

# VETERANS' PREFERENCE

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
FIRST SESSION

SEPTEMBER 6, 2007

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# CONTENTS

September 6, 2007

	Page
Veterans' Preference .....	1
OPENING STATEMENTS	
Chairwoman Stephanie Herseth Sandlin .....	1
Prepared statement of Chairwoman Herseth Sandlin .....	48
Hon. John Boozman, Ranking Republican Member .....	2
Prepared statement of Congressman Boozman .....	48
WITNESSES	
U.S. Merit Systems Protection Board, Hon. Neil A.G. McPhie, Chairman .....	24
Prepared statement of Hon. McPhie .....	60
U.S. Department of Defense, Hon. Patricia S. Bradshaw, Deputy Under Secretary of Defense (Civilian Personnel Policy) .....	26
Prepared statement of Hon. Bradshaw .....	63
U.S. Department of Agriculture, Hon. Boyd K. Rutherford, Assistant Secretary for Administration .....	28
Prepared statement of Hon. Rutherford .....	65
U.S. Office of Personnel Management, Anita R. Hanson, Outreach Group Manager .....	37
Prepared statement of Ms. Hanson .....	67
U.S. Department of Labor, John M. McWilliam, Deputy Assistant Secretary, Veterans' Employment and Training Service .....	40
Prepared statement of Mr. McWilliam .....	70
U.S. Department of Veterans Affairs, Willie Hensley, Deputy Assistant Secretary, Human Resources Management, Office of Resources and Administration .....	41
Prepared statement of Mr. Hensley .....	73
-----	
American Federation of Government Employees, AFL-CIO, Mary Jean Burke, First Executive Vice President, National Veterans Affairs Council .....	14
Prepared statement of Ms. Burke .....	54
American Postal Workers Union, AFL-CIO, C.J. "Cliff" Guffey, Executive Vice President .....	15
Prepared statement of Mr. Guffey .....	57
Disabled American Veterans, Brian E. Lawrence, Assistant National Legislative Director .....	17
Prepared statement of Mr. Lawrence .....	59
National Veterans Legal Services Program, Meg Bartley, Senior Staff Attorney .....	3
Prepared statement of Ms. Bartley .....	49
Tadsen, Roger, Wetumpka, AL .....	5
Prepared statement of Mr. Tadsen .....	50
SUBMISSIONS FOR THE RECORD	
American Legion, Ronald F. Chamrin, Assistant Director, Economic Commission, statement .....	76
National Association of Postal Supervisors, Ted Keating, National President, letter .....	81

	Page
<b>MATERIAL SUBMITTED FOR THE RECORD</b>	
Post-Hearing Questions and Responses for the Record:	
Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity, Committee on Veterans' Affairs, to Hon. Neil A.G. McPhie, Chairman, U.S. Merit Systems Protection Board, letter dated September 17, 2007 .....	83
Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity, Committee on Veterans' Affairs, to Hon. Patricia S. Bradshaw, Deputy Under Secretary of Defense (Civilian Personnel Policy), U.S. Department of Defense, letter dated September 17, 2007 ...	85
Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity, Committee on Veterans' Affairs, to Hon. Boyd K. Rutherford, Assistant Secretary for Administration, U.S. Department of Agriculture, letter dated September 17, 2007 .....	88
Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity, Committee on Veterans' Affairs, to Ms. Anita R. Hanson, Outreach Group Manager, U.S. Office of Personnel Management, letter dated September 17, 2007 .....	89
Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity, Committee on Veterans' Affairs, to Willie Hensley, Deputy Assistant Secretary, Human Resources Management, U.S. Department of Veterans Affairs, letter dated September 17, 2007 .....	91

## VETERANS' PREFERENCE

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THURSDAY, SEPTEMBER 6, 2007

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:10 p.m., in Room 334, Cannon House Office Building, Hon. Stephanie Herseth Sandlin [Chairwoman of the Subcommittee] presiding.

Present: Representatives Herseth Sandlin, Donnelly, McNerney, Hall and Boozman.

### OPENING STATEMENT OF CHAIRWOMAN HERSETH SANDLIN

Ms. HERSETH SANDLIN. Good afternoon, ladies and gentlemen. The Veterans' Affairs Economic Opportunity Subcommittee hearing on veterans' preference will come to order. Before I begin with my opening statement, I would like to call attention to the fact that Mr. Ted Keating, President of the National Association of Postal Supervisors, has asked to submit a written statement for the record. If there is no objection, I ask unanimous consent that his statement be entered for the record.

Hearing no objection, so entered.

[The statement of Mr. Keating appears on p. 81.]

When called to duty, service members must make a sacrifice by leaving behind loved ones and a way of life for an extended period of time. As four of our most recent Subcommittee hearings have highlighted, many of these service members have returned home to find themselves having a difficult time securing employment.

In the early years of our Republic, veterans returning from war have been provided assistance in their reintegration back into civilian life to include being given preference in Federal Government hiring so they may succeed after military service. Generally, to qualify for such preference, a veteran must have been discharged or released from active duty in the U.S. Armed Forces under honorable conditions and be eligible under one of the preference categories. These categories apply to certain veterans who served during war; veterans with less than or a greater than 30 percent service-connected disability; veterans who have a service-connected disability and are receiving benefits due to that disability, but do not qualify for other preferences; and family members of veterans.

Unfortunately, as we will hear today, there are some concerns that still exist, have existed over the past years. Some of these include veterans improperly denied appointments and veterans targeted during a reduction in force (RIF).

I hope this hearing will allow the Subcommittee to determine the success rate of veterans' preference; if veterans' preference has assisted our Nation's heroes in acquiring jobs at Federal agencies; and if these agencies have implemented veterans' preference properly.

I applaud the Federal agencies that have made strong efforts in hiring veterans, especially disabled veterans. I would also like to take the time to recognize the steadfast dedication of all our panelists today and their willingness to bring to light the serious issues that are being faced by many of our veterans today. I know that those of us here in the Congress, and the Administration officials on the third and fourth panels, look forward to hearing today's testimony so that we may all work together to properly recognize the sacrifice of those who have answered the call to duty. This is especially true at a time when our country is experiencing an increased retirement rate among Federal employees, and the military operations that are creating a larger population of veterans.

I now yield to our distinguished Ranking Member, Mr. Boozman, for his opening remarks.

[The prepared statement of Chairwoman Herseth Sandlin appears on p. 48.]

