

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-98-493>

February 2, 2009

Congressional Research Service

Report 98-493

*VETERANS PREFERENCES: CURRENT LAW AND
PROPOSED LEGISLATION*

Dennis W. Snook, Education and Public Welfare Division

Updated November 19, 1998

Abstract. This report provides information on current veterans preference law and discusses issues raised by two bills currently receiving attention. Veterans' advocates assert that a declining proportion of veterans among federal employees is indication that the policy of granting preferences to most veterans is not working as Congress intended. Two bills, H.R. 240 and S. 1021, addressed some of these concerns, and S. 1021, as amended, was enacted as P.L. 105-339.

WikiLeaks

CRS Report for Congress

Received through the CRS Web

Veterans Preferences: Congress Enacts Changes

Updated November 19, 1998

Dennis W. Snook
Specialist, Social Legislation
Education and Public Welfare

<http://wikileaks.org/wiki/CRS-98-493>

ABSTRACT

This report provides background on veterans preference in federal employment, and discusses issues raised during deliberation in the 105th Congress of two bills to amend existing law. Veterans' advocates asserted that a declining proportion of veterans among federal employees was an indication that the preference policy was not working as Congress intended. The two bills, H.R. 240 and S. 1021, addressed some of these concerns, and S. 1021, as amended, was enacted as P. L. 105-339. This report will be updated for further developments only.

Veterans Preferences: Congress Enacts Changes

Summary

Late in the 105th Congress, changes to veterans preferences were enacted as P.L. 105-339, the Veterans Employment Opportunities Act of 1998. Most federal agencies are required by law to grant preferences in federal hiring and retention to veterans with service-connected disabilities, and certain other veterans whose service encompassed specified periods of time. The proportion of veterans as a share of the federal workforce declined from 37% in 1984 to 28% in 1995, and some veterans' advocates contended that the decline reflected the failure of existing preferences to give veterans the advantages that their preference-eligible status should entail. Included among their concerns about existing law:

- *Veterans were not able to apply for all open jobs*
- *Some veterans claimed that they were improperly denied appointment*
- *Some believed that veterans were targeted during Reductions-in-Force*
- *In cases where their rights may have been ignored, any appeal was difficult*
- *Certain agencies were excluded from preference requirements*

H.R. 240, which passed the House during the 1st Session, would have expanded the number of federal jobs open to applications from veterans with at least 3 years active service; provided more protections to veterans during reductions-in-force, including increasing job transfer opportunities for veterans during RIFs and requiring agencies to establish Priority Placement Programs to help workers who lost jobs in a RIF; and expanded preference requirements to some excluded positions in the White House and in the legislative and judicial branches. The bill included language to make violating veterans preferences a prohibited and punishable personnel practice, adding new redress procedures for veterans who believed that their preference rights were not honored.

S. 1021, originally a companion to H.R. 240, was reported by the Senate Committee on Veterans Affairs with amendments moderating the language expanding application opportunities and eliminating the RIF protections. The Committee left in the proposed redress procedures, and added provisions that would give veterans of the Persian Gulf War preferences when they seek employment with federal contractors.

The new law will probably have no appreciable effect on the proportion of veterans in the federal workforce, which is higher than in the civilian workforce generally. While the law will increase opportunities for veterans to be *considered* for federal jobs, it will not change the process by which applicants are appointed in agencies where veterans preferences now apply. The new law gives veterans a means to challenge personnel actions that they believe are adverse to their interests as veterans. While this new "redress" right will not necessarily alter the basis for personnel decisions, many veterans believe that the existence of the right will discourage managers from seeking ways to avoid the preferential treatment eligible veterans have earned through their military service.

Contents

Background: Veterans Preferences in Policy and Practice	1
Underlying Policy Rationale	1
Compensation for disability	1
Readjustment at the completion of service	1
Inducement at enlistment; reward for service	1
Eligibility	1
Veterans Preferences in a Competitive Civil Service	2
Application of Veterans Preferences	3
Preferences in federal hiring	3
Preferences during Reductions-in-Force	4
Additional preference rights	4
The Historical Perspective: The View of the Bradley Commission	5
Effect of Veterans Preferences on Federal Employment	6
The Proportion of Federal Executive Branch Jobs Held by Veterans	6
Trends in federal hiring policy	6
Aging of the veteran population	7
Veterans in federal jobs	8
Veterans and federal hiring	8
A Bias Against Veterans?	8
Amending Veterans Preferences:	
H.R. 240; S. 1021; and P.L. 105-339	10
Addressing Perceived Problems with Veterans Preference Law	10
As passed by the House, the original legislation (H.R. 240) proposed to increase opportunities for veterans to be considered for federal jobs	11
H.R. 240 would have added retention protection. P.L. 105-339 does not contain these provisions	12
Both bills expanded appeal rights	13
The legislated added provisions to improve compliance	13
The legislation expands coverage to other agencies	14
P.L. 105-339 expanded coverage to federal contractors	14
Action on H.R. 240 and S. 1021	15

Veterans Preferences: Congress Enacts Changes

Background: Veterans Preferences in Policy and Practice

Underlying Policy Rationale

Compensation for disability. Beginning with the Civil War (and perhaps from the beginning of the Republic on an informal basis), disabilities sustained during U.S. military service were regarded as creating an obligation upon the government to help the disabled veterans during their remaining years. Preferential treatment in federal hiring and retention reflects this obligation to disabled veterans, and in some circumstances, dependents of disabled or deceased veterans.

