (A) IN GENERAL.—The remedy for a viola-
21 tion of paragraph (2) shall be such remedy as
22 would be appropriate if awarded under applica-
23 ble provisions of title 5, United States Code, in

1 the case of a violation of the relevant cor-
2 responding provision (referred to in paragraph
3 (2)) of such title.
4 (B) PROCEDURE.—The procedure for con-
5 sideration of alleged violations of paragraph (2)
6 shall be the same as apply under section 401 of
7 the Congressional Accountability Act of 1995
8 (and the provisions of law referred to therein)
9 in the case of an alleged violation of part A of
10 title II of such Act.
11 (4) REGULATIONS TO IMPLEMENT SUB-
12 SECTION.—
13 (A) IN GENERAL.—The Board shall, pur-
14 suant to section 304 of the Congressional Ac-
15 countability Act of 1995 (2 U.S.C. 1384), issue
16 regulations to implement this subsection.
17 (B) AGENCY REGULATIONS.—The regula-
18 tions issued under subparagraph (A) shall be
19 the same as the most relevant substantive regu-
20 lations (applicable with respect to the executive
21 branch) promulgated to implement the statu-
22 tory provisions referred to in paragraph (2) ex-
23 cept insofar as the Board may determine, for
24 good cause shown and stated together with the

1 regulation, that a modification of such regula-
2 tions would be more effective for the implemen-
3 tation of the rights and protections under this
4 subsection.
5 (C) COORDINATION.—The regulations is-
6 sued under subparagraph (A) shall be consist-
7 ent with section 225 of the Congressional Ac-
8 countability Act of 1995 (2 U.S.C. 1361).
9 (5) APPLICABILITY.—Notwithstanding any
10 other provision of this subsection, the term "covered
11 employee" shall not, for purposes of this subsection,
12 include an employee—
13 (A) whose appointment is made by the
14 President with the advice and consent of the
15 Senate;
16 (B) whose appointment is made by a Mem-
17 ber of Congress or by a committee or sub-
18 committee of either House of Congress; or
19 (C) who is appointed to a position, the du-
20 ties of which are equivalent to those of a Senior
21 Executive Service position (within the meaning
22 of section 3132(a)(2) of title 5, United States
23 Code).

1 (6) EFFECTIVE DATE.—Paragraphs (2) and (3)
2 shall be effective as of the effective date of the regu-
3 lations under paragraph (4).
4 (d) JUDICIAL BRANCH APPOINTMENTS.—
5 (1) IN GENERAL.—Subject to paragraph (2),
6 appointments to positions in the judicial branch of
7 the Government shall be made in accordance with
8 section 2108, and sections 3309 through 3312, of
9 title 5, United States Code.
10 (2) REDUCTIONS IN FORCE.—Subject to para-
11 graph (2), reductions in force in the judicial branch
12 of the Government shall provide preference eligibles
13 with protections substantially similar to those pro-
14 vided under subchapter I of chapter 35 of title 5,
15 United States Code.
16 (3) EXCLUSIONS.—Paragraphs (1) and (2)
17 shall not apply to—
18 (A) an appointment made by the Presi-
19 dent, with the advice and consent of the Senate;
20 (B) an appointment as a judicial officer;
21 (C) an appointment as a law clerk or sec-
22 retary to a justice or judge of the United
23 States; or
24 (D) an appointment to a position, the du-
25 ties of which are equivalent to those of a Senior

1 Executive Service position (within the meaning
2 of section 3132(a)(2) of title 5, United States
3 Code).
4 (4) REDRESS PROCEDURES.—The Judicial Con-
5 ference of the United States shall prescribe regula-
6 tions under which redress procedures (substantially
7 similar to the procedures established by the amend-
8 ments made by section 4) shall be available for al-
9 leged violations of any rights provided by this sub-
10 section.
11 (5) DEFINITIONS.—For purposes of this sub-
12 section—
13 (A) the term "judicial officer" means a
14 justice, judge, or magistrate judge listed in sub-
15 paragraph (A), (B), (F), or (G) of section
16 376(a)(1) of title 28, United States Code; and
17 (B) the term "justice or judge of the Unit-
18 ed States" has the meaning given such term by
19 section 451 of such title 28.
20 **SEC. 6. VETERANS' PREFERENCE REQUIRED FOR REDUC-**
21 **TIONS IN FORCE IN THE FEDERAL AVIATION**
22 **ADMINISTRATION.**
23 Section 347(b) of the Department of Transportation
24 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

1 (3) by inserting after paragraph (10) the fol-
2 lowing:
3 "(11)(A) knowingly take, recommend, or ap-
4 prove any personnel action if the taking of such ac-
5 tion would violate a veterans' preference require-
6 ment; or
7 "(B) knowingly fail to take, recommend, or ap-
8 prove any personnel action if the failure to take such
9 action would violate a veterans' preference require-
10 ment.".
11 (b) DEFINITION; LIMITATION.—Section 2302 of title
12 5, United States Code, is amended by adding at the end
13 the following:
14 "(e)(1) For the purpose of this section, the term 'vet-
15 erans' preference requirement' means any of the following
16 provisions of law:
17 "(A) Sections 2108, 3305(b), 3309, 3310,
18 3311, 3312, 3313, 3314, 3315, 3316, 3317(b),
19 3318, 3320, 3351, 3352, 3363, 3501, 3502(b),
20 3504, and 4303(e) and (with respect to a preference
21 eligible referred to in section 7511(a)(1)(B)) sub-
22 chapter II of chapter 75 and section 7701.
23 "(B) Sections 943(c)(2) and 1784(c) of title 10.
24 "(C) Section 1308(b) of the Alaska National
25 Interest Lands Conservation Act.

1 "(D) Section 301(c) of the Foreign Service Act
2 of 1980.
3 "(E) Sections 106(f), 7281(e), and 7802(5) of
4 title 38.
5 "(F) Section 1005(a) of title 39.
6 "(G) Any other provision of law that the Direc-
7 tor of the Office of Personnel Management des-
8 ignates in regulations as being a veterans' preference
9 requirement for the purposes of this subsection.
10 "(H) Any regulation prescribed under sub-
11 section (b) or (c) of section 1302 and any other reg-
12 ulation that implements a provision of law referred
13 to in any of the preceding subparagraphs.
14 "(2) Notwithstanding any other provision of this title,
15 no authority to order corrective action shall be available
16 in connection with a prohibited personnel practice de-
17 scribed in subsection (b)(11). Nothing in this paragraph
18 shall be considered to affect any authority under section
19 1215 (relating to disciplinary action).".
20 (c) REPEALS.—
21 (1) PROVISIONS OF TITLE 10, UNITED STATES
22 CODE.—Section 1599c of title 10, United States
23 Code, and the item relating to such section in the
24 table of sections at the beginning of chapter 81 of
25 such title are repealed.

1 (2) SECTION 2302(a)(1) OF TITLE 5, UNITED
2 STATES CODE.—Subsection (a)(1) of section 2302 of
3 title 5, United States Code, is amended to read as
4 follows:
5 "(a)(1) For the purpose of this title, 'prohibited per-
6 sonnel practice' means any action described in subsection
7 (b).".
8 (d) SAVINGS PROVISION.—This section shall be treat-
9 ed as if it had never been enacted for purposes of any
10 personnel action (within the meaning of section 2302 of
11 title 5, United States Code) preceding the date of the en-
12 actment of this Act.

○

Mr. HOLDEN. Thank you, Mr. Chairman.

It is a great pleasure to be here today. And I commend you for holding this hearing and markup on H.R. 240.

As a Nation, we owe a great debt of gratitude to our veterans for their fine service to our country. Many times, we have called on our military personnel to answer the call to duty and to help in times of need.

The veterans' preference recognizes our obligation to those who have served this Nation proudly. The Congress has a responsibility to make sure that the original goals of veterans' preference are being met, and that veterans' rights are being protected. And I look forward to hearing the testimony today.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Tim Holden follows:]

THE HONORABLE TIM HOLDEN
VETERANS PREFERENCE HEARING OPENING STATEMENT

Mr. Chairman,
It is my great pleasure to be here today to hear testimony from veterans groups and OPM and to mark-up H.R. 240.

As a nation, we owe a great debt of gratitude to our veterans for their fine service to our country. Many times, we have called on our military personnel to answer the call to duty and help in times of need.

The Veterans preference recognizes our obligation to those who have served this nation proudly. The Congress has a responsibility to make sure that the original goals of veterans preference are being met and that veterans rights are being protected.

I look forward to hearing the testimony on this important issue.

Mr. MICA. I think that Mr. Holden is going to make an incredible ranking member with short opening statements like that.

Mr. HOLDEN. Well, I was told to be careful about that.

Mr. MICA. I will tell my staff to make mine a little bit shorter. So I apologize, but I got in words for everyone.

I will turn now to our vice chairman, Mr. Pappas.

Did you have any opening remarks?

Mr. PAPPAS. No. I have a written statement that I would like to be included in the record.

Mr. MICA. Without objection, it will be made part of the record.

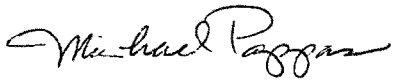
[The prepared statement of Hon. Michael Pappas follows:]

Statement of Congressman Michael Pappas
Before the Subcommittee on Civil Service
Hearing on HR 240 "The Veterans Employment Opportunities Act of 1997"
February 26, 1997

Mr. Chairman, Thank you. For too long many of our nation's veterans have been neglected when it comes to obtaining federal employment. The Veterans Employment Opportunities Act seeks to rectify this unfortunate situation by providing a legal framework in which veteran's grievances are answered in a fair and just manner.

Unfortunately, veterans preference has largely been a practice that has too often been seen as simply an insignificant and non-applicable piece of archaic legislation. This bill attempts to put an end to such a notion by addressing the concerns of the men and women who have served or will yet serve our nation so admirably. Artificial barriers are removed and, as a result, veterans can compete for federal jobs on a competitive basis. Furthermore, restrictions are put into place that limit the use of single person competition against veterans and make violators of veterans preference subject to disciplinary actions.

As many of you know, this bill is a bipartisan one that reflects the interests of the people who served our county so courageously. I commend this committee's previous work on the subject and I look forward to continuing to work with our nation's veterans to make sure their concerns are addressed.



Mr. MICA. Ms. Norton, did you have any opening comments or remarks? You were not with us for our first meeting, but you are most welcome, and we look forward to your participation on our panel.

Ms. NORTON. Thank you very much, Mr. Chairman. I do have a brief opening statement.

I would like to thank you, Mr. Chairman, for calling this hearing and markup today on the Veterans' Employment Opportunities Act of 1997.

This is essentially the same legislation that you introduced and that the subcommittee and the full committee approved in the 104th Congress, with modifications designed to address certain matters. The bill, of course, aims to bolster veterans' preference and increase Federal employment opportunities for our women and men who have served in the armed forces.

May I essentially thank you, Mr. Chairman, for including elements of a bill that I had introduced in the last session of the Congress to require Federal agencies to establish priority placement programs for employees affected by a RIF. And you have included a section in addition that would require the Federal agencies to give veterans' preference when rehiring employees. This is a very important addition to the bill, when one considers that the Federal Government continues to downsize.

The country has long recognized that whether in a voluntary or conscripted army, that serving one's country inevitably entails sacrifices. Among these are the loss of months or years when there could have been career advancement in the private sector. The least that the Government can do is to recognize this sacrifice in its own job pool.

Veterans' preference allows the Government to reap the benefit of its own investment in military training, encouraging skilled military personnel who leave the armed services to enter the Federal workforce today. Indeed, at this time, there is a greater percentage of veterans in the Federal workforce than in the private sector.

Veterans' preference also benefits women. And as more and more women enter the military, women are increasingly represented in the armed forces. Comprising approximately 200,000 of the 1.5 million in active military service today, veterans' preference could potentially have a great impact on these women as they leave the military and seek employment in the Federal Government.

Once again, I commend Chairman Mica for the bipartisan, participatory process that this subcommittee has engaged in to address concerns that were raised regarding this bill. I look forward to our markup this afternoon and our work on this subcommittee during the 105th Congress.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Eleanor Holmes Norton follows:]

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE

SUBCOMMITTEES
PUBLIC BUILDINGS AND
ECONOMIC DEVELOPMENT
WATER RESOURCES AND
ENVIRONMENT

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
GOVERNMENT REFORM AND
OVERSIGHT

SUBCOMMITTEE
RANKING MINORITY MEMBER,
DISTRICT OF COLUMBIA

STATEMENT OF CONGRESSWOMAN ELEANOR HOLMES NORTON AT THE CIVIL SERVICE SUBCOMMITTEE HEARING ON H.R. 240, THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997

February 26, 1997

I want to thank Chairman Mica for calling this hearing and mark-up today on the Veterans Employment Opportunities Act of 1997. This is essentially the same legislation that the subcommittee and the full committee approved in the 104th Congress, with modifications designed to address concerns raised by postal workers' unions and to make knowing violations of veterans' preference a prohibited personnel practice. The bill aims to bolster veterans' preference and increase federal employment opportunities for our women and men who have served in the armed forces.

The country has long recognized that whether in a voluntary or conscripted army, serving one's country inevitably entails sacrifices. Among these are the loss of months or years when there could have been career advancement in the private sector. The least that the government can do is to recognize this sacrifice in its own job pool.

Veterans preference allows the federal government to reap the benefit of its investment in military training, encouraging skilled military personnel who leave the armed services to enter the federal workforce. Today, there is a greater percentage of veterans in the federal workforce than in the private sector.

Veterans preference also benefits women as more and more women enter the military. Women are increasingly represented in the armed services, comprising approximately 200,000 of the 1.5 million in active military service today. Veterans preference could potentially have a great impact on these women as they leave the military and seek employment in the federal government.

I commend the Chairman for the bipartisan, participatory process that this subcommittee has engaged in to address concerns regarding this bill. I look forward to our mark-up this afternoon and our work in this subcommittee during the 105th Congress.

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Mr. MICA. Thank you.

And I would now recognize the gentlelady and long-suffering member of this committee, Mrs. Morella.

Mrs. MORELLA. I loved every minute of it, Mr. Chairman, or almost.

I want to thank you for reintroducing this bill with its changes, and for holding this hearing today, and the markup following. Because this is an important piece of legislation, the Veterans' Employment Opportunities Act of 1997.

As you indicated, Mr. Chairman, this bill has broad support. It passed this subcommittee in the last Congress, and it passed the House. And we did have two votes on it in the House. But unfortunately, the Senate failed to act on the legislation. Improvements since then have been made to the bill to ensure that postal workers are treated fairly.

And I remember the testimony that we had in the last Congress. We had many veterans' organizations and individuals who testified. And, of course, one that stands out in my mind is John Fales, who founded the Blinded American Veterans Foundation, who is represented here today by Heea Fales, his spouse. But he and the others provided personal experience testimony, which is very valuable to this committee.

So this bill would simply strengthen the requirement that veterans receive preferential treatment in obtaining and keeping Federal jobs. It would also establish a much-needed redress mechanism for veterans who are denied their employment rights. The contents of this bill are certainly deserved by all of our veterans, men and women alike.

And I thank you.

Mr. MICA. I thank the gentlelady.

And I will recognize the gentleman from Texas, Mr. Sessions.

Mr. SESSIONS. Mr. Chairman, thank you. I do have a few brief remarks, if I may.

Mr. Chairman, it is a pleasure to be in front of these groups today, who are representing veterans across our country. And I would like to say that it is never inappropriate to stand up for the rights of these veterans.

Sometimes, especially in a peacetime period that we are enjoying today in our history, it is easy to take for granted many of these many freedoms and sacrifices that each of these veterans have fought for.

But we can never forget the contributions that the men and women of our military have given to our country, and that is what we are talking about today, their place in society and the jobs that they will have.

The Veterans' Employment Opportunities Act of 1997 gives to those who have served our country needed appeals and the avenues for those cases which they have been denied the opportunity to work in the position for which they were most qualified. When veterans are not given the chance to prove their ability, justice must prevail.

When I first read this legislation, I was concerned about the impact it may have on the Postal Service. Because of my unique position serving not only on this subcommittee and the Subcommittee

of the Postal Service, many of my constituents voiced their opinions on this legislation.

And Mr. Chairman, I want you to know that they were concerned about this legislation that would put veterans without postal experience in high postal positions. In other words, something that they may not have had a background for.

And I was very heartened to receive from you, Mr. Chairman, that among other things stated that many jobs within the Postal Service, such as the Postmaster positions, require knowledge and skills that must and most often can be obtained only within the Postal Service.

And I would like to say that there is nothing in this bill that will require anyone to hire an unqualified veteran with no postal experience for any job, meaning that you must be qualified if you want to try to qualify for these jobs.

I would like to thank you for providing this letter to me. Because as I know and you know, the Postal Service has an outstanding record in hiring veterans. The Postal Service employs 258,510 veterans. In 1995 alone, the Postal Service hired 7,927. Of that 7,927, 6,033 had service-connected disability.

This is an agency that I believe we can applaud and be proud of for not only their service to America, but also working with the veterans' community with distinction. And it is certainly one that I think needs to continue to improve its service to the American people. And we need to work with them.

And I also want to thank you, Mr. Chairman, for your special consideration when we talk about the impact of this legislation to women. According to your letter to me, Mr. Chairman, the equal access provision in this bill will make it easier for women veterans to obtain Federal employment. So certainly, what we are talking about is not only people who have given up their time to our country, but also those people who might be minorities, and in this case specifically women.