#### **OPENING STATEMENT OF HON. JOHN BOOZMAN**

Mr. BOOZMAN. Thank you, Madam Chair. I want to thank you and your staff, my staff, for bringing this very important issue before the Subcommittee.

The Federal Government has a special obligation to make veterans part of its workforce, and I know that many Federal agencies make a real effort to hire and promote veterans. For example, the military services led by the Army with 43 percent, Air Force with over 41 percent, Navy with 38 percent, and the U.S. Department of Veterans Affairs (VA) with over 23 percent led the Federal Government in hiring veterans in fiscal year 2005. Unfortunately there are also agencies that make little or no effort.

I hope that today's hearing will provide us with insights as to how veterans' preference laws are working and in some cases not working. I would say that overall numbers show the Federal Government is making an effort. For example, according to the U.S. Office of Personnel Management (OPM) report on veterans in the Federal workforce for 2005, veterans comprised 27 percent of the Federal full-time permanent employees, and veterans hiring is up in all areas. If I am disappointed, it is that agencies did not make better use of the special hiring authorities, such as veterans recruitment authority, VRA, to hire even more veterans.

I must say reading OPM's Web site sections devoted to veterans' preferences is not an easy task, probably because of the multiple laws, hiring authorities and programs in effect for veterans and nonveterans.

Madam Chair, since we have no direct authority over Title 5 in the rest of the government, and again, I am thinking out loud but, I wonder if we should consider using our jurisdiction to simplify veterans' preference for the VA in the same manner as we did for small business in Public Law 109-461.

VA has a good overall record relative to hiring veterans, but I think that we could help them do even better without tying the hands of the human resources staff.

Again, I appreciate very much the panelists here, and I am very glad to hear the testimony. Thank you, Madam Chair.

[The prepared statement of Congressman Boozman appears on p. 48.]

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman, for your suggestions and ideas on how we can best utilize our jurisdiction in our work here together to ensure that other agencies can meet the higher standard that the VA has in a number of instances, and that we can share that information with our colleagues on other Committees but also look to simplify these procedures. I'm also interested in the testimony, or the questions you may have, for our witnesses along that line or thoughts they provide in their opening statements.

I want to welcome on our first panel Ms. Meg Bartley, Senior Staff Attorney of the National Veterans Legal Services Program (NVLSP); and Mr. Roger Tadsen, a disabled Air Force veteran, residing in the State of Alabama. Thank you both for being here today.

I do want to remind you that your entire written statements will be made part of the record. Please summarize your remarks, you will be recognized for 5 minutes. We will have some questions for you as well. We have two additional panels, so please keep your opening statement to 5 minutes, we would appreciate that.

Ms. Bartley, let us begin with your testimony. You are recognized for 5 minutes.

**STATEMENTS OF MEG BARTLEY, SENIOR STAFF ATTORNEY,  
NATIONAL VETERANS LEGAL SERVICES PROGRAM; AND  
ROGER TADSEN, WETUMPKA, AL (DISABLED VETERAN)**

**STATEMENT OF MEG BARTLEY**

Ms. BARTLEY. Madam Chair and Members of the Subcommittee, on behalf of the National Veterans Legal Services Program. I am honored to provide this testimony. And I hope it assists you in ensuring that all veterans receive the preference to which their service entitles them.

During the past 8 years, NVLSP has reviewed and investigated complaints concerning veterans' preference violations. During that time we have filed amicus briefs with the U.S. Merit Systems Protection Board (MSPB) and the Federal circuit on behalf of the American Legion and on behalf of our own organization in important veterans' preference cases. Based on discussions with individual veterans and review of numerous complaints, we believe there are currently many violations of both the spirit and the letter of veterans' preference laws.

I want to summarize three problems with the current system. In the interest of time, I will omit the recommendations that I have included in my written testimony. These are not the only problems with how veterans' preference works, but I believe they best illustrate the systemic weaknesses in the system. They show us that

agencies currently avoid consistent and even-handed application of veterans' preference in appointments to the competitive service.

I will first address the practice of canceling a certificate of eligibles in order to avoid hiring a preference eligible. And I have a little overview in my written testimony of what can happen when an agency posts a vacancy. Usually applicants apply. A certificate of eligibles is generated. Sometimes there is more than one certificate, and I will get to that in a minute.

But let's look at a case where there is a single certificate. Let's assume it is headed by a preference eligible. The hiring official doesn't want to hire that veteran. They may request a passover from OPM, and if their request for a passover is denied, the law currently provides that if the agency decides to subsequently cancel the entire announcement in order to avoid hiring the preference eligible, veterans' preference rights are not violated. That is from the Scharein case and also the Abell case of the Federal Circuit. That outrageous statement is the current state of the law, and allowing that situation to continue allows an agency to intentionally foil veterans' preference laws.

A second problem that shows the systemic weakness of the current system is that under veterans' preference laws, emphasis is placed on the rank or rating of a preference eligible on a single competitive examining certificate. That is in chapter 33 of Title 5 USC. For many positions, the preference eligible is at the top of the certificate. And years ago when there was only one certificate, that provided meaningful preference, right, because the veterans at the top end would have to be chosen, or the agency would be required to get authorization for a passover.

However, at the current time, agencies have the ability to choose a candidate from among multiple certificates and programs. The existence of multiple certificates and programs, any of which may be used to fill a single vacancy, renders the rank or rating assigned to the preference eligible on the competitive open certificate potentially meaningless. What is the benefit of being number one on the list if the agency has the ability to choose from four or five other certificates or programs in deciding who to hire? Veterans are completely confused to find that they were at the very top of a certificate, but someone from a completely different certificate was appointed to the job.

A third problem is that agencies tend to ignore the primacy of the competitive examining process in Federal hiring. The existence of multiple hiring programs and certificates from which agencies can choose leads agencies to a dangerous view of Federal hiring, and that is that they are pretty much unrestricted in choosing how to hire an individual. Competitive examination is seen as one hiring method among several. However, the statutory scheme in Title 5, chapter 33 requires that an individual be appointed in the competitive service only if they have passed an examination or of necessity been excepted from examination.

Deviations from that method of choosing an individual for the competitive service leads to serious violations of veterans' preference laws. This is evidenced by the fact that the Outstanding Scholar Program operated undisturbed for many years and only recently was recognized as violating veterans' preference. The growth



of additional programs as alternative routes into competitive service is a serious threat to consistent application of veterans' preference.

Madam Chair and Members of the Subcommittee, I appreciate the opportunity to present our views on this issue and look forward to continuing working with the Subcommittee on strengthening the application, oversight and enforcement of veterans' preference.