Readjustment at the completion of service. In the Veterans Preference Act of 1944, Congress gave the federal government a lead role in addressing problems arising from demobilization of large numbers of troops. The Act gave veterans competitive advantages for federal openings, and for retention as the government began to scale back from its wartime employment levels. Subsequent amendments to the Act gave similar readjustment assistance to veterans of Korea, Vietnam, and the Persian Gulf.

Inducement at enlistment; reward for service. Preferences can also be seen as a measure encouraging enlistment, and/or as a reward for service, especially during a period in which military service seems likely to lead to potential combat. Although evidence about the number of volunteers who enter military service largely because of enhanced federal employment opportunities would be difficult to develop, it is likely that for many recruits, preferences are one of several factors contributing to a perception that a period of enlistment will improve financial security once the service is completed.

Eligibility¹

Veterans who sustained a disability traceable to a period of honorable military service are eligible for veterans preference. Other veterans eligible for veterans' preferences, must have received an honorable or general discharge, and must generally meet other requirements about duration, period of time, or location of active duty. Military retirees at the rank of major, lieutenant commander, or higher, are not eligible for veteran preferences unless they have a service-connected disability. Nondisabled veterans qualify for preferences if they meet the above and:

¹ This section discusses eligibility criteria before enactment of P.L. 105-339.

- After October 14, 1976, they must also have *served in a war declared by Congress, or during a campaign for which a campaign medal was awarded* and;
- In addition, after September 7, 1980, they must have *completed 2 years active duty, or for the full period for which they were called or ordered to active duty*; unless they served on active duty during the period beginning on August 2, 1990, and ending on January 2, 1992, and completed the period for which they were called or ordered.

Nondisabled veterans also qualify if they meet the general requirements and they served:

- Anytime during the period December 7, 1941, to July 1, 1955; or
- For more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976.

In addition, spouses and mothers of disabled veterans are also eligible for preferences under certain conditions: unmarried surviving spouses of veterans who died of service-connected conditions or spouses of veterans who are unable to work because of service-connected disabilities; and mothers of veterans who died in service or who are totally and permanently disabled from a service-connected condition, qualify for certain preferences.

Provisions in P.L. 105-85 (the Defense Authorization Act of 1998) give veterans preference status to veterans of service during the Persian Gulf War, regardless of whether their service was in the Gulf. Finally, P.L. 105-85 contains provisions that expand preference eligibility to other veterans who served after November 20, 1995 in Bosnia and nearby areas affected by that conflict.

Veterans Preferences in a Competitive Civil Service²

The modern federal civil service originated with passage of the Pendleton Act in 1883. The Act brought together two views about contemporary federal service:

- Concern that increasingly complex and essential federal positions were being filled without due regard for the qualifications of the applicants; and
- Belief that a competitive civil service was necessary to staff federal jobs with professional, competent, efficient, and effective employees who would not be unduly influenced by partisan and personal political loyalties.

The merit-based civil service envisioned by the Pendleton Act requires an objective evaluation of applications from office-seekers, and hiring decisions that can withstand close scrutiny as to their fairness and suitability for the position filled. Veterans preferences affect the objective criteria by giving a competitive advantage to eligible veterans relative to nonpreference applicants who would otherwise be regarded as having at least equal qualifications. When the competitive evaluations result in a numerical score, preference *points* are added to that score, thereby

² The body of veterans preference law is found in U.S.C, Title 5, section 2108.

advancing the veterans above competitors with scores that would otherwise be equal to or slightly above the scores the veterans would have had were they not given the additional preference points. (Points cannot cause a score that would otherwise not pass to be changed to passing.)

Veterans preferences do not assure every veteran a job, nor do they reflect a goal that all federal vacancies should be filled by qualified veterans. The preferences do not govern promotions or generally affect assignments or other in-service decisions. While they provide competitive advantages during RIFs, they do not provide veterans with absolute protections during such reductions.

Application of Veterans Preferences³

The competitive advantages held by preference-eligible veterans take several forms, including points added to examination scores, waiver of physical requirements, more liberal use of military service as applicable experience, and in some cases, direct hiring into positions excepted from the competitive process. The present system of preferences originates with the Veterans Preference Act of 1944, which codified existing rules that the examination scores of veterans seeking federal employment be raised by either five points (for nondisabled veterans), or 10 points (for disabled veterans and eligible wives, widows, and mothers). Preference-eligible veterans also have retention advantages during agency lay-offs. Some veterans are also eligible for special preferential consideration by federal contractors.