I applaud your bill, Mr. Chairman. I think that it addresses legitimate concerns that we have. And I want to thank you for sending this letter to me. And I would ask unanimous consent for that letter that you sent to me that was dated February 24th be submitted into the record.

And with that, Mr. Chairman, I thank you for my time.

Mr. MICA. Thank you, Mr. Sessions.

And without objection, that document will be made part of the record.

[The prepared statement of Hon. Pete Sessions and the information referred to follow:]

Statement of the Honorable Pete Sessions
before the Subcommittee on Civil Service of the House Committee on
Government Reform and Oversight
February 26, 1997

Thank you, Mr. Chairman.

Mr. Chairman, it is a privilege to be in front of groups representing the veterans of this country. And it is never inappropriate to stand up for the rights of these veterans. Sometimes, especially in such a peaceful period in our history, it is easy to take for granted the freedom that we experience every day. But, we can never forget the contributions that the men and women of our armed forces have made to this country.

The Veterans Employment Opportunities Act of 1997 gives to those who have served our country needed appeals avenues in cases where they have been denied the opportunity to work in a position for which they were the most qualified. When veterans are not given the chance to prove their ability, justice must prevail.

When I first read this legislation, I was concerned about its impact on the Postal Service. Because of my unique position on both this subcommittee, and the subcommittee on the Postal Service, many of my constituents voiced their opinions on this legislation. Mr. Chairman, they were concerned that this legislation would put veterans without postal experience in high postal positions. I was heartened, Mr. Chairman, when you assured me, "Many jobs within the Postal Service, such as Postmaster positions, require knowledge and skills that most often can be obtained only within the Postal Service. Nothing in my bill would require anyone to hire an unqualified veteran with no postal experience for any job."

Those assurances were good to hear. The Postal Service has an outstanding record in hiring veterans. The Postal Service employs 258,510 veterans. In 1995 alone, the Postal Service hired 7,927. Of that 7,927, 6,033 have service connected disabilities. This is an agency that we can applaud as serving the veterans community with distinction. And it is one that continually seeks to improve on the service it gives to the American people.

I also feel the need to compliment the special consideration given in this legislation to women. According to your letter to me, Mr. Chairman, "the equal access provision in [this] bill will make it easier for women veterans to obtain federal employment." This makes this legislation doubly admirable.

I applaud your bill, Mr. Chairman. It addresses legitimate concerns, yet it is crafted in a way that ensures only the most qualified individuals will be put in positions of authority throughout this nation's dedicated civil service. I thank the Chairman for this time. I ask unanimous consent that your letter to me dated February 24, 1997 be submitted into the record. With that, Mr. Chairman, I yield back the balance of my time.

DAN BURTON, INDIANA
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED FIFTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
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February 24, 1997

The Honorable Pete Sessions
Member of Congress
U. S. House of Representatives
1318 Longworth HOB
Washington, DC 20515

Dear Pete:

Thank you for bringing to my attention the concerns expressed by the National Association of Postmasters of the United States (NAPUS), which is opposing the Veterans Employment Opportunities Act of 1997, H.R. 240. Unfortunately, NAPUS' opposition is based upon a profound misunderstanding of the bill, and it has disseminated misinformation that mischaracterizes the bill.

For example, NAPUS implies that career postmasters may lose out to less qualified outside veterans after waiting years for an opportunity. This is simply not true. Many jobs within the Postal Service, such as Postmaster positions, require knowledge and skills that most often can be obtained only within the Postal Service. Nothing in my bill would require anyone to hire an unqualified veteran with no postal experience for any job.

The section of the bill dealing with qualifications on which NAPUS seems to rely heavily applies only in certain narrow circumstances during reductions in force. And it was necessary to address this in the bill because we have learned that agencies too often tailor RIFs to undercut the protections provided by current veterans' preference laws. They single out individuals in "single-position competitive levels" and target them for removal without providing fair competition. The bill will provide protections to veterans who are victims of such "designer RIFs."

NAPUS also erroneously contends that my bill would adversely affect women. To the contrary, the equal access provision in my bill will make it easier for women veterans to obtain federal employment. Under it, women who have served honorably in the military for three years could not be frozen out of competition for federal jobs, even if they are not entitled to veterans' preference because they have not received a campaign badge. In contrast, NAPUS's statement that H.R. 240 would cause women to "be bumped from consideration for a higher level position by a less qualified male veteran" is simply not true. Not one word in my bill would cause this to happen.

Likewise, NAPUS also errs in saying that this bill provides a parallel appeals system for veterans. The redress system in this bill has been carefully crafted in conjunction with veterans' service organizations, other Members, and other interested parties. It prevents veterans from filing duplicative charges, and it does not allow them to get more than "one bite at the apple." A veteran may only file in a federal district court if he or she has not received a judicially reviewable decision from the Merit Systems Protection Board within a specified time frame.

Thank you again for giving me this opportunity to set the record straight. H.R. 240 is not unfair to anyone. To the contrary, it helps to fulfill a moral obligation toward the men and women who have served in uniform that we all share as citizens of this great nation. I appreciate your support for this measure and look forward to working with you to enact it into law.

Sincerely,

John L. Mica
Chairman
Subcommittee on Civil Service

Mr. MICA. I will also send a letter to Mr. Runyon. You should be entitled to at least two more postal facilities and quick delivery of your mail. That is in their mission statement, so I trust that it is going to happen.

Mr. SESSIONS. Thank you.

Mr. MICA. And thank you for your concern to make sure that those provisions are in the legislation.

Today we have two panels. We are very pleased to welcome our first panel, and to welcome back the Honorable James B. King, Director and Director-to-be of the Office of Personnel Management, as I understand that he is being renominated by the President. We have enjoyed our working relationship. We probably agree 90 percent of the time, and then are very amicable on the other 10 percent. We achieved some milestones in Federal personnel management under your leadership and with the cooperation of our panel.

So we congratulate you, and welcome you back. You have with you Mary Lou Lindholm, with the Office of Diversity in the Office of Personnel Management.

Is she going to testify too, Jim?

Mr. KING. Mr. Chairman, Mary Lou Lindholm is also our Associate Director for Employment. Her responsibilities include chairing our meetings with the veterans' service organizations. So she covers two areas that I thought might be helpful to the committee.

Mr. MICA. And she is also going to testify with you.

And as customary, this is an investigation and oversight panel. So if you would both please stand and raise your right hand.

[Witnesses sworn.]

Mr. MICA. Let the record reflect that the witnesses answered in the affirmative.

As is customary, we ask that full comments be submitted for the record, but that you summarize now and try to go under the 5-minute rule.

So with that, you are recognized and welcomed, Mr. King.

STATEMENTS OF JAMES B. KING, DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY MARY LOU LINDHOLM, ASSOCIATE DIRECTOR FOR EMPLOYMENT, OFFICE OF PERSONNEL MANAGEMENT

Mr. KING. Thank you, Mr. Chairman. I would be totally disingenuous if I did not thank you for your help on the very difficult work that lay before us at OPM when you first arrived as chairman. I really would be totally disingenuous if I did not acknowledge that.

And the former Chair, who was so helpful in the past, Ms. Norton, I also have to thank you during that first term. I really do not know how we would have done anything without your support.

And you suggested, Mr. Chairman, it has been bipartisan. And above all, Mr. Chairman, I think sometimes you may even understate yourself. Fairness, I think, has been one of the things that has been the hallmark really of your term here.

Mr. MICA. If you would be willing to repeat that to my wife.

Mr. KING. Mr. Chairman, I really thank you for the opportunity to state the Office of Personnel Management's views on the Veterans' Employment Opportunities Act of 1997, H.R. 240, and to restate the Clinton administration's firm support for the principle of

veterans' preference, which Franklin Roosevelt embodied in the Veterans' Preference Act of 1944.

The administration strongly supports veterans' preference, and the enhanced employment opportunities it has provided for our Nation's veterans. We at OPM take pride in the record that this administration has achieved in administering our veterans' preference.

OPM's most recent workforce figures demonstrate that even in a time when the Government is growing smaller, our Nation is keeping its promise to those who have worn its uniform.

Our figures show that in 1990, 1991, and in 1992, the percentage of veterans among Federal civilian full-time permanent new hires averaged 18.5 percent.

In 1993, 1994, and 1995, the percentage of veterans among Federal civilian full-time new hires was 31.1 percent, an increase of more than 50 percent over the previous 3 years.

These numbers represent real men and women, about 14,000 of them in 1995, who joined our civil service, largely because of their own skills and talents, but also because the veterans' preference law is doing the job that it was designed to do.

For example, in 1995, 47.7 percent of the 24,846 men aged 20 or older, who were hired for full-time permanent jobs, were veterans. That is more than double the 22.4 percent of men over the age of 20 who are already in the national workforce, who are veterans.

Under existing law, veterans have also had protection during reductions in force or RIFs. And we believe that these have worked well to protect veterans during the ongoing downsizing of Government.

The issue before us today is new legislation intended to further strengthen veterans' preference. Strengthening employment opportunities for veterans is a worthy goal. And I would like to thank you, Mr. Chairman.

During recent discussions with the veterans' service organizations, we questioned whether our goal of retaining the maximum number of veterans during a RIF could be achieved by this legislation without complicating an already complex and cumbersome RIF process.

OPM put forth for their consideration the idea of simply removing the grade limitation on bumping and retreating for veterans only. I had hoped that the proposal would be seen as a way to retain the most veterans during a RIF without the additional complexity that may result from the proposed legislation.

And I do support strengthening the veterans' preference. However, I would also note that any change to RIF procedures should allow agencies adequate time for implementation. Since RIFs may be underway should the bill be enacted in its present form, agencies will need this phase-in period.

Otherwise, they would have to stop ongoing RIFs and start over again, causing enormous disruption and increased expense. But in many cases, it would mean an even greater job loss, and therefore more RIFs.

We will work with the Congress to address this and any other concerns that you may have.

Mr. Chairman, I would be glad to answer any questions you may have about this legislation, and OPM's role in administering it. I thank you very much for permitting me to be here today.

[The prepared statement of Mr. King follows:]

STATEMENT BY
JAMES B. KING, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

at a hearing on

THE VETERANS' EMPLOYMENT OPPORTUNITIES ACT OF 1997
H.R. 240

FEBRUARY 26, 1997

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to state the Office of Personnel Management's views on the Veterans' Employment Opportunities Act of 1997, H.R. 240, and to restate the Clinton Administration's firm support for the principle of veterans' preference, which President Franklin Roosevelt embodied in the Veterans' Preference Act of 1944.

I am accompanied today by Mary Lou Lindholm, OPM's Associate Director for Employment, whose responsibilities include chairing our quarterly meetings with veterans' service organizations.

The Administration strongly supports veterans' preference and the enhanced employment opportunities it has

provided for our Nation's veterans. We at OPM take pride in the record this Administration has achieved in administering veterans' preference.

OPM's most recent workforce figures demonstrate that, even in a time when the Government is growing smaller, our Natio is keeping its promise to those who have worn its uniform.

Our figures show that in 1990, 1991 and 1992, the percentage of veterans among Federal civilian full-time permanent new hires averaged 18.5%.

In 1993, 1994 and 1995, the percentage of veterans among Federal civilian full-time permanent new hires was 31.1% -- an increase of more than 50% over the previous three years.

These numbers represent real men and women -- about 14,000 of them in 1995 -- who are joining our civil service, largely because of their own skills and talents, but also because the veterans' preference law is doing the job it was designed to do. For example, in 1995, 47.7% of the 24,846 men aged 20 or older who were hired for full-time permanent jobs were veterans. That is more than double the 22.4% of men over age 20 in the national workforce who are veterans.

As you know, under existing law, veterans also have protection during reductions in force, or RIFs, and we believe

these have worked well to protect veterans during the ongoing downsizing of the Government. The Administration has a proud record of ensuring that veterans receive the rights and preferences that current law provides to them.

The issue before us today is new legislation intended to further strengthen veterans' preference.

Strengthening employment opportunities for veterans is a worthy goal.

During recent discussions with veterans' service organizations, we questioned whether our goal of retaining the maximum number of veterans during a RIF could be achieved by this legislation without complicating an already cumbersome RIF process. OPM put forth for their consideration the idea of simply removing the grade limitation on bumping and retreating for veterans only. I had hoped the proposal would be seen as a way to retain the most veterans during a RIF without the additional complexities that may result from the proposed legislation.

I would also note that any change to RIF procedures should allow agencies adequate time for implementation. Since RIFs may be underway should the bill be enacted in its present form, agencies will need this phase-in period. Otherwise they would have to stop ongoing RIFs and start over again, causing

great disruption and increased expense. We will work with the Congress to address this and any other concerns.

Mr. Chairman, I will be glad to answer any questions you may have about this legislation and OPM's role in administering it.

Thank you very much.

Mr. MICA. I thank you.

And you are not going to make an opening statement?

Ms. LINDHOLM. No, I am not.

Mr. MICA. You are just available for questions?

Ms. LINDHOLM. Right.

Mr. MICA. Well, I have a couple of questions. First, we have gotten from your agency's Office of Diversity, I guess the latest list of the employment of veterans in the executive department.

Are you aware, either Mr. King or Ms. Lindholm, of what the civilian labor force percentage of veterans being hired are in the private sector?

Mr. KING. The last report that I had was I think it was 22 percent as opposed to now 27.5 percent in the latest figures I have.

Mr. MICA. Well, one of the things that concerns me is that even with some existing veterans' preference, if you look at our Federal agencies, and I have a copy of a table that was produced by your office, is that several of the agencies fall below that percentage: the Department of Education, the Department of HHS, the Department of Treasury, and other executive agencies. But many of these agencies are far below even the civilian workforce in percentages of veterans' hiring.

[The information referred to follows:]

OPM - Office of Div

Employment of Veterans by Executive Departments[1]

Agency	September 30, 1996		
	Total Employment	Total Veterans	Percent Veterans
Department of Agriculture	112,472	18,265	16.2
Department of Commerce	35,239	5,818	16.5
Department of Defense (Excluding Army, Navy, Air Force)	133,305	40,755	30.6
Department of the Army	253,729	89,033	39.0
Department of the Navy	218,384	83,040	38.0
Department of the Air Force	175,806	67,652	44.5
Department of Education	4,871	532	10.9
Department of Energy	18,477	4,463	24.2
Department of HHS	55,933	6,196	11.1
Department of HUD	11,425	2,038	17.8
Department of the Interior	70,922	15,475	21.8
Department of Justice	110,886	24,407	22.0
Department of Labor	15,287	3,366	22.0
Department of State	15,176	2,709	17.9
Department of Transportation	63,293	22,653	35.8
Department of the Treasury	146,275	24,111	16.5
Department of Veterans Affairs	254,070	65,899	25.9
Other Executive Branch Agencies	194,856	29,107	14.9
TOTAL EXECUTIVE BRANCH	**1,890,406**	**505,519**	**27.5**

[1] Federal workforce data from Demographic Profile of the Federal Workforce, September 30, 1996, OPM - Office of Workforce Information (Table 8)

Mr. MICA. Is there any reason for this that you have seen?

Mr. KING. We have done the analysis, and we have seen both figures. I could not respond regarding the record of specific agencies.

Ms. LINDHOLM. There is nothing that we have come across in the reports that would allow you to identify specifically what the barriers were in any particular agency.

Mr. MICA. Well, the other thing I am wondering, Jim, is if we might be able to get cooperation of your agency right from the getgo here, and ask them to voluntarily look at how they can increase veterans' employment, because these are some pretty dismal figures for some of our key Federal agencies. So that might be one thing we could do before we get legislation in effect, but it would be done on a voluntary basis.

Would you be willing to work with us on that?

Mr. KING. Surely.

Mr. MICA. Maybe we can do something jointly that we are concerned with in a positive vein.

Another thing that concerns me, and was just brought to my attention, and it is sort of like discrimination. You know, everybody knows that it goes on, and we detest it, and we have laws against it. But it does exist.

I got a letter from a Vietnam veteran dated February 6th. It takes a little while to get to me, but I did eventually get it. This veteran was working in the biological research division of the USDA, which has been undergoing a number of changes.

But what he brought to my attention was very disturbing. He said that he was and some other folks were called in as field station staff members to a meeting in Davis, CA. "We all met with the U.S. Fish and Wildlife Service personnel staff." And the individuals from the personnel branch of the Fish and Wildlife Service gave them an informal briefing on how to avoid giving veterans any preference.

Let me quote what he says here. "This is what these representatives said. 'We will tell you how not to hire a veteran, how to get rid of veterans, and how to avoid facing a 5 to 10 point veteran in hiring.'"

And then they asked them not to let the word out on this at this particular meeting, and then went on and explained how to run job announcements to avoid, partially, veterans. "You can run a job announcement for the last 2 weeks before the job announcement closing date, and use the excuse of checking the DD–214 or losing any other pertinent piece of paperwork that did not arrive before job placement."

They went on to talk about reduction in force, and how they get around reduction in force rules, and these are the personnel folks from Fish and Wildlife. "Reduction in force rules in general terms can be manipulated." I will not read the rest of it—about how you manipulate the rules to the disadvantage of veterans.

This is very disturbing to me to get this, but it seems pretty reliable. We need to be looking at this carefully.

[The information referred to follows:]

FEB 11 1997

February 6, 1997

John W. Cox
9460 Houston Road
Malibu, California 90265

The Honorable Elton Gallegly
2477 Rayburn House Office Building
Washing, D. C. 20515

Dear Congressman Gallegly,

Please do not allow the address to fool you, we live on the Ventura County side of the Santa Monica Mountains. You are mine and my families representative, and we had gladly voted for you in the last election. I am writing, as I think there exists a situation extremely troubling to those of us who are Veterans of the Armed Forces. The U. S. Fish and Wildlife Service gave classes on how to not-hire Veterans, to be able to RIF (Reduction in Force) specific Veterans, and basically discriminate against all Veterans. We also have no structure in place to combat this situation.