[The prepared statement of Ms. Bartley appears on p. 49.]

Ms. HERSETH SANDLIN. Ms. Bartley, thank you very much for your testimony.

Mr. Tadsen, thank you very much for taking personal leave to join us today to share with us your insights and testimony. You are now recognized for 5 minutes.

#### **STATEMENT OF ROGER TADSEN**

Mr. TADSEN. Madam Chairwoman and Members of the Subcommittee, I am Roger Tadsen, and I thank you for allowing me to speak with you concerning my experiences under the Disabled Veterans Affirmative Action Program (DVAAP), established by 5 CFR 720 Subpart C. My military career started when I joined the Air Force in January 1972 at the age of 17. While on active duty, I had surgery which left me partially paralyzed in both legs. The Air Force medically discharged me in January 1987. As a result, the Veterans Administration established my service-connected disability rating at 70 percent.

The Air Force Audit Agency hired me in June 1991 upon completing the VA's Vocational Rehabilitation Program. My previous Air Force experience paid off with my first audit, which resulted in over a \$3 million savings to the Air Force. I thought I was doing well. Imagine my surprise when my region chief, meeting me for the first time, told me, you should be satisfied where you are because of your disability and that you could not handle being an audit manager.

His statement took me aback. I filed an equal employment opportunity (EEO) complaint. And his explanation: You misunderstood what I said. And I gave him the benefit of the doubt.

Between 1995 and 2004, I had ratings of excellent and superior. I self-nominated for more than 15 competitive promotions and was never selected. All the while, the Air Force Audit Agency had continuous vacancies in California, Ohio, Texas and the Pentagon. I watched as my peers with less time and grade and service were selected and wondering, why not me? When I asked, I was told by Agency officials, focus your energies on job performance, which is the primary factor to promotion in the Audit Agency, and apply for vacancies.

Since January 2000, I have completed 23 audits, identifying over \$54 million in savings for the Air Force. I have audit experience in acquisition field operations and information systems audits and am a certified fraud examiner. I have worked with the Air Force Audit Agency for over 15 years and have more than 31 years with the Air Force.

In October of 2002, I discovered the DVAAP. On my own time I started to research its implementation in the Air Force Audit Agency. Over the next year I asked my supervisor and other agen-

cy officials why the Audit Agency was not following this affirmative action program, focusing on disabled veterans rated 30 percent or more as outlined. My written testimony gives a full account of who I wrote and their response since.

After many letters and e-mails and discussions, it became apparent that the Audit Agency did not want to implement this affirmative action program. As a result, I filed an EEO complaint in December of 2003 based on the lack of their responsiveness.

In January of 2004, I requested a humanitarian reassignment for personal reasons. A Deputy Assistant Auditor General offered me a job, which included a promotion in February 2004, stating, this will kill two birds with one stone. I assumed he was referring to my EEO complaint and humanitarian reassignment. I accepted this promotion, knowing that this same official had previously rejected my self-nomination a few months earlier, and I withdrew my EEO complaint.

After our move, I continued to ask why the Audit Agency was not implementing the DVAAP plan. My Associate Director said that a Deputy Assistant Auditor General poignantly told me in September of 2004, we don't want to hear any more about the DVAAP.

Since January of 2006, to continue my career progression, I have applied 11 times for vacancy in professional military education since the Agency senior officials say I need depth and breadth of experience. Yet again, I went unselected while generally others with less time and experience were selected.

In June of 2007, I provided Audit Agency senior staff contact information for the Supervisor of Employment Outreach at the national VA headquarters. None of these officials contacted his office even though he identified over 1,600 potential candidates rated 30 percent or more.

I believe my testimony has shown a pattern of deception concerning the implementation of this affirmative action program while supporting discrimination against disabled veterans within my own organization, especially those rated 30 percent or more. And I just thank you for allowing me to take the time to come and speak with you on this issue.

[The prepared statement of Mr. Tadsen appears on p. 50.]

Ms. HERSETH SANDLIN. Thank you again, Mr. Tadsen. We appreciate your willingness to share your experiences, clearly as frustrating as they have been, so that we can help get some answers to try to help others avoid being in this position. Certainly it is our oversight role to make sure that programs like DVAAP are implemented in the way that we had intended.

We have been joined by Mr. McNerney, the gentleman from California. Did you have an opening statement, Mr. McNerney, that you wanted to share with the Subcommittee?

Mr. MCNERNEY. No. Go ahead and go on with the questions.

Ms. HERSETH SANDLIN. I will recognize the Ranking Member first for questions and then recognize you, Mr. McNerney.

Mr. BOOZMAN.

Mr. BOOZMAN. Thank you, Madam Chair.

Ms. Bartley, you mentioned the three things that were common barriers. In one I was a little confused. You quoted a case, a citing from the case. Was that quoted from the law, or is that a bad inter-

pretation of the law? See what I am saying? Laws are made all the time, and then judges interpret what the law means. Is that a bad interpretation?

Ms. BARTLEY. That is both the Merit Systems Protection Board and the Federal circuit's interpretation of the law. I want to make clear that the MSPB and the court seem to be interpreting the law correctly. It is just that the law has this flaw in it that it would allow an agency to go ahead and cancel. There is nothing to prevent that from happening. So that was their interpretation of the law.

Mr. BOOZMAN. So in your mind, there is a loophole in the law.

Ms. BARTLEY. There appears to be a loophole in the law.

Mr. BOOZMAN. It wasn't intended to be that way when the law was written.

Ms. BARTLEY. I don't think when the law was written people thought that that would occur.

Mr. BOOZMAN. In many cases when you try to write law, sometimes you don't cover every intended loophole.

Ms. BARTLEY. Right. It is impossible to foresee that something like that would—

Mr. BOOZMAN. You describe the three most common barriers. What is the most common of the three?

Ms. BARTLEY. I think these are all significant flaws structurally in the law. I did not attempt to say that they were the most important or the ones that occur most frequently. I would find it hard to choose among them or to put them ahead of other problems that the other service organizations are going to address in a little while.

Mr. BOOZMAN. And I know in your written testimony it is there, but would you summarize again, would you kind of go through one, two and three? And then as one who works with the problem, what would be your fix for the problem?