Preferences in federal hiring. A competitive civil service presumes that information about open positions will be made available, and that applicants will be competitively ranked according to an examination that establishes the relative merits of their qualifications for specific positions. The more specific the recruitment requirements (such as for entry level clerical), the more standardized can be the examination process (such as the administration of a skills test). Higher level technical, administrative, or professional positions have requirements that entail a more detailed examination of potential candidates to determine suitability for the position to be filled.

Regardless of its form, whether a standardized test, or a detailed examination of applicants' pertinent qualifications, the examining system must result in a numerical rating, with a passing score of 70 out of a possible 100. Candidates are then ranked on the basis of their passing scores, and the top passing scores are advanced for further consideration by the selecting officials. Veterans preference-eligible applicants have points added to their *passing* scores. Veterans at the top of a competitive list of applicants are theoretically in the best position to be hired. In order for an agency to *not* hire a veteran at the top of the list, the agency must justify to the Office of Personnel Management (OPM) its reasons for passing over the higher ranking veteran.

³ Discussion in this section of the application of veterans' preferences does not reflect changes caused by enactment of P.L. 105-339.

Preferences during Reductions-in-Force. Agencies conducting a RIF specify the organizational and geographical boundaries within the jurisdiction of the agency that will be subject to the reduction. A RIF is a two-stage process: employees vulnerable to release first compete for retention with other employees in similar jobs (*competitive level*); if released, they compete with other employees within the boundaries set by the agency. The law provides that four factors must be taken under consideration in releasing specific employees: tenure or type of appointment (such as career or temporary); veterans' preference; length of service; and performance ratings.

During the first RIF stage, tenure groups are established, with permanent, career employees in the highest group, and the remaining more temporary employees vulnerable to release. About 96% of veterans employed by the federal government have preferences, and within the career tenure group, those preference-eligible veterans are placed in a higher retention subgroup than nonveterans, regardless of length of service. Veterans with disabilities rated at 30% or greater are retained in their positions over disabled veterans with lesser ratings, and all disabled veterans have higher retention factors than nondisabled veterans.

Employees unable to hold their positions through the first stage competitive level have the right to *bump* an employee with lower retention standing, or to *retreat* to a position that the employee previously held, if that position is presently occupied by an employee with a lower retention standing, and within the boundaries for the RIF developed by the agency. While a vulnerable employee may bump to a position the employee has never held, the employee must be qualified for the position, and the "available" position must have pay and grade no higher, or no more than three grades lower than the employee's current position.

Additional preference rights. Physical requirements are waived for preference-eligible veterans able to perform a prospective job safely and efficiently. In addition, services performed while on active duty, can be counted as experience in a preservice job, or as active duty experience, whichever is most beneficial for those veterans in meeting requirements for specific federal civilian jobs. Finally, certain postings are available only to qualified preference-eligible veterans so long as applicants are available. These positions include custodian, guard, elevator operator, and messenger.

Authority for direct hiring of veterans. In 1970, Congress added authority for agencies to hire veterans of the Vietnam Era directly, rather than fill such jobs through the competitive process.⁴ Direct hiring authority for nondisabled Vietnam Era veterans expired December 31, 1995. Subsequent amendments provided additional direct hiring authority for nondisabled, preference-eligible veterans whose entire service occurred after the Vietnam Era. All Executive Branch agencies and instrumentalities, including the U.S. Postal Service, are required to have plans for increasing the number of veterans hired through this direct hiring authority, which is applicable to federal jobs at GS-11 or below.

⁴ A veteran of the Vietnam Era served at least one day between August 5, 1964 and May 7, 1975, or had some service in Vietnam between February 28, 1961 and May 7, 1975.

“Special” disabled veterans. In 1978, Congress established direct hiring authority for “special” disabled veterans. Special disabled veterans are those with service-connected disabilities rated by VA at 30% or higher. At the discretion of the agency (and within its budget and any employment ceilings), a special disabled veteran can be hired without being subject to the competitive process, provided the veteran meets the requirements of the position. These excepted jobs are through grade GS-11 on the general schedule or its equivalent. After 2 years of successful performance in the excepted position, the appointment is converted to permanent, giving that veteran full competitive standing in the competition for promotions, other positions or assignments, and other personnel actions decided on a competitive basis.

Preferences for veterans seeking nonfederal jobs. In addition, the 1970 legislation provided that special disabled veterans and veterans of the Vietnam Era are to be granted preferential treatment by contractors doing business with the federal government. Contractors whose contracts with the federal government exceed \$10,000 were required to “take affirmative action to employ and advance in employment” these Vietnam Era and disabled veterans.