Presently I am one of those Veterans (I am a disabled Veteran who received the Purple Heart and Silver Star w/Cluster in Vietnam) who is being RIF'ed, a selected individual because of being a Veteran and for no other reason than people having animosity that Veterans receive the 5 or 10 point preference when hired. There are many, many more Veterans having the same problem as myself. We need help! Though HR240 is being voted on by the Congress, and the Senate, what are those of us to do now - my RIF takes place March 7, 1997. Personally I think this situation a slap in the face to all Veterans, and to patriotic Americans alike. You and other Congressman are the only people in a position to assist us, Veterans of foreign wars.

Please let me know if there is anything you or your staff can do to assist in this matter. I am sure those of us who are Veterans will be glad to see you helped. I am a member of the Ventura American Legion, the Oxnard Moose, and the Vietnam Veterans of America. We are all interested in your assistance in this situation and feel positive you will help. I have outlined the meeting of the U.S.F.W.S. meeting where they discussed how not to hire Veterans, and outright discriminate against us all.

Sincerely,

John W. Cox

A Vietnam Veteran in the Government

I am a Vietnam Veteran, working in the Biological Research Division of the United States Geological Service, at least until March 7, 1997, when my Reduction in Force takes effect. Not many Veterans are among the Department of Interior, especially within the research divisions. I would like to relate a situation that happened about 1 ½ years ago, and continues to this day. A situation that treats Veterans wrong, unjustified discrimination, and most often the Veteran can say nothing since it becomes a question of ethics rather than discrimination.

We are an agency that has been thrown from one agency to another, until what used to be the National Biological Service, is now the BRD within the USGS. We experienced three different management/administrative situations over the past four years, the NPS, BLM, FWS, and now the USGS.

As I said, about 1 ½ years ago all the field stations staffs gathered, at that time still NBS, in Davis, California. We all met with the U. S. Fish & Wildlife Service Personnel staff. While going over notes for the transition to have the FWS administer our personnel situation, a question was raised from our NBS staff member on how not to hire Veterans, especially Vietnam Veterans.

The two ladies from the Personnel Branch in the FWS stood for a moment, looked at one another, then in silent agreement turned toward the individual asking the question, until one finally spoke. "We will tell you how to not hire a Veteran, how to get rid of Veterans, and how to avoid facing a 5/10 point Veteran in hiring. But first we must have all your guarantees that not a word of this will leave this room."

I sat there amazed, at how this could happen within the government. A government that would not exist without the military. With people standing in front of the room with little or no regard, respect, or appreciation what so ever toward Veterans. I said nothing, confused on what would transpire further. The other lady explained how to run job announcements to avoid, partially, Veterans, in that "...you can run a job announcement for the last two-weeks before the job announcement closing date, and use the excuse checking the DD 214 (or loosing any other pertinent piece of paperwork) did not arrive before job placement." Therefore, the Veteran may have qualified but the paperwork incomplete, and the job vacancy filled before the paperwork of the Veteran complete. Or, they hoped by the time a Veteran would see the announcement, it would be too late, and the Veteran would have to call for an extension, which, both ladies smiled, they had "...gladly refused in the past unless the individual a non-veteran."

The other situation has to do with Veterans already in the government. "The Reduction in Force rules," they stated, "are general in terms, and can be manipulated." In other words, the way I understood their explanation, the

Personnel Office could give a RIF (Reduction in Force) action that either segregates the workers in selective job positions, or a blanket RIF, that would cover the way the regulations were written for in the first place, and define the individuals involved as in an "area" rather than a per job situation. Both ladies again hesitated, then one spoke again. Most Vietnam Veterans are getting older, so you can "get rid of the older people, while RIFing the Vietnam Veterans you didn't want to begin with, and was probably forced upon you with their points."

Both ladies went further into explaining how to "not hire" or "RIF" Veterans, especially Vietnam Veterans They also eluded, and joked about, "...if you can't do it in the FWS, put the Veterans in the USGS, since they don't care and pointedly want to RIF Veterans." The other lady chimed-in with a smile, "...and they're really good at it."

By then I walked out of the building, angered, but not knowing what to do about the situation. Most of the Research Scientists in the (then NBS now BRD/USGS) room favored the recommendations, in order to hire young and aggressive college girls (as they outright stated several times), who are more "fun" to work with in the field and in the office.

Presently, after becoming a staff member in the USGS / BRD, I have indeed been RIF'ed, finalized March 7, 1997. I am a Vietnam Veteran, and at last rating was in Sub Group 1-A; In government standards Sub Group 1-A is the last to go in a RIF, with Sub Groups 2-A,B,C and Group 3-A, B, C to be RIF'ed first. This is SOP, and regulated by Reduction in Force procedures, unless manipulated and a tiny "catch-all" regulation is known about from the Personnel Staff. What that is I do not know.

This is not only disrespectful to all Veterans, but torpedoes, undermines, all efforts of those who served in the Armed Forces in this United States. This is a Slap-In-The-Face to all Veterans and something should be done to eliminate this callous situation. The attitude of those involved are totally un-American, to usurp the Veterans is to loose everything the United States is all about.

Please do something about this situation.

Sincerely,

John W. Cox

Mr. KING. I would like to have a copy of that. You know, we have had 31 of these kinds of situations come before us in the past 2 years, and every one of them we have been able to solve and remedy, and make corrections, and take action.

If it would not jeopardize any confidentiality, we would very much like to have that, so we can go right to the organization.

Mr. MICA. We can have all of the laws on the books and pass new laws, and we will have folks subverting the law and the intent. We are the employers, and we need to make sure that the employees are cooperating in this effort.

So I call this to your attention, and ask for your cooperation.

Mr. KING. We will look into this, and we will report back to the subcommittee.

Mr. MICA. I have no further questions or comments.

Mr. Holden, you are recognized.

Mr. HOLDEN. Thank you, Mr. Chairman.

And thank you, Mr. King, for your testimony.

Can you outline the types of preferences that veterans get in the civil service, and explain which veterans qualify for them?

Mr. KING. We have the list.

Ms. LINDHOLM. There is a list that actually identifies the eligibility criteria, and we would certainly be glad to submit it to you. It is pretty lengthy.

Mr. KING. We can go through it, if you wish.

Mr. HOLDEN. If you could submit it for the record, so we could review it, I would appreciate that.

Ms. LINDHOLM. Sure.

[The information referred to follows:]

WHO IS ENTITLED TO VETERANS' PREFERENCE IN APPOINTMENT

1. A veteran who was separated from active duty in the Armed Forces with an honorable or general discharge and who served:

   - during a war, or

   - during the period April 28, 1952, through July 1, 1955, or

   - for more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976, or

   - in a campaign or expedition for which a campaign medal has been authorized (for example, El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti).

     Campaign medal holders who enlisted after September 7, 1980, (or who entered on active duty on or after October 14, 1982, without previously having completed 24 months of continuous active duty) must serve continuously for 24 months or the full period called or ordered to active duty. (Does not apply to disabled veterans separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. 1171 or 1173.)

     Military retirees at the rank of Major or higher are not eligible for preference in appointment unless they are disabled veterans.

2. A veteran who served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits or pension from the military or the Department of Veterans Affairs. This includes Purple Heart recipients.

3. The spouse of a disabled veteran who is unable to qualify for a Federal position along the lines of his or her usual occupation because of a service-connected disability.

4. The widow or widower of a veteran who was not divorced from the veteran and has not remarried (or whose remarriage was annulled), if the veteran either:

   - served during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign badge has been authorized, or

- died while on active duty that included service described above under conditions that would not have been the basis for other than an honorable or general discharge.

5. The mother of a deceased veteran who died under honorable conditions while on active duty during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign badge had been authorized, provided she is or was married to the father of the veteran, and

   - she lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage), or

   - she is widowed, divorced or separated from the veteran's father and has not remarried, or

   - she remarried but is widowed, divorced or legally separated from her husband when she claims preference.

WHO IS ENTITLED TO VETERANS' PREFERENCE IN A REDUCTION IN FORCE

The same rules apply as for appointments except that a retired member of a uniformed service must meet an additional condition to be considered a preference eligible for RIF purposes. This condition differs depending on the rank at which the individual retired.

1. Retirees below the rank of Major (or equivalent) are entitled to preference in a RIF if:

   - retirement from the uniformed service is based on disability that either resulted from injury or disease received in the line of duty as a direct result of armed conflict, or was caused by an instrumentality of war and was incurred in the line of duty during a period of war as defined in 38 U.S.C. 101(11), or

   - the employee's retired pay from a uniformed service is not based on 20 or more years of full-time active service, regardless of when performed, but not including periods of active duty for training, or

   - the employee has been continuously employed in a position covered by 5 U.S.C. Chapter 35 since November 30, 1964, without a break in service of more than 30 days.

2. Retirees at or above the rank of Major (or equivalent) are entitled to preference in a RIF if they qualify as disabled veterans and also meet one of the criteria above for a person retired below the rank of Major.

OTHER ADVANTAGES FOR VETERANS IN FEDERAL EMPLOYMENT

In addition to preference in appointment and RIF, preference eligibles enjoy an extensive and substantial array of other advantages in Federal employment, arising from the Veterans' Preference Act, including the following:

- 10-point preference eligibles have a right to reopen exams that are closed to other candidates;
- agencies may not establish minimum educational requirements except when OPM determines that a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education;
- competition for the positions of guards, elevator operators, messengers and custodians in the competitive service is restricted to preference eligibles;
- veterans receive credit for service in the armed forces, as well as for all other pertinent experience, including that gained in religious, civic, welfare, service, and organizing activities, regardless of whether it was paid service;
- agencies must waive any requirements as to age, height, or weight that are not essential to the performance of the duties of the position. The agency must also waive any physical requirement if, in the opinion of the examining official, the veteran is able to perform the duties of the job efficiently;
- preference eligibles who resigned, and those who have been separated or furloughed without delinquency or misconduct, may have their names entered on all employment lists for which qualified;
- preference elgibles may be reinstated to any position for which qualified;
- a qualified compensably disabled veteran is placed at the top of a list of eligibles;

- appointing officials must consider the top 3 candidates on a list of eligibles and may not pass over a preference eligible to select a nonpreference eligible without OPM approval. The veteran is entitled to be notified of OPM's decision. 30% or more disabled veterans may also contest a proposed passover before OPM;

- when a function is transferred or an agency is replaced by another, affected veterans must be placed first before any new "outside" hires are made;

- preference eligibles have adverse action protections requiring 30 days' notice, an opportunity to respond, and an appeal right to the Merit Systems Protection Board; and

- preference eligibles who face demotion or removal for unacceptable performance also have an appeal right to the Merit Systems Protection Board.

Mr. HOLDEN. And could you describe for us the manner in which you routinely have been conducting outreach to various veterans' organizations?

Mr. KING. We meet with the major national veterans' service organizations on a quarterly basis. We sometimes meet informally in between, and we talk with each other on the phone. And Ms. Lindholm is the one who chairs the meeting, but the agenda is set jointly during those meetings.

I make it a point to attend virtually all of them. I abbreviated my attendance at the last meeting, because, quite frankly, I was not feeling very well, and I did not want to infect the group. They are friends. So I left a bit early. But we did go over the agenda item, including discussion of the legislation before us.

Mr. HOLDEN. Just one final question, Mr. King. I believe the veterans groups will testify that Federal managers do not understand the responsibilities with respect to veterans' preference.

What if any information or training are managers provided with on this subject?

Mr. KING. That is on an agency-by-agency basis. And what we can do is every manager should be trained. I think that one of the things that is worth saying is that right now, because this has been brought to our attention, we are in the process—we are in the final process—of publishing a handbook called Vet Guide, which will be a handbook for all of the veterans' appointing authorities. And it will be a quick reference guide, quite frankly, to assist Federal agencies in accurately determining applying veterans' preference.

Because we view it in our agency as core to merit principles. So when I talk merit principles, veterans' preference, it is a part of that. It is not a separate section. It is right in there.

So I feel very strongly about supporting veterans' preferences as part of our merit system. I view it as an earned right. It is not simply an entitlement. I hope that I am expressing the agency and the Government as a whole. So that anyone who is inconsistent with that particular position, I believe is inconsistent with both the intent and the spirit of the laws and where we should be at.

Mr. HOLDEN. Thank you, Mr. King.

No further questions, Mr. Chairman.

Mr. MICA. Thank you.

Mrs. Morella, you are recognized for questions.

Mrs. MORELLA. Thank you.

Again congratulations, Dr. King, on your reappointment.

Mr. KING. Thank you.

Mrs. MORELLA. I just wanted to pick up on a line from your testimony, where you said that, "OPM put forth for their consideration the idea of simply removing the grade limitation on bumping and retreating for veterans only. I had hoped the proposal would be seen as a way to retain the most veterans during a RIF without the additional complexities that may result from the proposed legislation."

What are the complexities of the proposed legislation?

Mr. KING. On that one, I actually have a list, if you will go through it with me as I look at it first, so I can answer the question in reverse. What I referred to quite frankly was that with these we had a clean mind when we lifted any of the bump and

retreat, which would optimize. And there was some question, I think, by a number of groups, all legitimate.

What we did so, I would like to say, is we started with the same objective and the same goals. How do we optimize the opportunity for veterans at a time of downsizing to retain their jobs. That was the bottom line. So I put that one forward quite frankly in good faith, merely to say I am not starting from any previous predetermined position any bump or retreat from 15 to a 1. That would be up for discussion, as far as I was concerned. And that would simplify the whole process.

And the service organizations speak for themselves. But I also indicated at the same meeting that I would support anything that came forward in any manner that they felt would work toward the goal and the objective. And it is quite apparent that nowhere are we at loggerheads in relation to that. So I feel totally comfortable.

Part of it is that bumps outside of our competitive areas would cause RIFs quite frankly in agencies that are not facing shortages of funds or work. So the determination in one area could move into another agency or another area of responsibility that would ordinarily not be affected, because this opens up much broader.

There could be a productivity loss. Veterans could be placed in jobs obviously where they need more training to be effective. And that is stated and that is understood in the bill, but it goes to 150 days. And the increased training and the cost to the agencies.

But we are willing to accept these costs as part of our commitment as a public agency. And we understand that. But we want you to understand what the implications are.

This is also an area where people are making additional subjective decisions. Do you believe this individual can be better trained, et cetera. There is a lot of area of subjectivity. And we have generally found that where people are making judgments, in that sense you can get into a great deal of difficulty.

Again, we were looking at the simplest type, rather than going through the entire organizations. And I think really that the potential cost, which nobody knows right now, and the delay. Because as you know, every time you set a RIF, if anything changes, and you have to reissue and rework it.

I really had Ms. Lindholm with me today, because she is one of few people who is a personnelist, who is also in her own agency had to work from top to bottom. And what you hear many times, for examples, that managers make determinations.

First of all, I think I should establish the fact that our veterans make up about 38 percent of all managers in our Government. So it is not that as a veteran that once you become a manager that somehow you turn your back. I would like to think that that is not true. But there is a substantial managerial class for our veterans.

But even in this, what is the determination that is going to be made at each step. The personnel office does that. What you do as a manager is identify jobs that no longer need to be done, and the bump and retreat goes from there. And right now, virtually every agency I know uses a computer program.

Ms. LINDHOLM. Most of them do.

Mr. KING. Which any agency of any size does that. So they can reprogram and reset. It is much more complex sort of management

item. And the front line managers and even the more senior managers have no idea what it looks like. It is all done by the personnel office.

Ms. LINDHOLM. Right. And I think that it is important to note that throughout a RIF notice period that those determinations change. So if an individual retires or if there is any movement in that competitive area, you have to continually rerun the RIF. And that is the personnelist who would be rerunning it. So it is very difficult to know what the outcome is going to be of a RIF, when you reach the effective date.

Mrs. MORELLA. Mr. King, you mentioned that there could be a larger and longer phasing period.

Mr. KING. Our concern was that you give us enough time. I am operating on the assumption that the legislation will move forward. Then we are saying how do we make it work. My interest is bottom line, how do I get this to actually work and affect the people we are concerned about. And what I want to do is be certain we have enough time that we can do the rulemaking, which is a minimum of 90 days. And then in other areas where other agencies have to give up for this is we will take some time.

I do not know, and I am not about to predict, what time an agency would take for this. I would like to think that they may be asked and they could share that with you as to what they feel they need for lead time.

I know that the Department of Defense is already giving you an idea what they believe they would need, and maybe there are other agencies that are affected that would share that with you.

I am using 90 days. Please do not hold me to it, but we will work hard to come in within that 90 day window to make sure we are ready to go with rulemaking and everything that is required, so it can get started.

Mrs. MORELLA. So you can make this bill when it becomes law work?

Mr. KING. We will try. The question is can the agencies respond to the final rulemaking we put out. And I am just saying give them enough time. As I am saying, when we are bringing in 47 percent almost of our eligible people who are applying for jobs who are veterans, there is a real effort.

I know we are running into situations and they are real situations with real people where they have not been treated fairly. We have identified some of those, and they are real. So I am not in any way minimizing this. But I think that you have to give us a certain bit of leeway, because I think that there has been a bridge of trust established with the hiring that has been done. I am talking about new hires.

It is quite apparent when you say it is 47 percent. And by the way, 96 percent of your veterans are male right now. Now the mix is changing. It is about 86 right now, I think. But as far as the available pool of talent coming in, we are drawing down, and it seems that a good job is being done.