Ms. BARTLEY. Well, the first problem that I mentioned was the cancelation of a certificate specifically in order to avoid hiring a preference eligible. One recommendation or idea that we have and that some veterans service groups and I have discussed, some other service group members have discussed, is to require an agency to request permission to cancel a certificate that is headed by a preference eligible. A rule that might be patterned after the current passover provision in 5 USC 3318(b), which requires an agency—the current rule, the passover rule is if the agency wants to pass over a veteran on a certificate, to essentially request OPM's permission to do that, giving reasons why they want to do that; is the preference eligible not qualified, et cetera. And sometimes they can actually accomplish that. The OPM says, yes, go ahead and pass over.

There could be a similar provision concerning the cancelation of a certificate. Where the certificate is headed by a preference eligible, they could have to give reasons to OPM or give reasons to some agency as to why they want to cancel the certificate. And OPM, if they found that there was a valid reason other than just because the agency wants to avoid veterans' preference laws, they could go ahead and approve the cancelation of the certificate.

I am sure that there will be an objection, that that would be quite bureaucratically burdensome, and I guess that would have to be tailored so it wouldn't be burdensome, because I understand there are a lot of cancelations of certificates. The funding for the position might have failed, the agency may need to tweak how they described the position, so they cancel the certificate, and they add a new skill in there that needs to be—you know, that the applicant should have. There are all kinds of reasons why certificates are canceled. And I am not saying that this is the main reason, but this is—there are many cases that have—cited the Scharein case and the Abell case. And so our assumption is, well, this is happening with some frequency. And it is such an outrageous situation that it just calls out for some kind of action.

As far as the second problem, the agency's ability to choose from multiple certificates or programs in filling a single vacancy, I admit that our recommendation there is a bit vague: basically somehow to ensure that a certificate generated through the competitive process, that is the open competitive—open to all sources competitive certificate is somehow favored over other hiring methods and over other hiring programs.

Again, I admit that that is a bit vague, but that is all I can think of, because when you look at Title 5 as a whole, the only place that appointments are really talked about is in chapter 33. That is a structured—a structured method of appointing someone to the competitive service. It is all in chapter 33, and that is where all of the veterans' preference rules are also.

So that should be the primary method of hiring. But again, the recommendation there is admittedly a bit vague. And I am sure perhaps other people have other suggestions on that.

The third problem is—and it is related to the multiple certificate problem—is that agencies tend to ignore that the competitive examination process is supposed to be the primary hiring method for appointments to the competitive service. This is routinely ignored. It is ridiculously routinely ignored, in my opinion. The recommendation here, again, is to ensure that the competitive examining process remains the primary appointment method for entry into the competitive service, and if an agency is going to use another hiring program, they should have reasons why that is necessary.

Mr. BOOZMAN. With your permission, can I ask Mr. Tadsen one thing?

You told your story and then alluded to the fact that other veterans, other friends, acquaintances or whatever were having the same problem. Is it because that your supervisors feel like you are thrust on them in the first place? See what I am saying? If you are doing a good job, and if I were the supervisor, and you want to have a good team that does a good job doing these things, is it just getting off on the wrong foot in the first place, or—

Mr. TADSEN. Well, most of our—most of the decisions that are made aren't made at my first- or second-level supervisor. It is upper management and at the Senior Executive Service (SES) level that are making these decisions and trying to inform the agency how they want to do it. So my first- and second-level supervisors, they write glowing reports.

For example, when I put in for Air Command and Staff College at Maxwell, my first- and second-level supervisors, they wrote glowing comments. But when it got to the SES where they are supposed to fill out their comments on this form, their comments aren't supportive. And so the selecting officials at the Board that they choose the people that are to attend these professional schools, they wrote back to me saying that the endorsing officials' comments don't relate to how the Air Force would benefit from me attending this particular college.

And again, I am just one. There are 13 other disabled veterans, and they have told me their stories as well. But again, they don't want to be under the gun, as it were.

Mr. BOOZMAN. So you feel like the upper level is based on the fact that you and these other folks have a disability as to why they are—I guess what I am saying is you want to have a good team of people that are doing the job, and evidently you are doing the job.

Mr. TADSEN. You want to be qualified. You want to have qualified people in those positions.

Mr. BOOZMAN. So what is their motivation? What is their motivation?

Mr. TADSEN. I don't know, because they have yet to respond to any of my inquiries. You know, they just don't respond. They tell my Associate Director they just don't want to hear any more about it, and that is it. And even under National Security Personnel System (NSPS) now, we have been under NSPS since April of 2006, we have not hired any disabled veterans, we have not promoted any disabled veterans, and nobody will explain why. And when I write the Office of Primary Responsibility at the Air Force level, they said, well, we have provided the Air Force Audit Agency with six recommendations that would help them to improve the disabled veterans' representation. And they still have not implemented those recommendations.

Mr. BOOZMAN. Well, thank you for coming, and we appreciate your service. Thank you very much.

Ms. HERSETH SANDLIN. Mr. McNerney.

Mr. MCNERNEY. Thank you, Madam Chairwoman.

I also want to thank the two panelists. I know it is hard to come forth, but this is what it takes to change the system so hopefully we can make some things that are going to change and make it better.

Ms. Bartley, I would like to ask you, in your opinion, is the Office of Personnel Management capable of dealing with veterans' preferences across the country, or are there major structural changes that are needed?

Ms. BARTLEY. I think there are major structural changes that are needed. I believe that one of the other service organizations later will speak about the fact that the appeal process and the complaint process for veterans' preference violations is not streamlined at all. A lot of different agencies have a hand in it: Office of Special Counsel, OPM, the MSPB, et cetera. And often veterans don't know really what is happening.

I also think that with the growth of a lot of—I mentioned this in my written testimony—multiple student hiring programs and

things like that, it is hard for OPM to—you know, there is like growth in the number of ways to hire people. It is hard for OPM to keep their hands on each one. And then, of course, sometimes all this is delegated to the agency, and OPM is just doing minimal supervision. And then again, they don't really have the—they have authority, but they don't have the supervisory ability to make sure that things are happening the right way.

Mr. MCNERNEY. Well, in your view, then, does the veterans' preference statute really help? Is there any level that it does help, or are we sort of not getting anywhere at this point?

Ms. BARTLEY. Well, I certainly wouldn't recommend getting rid of it. Of course it helps in situations. What we are trying to highlight are the numerous violations and think about ways that we could improve it so that those violations don't occur. Sometimes, though, it seems as though you plug one hole, and, you know, other potential ways of hiring people appear, you know, and so you are busy kind of plugging holes.