The Historical Perspective: The View of the Bradley Commission

In 1956, the President’s Commission on Veterans’ Pensions (the Bradley Commission),⁵ assessed the status of veterans preferences, concluding that they have “... no sound justification, and major changes in the program seem desirable.” This conclusion was based on several observations:

On hiring:

The initial preference in competing for federal jobs is a justifiable readjustment benefit, if limited to a reasonable period after discharge from the service. As a lifetime preference, it is ... self defeating in terms of the readjustment of veterans just leaving service ... a young veteran must compete mainly against the other, older veterans who have the same five point preference, plus greater experience or seasoning on the job. A preference for a more limited period, such as 5 years after discharge, would thus do more for the veteran who is most in need of special help.

On retention rights gained through preferences:

Preference in retention during reductions in force for nondisabled veterans has no real relation to readjustment needs and does violence to the basic principles of the Federal merit system. The goals of open competition and equal treatment for all, on the basis of their ability to serve the public as employees, cannot be achieved if there is arbitrary discrimination in favor of one group based on factors having nothing to do with their efficiency or with their readjustment needs as veterans.

⁵ President Eisenhower established the commission to review veterans benefits and appointed its chairman, General Omar Bradley, former commissioner of the Veterans Administration and a favorite of World War II veterans because of his distinguished command of U.S. Army forces in Europe.

On appeals when veterans preference does not achieve outcomes satisfactory to a veteran:

The special appeals procedure for veterans tends to make a traditional and necessary function of management into an elaborate, costly, and time-consuming quasi-judicial procedure. The readjustment needs of the veteran do not require this privilege for more than a reasonable period after discharge from the service.

In spite of the critique offered by the Bradley Commission of the broad array of veterans preferences, no action was taken and veterans reentering civilian life after military service have continued to benefit from readjustment opportunities in the federal government. There has been no criticism of providing preferences to those veterans who sustained injuries or lingering illnesses traceable to their service.

Effect of Veterans Preferences on Federal Employment

The Proportion of Federal Executive Branch Jobs Held by Veterans⁶

Trends in federal hiring policy. In recent years, the downsizing of the federal workforce has led to fewer employees newly hired from outside the government, as employees shift and transfer within agencies to fill jobs vacated through normal attrition. From 1984 through 1992, the number of first-time entrants into federal professional and administrative jobs declined by 40%. As the government has gotten smaller, it has also decentralized agency administrative authority, such as hiring, so that a more direct link between agency needs and potential applicants could be developed.⁷

As federal hiring needs have changed, avenues into federal employment have become more diverse. Fewer jobs are filled by candidates from *certificates* (a list of applicants determined most qualified), either developed by the Office of Personnel Management (OPM) from a pool of all qualified applicants, or at the agency level. In its 1994 study, the Merit Systems Protection Board (MSPB) found that in 1984, one-third of new entrants to federal professional and administrative jobs in the federal Executive Branch were hired from certificates developed from the central OPM register of qualified applicants. By 1992, that percentage had fallen to 19%. Positions filled from certificates developed at the agency level declined from 20% in 1984 to 17% in 1992.

⁶ Data is for veterans in the federal Executive Branch workforce, 96% of whom qualify for veterans preferences. *Status of Veterans in the Federal Workforce*. Office of Personnel Management. May 1996.

⁷ *Entering Professional Positions in the Federal Government*, a report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, March 1994.

Thus, there are fewer jobs for which preference points are the determining factor in candidate placement on competitive lists, and fewer occasions in which veterans would seek entry into federal service from a broad-spectrum register of applicants.⁸ In effect, hiring certificates have been increasingly replaced by other methods. Positions filled from within agencies rose from 12% in 1984, to 22% by 1992. Entrants hired through direct hiring authority (including authority that pertains to certain categories of veterans) had increased from 22% to 29% over the same period.

Aging of the veteran population. Veterans advocates point out that, as a proportion of the federal executive workforce, the percentage of veterans has declined, from 37% in 1984, to 28% in 1995.⁹ However, because of the aging of the veteran population relative to the rest of the population of United States, a decline in the proportion of veterans in both the federal and total civilian workforce can be expected. Between 1984 and 1996, the median age of all males in the U.S. rose by 1 year, while the median age for male veterans had risen by 5 years. This difference illustrates the greater relative age of the veteran population, and thus the departure of large numbers of veterans from the civilian workforce.

This is demonstrated by data on labor force participation of veterans at various ages. In the age groups of 20-39, and 40-54, labor force participation for male veterans was 90% and 94%, respectively, in FY1996.¹⁰ Large numbers of veterans, however, trace their service to World War II, and that cohort of veterans had reached retirement age and largely left the workforce. This demographic shift has been reflected in an overall *decrease* in the percentage of veterans in the workforce. In 1992, 82% of nonveteran males over age 20 were in the civilian workforce, compared to 65% for veterans. Although in FY1996 nonveteran male workforce participation was largely unchanged (83%), the percentage of male veterans in the civilian workforce had declined to slightly under 60%.