Now we are concerned about two other things. First on the hires, but second on RIFs. How do we retain people and maintain the same commitment to fairness and to job stability that we did to entry, and to maintain all of those standards together.

What we are saying is, give us an opportunity to get the training in, and to make sure that gets done, and that it is done properly. But I am not saying give us some excessive amount of time. I believe that it can be done in a reasonable period.

Mrs. MORELLA. Thank you, Dr. King.

Mr. MICA. Thank you.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. King, I am intrigued by your list indicating the percent of veterans by department. One sees in the departments that are related to the military far larger numbers than other departments.

Would you say this occurs largely because of the preference of veterans themselves, because of greater receptivity of the agencies, or some other reason, particularly in light of the fact that you have this high percentage of situations, 71 percent according to the figures I have, where there is circumvention of the law, where the veteran is at the top of the civil service register?

Mr. KING. Well, first of all, I think that the veterans, as anyone else, do not stray far from home. In some cases, people are known. They are known quantities. And they are leaving the service, and they are recruited back in as civilians.

Ms. NORTON. The departments themselves reach out to recruit people?

Mr. KING. Yes. And by the way, I am delighted that they do it. And some of it is retraining. But also a colonel so-and-so knows that they are looking in the particular area that these people are going on, that they are looking for somebody, and they are aware of the job notice. And say we have an ideal person coming out of the service now, and you really ought to look at them.

There is a network that is established. And also, I think in many cases, and I would include ours, that it is a question of where the specialty lies, too. But I do not know. That is why I say it is interesting to see the spread. That is why I brought it in. It is interesting to see the spread. I do not have any definitive answers.

Mary Lou, what has been your experience over the years with this?

Ms. LINDHOLM. Well, I think your point about the high number of military retirees. I believe the number is running almost 50 percent these days of the hires, the new hires, into DOD are military retirees. And we can certainly check and verify those numbers, and submit them for the record. But I think that Jim's point is correct, that it is the recruitment sources that they have identified.

Mr. KING. And it is fascinating, as you noted. For example, the Department of Transportation has a very high level of veterans.

Ms. NORTON. They look like they are matching themselves. This may not reflect poorly on the other departments. It reflects the network, and it reflects the particular skills that people are trained for in the service, and are reused in civilian life, all of which means, of course, that the Federal Government is getting a bigger bang out of its initial buck, because it has invested very heavily in training for these veterans. And that training probably reflects itself better where we see these numbers than it would, for example, in Education, or in Labor, or in HHS, where we see the numbers lower.

I am struck, however, in your testimony by the difference between employment of veterans in the Federal Government and in the private sector.

Would that be for the same reason? You had twice as many, or approximately twice as many by percentage, going into the Federal sector as going into the private sector.

Mr. KING. What I have in the private sector is where we are looking at a stable thing. We do not know what the private sector hires as a percentage.

Ms. NORTON. The national workforce without knowing.

Mr. KING. That is correct.

Ms. NORTON. So it might not be all private.

Mr. KING. I am using the dynamic side where people are seeking work. It is interesting to know that people who have jobs, about 22 percent out there in the public sector, which is a pretty good barometer of what is there, that the hires—and by the way, it is interesting to note that the cadre of the age 20 to 34 is about 4.7 percent of the population in the private sector.

And when you see a very substantial number of veterans that we bring into the military when you look at the cadre of the age group, it is that a very substantial cadre of veterans from the 50 to 65 that if you were looking at a chart, that is the big swell. It is very, very substantial. Almost half of the veterans, better than half, are in that category.

What we are seeing now is a shift within Government of higher and higher percentages of Vietnam veterans being the veteran who is presently employed in the Government. There is a wide range, but there is a definite shift away from World War II and Korea, because of the age and retirement. Plus the Government retires at an earlier age as a rule on average than the private sector. People leave the Government earlier than they do in the private sector in gross numbers.

Ms. NORTON. The figures in your testimony is you refer to hires and not promotion, do they not?

Mr. KING. Pardon?

Ms. NORTON. The figures in your testimony reflect hires and not promotions?

Mr. KING. That is correct.

Ms. NORTON. Would you talk about promotion, where veterans' preference also comes into play?

Mr. KING. Let me see what I have in the numbers. Let me just check. I was just looking at them.

Ms. NORTON. Do the ratios continue in the way that we find them in the hires?

Mr. KING. We find, for example, 10 percent of a gross figure of 27.5 percent veterans. It is about 38 or 37.9 percent on managers or in the supervisory category. We have various categories that we are running through right now. It is almost over-charted, please forgive me.

Ms. NORTON. I am not actually sure that it breaks out promotions.

Mr. KING. I do not have promotions per se. We can get you the positions that they presently hold, which would indicate promotions.

[The information referred to follows:]

PROMOTION RATES FOR VETERANS

There were 278,680 promotions in the Federal Service in FY 1995. Veterans accounted for 58,182 of these promotions, or 20.9 percent. The percentage of promotions going to veterans ranged from a high of 35.2 percent in Air Force to 7 percent in HHS and generaly paralleled the extent to which agencies hired veterans.

Ms. NORTON. Well, promotions are interesting. Because it is in promotions that you have competing. You really do have a more difficult situation. People coming in and being hired for the first time is an easier situation than when two people have done good work, and one may have done considerably better work than another. And then veterans' preference comes into play.

Mr. KING. At the end of the day, if you end up with 38 percent of your positions, your leadership positions, being held by veterans that we can document, they obviously are being promoted. And they are being promoted in disproportionate numbers to the number in the workforce.

But I would like to say, if I could, whatever we are doing, the real issue is can we do more. And we believe we can, and we believe that this legislation will help us to do more. And that I think is what your bottom line is, and the committee's bottom line is, and we share that.

Ms. NORTON. Thank you very much.

And thank you, Mr. Chairman.

Mr. MICA. Thank you, Ms. Norton.

Mr. Sessions.

Mr. SESSIONS. Thank you.

Dr. King, have you had an opportunity to see this letter from John W. Cox yet, were you just given that?

Mr. KING. It was just given to me, sir.

Mr. SESSIONS. Have you reviewed it before today, sir?

Mr. KING. No, sir.

Mr. SESSIONS. OK. I would like, if I could, to just take a minute, Mr. Chairman, and look into at least just part of this letter. I would like to direct you to where it says a Vietnam veteran in the Government, the last paragraph.

It says, "The other situation has to do with veterans already in government. The reduction in force rules they stated are general in terms and can be manipulated. In other words, the way that I understood their explanation is the personnel office could give a RIF action that either segregates the workers in selective job positions or a blanket RIF that would cover the way that the regulations were written for in the first place."

Specifically, my question is can you please discuss what this means, and is there something that is a unique or single person competitive level?

Mr. KING. There is a single person competitive level. In many cases, we see that is of advantage to the individual in it.

Mr. SESSIONS. Advantage to what?

Mr. KING. For the individual who is in that single category. In many cases, it is in their interest.

Mr. SESSIONS. What is this, and does it mean single person, or does it mean job title, what does this relate to, and how many sin-

gle—because evidently, there is a competitive advantage in a RIF situation.

Mr. KING. Sometimes it can be, sir, and sometimes there is not.

Mr. SESSIONS. Let me allow you a few minutes. I think you see the area that I am going in.

Ms. LINDHOLM. Yes. Actually, I do not see how any individual could say that even before you are ever even running a RIF and you have ever established your retention registers you would be making some of those statements.

But the point is that when you are starting to run a reduction in force, you look at how your positions are classified, and your occupational series. In most cases, your competitive levels are determined by the series.

But there are some classification series that are so broad, such as the ones in the 300 series, that you would look and say, how do you group these positions in such a way that the duties are interchangeable, that anyone in that competitive level could do any person's job in that competitive level. And that is how you make those determinations.

Mr. SESSIONS. As to whether it would be considered unique?

Ms. LINDHOLM. That is right. And it is very, very specialized. Someone who has scientific, that is usually you see a lot of it, that they have to have a lot of scientific expertise that only one individual perhaps has that kind of specialized position at that point. That would create the situation for a single competitive level.

But as Jim indicated, that is only for the first round of a reduction in force. And even if you identify that single competitive level position as one to be abolished, you then have to go into your second round of reduction in force, which means that you start applying your bumping and retreating rights. So you do not know how it is going to fall out after that.

Mr. SESSIONS. Have you received any comments similar to this within your own evaluations and within your own business and feedback from managers or from other groups that this is a problem?

Ms. LINDHOLM. You mean believing that some agencies are actually trying to manipulate, according to this statement?

Mr. SESSIONS. Believing, as it says here, in selective job positions, in other words allowing that?

Mr. KING. I heard that in my own agency when we were RIFing. We downsized our agency about 46 percent. And a lot of it was attrition, and a substantial amount by RIFs. And we were told time and time again that this was being done selectively and so forth. And I was very curious, and that is when Mary Lou and I worked together very closely. As I said, she has the hands-on side.

Once it started, it was like a ball on a roulette wheel. If you can really predict what slot that is going into, you can become a millionaire. You could do the same thing in our business. If you could really predict how a RIF runs. I do not think you can predict it. I have never had a prediction on a real RIF.

Mr. SESSIONS. Not even a manager.

Do the RIFs originate only from Washington, DC?

Mr. KING. No. They can originate——

Ms. LINDHOLM. In a community.

Mr. SESSIONS. Local management.

Mr. KING. No. Local management determines the jobs. The personnel people work the RIF. They are separate.

Mr. SESSIONS. So the local management determine the RIF.

Mr. KING. They determine the jobs that are to be closed, that would no longer be necessary. And the individual holding that job then with the floor being taken from under them. But they have the right at that time to either bump or to retreat. And they move up or down, or horizontally or vertically, horizontally or in a downward pattern. And they can take another job.

The person getting the RIF notice may not be the person going out the door. I may be legally RIFed, but I have standing with a number of incremental things. It is a mathematical equation, basically, that makes the determination of who leaves us.

Ms. LINDHOLM. And I think what you will find is that management identifies the positions that are excess. And if, for example, they have five accountants, and they say that they can do the work with one less accountant now, then they just identify an accountant, for example, Grade 7 is the position now they are going to determine is excess. From then on they have no idea which of the five are even going to be identified as the low person on that retention register, who would start the reduction-in-force process.

Mr. KING. And that person who, let's say, is removed, and they lose their job, they may have rights to permit them to run into another department where they bump someone else. And they stay there, and that other person starts to bump or retreat. That is what we are saying. It is a series of bumps and retreats as to who actually leaves us. You may have anywhere from 6 to 10 people who are affected on one job.

Mr. SESSIONS. Have veterans expressed a specific problem with this, and have those been addressed?

Mr. KING. I know that in a number of cases, and I believe that testimony was given here, where veterans had some questions, because veterans have gone out the door. They have lost their jobs. And there is no guarantee under any legislation I have seen, but they are four times better off than non-veterans.

In some places, and I know the Chair is very sensitive and aware of this, the U.S. Geological Survey, where there were RIFs, and there were a number of comments made. But veterans were disproportionately impacted as far as retention goes than non-veterans. Some veterans still went out the door, and that is part of the question.

What I think this legislation attempts to do, sir, is to try and still reduce that further. But there is nothing that I have seen that would stop it outright, unless you gave absolute preference, under no circumstances is anyone removed from a job.

Mr. SESSIONS. Thank you, Dr. King.

Thank you, Mr. Chairman.

Mr. MICA. I thank our panelists today.

Did you have something else?

Mr. KING. Just one thing, Mr. Chairman. I know during these hearings that you have always looked for perfecting language. But I was just a little concerned about the standards that you have in there for reporting. You mentioned, as you did in your opening

statement, sir, about both the Congress, and the judiciary, and the executive, the White House, having a methodology and reporting.

What I noticed in the legislation is that there seems to be a lower standard for judges, and Members of Congress, and the White House. And I was wondering if we were going to equalize that in the legislation, sir. And if that was an oversight, the committee might want to consider it.

Mr. MICA. Well, we have met with our good friends in the judiciary, and they have some particular concerns and a particular manner in which they are required under the Constitution to conduct themselves. And the same thing for the legislative branch, which I learned a little bit about. So there is some uniqueness to each of the branches and some constitutional requirements, believe it or not.

What we have tried to do is take the intent. And the intent is that all things being equal, we want to give our servicemen and women, who have served the country honorably, some advantage in the Federal workplace, whether it be the legislative, the judicial, or the executive branch.

And they may have to go about it in slightly different terms, because of some of their constitutional requirements, or requirements of their job. But our intent is what we want to see carried out.

The other point that I wanted to make to you, Mr. King, and others is that we have legislation that we hope to mark up here today. We have tried to work from the end of the last session to today to improve the legislative language to meet any concerns. If there is something that needs to be flexible due to a particular requirement, we are willing to do that. But it is to get to that intent.

So we welcome your additional comments. The markup today should occur just a little later on. This is not by any means the end of the process. And we will welcome that step until we can conclude with an agreement with the Senate.

Mr. KING. Thank you so much, Mr. Chairman.

Mr. MICA. And thank you. We thank you both for coming.

I would like to call our next panel. Our second panel is Emil Naschinski, who is the director of the National Economics Commission of the American Legion. Mr. Charles L. Calkins, who is the national executive secretary of the Fleet Reserve Association. Sidney Daniels is the director of the National Veterans' Employment Assistance Service of the Veterans of Foreign Wars. And Mr. Larry Rhea, deputy director of legislative affairs for the Non-Commissioned Officers Association.

I believe for the record that all of the witnesses and organizations have complied with Rule XI of the House certification of nonreceipt of Federal funds. We will make that part of the record.

Again, I would like to welcome you here today. And as is customary, it is necessary to swear you in as this is an investigations and oversight panel.

[Witnesses sworn.]

Mr. MICA. Welcome. We try to encourage that you submit lengthy statements which will be made part of the record, but ask that you summarize now, and we will impose a 5-minute time limit. We have a large panel here today.

I will recognize Mr. Emil Naschinski, director of the National Economics Commission of the American Legion.

STATEMENTS OF EMIL NASCHINSKI, ASSISTANT DIRECTOR, NATIONAL ECONOMICS COMMISSION, THE AMERICAN LEGION; CHARLES L. CALKINS, NATIONAL EXECUTIVE SECRETARY, FLEET RESERVE ASSOCIATION; SIDNEY DANIELS, DIRECTOR, NATIONAL VETERANS' EMPLOYMENT ASSISTANCE SERVICE, VETERANS OF FOREIGN WARS; AND LARRY RHEA, DEPUTY DIRECTOR, LEGISLATIVE AFFAIRS, NONCOMMISSIONED OFFICERS ASSOCIATION

Mr. NASCHINSKI. Mr. Chairman, and distinguished members of the subcommittee. The American Legion appreciates having this opportunity to share its views on H.R. 240, the Veterans' Employment Opportunities Act of 1997.

Before commenting on the status of veterans' preference and the provisions of H.R. 240, the American Legion would like to take just a moment, Chairman Mica, to publicly thank you for your efforts to eliminate the flaws that currently exist in our veterans' preference statutes. We believe that H.R. 240 will correct those deficiencies, and we look forward to working with the subcommittee to ensure enactment of this important legislation.

Congress enacted veterans' preference in 1944 to address the readjustment needs of men and women who had served their country during a time of war. It was also designed to assist war veterans in regaining the lost ground that their civilian careers had suffered as a result of military service.

In the beginning, the Federal Government gladly complied with the provisions of the new veterans' preference law. Unfortunately, however, as the years passed, the memory of war faded, and some of America's concern for fulfilling her obligation citizen soldiers. Today, the provisions of our veterans' preference laws are for all intents and purposes, meaningless.

One of the reasons for this is that unlike women and/or minorities, the Federal Government never developed any "goals" or "time tables" for the recruitment of veterans. As a result, there was, and is, very little incentive for agencies to hire veterans.

Another reason is that under affirmative action, women and/or minorities are protected from discrimination by the rules and regulations of the Equal Employment Opportunity Commission. If a person covered by EEOC feels that he or she has been discriminated against in hiring, promotion, or retention, they may file a formal complaint. Unfortunately, the same protection is not afforded to veterans because veterans' preference is an earned right and not an affirmative action program.

Because of that lack of accountability, many Federal managers have routinely discriminated against veterans. Section 8 of H.R. 240 will remedy that problem by making it a prohibited personnel practice to knowingly discriminate against veterans. It will permit the special counsel to bring disciplinary action before the Merit Systems Protection Board against any Federal employee who knowingly violates veterans' preference laws. The American Legion believes that this amendment to the law is long overdue.

While the American Legion does not oppose increasing employment opportunities for women and minorities, we do object to the fact that all too often that goal has been accomplished by denying veterans their rights under the veterans' preference laws. The American Legion supports H.R. 240, because it will provide an effective, efficient, and user friendly redress mechanism for veterans' whose rights have been violated.

While the American Legion fully supports the provisions of H.R. 240, Mr. Chairman, the American Legion would like to recommend that the subcommittee consider legislation or an amendment that would require Federal agencies to track and report the number of preference eligibles that are hired in the Federal system, as opposed to all veterans. With all due respect to Mr. King and our colleagues at OPM, the American Legion believes that if Federal agencies and the administration were to track and report the number of preference eligibles hired as opposed to all veterans, then the number would demonstrate an unsatisfactory record with regard to veterans' preference.

The American Legion also supports H.R. 240, because it will prevent unfair personnel practices such as the creation of single-person competitive levels for RIF purposes and will enhance a veterans' chance of finding another job should he or she be forced from the Federal workforce.