And I would point to the Outstanding Scholar Program, as you know, a hole that was plugged, but now—and after the—you know, the Outstanding Scholar hiring program was frozen. I believe it is still frozen. But I heard various things from various people on that. After that was frozen, because it was seen as basically a violation of veterans' preference laws and the competitive examining process, then we did see some advice, actually, among Federal hiring managers, what to use now that Outstanding Scholar isn't available to us. And, of course, there is nothing wrong with that, but a lot of these—seemingly what has occurred is that there has been a bit of an explosion in different student hiring programs, and we are not sure how veterans' preference is being applied there and whether anyone is doing any oversight or enforcement of those programs.

Mr. MCNERNEY. Do you think that employers find any tools that are useful in locating the appropriate person to hire for vacancies, or is that an area that could use some work as well?

Ms. BARTLEY. Did they have—it is possible that a human resource (HR) professional might have a better view of that than I do because I really don't do HR work. I know they clamor for hiring flexibilities. And, of course, no service organization in this room has a problem with that as long as veterans' preference laws, including, you know, passover and enforcement, are followed.

Mr. MCNERNEY. Thank you.

Mr. Tadsen, do you think that the Air Force Audit Agency retaliated against you in any way, or do you feel like there was unintentional action?

Mr. TADSEN. Oh, I think it was well directed at me, because my first line supervisor and a deputy director for my region worked together, I think, to put me in the hospital, as it were. They were—the VA, they were thinking I was having heart trouble, but it was all stress-related, because, again, they were attacking my character, my work. As I said in my previous testimony, my ratings from 1995 until 2004 were superior or excellent. And since that time—now I am just average. And I think that is part of the process.

And just to add with what Ms. Bartley had said as far as certificates being cancelled and how the preferences are given, in my own

organization, I believe that they purposefully tried to do what they can so that they don't have to have a disabled veteran in a supervisory position or mid or upper management, because there are none currently.

Mr. MCNERNEY. Can I ask one more question? Do you have any specific recommendations then on what should be done to improve the situation or—you don't have to answer in detail now, but if you do, if you would submit those, I think it would be useful.

Mr. TADSEN. One recommendation I would give is that the air staff, the AIX folks that are the Office of Primary Responsibility (OPR) office for the DVAAP plan, is that they should have the authority to not necessarily encourage my organization to participate in this program, but actually monitor how they implement the DVAAP for hiring using veterans' preferences or promotions under the DVAAP, because now it is just not satisfactory.

Mr. MCNERNEY. Okay. Thank you.

Ms. HERSETH SANDLIN. Let me continue with you then, Mr. Tadsen. In your testimony you said that between 1995 and 2004 you self-nominated 15 times?

Mr. TADSEN. Yes, ma'am.

Ms. HERSETH SANDLIN. For competitive promotions. You were never selected, and there were continuous vacancies at the time?

Mr. TADSEN. Yes, ma'am.

Ms. HERSETH SANDLIN. And you were never proffered a reason as to why you were not selected?

Mr. TADSEN. No, ma'am. Well, I assume in some instances, as Ms. Bartley had alluded to, some certificates were withdrawn. We chose not to fill the position at this time. In other things, they just never filled the position.

Ms. HERSETH SANDLIN. I think you stated this in your response to an earlier question. This wasn't an issue, it doesn't sound like, even at the outset, that was just someone's lack of awareness of DVAAP, right?

Mr. TADSEN. Well, in 2003, I gave the auditor general a copy of the law, the 5 CFR Subpart C, and a paper I had written when I was attending the Professional Military Comptroller School on how the Air Force should implement this affirmative action program. So they were well aware of it in 2003. Myself, I wasn't aware of it until I was doing research on another audit project that I just happened to cross the law. Otherwise, I would have never even known of the DVAAP. And once I found out, that is when I started to ask questions.

Ms. HERSETH SANDLIN. I am asking these questions so that we can figure out, as a Subcommittee, the best way to address different cases. Whether it is an agency that has some folks in certain positions of responsibility that aren't as familiar as they should be, and is, therefore, obviously not taking adequate steps to implement it; or do we have instances in which people are fully aware of it, those that are responsible in a particular agency for knowing about it and implementing it, and there is an intentional, willful refusal to implement the law.

Do either you or Ms. Bartley want to respond to whether or not you think that we have situations in which either are true? Do you think in your experience with other agencies, that people are famil-

iar with the various programs we have in place to ensure adequate enforcement of veterans' preference?

I raise this question because we have had other hearings where workload issues are identified for people and primary responsibility to keep up with changes in the law, whether it is in contracting issues or what have you. Or do we have a systemic situation in which individuals with responsibility are purposefully not doing enough to implement the programs?

Ms. BARTLEY. Well, that is an interesting question, and I tend to think it is a mixed bag. But I did want to note from what Mr. Tadsen said that—I believe I am correct in this, although I don't have all the laws memorized. veterans' preference doesn't apply to the SES. And he was just mentioning that the problem is with SES. I don't want to draw too much out of that—out of that connection I am making, but it is possible that because upper management—there may not be. I don't know a lot of disabled veterans there—that there may be some resistance to following the many parts of the veterans' preference or affirmative action laws. I don't know.

But as far as your general question, I do believe it is a matter of both workload and ignorance, or I believe there is often outright resistance to applying the law and thinking of ways to getting around it, like canceling certificates or tweaking the requirements for a position so that the veteran may no longer qualify, things like that.

Mr. TADSEN. If I might add, ma'am, when I was trying to discover how the Air Force was implementing this plan, it took me almost a year to get the Air Force to provide me two sheets of paper that looked like a Word document. It was not properly staffed. Most regulations that I review, they have an OPR identified on the face of the document whose office is primarily responsible, just the staffing. But the plan that they provided me, and they called this the Air Force fiscal year 2003 DVAAP plan, I provided it to my Civilian Personnel Office at Elmendorf. That is where I was stationed at the time. They had never seen it. I contacted the Civilian Personnel Office for the Pacific Air Command because that is where Elmendorf falls under. They had never seen it.

So as she has alluded to, I think it is a mixed bag of just knowledge and knowing that it is there. So I—again, I think it is a mixed bag. But in my own organization, I gave them a copy of the law. I gave them a copy of the Air Force plan in 2003, and we have yet to hire or promote disabled veterans within my organization. We remain constant between 10 and 13 disabled veterans that have a rate of 30 percent or more. And that is a concern for me, not necessarily from my own progression, career progression, but for the other 10 or 12 other 30-percent disabled veterans that are out there that have had these comments made to them, you know, the only reason you were hired is because you are disabled; it should have gone to a woman. Those kind of comments are just irresponsible from mid and upper management.