Thus, as the median age of veterans rises, the proportion of veterans in the workforce declines. *Unless an increasing percentage of veterans in the workforce become employed by the federal government, a decreasing proportion of veterans among federal employees should be expected.* Maintaining the current proportion of veterans among federal workers would prove difficult, and perhaps impossible in the future: given the current rate of entry into the armed forces, by 2010, half of all current veterans will be over age 62, the current average retirement age for the civilian work force.¹¹

Veterans in federal jobs. Veterans make up a much larger proportion of the federal workforce than they do of the civilian workforce as a whole, and to some extent, that relative share probably reflects the impact of veterans preference laws.¹²

⁸ MSPB, *Entering Professional Positions in the Federal Government*.

⁹ OPM, *Status of Veterans in the Federal Workforce*.

¹⁰ FY1985, FY1992, and FY1996 *Annual Reports of the Secretary of Veterans Affairs*.

¹¹ *FY1996 Annual Report of the Secretary of Veterans Affairs*.

¹² Except where otherwise noted, data for this section is from: *Status of Veterans in the* (continued...)

- Veterans constituted 27.6% of the federal workforce in FY1995, compared to 13.1% of the total civilian workforce.
- The veterans' proportion of the federal workforce has been relatively stable since 1992 (28.9% in 1992, 27.6% in 1995) during a period when the total federal workforce declined by 10%.
- Vietnam Era veterans constituted 17.3% of the federal workforce in FY1995, compared to 5.7% of the total civilian workforce. The percentage of disabled veterans in the federal workforce compares favorably with the total workforce (4.4% to 0.9%).
- The special disabled (rated 30% or more) are much better represented in the federal government than in the total workforce (1.5% to 0.2%).

Veterans and federal hiring. Another measure of the effect of veterans preferences is the number of veterans hired.

- Of all employees hired for permanent, full-time federal positions in FY1995, 31% were veterans, increasing from 17% in 1990.
- Of the 25,000 males hired for full time permanent federal jobs in FY1995, 47.7% were veterans.¹³
- Direct hiring of veterans under special hiring authority increased from 13% to 20% of the total number of veterans hired during the period FY1990-FY1995.

This increase in the percentage of recent positions claimed by veterans accounts for the relatively stable percentage of veterans in the federal workforce since 1992 and offsets the large number of veterans retiring each year. Between 1992 and 1995, veterans accounted for over 50% of all retirements from federal jobs.

A Bias Against Veterans?

At times, veterans have asserted that some federal officials are biased against veterans. According to testimony by OPM officials before the House Civil Service Subcommittee, 28% of the federal workforce are veterans, and 38% of federal managers are veterans, which would suggest that bias against veterans is likely to be more episodic, rather than systemic.¹⁴ Notably, the annual percentage of all promotions earned by veterans has remained stable, at 21-23% since 1990. That percentage is below the percentage of veterans in the federal workforce. However, veterans' average grade levels are already higher (GS 9.9 compared to 9.3), their service is longer (18.5 years compared to 15.5), and they are older (49 compared to 44), all factors that reduce opportunities for promotion. There are more opportunities for promotions among younger employees who tend to be at lower grades, and have shorter service.

¹² (...continued)

Federal Workforce. Office of Personnel Management. May 1996.

¹³ Testimony of James King, then director of the Office of Personnel Management, before the Subcommittee on Civil Service of the House Committee on Government Reform and Oversight, February 26, 1997.

¹⁴ Testimony of James King, February 26, 1997.

Some veterans have contended that the percentage of hiring certificates returned without securing an appointment is unacceptably high when a veteran is at the top of the register for consideration. Citing a 1992 GAO report¹⁵ that found that 71% of certificates with veterans at the top were returned unused, compared to 51% for certificates headed by nonveterans, some veterans advocates have suggested that the GAO study confirms the existence of a bias against veterans during the appointment process. The GAO report does not draw that conclusion, and suggests several reasons for this disproportionate number of certificates that were returned unused.¹⁶

A subsequent detailed study of federal hiring procedures by the Merit Systems Protection Board (MSPB), found no similar disparate treatment. The MSPB study also examined the relationship between veterans preferences and officials' hiring decisions, and concluded that current practices *do not* indicate that veterans are discriminated against in federal hiring, nor do they cause veterans to be hired when they are not qualified or not suited for the posting. The MSPB study also concluded that, in spite of a commonly-voiced suspicion reported to researchers, it did not appear as if more suitable applicants were being passed over simply because a veteran had preference advantages.

After reviewing the methods used for selecting among available candidates, and finding that veterans are not encountering systemic difficulties in the hiring process, the MSPB study concludes that the selection process could be made fairer to veterans and nonveterans alike. The study recommends giving greater responsibility to managers to evaluate applicants, because "...the current approach to veterans preference too often produces results that are not in the best interests of managers or job candidates, including candidates with veterans preference." The complexity of the standard hiring rules has encouraged hiring officials to use alternative procedures available to them, no matter how cumbersome the steps that must be taken to exercise the hiring discretion that such alternatives provide.¹⁷

In statements before the House Subcommittee on Civil Service¹⁸, some veterans indicated a belief that agency officials sometimes design RIFs to target specific veterans with the intent of removing them. A RIF conducted at the U.S. Geological Survey (USGS) during 1995 has been cited as an example of a "designer" RIF. GAO reviewed the USGS procedures and their effect on preference-eligible veterans, and

¹⁵ *Federal Hiring: Does Veterans' Preference Need Updating?* U.S. General Accounting Office Report to Congressional Requesters, March 1992.