In closing, the American Legion would like to respond to a couple of criticisms that we often hear about veterans' preference. First, veterans' preference does not discriminate against women and minorities. It is completely neutral with respect to veterans' gender and ethnicity.

Second, a large percentage of preference eligibles are women and minorities. In fact, the percentage of minorities serving in the military today is double that of their percentage in the civilian population. Also, approximately 20 percent of the veterans who became preference eligibles because of their service in Desert Storm were women.

Another false assumption that many Federal officials have is that veterans' preference prevents them from hiring the most qualified person for any given job. In truth, veterans' preference only comes into play when the veteran is completely qualified for the position for which he or she is applying.

Chairman Mica, that concludes the American Legion's statement. Again, thank you for the opportunity to comment on H.R. 240.

[The prepared statement of Mr. Naschinski follows:]

STATEMENT OF EMIL W. NASCHINSKI, ASSISTANT DIRECTOR
NATIONAL ECONOMIC COMMISSION
THE AMERICAN LEGION
BEFORE THE
HOUSE GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 240, THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997

FEBRUARY 26, 1997

Mr. Chairman and distinguished members of the subcommittee: The American Legion appreciates having this opportunity to share its views on H. R. 240, *The Veterans Employment Opportunities Act Of 1997.*

Thank you for your efforts during the 104th Congress to eliminate the flaws that currently exist in veterans preference statutes. Unfortunately, a similar measure which passed the House of Representatives last year with overwhelming support, fell victim to time constraints and a "cloak room hold" in the Senate. Hopefully, today's hearing will lay to rest all of the false information and inaccurate assumptions about H.R. 240. You can count on the Legion's cooperation and support during the 105th Congress to pass this legislation.

The American Legion supports H. R. 240 because, for the first time, it will provide an effective, efficient and user friendly redress mechanism for veterans whose rights have been violated under veterans preference laws. This legislation is long overdue. If federal agencies and federal managers were fulfilling their obligation to enforce current law, this legislation would not be necessary.

Mr. Chairman, The American Legion would like to address some of the false assumptions and inaccurate information regarding veterans preference and H.R. 240. Unlike affirmative action programs, veterans must be fully qualified for a position in order for veterans preference to apply. The law simply provides preference to eligible veterans in obtaining and retaining federal employment, provided the candidates or employees have equal qualifications. The law only applies to preference eligible veterans.

Federal agencies and the administration regularly tout the number of veterans hired as a way to demonstrate their support for veterans preference. Unfortunately, the vast majority of these hires are low skilled, blue collar positions with little or no career advancement. In addition, The

American Legion believes that the number of preference eligible veterans is significantly lower than these statistics represent.

Mr. Chairman, The American Legion would like to recommend that this subcommittee consider legislation or an amendment, which would require federal agencies to track and report the number of preference eligible veterans hired by the federal government. The American Legion believes that if federal agencies and the administration were to track and report the number of preference eligible veterans, as opposed to all veterans, the numbers would demonstrate an abysmal record with regards to veterans preference.

Regarding H.R. 240, this bill will not create a new entitlement or benefit for veterans, despite the false and misleading information about this legislation which indicates otherwise. The American Legion also believes that there are current mechanisms in place, like those for affirmative action programs, to allow easy implementation of the redress mechanisms outlined in this bill. Currently, all of the concerns raised about this bill to date, are shallow. The American Legion can only question the support of veterans preference by federal agencies in light of these shallow concerns. Mr. Chairman, the bottom line is that federal managers are violating current law and this bill will correct those violations.

Congress enacted the Veterans Preference Act of 1944 to address the readjustment needs of the men and women who served their country during a time of war. The law was designed to assist veterans in regaining the lost ground their civilian careers had suffered as a result of military service. In the beginning, the federal government gladly complied with the provisions of the new veterans preference law. Unfortunately, however, as time passed and the memory of war faded, so did America's concern for fulfilling its obligation to its citizen-soldiers. Today, the provisions of the original legislation and its amendments as codified in Title 5, U. S. C. are, for all intents and purposes, meaningless.

The American Legion believes there are several reasons for this. First, federal managers do not understand the reason for granting veterans preference to those who fought to keep this country free, nor do they understand how it works. That problem is compounded by the fact that many veterans are unclear about their rights under the law.

In the early 1970s, veterans preference became politically controversial. As public opposition to the war in Vietnam escalated, the stigma of the war spilled over to those who served in the Armed Forces.

At approximately the same time, affirmative action legislation was enacted that required federal agencies to establish "goals" and "timetables" for the recruitment of women and minorities for careers in civil service. Because veterans preference is an earned entitlement and not an affirmative action program, there have never been quotas for the hiring of veterans. As a result, there was/is very little incentive for federal agencies to hire veterans.

While The American Legion does not oppose increasing employment opportunities for women and minorities, we do object to the fact that all too often that goal has been accomplished by denying veterans their rights under veterans preference laws. Ironically, a large percentage of women and minorities are veterans. In fact, the percentage of minorities serving in the armed forces is double the percentage of minorities in America.

Under affirmative action, women and minorities are protected from discrimination by the rules and regulations of the Equal Employment Opportunity Commission (EEOC). As a result, those protected by EEOC may file formal complaints if they feel they have been discriminated against in hiring, promotion or retention. Unfortunately, that same protection is not afforded to veterans because veterans preference is not an affirmative action program.

The American Legion firmly believes that the major problem with veterans preference is that veterans do not have an adequate redress system for instances of discrimination. As a result, federal managers have routinely discriminated against veterans. Their rationale is that veterans preference prevents them from hiring the most qualified person for the job or because they feel that it discriminates against women and minorities. What they fail to realize is that veterans preference is completely neutral with regard to the veteran's gender and ethnicity. Furthermore, in order for veterans preference to apply, the veteran must be totally qualified for the position for which he or she is applying.

With the mandatory downsizing of federal government, many federal agencies have become extremely creative in finding ways of circumventing veterans preference regulations. Probably the best example of this is what happened to veterans during the 1992 reorganization of the U. S. Postal Service. As you may remember, Mr. Chairman, the Postal Service conducted a reduction-in-force (RIF). However, because it was not called a RIF, and because employees who were downgraded were allowed to keep their pay and grade, the Postal Service was able to prevent veterans from exercising their RIF rights under veterans preference.

The American Legion also supports H. R. 240 because it will prevent unfair personnel practices such as the creation of single-person competitive levels for RIF purposes and will enhance a veteran's chances of finding another job should he or she be force from a federal job.

In closing, The American Legion would like to share some important facts. Historically, veterans have become some of the more productive members of society, provided they are given the right opportunities. They are stable, with over fifty percent married. They know about leadership and have an excellent work record. They show initiative and are very familiar with teamwork . In short, they are a national resource.

Mr. Chairman, this concludes my statement.

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(202) 861-2700 ★

February 24, 1997

Honorable John L. Mica, Chairman
House Government Reform Oversight
Subcommittee on Civil Service
B371C Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The American Legion received a federal grant from the U.S. Department of Labor in the amount of $98,982 in August of 1996. The purpose of the grant is to evaluate and identify military occupational specialties that have application to civilian careers and for which a license or certificate is required. The American Legion has not received federal moneys relevant to the subject of today's hearing, on H.R. 240, The Veterans Employment Opportunities Act of 1997.

Sincerely,

Emil Naschinski, Assistant Director
National Economics Commission

BIOGRAPHICAL SKETCH

EMIL W. NASCHINSKI
Assistant Director
National Economic Commission
The American Legion

Emil W. Naschinski has been employed by The American Legion since February of 1980. He was promoted to his current position on January 1, 1982.

As the Assistant Director of Economics, Emil is responsible for implementing the mandates of The American Legion's National Economic Commission. He prepares and presents congressional testimony; researches and writes articles on veterans' economic issues for various Legion publications; and administers the Commission's awards programs.

Additionally, Emil serves as The American Legion's liaison to the Office of Personnel Management, Small Business Administration, Department of Housing and Urban Development, National Organization on Disability, Postal Service, and the President's Committee on Employment of People with Disabilities and its Subcommittee on Disabled Veterans. During program year 1993-1994 he served as Chairman of the latter.

Emil served in the U.S. Army from 1967 to 1969. During his time in service he was trained as a combat medic and neuro-psychiatric technician. After being discharged, Emil joined the Cissel-Saxon American Legion Post #41 in Silver Spring, Maryland.

In 1972 he returned to school and graduated from the Maryland Institute, College of Art with majors in graphic design and painting. He subsequently taught art at Mount Vernon College.

Emil and his wife Charlotte, who is a nurse/educator, reside in Darnestown, Maryland.

Mr. MICA. Thank you for your testimony. We will hold questions until we have finished all of the panels.

And now, Charles Calkins for the Fleet Reserve Association. You are recognized, sir.

Mr. CALKINS. Thank you, Mr. Chairman, and other distinguished members of your subcommittee.

I am Charles Calkins, the national executive secretary of the Fleet Reserve Association. And I wish to thank you for holding this hearing, and pushing forward with your strong commitment for our veterans.

This bill will enable qualified veterans to compete in the mainstream of Federal employment. It is especially important that all Federal Government agencies support and actively adhere to the veterans' preference standards. Currently, this is not the case. Some agencies support in principle the existing statute, but in practice impose their own will as a substitute and answer to no one. An unsuccessful Federal applicant, who suspects discrimination based on sex, race or religion can appeal to the EEO Commission. A bypassed veteran, however, has no such recourse.

This bill will enforce the Nation's commitments to its veterans. For over 200 years, the Nation has recruited men and women into military service. And in return for their dedication and years of service, veterans with the necessary skills and qualifications deserve special consideration for Federal employment.

The Fleet Reserve Association urges quick action in passing this important legislation.

And in conclusion, Mr. Chairman, if I might add. As president of the Military Coalition, I would like to remind you and your subcommittee members that you should have received a letter from the Coalition in support of H.R. 240. The Coalition represents 24 military and veterans' organizations with more than 5 million veterans members.

Thank you again this afternoon, and let us hope that this passes through quickly.

[The prepared statement of Mr. Calkins follows:]

MR. CHAIRMAN AND OTHER DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE. I AM SENIOR CHIEF CHARLES L. CALKINS, U. S. NAVY RETIRED, NATIONAL EXECUTIVE SECRETARY OF THE FLEET RESERVE ASSOCIATION (FRA). THE ASSOCIATION WAS CHARTERED IN 1924, AND HAS A WORLD-WIDE MEMBERSHIP OF OVER 162,000 SAILORS, MARINES AND COAST GUARD PERSONNEL ON ACTIVE DUTY, RETIRED, OR IN THE RESERVE - VETERANS ALL. IT IS MY PRIVILEGE TO BRING THEIR MESSAGE TO YOU CONCERNING JOB PREFERENCE FOR VETERANS.

THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997 (HR 240), ENABLES QUALIFIED VETERANS TO COMPETE IN THE MAINSTREAM OF FEDERAL EMPLOYMENT. ITS PRIMARY FOCUS IS ON A NUMBER OF FACTORS THAT ASSIST THE VETERAN IN FINDING SUCH EMPLOYMENT. IT'S ESPECIALLY IMPORTANT THAT ALL FEDERAL GOVERNMENT AGENCIES SUPPORT AND ACTIVELY EMPLOY THESE STANDARDS.

CURRENTLY, THIS IS NOT THE CASE. SOME AGENCIES SUPPORT IN PRINCIPAL THE EXISTING STATUTE, BUT IN PRACTICE NOW IMPOSE THEIR OWN WILL AS A SUBSTITUTE AND ANSWER TO NO ONE. A GAO REPORT FOUND THAT IN 71% OF THE SITUATIONS WHERE A VETERAN WAS AT THE TOP OF A CIVIL SERVICE REGISTER, THE LAW WAS CIRCUMVENTED.

AN UNSUCCESSFUL FEDERAL APPLICANT WHO SUSPECTS DISCRIMINATION BASED ON SEX, RACE OR RELIGION CAN APPEAL TO THE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC). A BYPASSED VETERAN HOWEVER, HAS NO SO SUCH RECOURSE. SOME AGENCIES THAT OPPOSE PASSAGE OF HR 240 WISH TO MEET RESPECTIVE DOWNSIZING/RIGHTSIZING AGENDAS BY AVOIDING THE HIRING OF QUALIFIED VETERANS.

OTHER IMPORTANT ASPECTS OF THIS BILL:

- IT CREATES AN EFFECTIVE, EFFICIENT, AND USER-FRIENDLY REDRESS SYSTEM FOR MEN AND WOMEN WHOSE VETERANS PREFERENCE RIGHTS UNDER EXISTING LAW ARE VIOLATED.

- IT FURTHER REMOVES ARTIFICIAL BARRIERS THAT BAR QUALIFIED VETERANS FROM COMPETING FOR FEDERAL JOBS. EXISTING RESTRICTIONS PROMOTE AGENCY INBREEDING AND CRONYISM AMONG BUREAUCRATS.

- IT PREVENTS UNFAIR PERSONNEL PRACTICES SUCH AS SINGLE PERSON COMPETITIONS DURING REDUCTIONS IN FORCE (RIFS) WHICH RIG THE SYSTEM AGAINST THE JOB PROTECTION RIGHTS OF VETERANS.

- IT PUTS TEETH IN THE REGULATIONS TO MAKE VIOLATION OF VETERANS PREFERENCE LAWS A PROHIBITED PERSONNEL PRACTICE FOR DISCIPLINARY ACTIONS FOR ALL AGENCIES.

- IT PROVIDES VETERANS PREFERENCE TO MEN AND WOMEN SERVING IN BOSNIA, CROATIA AND MACEDONIA.

MR CHAIRMAN, THE SELECTION PROCESS FOR PREFERENCE IS NOT A SIDESTEPPING MECHANISM ENSURING THE HIRING OF A VETERAN. IT DOES HOWEVER, PLACE AHEAD OF LISTINGS THOSE VETERANS WHO MEET THE QUALIFICATIONS FOR THE DESIRED POSITION AND WHO IN 150 DAYS CAN PROVE THEIR KNOWLEDGE AND SKILLS TO SATISFACTORILY PERFORM THE JOB. MINORITY AND WOMEN VETERANS SHARE THE SAME RULES OF HIRING BASED UPON QUALIFICATION.

THE DEPARTMENT OF DEFENSE NOW RECRUITS MORE WOMEN AND MINORITIES FOR THE ARMED SERVICES BASED UPON THEIR MENTAL, PHYSICAL AND MORAL QUALIFICATIONS, REGARDLESS OF RACE, SEX OR RELIGION. PER THE LIFTING OF THE COMBAT EXCLUSION LAW IN 1994, FEMALE SERVICE MEMBERS ARE NO LONGER RESTRICTED TO TRADITIONAL "ROLE MODEL" POSITIONS. CURRENT RECRUITING TRENDS REFLECT HIGHER ACCESSIONS AND PLACEMENT OF WOMEN IN NON-TRADITIONAL ROLES. SO TODAY MORE FEMALES AS WELL AS MINORITIES ARE QUALIFYING IN HIGHER TECHNICAL AND MECHANICAL JOB SPECIALITIES. UPON LEAVING THE SERVICES, THEY HAVE AS MANY OPPORTUNITIES AS OTHER QUALIFIED VETERANS.

IN CLOSING MR CHAIRMAN, THIS BILL WILL REINFORCE THE NATION'S COMMITMENT TO ITS VETERANS. THE NATION HAS RECRUITED MILLIONS OF AMERICA'S MEN AND WOMEN INTO MILITARY SERVICE FOR WELL OVER TWO

HUNDRED YEARS. THEY HAVE PROVEN THEIR DEDICATION AND NOW SHOULD HAVE AN OPPORTUNITY TO COMPETE FOR EMPLOYMENT IN ONE OF THE FEDERAL AGENCIES. IN RESPONDING TO THEIR NATION'S CALLING THEY GAVE YEARS OF THEIR YOUNG LIVES DEFENDING THE NATION'S RAMPARTS – YEARS THAT COULD HAVE BEEN DEVOTED TO FINDING A JOB RESULTING IN SENIORITY THEREIN. THOSE CITIZENS WHO REMAINED AT HOME, HAD THAT TIME TO FIND EMPLOYMENT AND GAIN SENIORITY. NOW THAT THE VETERAN HAS COME HOME, HE OR SHE DESERVES AN OPPORTUNITY TO MAKE UP FOR THE YEARS SPENT IN THE MILITARY. THIS SHOULD BE AN INCENTIVE FOR ALL FEDERAL AGENCIES TO 'HIRE A VET'. THEY HAVE PROVEN TO A HIGHER STANDARD THEIR COMMITMENT TO OUR NATIONAL INTERESTS. THIS NATION HAS INVESTED IN A WELL TRAINED INDIVIDUAL BOTH TECHNICALLY AND METHODICALLY WHILE HE OR SHE WAS IN THE SERVICE.

MR. CHAIRMAN, CONSIDER THE VETERAN AS AN AMERICAN ON HOLD WHILE SERVING HIS OR HER COUNTRY. THEY WANT TO WORK. THEY ARE COMMITTED AND THEY HAVE A VISION OF PURPOSE TO MAKE THIS COUNTRY THE BEST EVER. WE MUST NOT CURTAIL THEIR OPPORTUNITY AND PREFERENCE AS QUALIFIED EMPLOYEES. FRA SAYS YES TO HR 240.

THE FLEET RESERVE ASSOCIATION URGES YOUR QUICK ACTION IN PASSING THIS IMPORTANT LEGISLATION.