Ms. HERSETH SANDLIN. Ms. Bartley, you had already addressed the issue of your concerns about OPM. Let me ask you both this: If it is a workload issue and a lack of familiarity with some of the laws that are in place, then going to the issue that Mr. Boozman



brought up in his opening statement, when there is familiarity, is it still too complex? Do you think it needs simplification? Are there certain agencies, in your opinion, that you have seen canceling a certificate of eligibles more frequently than others, particularly since the decisions that you have referenced from 2002? I think it is the Scharein decision in 2002 and the Azdell decision. What are your thoughts on the complexity of administering veterans' preference across agencies? Which agencies may have taken these decisions from the last few years and started issuing more cancelations of the certificate of eligibles? That is a question more directed to you, Ms. Bartley, and I may have another one to directed Mr. Tadsen. What are your thoughts?

Ms. BARTLEY. We haven't looked into the—well, I did call OPM to try and see how they track the cancelation of certificates. They do track the cancelation of certificates. I didn't talk—I wasn't able to talk to the person who is actually in charge of that. So I don't have any sense of what agencies might be doing this more than others.

As to your question about the complexity, I think that is an issue. It has become very complex. If you read, you know, Title 5 and the appointment and selection process there, it all sounds really simple. But there is just so many regulations and different parts of the mosaic that it is very complex. I mean, I have some sympathy with, you know, human resources people just because it is hard to walk that line. But again, the most important thing to me and to our organization is that veterans' preference laws are applied. But it has become a very, very difficult thing with all of these different programs.

Ms. HERSETH SANDLIN. I appreciate that. We may explore with the next panel their thoughts on this. Perhaps after the hearing, taking the testimony we are getting today, if there is a consensus about that, we can help develop proposals, as Mr. Boozman suggested, to help simplify this process that would also help in the training for those being familiar with what laws apply and how to best implement them.

We do have three more panels, so I think we may have some additional questions that we will submit to you in writing, if you can get back to us, because I think if they are agency-specific, Mr. Tadsen, for us to get more information from your experience. We may want to submit some additional questions to you.

I again appreciate your testimony today and share your concerns. Of course, it raises some other issues, as Ms. Bartley pointed out. If we have got veterans' preference applying to initial hires and protection against reduction-in-force actions, we want to focus on what is currently the law. I also think if we have continuous vacancies, and someone has demonstrated their qualifications and has consistently received positive reviews, then in supervisory managerial roles there needs to be not so much flexibility for agencies to just be canceling certificates of eligibles or just leaving vacancies open when we know we have got people who applied that appear to meet the qualifications for the position.

Thank you both. I appreciate the time, and we appreciate your service to the Nation. Thank you.

Mr. TADSEN. Thank you kindly.

Ms. HERSETH SANDLIN. I now invite the second panel to the witness table. Joining us on the second panel of witnesses today is Ms. Beth Moten, Director of the American Federation of Government Employees (AFGE); Mr. Cliff Guffey, the Executive Vice President for the American Postal Workers Union (APWU); Mr. Brian Lawrence, Assistant National Legislative Director for the Disabled American Veterans; and Mr. Rick Weidman, Executive Director for Policy and Government Affairs for the Vietnam Veterans of America.

Well, evidently Mr. Weidman wasn't able to meet with us today, so we will move right to Ms. Moten. You are recognized for 5 minutes. Thank you for being here, and thank you for your written testimony. Again, your written testimony will be made part of the record in its entirety, and we look forward to your summation.

**STATEMENTS OF MARY JEAN BURKE, FIRST EXECUTIVE VICE PRESIDENT, NATIONAL VETERANS AFFAIRS COUNCIL, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO; C.J. "CLIFF" GUFFEY, EXECUTIVE VICE PRESIDENT, AMERICAN POSTAL WORKERS UNION, AFL-CIO; AND BRIAN E. LAWRENCE, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS**

**STATEMENT OF MARY JEAN BURKE**

Ms. BURKE. Thank you. Ms. Moten wasn't able to be here today. So I am Ms. M.J. Burke.

Madam Chairwoman, Members of the Subcommittee, thank you for inviting AFGE to testify today. Being a union officer and a physical therapist at the Indianapolis VA Medical Center gives me a unique ability to understand veterans' vocational needs during the recovery process and as employees try to advance their careers once they return to civilian life.

The Federal Government should be a role model for all employers in this country not only when it comes to hiring practices, but also for career advancement and placement of qualified employees in leadership positions. Veterans' preference rules must change with the times. Currently veterans' preference rules only apply to Title 5 positions or positions covered by the Veterans Employment Opportunity Act. There are roughly 85,000 Federal employees in the VA who are covered by Title 38. More recently, the Department of Defense and the Department of Homeland Security have put in place their own personnel rules. Therefore, we urge Congress to expand current civil service protections for veterans to cover employees under all personnel systems.

Veterans' preference rules must also change as the nature of military service changes. For example, members of the Guard and Reserves are being redeployed more often and for longer periods than in the past. Therefore, they are particularly disadvantaged by the fact that veterans' preferences does not currently apply to promotions and transfers. For example, a Title 5 employee working in my medical hospital as a biomedical engineer technician is in the Reserves and is activated. He perhaps then earns preference status through this new military experience. When he returns to work at

my hospital, this additional status is of no help to get him promoted or transferred.

Our employees in the Reserves and Guard deserve better. They deserve a civil service system that recognizes their own personal sacrifice. Only through my personal experience at the Indianapolis VA Medical Center have I come to realize something about today's veterans and their employment options. At one point in my life, I assumed that people with Bronze Stars and Purple Hearts were set for life financially, that their record would ensure them a decent wage and good benefits. The reality is many of these veterans at the VA who fold our sheets, mop our floors, repair our air conditioners and fix our wheelchairs have exemplary military records, but what they, in fact, rely on is their Federal employment to give them a consistent living wage, health and pension benefits. And even though most of these jobs are lower skilled, they find tremendous satisfaction in caring for other veterans.

Currently the Federal Government does not have the tools it needs to see how well its policies are working to promote veterans employment. There is a ready-made model that the government could use to monitor veterans employment practices: Management Directive 715, which currently tracks race, age, national origin, disability and gender trends in Federal employment. This report could be easily expanded to include data on veterans in the Federal workforce.

Finally, those who are making hiring decisions and those who decide how to rate an applicant's past work experience for qualification purposes need more training to ensure that military service is properly recognized and uniformly applied. I have been troubled by the lack of consistency in rating decisions. I have seen very little guidance from VA central office about this very important function for fair treatment of veterans and employment.