¹⁶ The GAO report suggests that many certificates were returned because candidates requested by managers did not appear among the top ranked, but when they did, the certificates were used 84% of the time, and 9% of those hired were veterans. In other instances, GAO found that veterans declined employment or failed to respond to the agency. In general, GAO concluded that managers, who are responsible for considering numerous factors relevant to filling federal positions, could use several different methods to hire specific persons, or persons with specific qualifications, and that is the principle factor guiding the use of a certificate or return of a certificate unused.

¹⁷ *The Rule of Three in Federal Hiring: Boon or Bane?* A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, December 1995.

¹⁸ Testimony before the Subcommittee on Civil Service, April 30, 1996.

drew the conclusion that "... employees with veterans' preference consistently fared better in the RIF than did employees without such preferences."¹⁹

One measure of dissatisfaction with practices surrounding the application of veterans preferences could be the number of complaints filed under existing rules. During FY1996, 48 complaints were filed with the Department of Labor's (DoL) Veterans Employment and Training Service (VETS) which has the responsibility to investigate. The relatively light caseload does not indicate that veterans widely believe that their preference rights have been so clearly violated that a formal complaint is a promising remedy.²⁰

Amending Veterans Preferences: H.R. 240; S. 1021; and P.L. 105-339

Addressing Perceived Problems with Veterans Preference Law

Proposals to amend veterans preference law arose because of perceptions by some veterans that at best, federal officials were ignoring preference rights, and at worst, were acting to disadvantage veterans, precisely because of their veterans status. As the issue unfolded, these concerns prompted Congress to examine the claims of veterans advocates that veterans preferences were not working as Congress intended. These advocates asserted that:

- *Veterans did not have sufficient opportunities to apply for all open jobs.*
- *Veterans with preferences were often improperly passed over for appointment*
- *Veterans were often treated improperly during Reductions-in-Force*
- *In cases where veterans rights were ignored, appeals were difficult*
- *Certain agencies were unnecessarily excluded from preference requirements*

H.R. 240, and S. 1021 (originally a companion bill, but later amended), were developed to address these perceived problems. The House bill addressed these concerns in several ways. The Senate bill, as amended, retained some of these features, and added one the House bill did not contain.

¹⁹ Letter to the Chairman of the Subcommittee on Civil Service, from the GAO Associate Director of Federal Management and Workforce Issues, August 1, 1996.

²⁰ *Veterans' Complaint Case Summary*, materials to accompany a briefing of staff of the Senate Committee on Veterans Affairs, by Espiridion "Al" Borrego, Assistant Secretary for the Veterans Employment and Training Service, Department of Labor.

As passed by the House, the original legislation (H.R. 240) proposed to increase opportunities for veterans to be considered for federal jobs. H.R. 240 proposed to add to opportunities for veterans to secure federal jobs. H.R. 240 would have increased veterans' job opportunities by requiring agencies to accept applications from veterans for all open jobs, and by expanding the number of agencies required to grant preferences to veterans.

As enacted, P.L. 105-339 provides some expanded opportunity for veterans to apply for jobs, but the new right is restricted to those jobs open to outside applicants.

Expands opportunities to apply for positions. Under H.R. 240, the definition of a preference-eligible veteran was to be amended to add, for veterans with at least 3 years of active military service, the right to apply for positions currently open only to persons already employed within the federal agency posting the position, or with "status" attained as a former employee within that agency. These veterans might not have campaign medals or wartime service, a requirement for preferences for most nondisabled veterans under current law.

Before reporting S. 1021, the Senate Committee on Veterans Affairs eliminated the provisions expanding the class of veterans eligible for veterans preferences for federal employment, and the language requiring agencies to accept applications for all open postings. In floor action before passage, an amendment added a modified version of the provision expanding opportunities for veterans completing 3 years active duty, but included postings only open to external applications, thereby permitting agencies to deny veterans the opportunity to apply for postings restricted to personnel internal to the agency.

Increases access to information about openings. Under H.R. 240, agencies would have been required to provide additional information about jobs open to veterans by reporting all vacancies to OPM. OPM would have been required to maintain a list of such postings that would become open to applications from veterans. Positions in the U.S. Postal Service governed by collective bargaining agreements were exempted from the above provisions of the bill. This provision was not included in S. 1021 as reported, and is not in P.L. 105-339.

Possible effects of adding application opportunities. Under the House-passed bill, agencies would have been required to list jobs available to veterans, and would have been expected to *consider* the applications of veterans within the pool of all applicants, even in common situations where budget constraints encouraged agencies to hire from within their own ranks. Maintaining these separate lists of postings for which only veterans could apply, but not other applicants from outside the agency, would have placed some additional administrative burden on agencies.