Fleet Reserve Association

Serving Millions of Career Service Personnel Since 1924

CHARLES L. CALKINS
NATIONAL EXECUTIVE SECRETARY
FLEET RESERVE ASSOCIATION

Charles L. Calkins is the National Executive Secretary of the Fleet Reserve Association (FRA) — a 160,000 member national organization of active duty, reserve, and retired U.S. Navy, Marine Corps, and Coast Guard enlisted personnel. The FRA represents the views and concerns of its members and their families to the U.S. Congress and works to enhance the career compensation, benefits, and entitlements, including veterans benefits, for Sea Service personnel.

As the FRA's senior salaried national officer, Mr. Calkins manages the Administrative Headquarters in Alexandria, Virginia, is a member of the National Board of Directors, chairs the National Committee on Legislative-Service, and serves as the senior lobbyist. In addition, he is the First President of the newly incorporated Military Coalition.

He retired in October 1978 as a Senior Chief Signalman after 21 years of naval service.

Mr. Calkins has been a continuous FRA member since July 1975, serving on Branch, Regional, and National Committees and as the New England Regional President from 1993 to 1994.

Mr. Calkins was a Human Resources Specialist with the U.S. Postal Service prior to his election as FRA's National Executive Secretary.

He is a member of the George Washington Society of Association Executives and the Society for Human Resources Management.

He and his wife, Lynda, reside in Dumfries, Virginia.

—30—

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Subcommittee on Civil Service

Chairman John L. Mica

CERTIFICATION OF NON-RECEIPT OF FEDERAL FUNDS

Pursuant to the requirements of House Rule XI, I certify that neither I nor the entity(ies) I am representing before the Subcommittee (CIVIL SERVICE **) has received <u>any</u> federal grant (or subgrant thereof) or contract (or subcontract thereof) during the current fiscal year or either of the two previous fiscal years.**

By: CHARLES L. CALKINS — ***Name***

26 FEB 97 — ***Date***

National Executive Secretary
Title

Fleet Reserve Association
Organization Represented

Mr. MICA. Thank you for your testimony, and also your support.

Sidney Daniels, with the Veterans of Foreign Wars, you are recognized.

Mr. DANIELS. Thank you, Mr. Chairman.

Mr. Chairman and distinguished members of this subcommittee, we thank you for holding this hearing and for the opportunity to appear this afternoon.

We thank you in particular, Mr. Chairman, for your leadership efforts in strengthening the veterans' preference. It is an issue of vital importance to the men and women who first served honorably in our armed forces, and who are now or will be part of the dedicated civilian Federal workforce of our Nation.

Veterans' preference is an issue of enduring importance to those who served in the military, and an issue which we citizens and legislators have to have a responsibility to ensure. That the intent of the law matches the purpose and reality of veterans' preference as it is applied across the entire spectrum of civil service employment.

The Veterans of Foreign Wars believes that the Equal Access for Veterans provision of the bill will greatly assist many highly qualified veterans, who are potential candidates for Federal employment, as well as those who already in the Federal workforce, to apply for and to compete for Federal jobs and positions.

Contrary to the assertions of some, allowing veterans who are otherwise qualified to compete for jobs that are currently only open to insiders will only result in more women and minority veterans security Federal jobs, but increase the size of the pool of highly qualified candidates to choose from. This, in turn, enhances the overall quality of the Federal workforce.

The VFW fully supports the proposed language found in Section 2, Subsection (b) of H.R. 240, which would require the Office of Personnel Management to maintain and publicize to State employment services all Federal job vacancies for which a veteran may apply. We recommend, however, that the provision include additional language making it clear that not only should the list of vacancies be maintained, but that each vacancy position be listed with the State Employment Security Agency in the region where the job is located.

This listing of vacant positions will allow the federally funded veterans staff of that SESA to run an automated computer file search for veterans who are qualified for any given position. Additionally, such a listing of positions vacancies would address the issue many veterans do not apply for jobs they are qualified for simply because they did not know that such a vacancy existed.

With respect to the provision requiring an Office of Personnel Management Report, the VFW recommends that the report to the President and the Congress be made an annual requirement for the first 2 years, and biannually thereafter. This recommendation is in recognition of the fact that major hurdles in implementing this law will likely occur in the first few years, and must be carefully monitored by all concerned.

The VFW has been pleased to be a party to discussions with the American Postal Workers Union and their leadership. The APWU is to be commended for their commitment to veterans' preference as well as for their good faith discussions with veterans' organiza-

tions and the Congress in regard to the provisions of H.R. 240 affecting the U.S. Postal Service.

We hope that the Postmaster General and the National Association of Postmasters of the United States will follow the APWU's leadership example and work in good faith to resolve any remaining concerns regarding this carefully crafted section of the proposed legislation. The VFW fully supports the provisions, however, as now written.

We are firmly committed to ensuring that special protections are extended to veterans when a reduction in force action becomes necessary in an agency. The principle of special protections is consistent with the bumping and retreating provisions of the Veterans' Preference Act of 1944, as amended.

In recent years, Mr. Chairman, it has become clear that protections afforded veterans in a RIF situation through the original Veterans' Preference Act of 1944 are no longer adequate for discouraging those forces who would willfully and knowingly design and implement a RIF that makes mockery of congressional intent. We believe that H.R. 240 would remedy that situation.

We believe that these provisions effectively discourage so-called designer RIFs, which have generated much concern of late. There is concern that some agencies have taken questionable personnel actions to skew the results of any legitimate reduction in force action months prior to the actual legal procedure.

Mr. Chairman, we fully support the provision of the bill that establishes a redress mechanism for preference eligibles. As we understand the measure, the redress mechanism in its initial stage would allow a veteran who feels his or her preference rights have been violated to file a complaint with the Secretary of Labor within 60 days of the alleged violation.

If the Labor Department is unable to resolve the complaint within 60 days, the complainant is then able to pursue an appeal with the Merit Systems Protection Board and ultimately the U.S. District Court.

This concludes my statement, Mr. Chairman. I would be happy to take questions.

[The prepared statement of Mr. Daniels follows:]

VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATEMENT OF

SIDNEY DANIELS, DIRECTOR
NATIONAL VETERANS EMPLOYMENT ASSISTANCE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H.R. 240: "THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1997"

WASHINGTON, D.C. FEBRUARY 26, 1997

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.1 million members of the Veterans of Foreign Wars of the United States I wish to commend you for holding this hearing and affording us the opportunity to make a statement. I also want to thank you all for your efforts in the field of employment as relates to veterans and the opportunities afforded to them. Your effort on behalf of the American people is fitting recognition of the service and sacrifices made by the brave young men and women serving in the Armed Forces today and their expectation of fair treatment upon entering the civilian workforce.

★ WASHINGTON OFFICE ★
VFW MEMORIAL BUILDING ● 200 MARYLAND AVENUE, N.E. ● WASHINGTON, D.C. 20002-5799
AREA CODE 202-543-2239 ● FAX 202-543-6719

We thank you in particular, Mr. Chairman, for your staunch leadership efforts in strengthening veterans' preference. It is an issue of vital importance to the men and women who first served honorably in our Armed Forces and who are now or will be part of the dedicated civilian federal workforce of our nation. Veterans' preference is an issue of enduring importance to those who served in the military and an issue which we citizens and legislators have a responsibility to ensure that the intent of the law matches the purposes and reality of veterans' preference as it is applied across the entire spectrum of civil service employment.

Mr. Chairman, the VFW is strongly in favor of this proposed legislation. Our leadership has placed enactment of H.R. 240 at the forefront of our legislative agenda as a priority item for 1997. The VFW believes that early passage of H.R. 240 by the Congress is especially important for the veterans who may be subject to job loss due to the continuing reductions in the size of the federal workforce.

The Veterans of Foreign Wars believes Section 2, titled "Equal Access for Veterans" will greatly assist many highly qualified veterans who are potential candidates for federal employment as well as those already in the federal workforce to apply for and to compete for federal jobs and positions. Contrary to the assertions of some, allowing veterans who are otherwise qualified to compete for jobs that are currently only open to insiders will not only result in more women and minority veterans securing federal jobs, but increase the size of the pool of highly qualified candidates to choose from. This, in turn, enhances the overall quality of the federal workforce.

The VFW fully supports the proposed language found in Section 2, Subsection (b) of H.R. 240, which would require the Office of Personnel Management (OPM) to maintain and publicize to state employment services all federal job vacancies for which a veteran may apply. We recommend, however, that the provision include additional language making it clear that not only

should the list of vacancies be maintained, but that each vacant position be listed with the State Employment Security Agency (SESA) in the region where the job is located. This listing of vacant positions will allow the federally funded veterans staff of that SESA to run an automated computer file search for veterans who are qualified for any given position. Additionally, such a listing of positions vacancies would address the issue that many veterans do not apply for jobs they are qualified for simply because they did not know that such a vacancy existed.

The VFW acknowledges and is grateful for the extraordinary efforts to make federal job information available on the Internet. Both the Office of Personnel Management (OPM) under the vigorous leadership of the Director James King, and the efforts of the United States Department of Labor (DOL) under the strong leadership of former Secretary Robert B. Reich and the Assistant Secretary for Veterans Employment and Training, Preston Taylor, have made great strides in this regard. The VFW suggests that the additional step of ensuring this information reaches the SESA's veterans staff will help ensure that job information quickly reaches the potential veteran candidate for any vacant position.

With respect to the provision requiring an Office of Personnel Management (OPM) Report, the VFW recommends the Report to the President and the Congress be made an annual requirement for the first two years, and biannually thereafter. This recommendation is in recognition of the fact that major hurdles in implementing this law will likely occur in the first few years, and must be carefully monitored by all concerned.

The VFW has been pleased to be a party to discussions with the American Postal Workers Union (APWU), and their leadership. The APWU is to be commended for their commitment to veterans preference as well as for their good faith discussions with veterans organizations and the Congress in regard to the provisions of H.R. 240 affecting the United States Postal Service. We hope that the Postmaster General and the National Association of Postmasters of the United

States (NAPUS) will follow the APWU's leadership example and work in good faith to resolve any remaining concerns regarding this carefully crafted section of the proposed legislation. The VFW fully supports the provisions as now written.

The VFW also applauds the straight forward special protections language for preference eligibles in reductions-in-force as contained in Section 3 of H.R. 240. One key provision of Section 3 recognizes that single-position competitive levels pose a threat to veterans' preference in RIFs and prohibits agencies from placing positions occupied by preference eligibles in such a competitive level except under the most limited circumstances.

The VFW is firmly committed to ensuring that special protections are extended to veterans when a reduction-in-force (RIF) action becomes necessary in an agency. The principle of special protections is consistent with the "bumping" and retreating provisions of the Veterans' Preference Act of 1944 as amended. In recent years, Mr. Chairman, it has become clear that protections afforded veterans in a RIF situation through the original Veterans' Preference Act of 1944, are no longer adequate for discouraging those forces who would willfully and knowingly design and implement a RIF that makes mockery of congressional intent.

We also welcome the proposed language that would provide enhanced assignment rights to preference eligibles whose work history identify them as good performers. We especially welcome the language that would make it possible for preference eligibles to compete (within the agency conducting the RIF) for positions within the commuting area that has been filled with a non-preference eligible within six month before a RIF action.

We believe these provisions will effectively discourage so-called designer RIFs, which have generated much concern of late. There is concern that some agencies have taken questionable

personnel actions to skew the results of any legitimate reduction-in-force action, months prior to the actual legal procedure.

Mr. Chairman, the VFW fully supports the provision in H.R. 240 which require agencies to establish agency-wide priority placement programs to assist their employees who are scheduled to be separated or who have already been separated due to a RIF. We feel it is most appropriate that veterans' preference be made an integral part of the priority placement process.

We are aware of the Priority Placement Program operated by the Department of Defense and the similarly Displaced Employee Program operated by the Office of Personnel Management. While both programs have enjoyed a measure of success throughout their history, we note that veterans' preference principles are not now observed by those programs and, of course, it should be.

Mr. Chairman we fully support the provision of the Bill that establishes a redress mechanism for preference eligibles. As we understand the measure, the redress mechanism in its initial stage would allow a veteran who feel his or her preference rights have been violated to file a complaint with the Secretary of Labor within 60 days of the alleged violation. If the labor Department is unable to resolve the complaint within 60 days the complainant is then able to pursue an appeal with the Merit System Protection Board (MSPB) and ultimately the United States District Court.

We believe this provision would be very effective in curbing the type of abuses that are commonly visited upon all veterans but especially those attempting to apply for initial federal employment. We question, however, whether the "make whole" relief language is sufficient. One of the most common complaints we receive at the VFW are from veterans who feel they have been improperly passed over by a federal agency in initial appointment. Often, even when an agency admits it made an error which resulted in the veteran not being hired, all it will offer is the

promise of future employment to a similar position. In addition to the award of back pay, we believe the aggrieved veteran should also be entitled to immediate employment within his commuting area.

Finally, Mr. Chairman, the VFW fully supports the provision of Section 8 of H.R. 240. An intentional violation of veterans' preference should most certainly be a Prohibited Personnel Practice in all federal agencies. Disciplinary action against a manager or any federal employee who knowingly violates veterans' preference is the surest means of truly enforcing veterans preference. The VFW currently has two standing resolutions, #615 and #654 which support Section 8 and H.R. 240 in its entirety.

Thank you, Mr. Chairman. I am prepared to answer any questions you and other committee members may have.

Resolution No. 615

VETERANS' PREFERENCE IN PUBLIC EMPLOYMENT

WHEREAS, a grateful nation, following each war, has indicated its thanks to those who bore the brunt of the battle by providing certain rights and benefits, one of which has been a small advantage when seeking federal, state and local employment and in retention of employment; and

WHEREAS, absence from a highly competitive job market creates an unfair and unequal burden on veterans upon completion of their military service, in competing with their non-veteran peers, which this preference in federal, state, and local employment is intended to overcome in part; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we strongly support veterans' preference in federal, state, and local employment, as provided by a grateful nation, and oppose any and all efforts to reduce this preference; and

BE IT FURTHER RESOLVED, that we continue to speak out forcefully and publicly on the issue of veterans' preference.

Resolution No. 654

SANCTIONS FOR VIOLATION OF VETERANS PREFERENCE

WHEREAS, over 50 years ago Congress enacted the Veterans' Preference Act to assist veterans in obtaining and retaining federal jobs; and

WHEREAS, enactment of this historical legislation was in recognition of the special and unique contributions and sacrifices made by the men and women who have and continue to serve in the military services: and

WHEREAS, in recent years there has been an alarming increase in abuses and avoidance of veterans' preference provisions, particular with respect to agency hiring practices and "bumping" and "retreating" rights during a reduction-in-force (RIF); and

WHEREAS, existing federal personnel laws does not provide for sanctions against responsible officials when violation are committed; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we strongly urge Congress to enact legislation which provides that intentional violation of a provision the Veterans' Preference Act is a "prohibited personnel practice" and therefore is subject to corrective and disciplinary action, and intervention by Office of the Special Counsel.

Adopted by the 97th National Convention of the Veterans of Foreign Wars of the United States held in Louisville, Kentucky, August 17-23, 1996

Mr. MICA. Thank you.

I would now recognize Mr. Larry Rhea, with the Non-Commissioned Officers Association. You are recognized, Mr. Rhea.

Mr. RHEA. Thank you, Mr. Chairman. Good afternoon to you and all of the distinguished members of the subcommittee.

The Non-Commissioned Officers Association, like my contemporaries here, appreciates very much your invitation to comment on the important legislation under consideration today. And I believe that it is appropriate for me to begin what will be brief oral comments by expressing to the distinguished chairman the deep admiration and appreciation that we have for the marvelous work that you have done on the issue that we are discussing.

The Non-Commissioned Officers Association salutes you, sir. And we, too, are hopeful that 1997 will be the year that sees this come to a successful conclusion.

I will not be repetitive of what has already been said. We certainly associate ourselves with the very well stated comments of the other panelists. But I would be remiss if I did not state that the Non-Commissioned Officers Association strongly supports H.R. 240, the Veterans' Employment Opportunities Act in its entirety.

It is a solid bill that addresses head on a very real and persistent problem, and passage of the legislation is a very high priority for our association.

So I will spend my time by informing the subcommittee of something that I think is important to state here. The support for H.R. 240 goes well beyond NCOA, the VFW, the Fleet Reserve Association, and the American Legion, the four organizations that are represented on this panel.

I am unaware, Mr. Chairman, of any national prominent military or veterans' service organization that is opposed to the legislation. But let me be clear. I cannot speak for all military and veterans' organizations, and I do not want to leave that impression with anyone.

I can, however, Mr. Chairman, say something on behalf of 19 organizations. I invite your attention to the charts in the room. And I have a pamphlet in my hand that I would like to give to the chairman, and ask that it be made part of the hearing record.

Because in addition to the four organizations on this panel, this chart and the pamphlet identifies 15 other military and veterans' organizations that are solidly seeking the enactment of H.R. 240.

With your indulgence, Mr. Chairman, in addition to this panel, those organizations are the Air Force Sergeants Association; the American Veterans of World War II, Korea, and Vietnam; the Blinded American Veterans Foundation; the Blinded Veterans Association; the Disabled American Veterans, the Jewish War Veterans of the USA; the Korean War Veterans Association; the Military Order of the Purple Heart; the National Association for Uniformed Services; the National Military and Veterans Alliance; the Naval Reserve Association; the Paralyzed Veterans of America; the Retired Enlisted Association; the Veterans Economic Action; and the Vietnam Veterans of America.

Those 15 organizations and the four on this panel, Mr. Chairman, collectively represent approximately 12 million veterans that

want to see H.R. 240 become law. We believe that it is needed and deserves to be enacted in law.