For example, there have been complaints by veterans who have worked as medics in the military who felt they were unfairly denied step and/or grade increases when being rated as a licensed practical nurse. We have similar examples by other occupations.

This concludes my testimony, and I would be happy to answer any questions for the Subcommittee.

Ms. HERSETH SANDLIN. Ms. Burke, thank you very much.

Ms. BURKE. You are welcome.

[The prepared statement of Ms. Burke appears on p. 54.]

Ms. HERSETH SANDLIN. Mr. Guffey.

#### **STATEMENT OF C.J. "CLIFF" GUFFEY**

Mr. GUFFEY. Madam Chairwoman and Members of the Subcommittee, I am Cliff Guffey, Executive Vice President of the American Postal Workers Union, AFL-CIO, the APWU. I am proud to say that I am a 10-point veteran. I was a member of the Marine Corps in Vietnam 1968 and 1969. My President, William Burrus, was a member of the 101st Airborne, and with me today is Steve Raymer, our Director of the Maintenance Division, and he is also a Marine Corps veteran.

It is no coincidence in my mind that those of us who are willing to fight for the rights of our country are also willing to fight in our workplace for the rights of working employees, veterans included.

Postmaster General Potter recently reported that nearly 25 percent of the postal employees are veterans. Among postal workers of my generation, the numbers and percentages of veterans in the Postal Service has been higher.

The fact that large numbers of veterans are employed by the Postal Service tends to obscure the fact that Postal Service effort on behalf of our veterans is not as strong and beneficial as it should be. There has been a continuous decline in the number and proportion of its workers who are veterans. This trend is particularly significant in light of the large number of veterans, particularly disabled veterans, who are returning from fighting in the Middle East. The Veterans Administration has reported that our returning veterans are suffering levels of unemployment and homelessness that I am sure the Committee will agree are not acceptable.

According to the Veterans Administration, the reality is that unemployment usually affects younger, less experienced workers than most, and that includes young veterans who are attempting to enter the civilian workforce after they are discharged from the military service. The VA estimates nearly 200,000 veterans are homeless on any given night, and nearly 400,000 to 1 million veterans experience homelessness each year. Conversely, one out of every three homeless men who are sleeping in a doorway, alley or box in our cities and rural communities have served in our military.

While great efforts have been made to provide housing, these have not been nearly enough. More importantly, our veterans need good jobs, good-paying jobs, a living wage with adequate fringe benefits. Studies show that gainful employment with a living wage with the opportunity for advancement is the foundation for maintaining economic stability and reducing the risk of homelessness.

There is no doubt that the Veterans' Preference Act has provided important assistance to veterans, but this assistance is not as effective as it should be. Perhaps the largest problem is that veterans are not aware of their veterans' preference rights. Neither the military nor the Veterans Administration nor the Postal Service is doing enough to inform veterans of their veterans' preference rights.

In our experience, the vast majority of veterans are not aware of their rights. Even knowing their rights under the law will not really assist veterans unless the Postal Service makes an effective effort to inform them of employment opportunities. Veterans who are informed of their rights and also informed of the available postal positions are more likely to gain U.S. Postal Service (USPS) employment because they have access to the entrance exam upon discharge.

Currently the best employment information vets are offered is at sporadic job fairs that do not regularly include a representative from the USPS. We recommend that all Federal agencies be given timely notice of these fairs and that all agencies within the geographic area of the fairs be required to send knowledgeable representatives.

Additionally, we urge the Committee to take steps to ensure that the Veterans Administration and the military provide exit coun-

seling that includes useful information regarding Federal-sector employment, recruitment and available positions.

The Subcommittee also needs to be aware of another significant impediment to the veterans' preference and the Postal Service. The Postal Service has systematically eliminated or contracted out the six job classifications under section 3310, Title 5 of the Veterans' Preference Act restricting those jobs to applying veterans. For years the Postal Service has sought to contract more and more of these restricted jobs over the objections of the APWU.

We think that this effort by the Postal Service is contrary to the spirit of the Veterans' Preference Act and not in the best interest of the Postal Service. Veterans are losing their postal employment rights because the Postal Service is not preserving these restricted jobs for them in accordance with Federal policy. It may be that the most effective way to provide employment opportunities for veterans would be to identify additional positions that could be restricted for the employment of veterans.

If veterans are to be provided meaningful postal employment opportunities as they have in the past, effective steps needs to be taken to inform veterans of their rights. The military should be required to provide effective exit counseling to discharging veterans, informing them of their preference rights. The Veterans Administration needs to provide effective job counseling services that include information about veterans' preference rights and employment opportunities. And the Postal Service must systematically provide information about employment opportunities to the military, to the Veterans Administration and to the veterans themselves.

In closing, I want to thank the Committee. I want to make two quick comments, personal comments.

When I was discharged, I got no counseling. I was sent to the VA hospital for my exit physicals. I thought it was atrocious at that time. I was lined up in the hallway with hundreds and hundreds of other veterans. At that time, I said I would never go back to a VA hospital.

Today I go back to the VA hospital, and I am very pleased and very proud of what you all have done for us in those areas, because what I get from the clinics and the VA hospitals has been outstanding as far as I am concerned. Conversely to that, the VA benefits, the processing the claims now is atrocious, and you need to do something.

Thank you.

[The prepared statement of Mr. Guffey appears on p. 57.]

Ms. HERSETH SANDLIN. Thank you very much, Mr. Guffey. Thank you for your service and your testimony today.

Mr. Lawrence, welcome back to the Committee. You are now recognized for 5 minutes.

#### **STATEMENT OF BRIAN E. LAWRENCE**

Mr. LAWRENCE. Thank you.

Madam Chair, Ranking Member Boozman and Members of the Subcommittee, on behalf of the 1.3 million members of the Disabled American Veterans, I am pleased to present our views regarding veterans' preference in Federal employment.

Commenting on veterans' preference is a bit like discussing the Emperor's new clothes. There is an abundance of important-sounding words, but no real substance. Someone who is knowledgeable about veterans benefits can tell you about the 5-point preference or 10-point preference, and on the surface it would seem as if there were real advantages in place to help veterans obtain Federal employment. But from the veterans' perspective, the provisions that are in place are empty rhetoric, and there is no significant veterans' preference.