The number of veterans actually hired because of advantages given to them by the bill would probably not have been large. The federal appointment process involves other considerations besides preference rights of veterans, including budget priorities, current workforce career opportunities, and job specific requirements. H.R. 240 did not propose changes to the essential element within federal hiring policy that leaves appointment decisions to managers who must exercise judgment

in final selections, sometimes choosing from among several candidates, each of whom has different attributes to be considered.

To the extent that the legislation's provisions encouraged additional applications to be submitted by veterans for positions to which they would have little chance of being appointed, the net result of expanding opportunities could be one of marginally increased veteran dissatisfaction with federal hiring policy, rather than significantly more veterans within federal employment.

H.R. 240 would have added retention protection. P.L. 105-339 does not contain these provisions. Under H.R. 240, veterans would be given additional protections during RIFs. The provisions were eliminated by the Senate Committee, and the enacted legislation does not contain these provisions. The House-passed bill would have:

Prohibited "single-position" competitive levels. Current law permits an agency to define a competitive level as applicable to one position for RIF purposes; H.R. 240 would have prohibited agencies from applying this classification to positions occupied by veterans.

Expanded "bump" and "retreat" rights. Preference-eligibles would have been permitted to displace persons in a wider range of positions than is permitted under current law. Under H.R. 240, a preference-eligible veteran would have been given the right to any position at the same grade level in the agency (in the same commuting area) that was currently held by someone who had been in the position less than 6 months (or 12 months if the person in the position came from the same competitive level), and if "a reasonable person could conclude that the preference eligible would be able to perform [the position's] functions successfully within a period of 150 days."

Established agency Priority Placement Programs (PPPs). Each agency would have been required to establish a PPP, which would develop rosters of employees with high-priority re-employment rights because of being displaced from an agency job. These employees would have been eligible for assignment to open agency jobs within the commuting area in which the RIF occurs, and before the agency could fill them from outside the agency. In addition, employees could select other geographic areas in which their re-employment rights under the PPP could apply. Preference-eligible veterans would have been given higher priority for vacancies in the agency than nonveterans.

Possible effects of the proposed RIF protections. Veterans preferences provide some degree of protection, but not an absolute shield during RIFs. The *retention order* listing the sequence by which workers will be released during a RIF is mostly an impersonal calculation, and each move made in response to it causes a recalculation of the positions on the list. Studies show that preference-eligible veterans are more often retained than nonveterans with similar retention ratings, and this could reflect the advantages conferred by veterans preferences. Yet, this objective rating system does not incorporate all relevant components that determine which employees will ultimately be removed; other more subjective factors can legally also be taken into consideration when retention orders are developed. H.R.

240 would not have eliminated these subjective factors. Even with passage of the proposed provisions, RIFs would probably still have exposed some veterans to a loss of their federal jobs, and in spite of efforts to find other suitable federal employment for these veterans, some would still have been released.

Both bills expanded appeal rights. Both bills, H.R. 240, and S. 1021 as reported, contained the provisions for expanded appeal rights. Under the House bill, the provisions would be extended to the group of preference-eligible veterans, which the bill expands (as explained above). Under the Senate bill, the rights would be extended only to those veterans currently eligible for preferences. The bill as enacted, contains the Senate provisions. P.L. 105-339 expands appeal rights in the following ways:

Expands the role of Department of Labor in examining veterans appeals. Under prior law, OPM advised agencies as to the proper preference rules when veterans filed complaints, but compliance was left to agencies. The new law requires the Veterans Employment and Training Service (VETS) at DoL to investigate veterans' complaints, and enforce compliance where warranted. The VETS is expected to resolve the complaint, if possible, but within 60 days the veteran could notify VETS of an intention to appeal the agency action in question to the Merit Systems Protection Board (MSPB).

Adds additional appeal opportunities. Under prior law, only employees separated during a RIF could appeal a decision concerning the proper application of veterans preferences to the MSPB. New law permits veterans to appeal personnel decisions in which they believe their status as a veteran (or their right to veterans preferences) has been improperly considered, to MSPB, and after 120 days (but before MSPB issues a "judicially reviewable" decision), the veteran may terminate the process and appeal the action in an appropriate federal court. Veterans whose complaints about veterans preference rights are validated could be compensated for loss of wages or benefits, and could be reimbursed for attorney's fees.

Possible effects of expanding appeal rights. Error is possible whenever human judgement is required, and some occasions will predictably arise in which veterans rights are not properly considered. New redress procedures provided by the new law give veterans additional ways to challenge and appeal actions taken that they believe are improperly adverse to their interests as veterans with earned rights to preferential treatment. The changes may be of value to veterans, but will not necessarily resolve every dispute to the satisfaction of veterans. Note that veterans are not appealing decisions in large numbers at the current time.