I vowed not to repeat what previously had been said. So I would like to conclude, Mr. Chairman, with just a philosophical thought. I mean no disrespect to anyone when I say this, but there has been a lot of talk about bridge building lately.

I respectfully submit to the chairman and to the distinguished members of this subcommittee that H.R. 240 is not building something new. I submit to you that H.R. 240 is simply some much needed repair work that is overdue on a structure that was erected some 50 years ago.

Veterans' preference at one time in our Nation's history was recognized as an earned right, but it has slowly been chipped away at. Veterans' preference at one time bridged sacrifices of military service with the veterans' dreams for the future.

That is not the case today. And that fact makes H.R. 240 all the more important. In NCOA's view, H.R. 240 is nothing more than reinforcement of the 50-year-old bridge that has been allowed to get a little bit shaky. It is about fairness and fulfilling an earned right.

The Association salutes you, Mr. Chairman, for your effort to reestablish veterans' preference to its rightful and proper place in the Federal Government. Thank you.

[The prepared statement of Mr. Rhea follows:]

LARRY D. RHEA
COMMAND MASTER CHIEF
UNITED STATES NAVY (RETIRED)
DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS

As Deputy Director of Legislative Affairs for the Non Commissioned Officers Association, Master Chief Rhea is responsible for veteran and reserve component legislative activities of a 160,000 member Congressionally Chartered military association and veteran service organization.

Master Chief Rhea began his Navy career in August 1960 and following graduation from recruit training as Company Honorman, he served with Patrol Squadron Forty-Six, U. S. Pacific Fleet, and the Navy Training Publications Center, until his release from active duty in September 1963. After a two-year service break, Master Chief Rhea returned to active duty where he served continuously until his retirement in March 1992.

Master Chief Rhea's military assignments were numerous and varied including: Command Master Chief, Naval Air Station, Willow Grove, Pennsylvania; Officer-in-Charge, Naval Reserve Management School; Special Assistant to the Deputy Chief of Staff for Surface Readiness; and the staffs of Commander, Naval Reserve Readiness Command Region Twenty-Two and Commandant, Thirteenth Naval District. He served an unprecedented four year term on the Secretary of the Navy's National Naval Reserve Policy Board (1982-1985) and is a graduate of the U.S. Army Sergeant's Major Academy Class Fifteen.

From November 1986 to September 1991, Master Chief Rhea served as the Senior Enlisted Advisor to the Assistant Secretary of Defense for Reserve Affairs as the senior enlisted representative of the 1.6 million enlisted men and women of the seven national guard and reserve components. He was selected as the outstanding senior enlisted member for the Department of Defense in 1987.

Master Chief Rhea's awards include the Defense Superior Service Medal, Joint Service Commendation Medal, Navy Commendation Medal (three awards), Coast Guard Commendation Medal, Navy Achievement Medal (two awards), Navy Good Conduct Medal (seven awards), and Southwest Asia Service Medal.

Master Chief Rhea is married to the former Wanda Ann Johnson of New Orleans, Louisiana. They currently reside in Fredericksburg, Virginia, with their son Larry, Jr.

NCOA

Non Commissioned Officers Association of the United States of America

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DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Non Commissioned Officers Association of the USA (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

The Non Commissioned Officers Association of the USA (NCOA) considers it appropriate to begin by expressing to the distinguished Chairman our sincere appreciation for this opportunity to testify on an extremely important issue. The Association trusts that our testimony today will be helpful to the Subcommittee. Your thoughtful consideration of our comments is deeply appreciated.

ENDORSEMENT BY

NATIONAL MILITARY AND VETERANS ALLIANCE

NCOA is pleased to inform the Subcommittee that our testimony has been endorsed by the National Military and Veterans Alliance (NMVA). The Alliance is comprised of nationally prominent military and veterans organizations who collectively represent over 3 million members of the seven uniformed services - officer, enlisted, active-duty, National Guard and Reserve, retired and veterans plus their families and survivors.

NMVA organizations endorsing this testimony are: American Military Retirees Association; American Retirees Association; Air Force Sergeants Association; Korean War Veterans Association; National Association for Uniformed Services; Naval Enlisted Reserve Association; and, the Naval Reserve Association.

VETERANS PREFERENCE

THE EARNED RIGHT - YET TO BE FULFILLED

One year has passed Mr. Chairman since NCOA testified to this Subcommittee and pleaded for Congressional action on veterans preference law. Despite the best, bi-partisan efforts of the House of Representatives during the Second Session of the 104th Congress, the Senate failed to act. Hence, another twelve months have elapsed and veterans continue to have their earned rights for preference in federal hiring circumvented and ignored.

Veterans preference has become the great but routinely circumvented earned right of those who have served in time of war or national crisis, often to the detriment of their own careers and well-being. Veterans preference has become the "unfilled earned right" simply because veterans preference laws lack an effective enforcement mechanism. Hearings last year revealed the extent of the problem and the situation today has not changed. The patriotism of America's veterans continues to be penalized daily in federal hiring and force reductions.

For nearly two years now, NCOA has worked closely with the Distinguished Chairman and the Subcommittee staff to structure legislation to provide substantive meaning to veterans preference laws. That effort resulted in H.R. 3586 (104th Congress) being overwhelmingly passed by the House on July 30, 1996. Despite the best efforts of NCOA and most major veterans service organizations, the Senate could not be persuaded to even consider the legislation. The politics of the moment prevailed and an excellent piece of legislation summarily died in the Senate.

NCOA salutes the Distinguished Chairman for the herculean work you have invested in this issue. This Association is deeply grateful that you did not let last year's outcome daunt your efforts on this important legislation. NCOA strongly supports, H.R. 240, The Veterans Employment Opportunities Act of 1997, in its entirety and as it was introduced by the Distinguished Chairman on January 7, 1997. Passage of H.R. 240 during the 105th Congress is a high legislative priority of this Association.

The Veterans Employment Opportunities Act of 1997 is a bi-partisan bill supported by every major veterans service organization. **THE KEY FEATURES OF THE LEGISLATION WOULD:**

o create an effective, efficient, user-friendly redress system for men and women whose veterans preference rights under existing law are violated.

o remove artificial barriers that bar qualified veterans from competing for federal jobs.

o prevent unfair personnel practices such as single person competitions during RIFs which rig the system against the job protection rights of veterans.

o provide veterans enhanced opportunities to find other jobs during RIFs.

o extend veterans preference to certain non-political jobs in the legislative and judicial branches and the White House.

o make violation of veterans preference laws a prohibited personnel practice for disciplinary actions.

o provide veterans preference to men and women serving in Bosnia, Croatia and Macedonia.

The Veterans Employment Opportunities Act of 1997, H.R. 240, **DOES NOT**:

- o create a new class of preference eligibles
- o violate any right to equal protection of law and due process
- o take from any non-veteran any rights otherwise possessed

The Veterans Employment Opportunities Act of 1997, H.R. 240, remains what it purports to be: a preference for veterans of either sex, not for men over women, as a result of honorable military service.

H.R. 240, as indicated earlier, is the product of nearly two years work. This work includes a cooperative effort between several veterans organizations and representatives of one union that had concerns about the potential impact of the legislation on their collective bargaining agreements. As the Distinguished Chairman knows, the union's concerns were addressed and accommodated in The Veterans Employment Opportunities Act of 1997.

It is no secret either Mr. Chairman that some officials from the Office of Personnel Management and Department of Defense have expressed concerns with some aspects of H.R. 240. Although they have stated support for the intent of the bill, some believe that implementation of the legislation would be costly, extremely cumbersome and produce unintended consequences for veterans, particularly during force reduction actions.

In complete candor Mr. Chairman, we would not be here today in the "court of last resort" if federal agencies and hiring officials were abiding by current veterans preference law. In NCOA's view, some of the concerns now being vented may in fact be an unintended admission. If the spirit and intent of the current law was being followed, H.R. 240 could be implemented with little or no cost and done so quite easily.

In summary, The Veterans Employment Opportunities Act of 1997 is a solid bill. NCOA is firmly convinced that H.R. 240 provides the ingredients that have been missing in veterans preference law for fifty years - namely, an adequate and fair enforcement mechanism and protection for veterans during reduction-in-force (RIF). In the strongest possible terms,

NCOA believes Congressional Leadership, Democrat and Republican, should act on the measure in an expedient manner.

No one seems to disagree that the patriots who have served in the Nation's armed forces have earned their veterans preference rights. It is now up to Congress to reaffirm and protect that earned right from any further erosion. Penalizing patriotism and America's patriots must cease - The Veterans Employment Opportunities Act of 1997 will do so.

CONCLUSION

In closing Mr. Chairman, NCOA respectfully suggests that some repair work needs to be done before Congress undertakes building a new "bridge to the 21st Century". The bridge that once bound this Nation with her veterans has fallen into a state of woeful disrepair. The bridge that once formed the moral contract with America's veterans has collapsed. Before new bridges are considered, those which were once considered sacred - those which bridged the past sacrifices of military service with our dreams for the future - need to be reconstructed.

In NCOA's view, H.R. 240 is nothing more than a reinforcement of a fifty plus year old bridge that has become shaky at best. This Association salutes the Distinguished Chairman for your effort to reestablish and reassert veterans preference to its rightful and proper place in the Federal Government.

Thank you.

Mr. MICA. I thank you for your testimony.

And without objection, your material will be made part of the record.

[The information referred to follows:]

The Initiative for Passage of
The Veterans Employment Opportunities Act

The American Legion
Air Force Sergeants Association
AMVETS (American Veterans of WWII, Korea and Vietnam)
Blinded American Veterans Foundation
Blinded Veterans Association
Disabled American Veterans
Fleet Reserve Association
Jewish War Veterans of the USA
Korean War Veterans Association
Military Order of the Purple Heart of the USA, Inc.
National Association for Uniformed Services
National Military and Veterans Alliance
Naval Reserve Association
Non Commissioned Officers Association of the USA
Paralyzed Veterans of America
The Retired Enlisted Association
Veterans Economic Action, Inc.
Veterans of Foreign Wars
Vietnam Veterans of America, Inc.

Representing 12 Million American Veterans

Veterans Preference

An Earned Right

The Initiative for Passage of
the Veterans Employment Opportunities Act

The Veterans Employment Opportunities Act of 1997

Veterans Preference: *An Earned Right Yet to be Fulfilled*

Veterans preference is the great but frequently circumvented promise of the United States to those who have served in time of crisis, often to the detriment of their own careers and well-being. Veterans preference in federal hiring was created in World War II to help qualified men and women make up for lost time or serious disabilities incurred while serving this country. But veterans preference laws lack an effective enforcement mechanism.

The Question

Is there really a need for new veterans preference legislation?

Answer: Yes. Federal bureaucrats admit ignoring veterans preference to hire non-veteran men and women. GAO found in 71 percent of the situations when a veteran was at the top of a Civil Service register, the law was circumvented. An unsuccessful federal applicant who suspects discrimination based on sex, race or religion can appeal to the Equal Employment Opportunity Commission (EEOC). A cheated veteran has no such recourse.

The Myth

A new class of preference eligibles is created by extending veterans preference to people who served three years or more honorably in peacetime.

Fact: Eligibility for veterans preference protection is not extended to a single peacetime veteran by the Veterans Employment Opportunities Act. It does, however, contain a provision allowing this class of mostly post-Vietnam veterans to apply - without veterans preference rights - for federal jobs that may otherwise be closed to qualified individuals on the grounds that they are not employed by the agency, or have not acquired competitive status.

While granting additional rights to certain persons, veterans preference does not take any rights away from anybody. Thomas v United States (1961)

Veterans Employment Opportunities Act

A bipartisan bill supported by every major veterans service organization to

- Create an effective, efficient, user-friendly redress system for men and women whose veterans preference rights under existing law are violated.
- Remove artificial barriers that bar qualified veterans from competing for federal jobs.
- Prevent unfair personnel practices such as single person competitions during reductions in force (RIFs) which rig the system against job protection rights of veterans.
- Provide veterans enhanced opportunities to find other jobs during RIFs.
- Extend veterans preference to certain non-political jobs in the legislative branch, the judicial branch, and the White House.
- Make violation of veterans preference laws a prohibited personnel practice for disciplinary actions.
- Provide veterans preference to men and women serving in Bosnia, Croatia and Macedonia.

The law remains what it purports to be: a preference for veterans of either sex, not for men or women.

Mr. MICA. I want to thank each of the panelists for their testimony, and their suggestions for improvements in the legislation, and for working with us to get the legislation to this point. Those who testified here representing various organizations, and other veterans' services organizations and interested groups that have worked with us, deserve our thanks to get this legislation moving forward.

I do not have any questions of the panelists at this time, but welcome your input as we move forward with this.

I yield now to the ranking member, Mr. Holden.

Mr. HOLDEN. Thank you, Mr. Chairman. And I thank the panel for their testimony.

I just have one question. I believe that one of the panelists testified that the number of preference-eligible veterans being hired is lower than the administration represents.

I am just wondering what is the basis for this view?

Mr. NASCHINSKI. Because, sir, the figures that are collected by OPM represent all veterans, not those who are preference-eligibles. They do not break that down. And there is a big difference there.

Mr. HOLDEN. Thank you. No further questions.

Mr. MICA. Thank you.

And I will recognize Mr. Pappas.

Mr. PAPPAS. Thank you, Mr. Chairman.

Gentlemen, thank you for being here and participating.

It has been suggested during the course of today and coming up until this day, and moving to the day when hopefully we will move this bill forward, that over the past 40 or 50 years that the preference, if you will, for hiring veterans has slacked off. I am assuming you would agree with that, but please feel free to comment if you disagree with that.

But could you also comment if you have seen over the period of time that you have been involved in veterans' causes and organizations, whether you have seen a funneling of veterans into certain categories of employment versus what you believe to be the case with non-veterans? I am curious if any of you would care to respond to that.

Mr. DANIELS. Certainly, there has been a fall-off in employment, but that is probably reflective of the aging population in general. Many of the veterans in the population who held Federal positions up until most recently were World War II veterans, who now happen to be at retirement age.

The problem is with the influx of new people coming into the Government. We believe that the principles of veterans' preference have been diluted, because there are so many other different other types of hiring authorities where veterans' preference does not come into play.

The outstanding scholar program is one that comes to mind, where I believe that an applicant for a Federal position only needs to have a 3.5 grade point average at the undergraduate level, and then is able to come into the Government non-competitively.

We happen to believe that any of these hiring authorities should respect veterans' preference.

As to the other part of your question. Many of your agencies show—DOD, for instance, is proud of their 46.3 percent veterans

in their workforce. But when you ask them how many of those veterans are below the age of 30, which would take into account Desert Storm troops from 1991 up to the present, it is probably less than 1 percent.

Most of the veterans coming into the Government today do so through a non-competitive route—the Veterans' Readjustment Assistance Program—which is an OJT type program. In this program you come into the Government, and you work and train for 2 years, after which you are eligible to convert to civil service status.

In fact, many of the complaints we receive these days are from VRA people who are past the 2-year training period, and have not yet been converted to civil service status.

That is my response. Thank you.

Mr. RHEA. I would like to give that a shot here, too, Mr. Pappas. I certainly would just be guessing if I said anything along the lines of what levels they are at or anything, so I will not go into that.

But your question, as I took it anyway, also alluded to a little bit of the lessening and the deemphasizing of the things that are going on. Certainly, the chairman pointed out one example to us there in his opening comments that should alarm us all. But if I could refer to some notes that I have here, I would like to take just a couple of quotes out of the U.S. Information Agency document that stated this.

"Veterans' preference will not be given for retired military. We are pleased to announce that for non-broadcasting USIA employees that we will not use RIFs to achieve reductions."

In other words, USIA is not only breaking the law, but they are more than happy to do so. Because if that military retired veteran qualifies for the 5 or the 10 point preference, they do not have a choice. They have to give it to them.

Another example is the Department of Agriculture. You talked about the statistical profiles that you have there. The Department of Agriculture is not exactly a shining example. Yet a recently released DOA memorandum entitled Policy on Selection of Employees for Under-Represented Groups directed all selecting officials to justify in writing non-selection of candidates from the best qualified list who were from under-represented protected groups.

The 71 percent figure that the GAO report cited of certificates that were returned to OPM unused. And about what I just said relative to USIA and the Department of Agriculture. I have never, and I would be more than happy to be proven wrong on this, but I have never seen or heard of any agency asking for similar written justification for non-selection of a best qualified veteran at the top of the list.

Mr. PAPPAS. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Ms. Norton.

Ms. NORTON. Mr. Chairman, I do not have a question, but I do have something that I want to say to the panel. Several have raised the notion of affirmative action and juxtaposed it sometimes invidiously to the veterans' preference.

I would just like to say on the record that I, myself, would like to discourage the pitting of one group against another. That is what I have stood for all of my life. When we began to come for-

ward for affirmative action of minorities, they said, "Oh, here come the women."

The answer is yes, they should come, and we should find a way to make sure that there is some Government remediation or preference—yes, it is due—without picking fights with one another.

I am very concerned about the 71 percent figure. And I believe that this committee has responded, that the subcommittee has responded in this very legislation to that figure. The circumvention of the law for any group is wrong. Minorities and women qualify for affirmative action for the very reason that veteran or not, our very Government discriminated against them throughout human time until very recently. And we are trying to make up for that.

At the same time, anybody who served their country is entitled to a veterans' preference. And any attempt to violate the law with respect to that preference deserves to be remedied.