The legislated added provisions to improve compliance. In addition to being treated as a right *earned* through military service, preference rights were made comparable to protected class (*status*) rights that must be recognized throughout the personnel system. New law:

Establishes denial of veterans preference rights as a prohibited personnel practice. Federal officials are prohibited from denying the preference rights of eligible veterans in the same way in which such officials are prohibited from denying fair treatment to individuals because of race, color, religion, or national origin.

Establishes penalties for officials who deny veteran rights. Officials who are found to have intentionally violated veterans preference requirements may be subject to penalties.

Possible effects of provisions to improve compliance. Officials responsible for properly complying with veterans preference requirements will be made more clearly aware that fostering noncompliance can lead to adverse consequences. Even before enactment of P.L. 105-339, various penalties could be applied to federal officials who ignored requirements to perform their hiring responsibilities according to federal policy and regulations. How much additional notice and penalties will alter officials' behavior is difficult to gauge.

The legislation expands coverage to other agencies. The new law expands the application of veterans preferences to include certain jobs in the White House, the legislative branch, and the judicial branch. In addition, the legislation extends the RIF protections provided by existing veterans preferences to the Federal Aviation Administration which, under prior law, was required to grant preference rights only with respect to hiring decisions. The legislation requires these parts of the government to broadly comply with veterans preference requirements, but provides exclusions for political appointments and special appointment requirements. P.L. 105-339 leaves interpretation, application, and compliance up to internal mechanisms for the legislative and judicial Branches.

Possible effects of expanding veterans preferences to other agencies. Positions exempted from veterans preference requirements often have special characteristics that place additional responsibilities on hiring officials to select from among applicants according to those specific characteristics. Some veterans may be added as a result of the legislation, but in general, these special characteristics will continue to govern when it would be appropriate to apply veterans preferences to open positions. There is no evidence that veterans were systematically excluded from these positions under existing law, or that their numbers were disproportionately lower than in other federal agencies.

P.L. 105-339 expanded coverage to federal contractors. Under prior law, special disabled veterans (as defined in the section *Application of Veterans Preferences*, above) and veterans who served in the Vietnam Era (defined in law as service anytime during the period beginning February 28, 1961 and ending May 7, 1975), were entitled to special consideration when applying for jobs with contractors having contracts with the federal government totaling \$10,000 or more. These contractors were required to maintain "affirmative action" plans for preference-eligible veterans, and to report annually on their plans, and the number of veterans the plans assisted. Veterans believing a contractor had not complied with the preference requirements could file a complaint with the Department of Labor, which had a responsibility to investigate the claim and take appropriate action to resolve it within the requirements of the law.

P.L. 105-339 contains language extending the concept to veterans of the Persian Gulf War, which the legislation defines as the period beginning August 2, 1990 and ending January 2, 1992. The plateau making contractors subject to the preference conditions was raised from \$10,000 to \$25,000. Contractors are required to report

the maximum and minimum number of its employees, and the total number of veterans the contractor employs. Agencies are prohibited from contracting with contractors who do not comply with the reporting requirements.

Action on H.R. 240 and S. 1021

H.R. 240 was introduced early in the 1st Session of the 105th Congress, and hearings were held in the Subcommittee on Civil Service of the Committee on Government Reform and Oversight, February 26, 1997. The bill, with 26 cosponsors, was reported to the House, March 12, 1997. H.R. 240, which was similar to a bill that passed the House during the 104th Congress, passed the House on April 9, 1997 by voice vote.

In the Senate, H.R. 240 was referred to the Committee on Veterans Affairs, as was the similar bill, S. 1021, which had 18 Senate cosponsors. The Senate Veterans Affairs Committee held a hearing on the two bills on March 24, 1998.

On July 28, 1998, the Committee ordered reported S. 1021, with an amendment stripping the section that expanded the opportunity for veterans to apply for all open jobs. Also removed was the section expanding job protections during RIFs. The redress procedures in H.R. 240 were retained, and the Committee added a new section that gives preference rights to Persian Gulf War veterans when they sought employment with contractors whose federal contracts exceeded \$25,000 per year. Such a preference already existed for Vietnam Era veterans (see above).

On September 21, 1998, the Committee reported the bill, and on October 5, 1998, S. 1021 was brought before the Senate, with an amendment proposed by the Chairman of the Senate Committee on Veterans Affairs, Senator Arlen Specter of Pennsylvania. The amendment, adopted by unanimous consent, restored some aspects of the provisions of H.R. 240 that gave the right to apply for all open postings to veterans of three years active duty. Under the amendment, the right was limited to jobs for which the posting agency would be accepting outside applications, and jobs restricted to employees within the agency would remain closed to outside applicants, including veterans with preference rights.

Veterans service organizations supported the legislation, and testified in its behalf. The Administration endorsed the concept of refining veterans preference law, but in hearings on the two bills, Administration spokesmen disagreed with the critique of current policy that some advocates of the legislation presented. Some federal employee organizations testified that some aspects of H.R. 240 would run contrary to the interests of various categories of nonveteran federal workers they represented. There was no apparent organized opposition to S. 1021, as amended