I do not agree, as one of your testimony says, that there is very little incentive for Federal agencies to hire veterans. I think that a 5 point or a 10 point preference does give a unique incentive to hire. And if in fact that is not being done, we do not have to say that affirmative action should not happen in order to remedy that.

I just want to make it clear that I believe that veterans, particularly today, are entitled to everything they have earned. And like the chairman and members of this committee, I will do all that I can to make sure that they not get one ounce less than they have earned. And I do not believe that that has anything to do with minorities and women, and the attempt on the part of our Government to make up for decades of discrimination against them.

Mr. MICA. Thank you for your comments.

And I recognize Mrs. Morella.

Mrs. MORELLA. I just want to give you an opportunity if you would like to make any comments on the question that I asked Dr. King with regard to his testimony that the safeguards with regard to RIFs that are in the bill will add complexities to its enforcement. If you would like to comment or not.

Mr. RHEA. I guess we will start on the right up here. Certainly, I appreciate those concerns that he has stated. But I guess that I can only give to you an old non-commissioned officer's reaction, and that is this. In our view, it probably would not be too difficult if we were doing the things that we were supposed to be doing today.

And our stand on it quite bluntly is this. Whether it was intended or not, it might be an admission that we are not following the law the way that we are supposed to be following it today. Because I think that if we were, OPM, I think that if we were, DOD, and any other Federal agency could pick this legislation up and implement it with little difficulty at very little or maybe at no cost.

Mrs. MORELLA. Thank you.

Does anyone else have any other comments?

Mr. DANIELS. Yes, Mrs. Morella. I have a lot of faith in Jim King and the staff over at OPM. I believe that 90 days is an appropriate period of time to implement the law. It might be a little on the excessive side. OPM has operated the displaced employees program, which in effect is a RIF program, for a number of years. I am not really sure.

In the case of DOD, they have operated their priority placement programs for over 30 years. They have a very admirable record. They have placed over 100,000 people since they started up their program. And I believe that both agencies are in a position to give whatever technical assistance is required of all of the other agencies that would now come under this particular bill once it is enacted.

Mr. CALKINS. Mrs. Morella, if I might respond, having recently left the Postal Service, as a former postal employee, and having worked in the personnel office, or having the fortune of working in the personnel office in the Postal Service.

The figures that Dr. King gave are probably quite true throughout the agency as far as how many people were hired. the question that I would ask him, and of course Postmaster Runyon, is how many people were hired in the 5 years previous to that, because of the downsizing, or the rightsizing, or the RIFs, as it may be.

And, of course, during that period of time, we were able to gain, for lack of a better term, a glut of veterans who recently got out of Desert Storm and a few other conflicts to buildup this veterans' pool again.

I am not disputing what he has given us. I think the information was very good and very helpful. But I think that the hiring practice is in place and is there. Although in my own experiences in that personnel office that I came from, I heard from a person who was a non-veteran in charge of that office say something about a veteran, "Well, we do not owe him anything."

And, of course, that got the hair on the back of my neck quite high. And when you have a person in that position, in that particular office, with that attitude, I wonder what the rest of that organization is thinking, or where they came from. But can it be put in place? Yes, tomorrow.

Mrs. MORELLA. Mr. Naschinski, do you have any comments?

Mr. NASCHINSKI. Just to say that the American Legion believes that 90 days is sufficient time to get that mechanism in place.

Mrs. MORELLA. I just want to thank you gentlemen for being here and testifying on this bill.

Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mrs. Morella.

And I recognize Mr. Sessions.

Mr. SESSIONS. Thank you, Mr. Chairman.

Just one comment. Your comments get to me about, "We do not owe veterans anything." All we owe them is the peace that they have given us, and the freedom that we enjoy. Because without veterans and the men and women who have given their lives, we would have neither. My personal preference is I prefer freedom.

Thank you for being here with us today. And I just want to thank each one of you and your member organizations.

Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Sessions.

Again, we appreciate you being with us, and your recommendations for this legislation. We look forward to your input and your constructive comments as we continue through the legislative process. Thank you also for the support that has been expressed here today.

So with that, we will excuse this panel, and get on to the important work of marking up the legislation. Thank you.

[Whereupon, at 3:23 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

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February 27, 1997

The Honorable John L. Mica, Chairman
House Subcommittee on Civil Service
Cannon House Office Building
Washington, DC 20515

Dear Chairman Mica:

At yesterday's hearing on H. R. 240, Congresswoman Norton took exception to a portion of The American Legion's written and oral statements.

Attached is a letter to the Congresswoman which hopefully clarifies our position. I respectfully request that it be made a part of the record of that hearing.

Please let me know if The American Legion can be of further service.

Sincerely,

Emil W. Naschinski
Assistant Director of Economics

Enclosure

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(202) 861-2700 ★ FAX (202) 861-2728 ★

February 27, 1997

The Honorable Eleanor Holmes Norton
House Subcommittee on Civil Service
Longworth House Office Building, Room 1424
Washington, DC 20515

Dear Congresswoman Norton:

This is in response to your comments at yesterday's hearing on H. R. 240, *The Veterans' Employment Opportunities Act of 1997.*

The American Legion regrets any misunderstanding that our written statement may have caused. The paragraph that you took offense to read as follows:

> At approximately the same time, affirmative action legislation was enacted that required federal agencies to establish "goals" and "timetables" for the recruitment of women and minorities for careers in civil service. Because veterans preference is an earned entitlement and not an affirmative action program, there have never been quotas for the hiring of veterans. As a result, there was/is very little incentive for federal agencies to hire veterans.

Your perception, as I understand it, is that we are trying to drive a wedge between those two groups and that we are opposed to affirmative action. Neither is true.

As I told you after the hearing, The American Legion felt that the subcommittee had to understand that while federal government has goals for the recruitment of women and minorities, it has no quotas for the recruitment of veterans. Furthermore, one of the things that a federal manager is evaluated on is the diversity of his or her workforce and not the number of veterans they have on board. As a result, there is not much of an incentive to hire veterans.

It might interest you to know that according to *Defense '96*, a DoD publication, as of September 30, 1996, 12.9 % of the military were women and 30.9% were minorities. Also, 20% if those who became preference eligibles because of the service in the Persian Gulf were women. Please keep in mind that The American Legion is lobbying for them too.

We hope this clarifies our position. If you have further comments or questions regarding our testimony, please let me know.

Again, thank you for your efforts on behalf of all Americans and your support of *The Veterans' Employment Opportunities Act of 1997*.

Sincerely,

Emil W. Naschinski
Assistant Director of Economics

cc: Subcommittee on Civil Service

STATEMENT OF
RONALD W. DRACH
NATIONAL EMPLOYMENT DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 26, 1997

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than one million members of the Disabled American Veterans (DAV) and its Auxiliary, I want to thank you for allowing us the opportunity to appear before you today to discuss the issue of veterans' preference in federal employment and the changes offered in H.R. 240, the Veterans' Employment Opportunities Act of 1997.

We appeared before this Subcommittee on April 30, 1996 to express our views on the issue of veterans' preference in federal employment. In that prepared written testimony, we made reference to testimony provided on behalf of several veterans' service organizations which was presented on October 13, 1995. By way of reference, we request those statements to be made part of this record to avoid repetition.

Mr. Chairman, we are cognizant of the fact that there are individuals, organizations, and certain groups who would be happy to do away with or curtail veterans' preference in federal, state, and local employment. Some of these same people say that veterans' preference militates against the employment of other groups in our society.

It is interesting to note that veterans who apply for, or are eligible for, veterans' preference are in fact former federal employees who were required to make many sacrifices to be a federal employee. When they applied for federal employment (entered the military) they did not apply for a specific job at a specific grade level. Rather, they all took "entry level jobs" at nominal salaries. They didn't have the right to pick and choose educational opportunities or apply for the jobs that best suited their interests or backgrounds. Rather, they were subject to determinations by higher authority as to what services were most needed and where those services would be carried out.

While promotions in many instances were based on performance and merit, they were not applied for. If they had uncomfortable work situations or believed other labor situations were untenable, they could not go to their union representative and file a grievance. They followed orders, reported to work on time, were goal oriented, worked as a team for the achievement of mutual goals, and were dedicated. They often served in places they never heard of in situations around the globe. While, in fact, in these positions, they were federal employees.

We believe these individuals who so willingly served as a military federal employee certainly should enjoy some preference in becoming a civilian federal employee. The nonveteran civilian applicant had an opportunity to pick and choose colleges, universities, community colleges, or other forms of education or training that enhanced their opportunities to work for the federal government. They, for the most part, were not interested or willing to serve their federal government in a military occupation, but now say they should have the same opportunity as those veterans who have already served their country.

Mr. Chairman, Section 2, Equal Access for Veterans of H.R. 240, would allow certain veterans and preference eligibles the opportunity to compete for an announced vacancy within an agency even if that vacancy is restricted to certain categories of applicants, and would normally exclude someone who has not acquired competitive status or is not an employee of that agency. This change would treat the veteran the same as if he or she had acquired competitive status or was an employee. We thank you for this and support its passage.

Title 5 U.S.C., Section 3327, in part, requires federal agencies who are seeking applicants from outside their agency to make those vacancy announcements available to the employment service offices operated by the various states. This provision has been in law for almost 20 years with no mechanism to assess its effectiveness. Under current law, veterans are supposed to receive priority services through the employment service which includes priority of referral to these federal job openings.

DAV supports your amendment to Section 3327 which would require a report of:

- The number of vacant positions listed.
- The number of preference eligibles and other veterans referred to these vacancies.
- The number of preference eligibles and other veterans appointed to these positions.

This is commonly referred to as "applicant flow data." As certain veterans are entitled to veterans' preference and also may be entitled to priority of services through the employment service, this report is a necessary tool to ascertain the effectiveness of such listings.

We do, however, suggest that rather than requiring a separate report, the existing report required by Section 4214(a)(1), Title 38 U.S.C. be amended to include the data and information required by this change. We believe this is extremely important and can be an effective management tool to monitor veterans' preference opportunities.

We are also encouraged by the inclusion of the United States Postal Service among those subject to these amendments.

Section 4 of H.R. 240 provides for a redress mechanism for veterans. The DAV has expressed concern about the lack of an effective redress system. There has never been a meaningful appeal/redress system available to an individual veteran or a veterans' service organization. If an allegation was made that veterans' preference was being violated (the exception being in a reduction-in-force), the Office of Personnel Management (OPM) reviews a veteran's complaint, which most often consists of a report from the alleged offending agency. That report becomes the basis for telling the veteran that no violation had occurred. An actual investigation of the veterans' allegations was never conducted. Rather, it just took the form of the agency explaining its actions.

Under current law, preference eligibles are entitled to two protections through OPM. One is specifically related to the Veterans' Preference Act of 1944, as amended, and the other was added by the Civil Service Reform Act of 1978.

The first one is the "Rule of Three." (Section 3318, Title 5 U.S.C) However, the "Rule of Three" does not convey any specific "appeal rights" to the veteran. Section 3318(a) requires "the nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available..." (Emphasis added.) The literal interpretation of "shall select" has never been implemented because agencies historically have returned these certificates unused.

With the hiring authority delegated to many agencies for most jobs today, the maintenance of a certificate of eligibles is virtually nonexistent. Does this delegation of authority itself circumvent veterans' preference and violate the Congressional intent of the Veterans' Preference Act to select from certificates of eligibles? We think yes. Has it been ongoing? We think at least since 1977 and probably before.

Second, a benefit for disabled veterans was added by the Civil Service Reform Act and is contained in Section 3312(b), Title 5 U.S.C. In essence, this provision prohibits federal departments and agencies from denying certain disabled veterans employment based on a disability without first obtaining approval from OPM. While this is a protection, it certainly does not convey any specific "appeal rights" to the veteran. Based on the ongoing inquiries we receive from veterans, we believe that Section 4 of H.R. 240 is an extremely important provision and should be enacted.

The Merit Systems Protection Board (MSPB) will provide an increasingly important procedural safeguard for disabled veterans under this proposal. MSPB procedures currently provide important appeal rights for disabled veterans affected by reduction in force, as well as protection for those affected by arbitrary or discriminatory disciplinary actions. We are concerned that these safeguards may erode because of current, serious pay equity and retention problems impacting Administrative Judges (AJs) of MSPB. We recently learned that MSPB has

lost 16 experienced AJs since 1993, largely due to Administrative Law Judge (ALJ) positions which were available at higher pay rates at the Social Security Administration.

In 1992, the Administrative Conference of the United States (ACUS) recognized potential problems arising from an increase in the use of non-ALJ adjudicators and recommended that several groups of AJs, including those at MSPB, be afforded equivalent ALJ status. With the exception of MSPB AJs, Congress has legislated the recommendation of ACUS.

Mr. Chairman, nearly all AJs at MSPB have more than five years of AJ service, yet they remain at the GS-15 level, which was the grade level ALJs were assigned until 1990. We are concerned that if this pay inequity is not addressed that MSPB may lose additional judges, and with the potential increase of complaints from veterans, we believe we will see a loss of additional AJs resulting in increasing workloads, culminating in a "justice delayed is justice denied" scenario for many veterans.

Mr. Chairman, another issue not addressed in H.R. 240 has recently surfaced regarding veterans' preference as it applies to certain spouses and unmarried widows or widowers of a veteran.

We currently have a situation where the "wife or husband of a service-connected disabled veteran, if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia," (Section 2108(3)(E), Title 5 U.S.C.) may be considered a "preference eligible" and be entitled to veterans' preference. However, should that service-connected disabled spouse die, the unmarried widow or widower loses veterans' preference. That is because of the definition contained in Section 2108(3)(D), which requires that the unmarried widow or widower have been married to a veteran as defined by paragraph (1)(A) of that section.

Section (1)(A) states, "veteran means an individual who -- served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955."

In essence, you can have a spouse of a service-connected disabled veteran eligible for preference only to lose that preference upon the death of the service-connected disabled veteran unless that veteran meets the (1)(A) definition. We suggest that Section 2108(3)(D) be amended to read as follows: "the unmarried widow or widower of a veteran as defined by paragraph (1)(A), or (1)(B), or (2)."

Thank you again, Mr. Chairman, for allowing us the opportunity to present our views on this important and timely measure. I will be happy to respond to any questions you may have.

RONALD W. DRACH
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EDUCATION

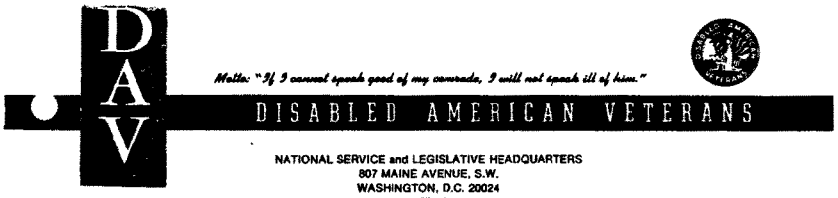
1970 - 1978	Various course work at Allegheny Community College, Pittsburgh, PA Northern Virginia Community College, Alexandria, VA U.S. Department of Agriculture Graduate School, Washington, D.C.

EMPLOYMENT

1975 - Current	National Employment Director, Disabled American Veterans, Washington D.C.
1972 - 1975	Administrative Assistant to the National Director of Employment, Disabled American Veterans, Washington, D.C.
1970 -1972	National Service Officer, Disabled American Veterans, Pittsburgh, PA and Washington, D.C.
1968 - 1970	Receptionist, Department of Veterans Affairs, Pittsburgh, PA

ORGANIZATIONS AND AFFILIATIONS

1996 - Current	Member, Commission on Servicemembers and Veterans' Transition Assistance
1996 - Current	Member, VA's Steering Committee on the Redesign of Vocational Rehabilitation
1995 - Current	Vice-chair, President's Committee on Employment of People with Disabilities
1994 - Current	Chairman, Secretary of Labor's Advisory Committee on Veterans' Employment and Training
1993 - Current	Member, Board of Directors, President's Committee on Employment of People with Disabilities
1990 - Current	Member, National Ability Center, Park City, Utah
1990 - Current	Life member, Military Order of the Purple Heart
1989 - 1991	Member, Handicapped Parking Regulatory Negotiation Advisory Committee, Department of Transportation
1989 - 1990	Member, National Performance Management Task Force, Department of Labor
1989 - Current	Member, Connecticut Handicapped Ski Foundation, Hartford, Connecticut
1988 - 1989	Member, Job Training Partnership Act Advisory Committee, Department of Labor
1988 - 1989	Member, Literacy Task Force, President's Committee on Employment of People with Disabilities
1986 - 1988	Member, Disability Advisory Council, Social Security Administration
1985 - Current	Chairman, Secretary of Veterans Affairs Advisory Committee on Rehabilitation
1985 - Current	Member, Nation's Capital Handicapped Sports, Washington, D.C.
1985 - 1989	Member, Veterans Administration Advisory Committee on Readjustment Problems of Vietnam Veterans
1982 - 1983	Member, Transition Task Force on the Job Training Partnership Act, Department of Labor
1975 - Current	Member, Veterans' Affairs Committee of the Interstate Conference of Employment Security Agencies
1973 - Current	Member, Subcommittee on Disabled Veterans, President's Committee On Employment of People with Disabilities
1970 - Current	Life member, Disabled American Veterans



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DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Disabled American Veterans (DAV) does not currently receive any money from any federal grant or contract.

During fiscal year (FY) 1995, DAV received $55,252.56 from Court of Veterans Appeals appropriated funds provided to the Legal Service Corporation for services provided by DAV to the Veterans Consortium Pro Bono Program. In FY 1996, DAV received $8,448.12 for services provided to the Consortium. Since June 1996, DAV has provided its services to the Consortium at no cost to the Consortium.