This is inexcusable. The proportion of our population that serves on the active duty is about 4 out of every 1,000 citizens. A very small percentage ensures that the rest of us can enjoy the freedom and security of a great Nation. Men and women of the Armed Forces serving the Federal Government in its most demanding roles; therefore, they should be assured that they will be the first in line for any Federal position for which they may qualify. Doing so is not only a moral obligation, it is wise economic policy from a national perspective.

By virtue of their service, military veterans have already established that they are disciplined, task-oriented workers who are drug free.

Veterans will break the potential to fortify any job market. But more than any other segment of the workforce, our Federal Government should be among the first employers seeking to fill those ranks with those who have served.

I have in my notes examples of how preference is avoided, but I won't reiterate what Meg Bartley has so eloquently pointed out. And I will move toward closing by saying that the DAV urges the Subcommittee to support legislation that will restore the value of veterans' preference laws. These laws should be simple, unavoidable advantage for Federal employment, and there should be a clear procedure for veterans to appeal when consideration has not been afforded to their military service. Should a fellow job candidate be selected over a veteran based on greater credentials, it is proper. However, the hiring official must be able to state in specific and certain terms precisely why the veteran was less qualified than the job recipient.

Madame Chair and Members of the Subcommittee, that concludes my statement. I will be happy to answer any questions.

[The prepared statement of Mr. Lawrence appears on p. 59.]

Ms. HERSETH SANDLIN. Thank you, Mr. Lawrence.

Thanks to all three of you.

Let me just start with a question that I had raised with the first panel and I am going to pose to all of you. I think some of you have addressed it to a degree. Is there a consensus among the three of you that we have to figure out a better way for a veteran to be better informed of his or her employment rights, particularly as these relate to veterans' preference?

Mr. GUFFEY. There needs to be stronger exit counseling. I realize we have a professional Army or military at this time, and they are not expecting people to leave, but X amount of people do leave and there needs to be better exit counseling.

Ms. HERSETH SANDLIN. I would agree with you on that point. We have addressed that point even as it relates to National Guard and

Reserve when we have mobilized them more over the years. In doing that, in terms of the exit interview or counseling, we also know that sometimes there is so much information coming at somebody retiring out of active duty or leaving National Guard or Reserve service. We have also inquired about the importance and the need for some follow-up, 6 months down the line or some regular reminder. Particularly perhaps for some of our younger veterans who are looking at different options and maybe more of a state of transition, especially if they are not coming back to families.

I worry in particular, as some of you mentioned, about some of the younger veterans who are falling through the cracks. Let me go specifically to the veterans' preference laws.

One, do you think they need to be updated? In updating them, do they need to be both simplified and expanded? Or would we be better served to first update them in a way that simplifies and focuses on those making the hiring decisions before we expand veterans' preference? I'm interested in your thoughts on how we go about better implementation.

Mr. LAWRENCE. I think you are right. They are outdated. I mention the 5 and 10 point preference, and that was based on the test that used to be given for Federal employment. To my understanding, a lot of those agencies don't even have a test that is based on a 100-point system. So a 5- or 10-point preference is really meaningless outside of that context.

But I think you were right in what you said to the last panel, the need to kind of gather the people at the—authorities on this and find a simple way of having the veterans' preference that can't be avoided and somebody that knows, you know, more about hiring process than I do, or is familiar with the Federal hiring process.

Mr. GUFFEY. Within the Postal Service in the hiring process, I don't see the problems that other people have. We have a large industrial workforce, and many people are hired at the same type of job at the same time, and veterans get the preference and that works out great.

Where we do have a problem with the Veterans' Preference Act, where I think it may need to be updated, is in that area where it lists specific jobs that are reserved specifically for veterans, and where those jobs are basically defunct and other situations where some of those jobs are being contracted out and not being reserved for veterans.

So there could be new jobs added and changed out and what have you.

Ms. BURKE. I agree with what has been said already. I don't think it should matter if you are a physical therapist or what kind of appointment authority that you come into the Federal service with. There should be administrative redress ability for all employees, who are veterans.

Ms. HERSETH SANDLIN. Also, Mr. Guffey, specifically with the Postal Service, are you aware of what reasons the Postal Service is giving for contracting out those positions?

Mr. GUFFEY. Generally speaking, it is economics. I mean, the Congress has put special provisions on the Postal Service and our ability to compete in different things. And they have to find different ways to save money and what have you.

I don't think—I don't think it is a retaliation. I don't think there is anyone in the Postal Service who has a bone to pick with veterans or anything like that, like the other witness testified to. Once again, when you come into the Postal Service—and we have a union, and the union rules. There is nothing subjective about promotions within the area that we represent; it is all objective and very set rules. So no one, veterans or any other group, can be discriminated upon based on their service.

Ms. HERSETH SANDLIN. Where are they contracting out most of the positions? Is it rural mail delivery?

Mr. GUFFEY. Custodial positions in rural areas and suburbs and what have you. Those are jobs that may not sound great, but they are great entry level positions to positions of very high level within the bargaining units, all the way to level 12s that does electronic technician work. Those are the entry level positions, and they are very coveted positions.

Ms. HERSETH SANDLIN. Thank you for mentioning the area where we could look at updating the Postal Service has been the fact that some of the jobs that have been specifically designated are now defunct in terms of—

Mr. GUFFEY. There are not many elevator operators left in this country.

Ms. HERSETH SANDLIN. Right. Well, I appreciate your responses to those questions.

Mr. Boozman.

Mr. BOOZMAN. Thank you, Madame Chair. I don't have a lot of questions.

Mr. LAWRENCE, can you tell me—and I know you can say specifically for yourself about the relationship that the Veterans Service Organizations (VSOs) have with OPM? Is it a good one or a bad one?

Mr. LAWRENCE. Yeah, I don't think there is any animosity between the VSOs and OPM that I am aware of.

Mr. BOOZMAN. Do you all meet regularly?

Mr. LAWRENCE. We have at least quarterly meetings over at OPM.

Mr. BOOZMAN. Okay. Thank you all very much for your testimony. It is helpful. You don't get to go yet, though. You are just done with me.

Ms. HERSETH SANDLIN. We have also been joined by another colleague, the gentleman from New York, Mr. Hall.

Let me go to Mr. McNerney for any questions he has of the panel, and then we'll recognize Mr. Hall for his questions.

Mr. MCNERNEY. Thank you, Madame Chairwoman. First of all, I want to thank Mr. Guffey for his comment about the service that he sees at the VA now. He or she is treated with a lot of care and just a lot of basic desire to do good for the veterans.

And I am not sure what it is like to sign up for veterans' benefits; that is another story. Once you are in the program and in the hospital, they do take care of you. And if they don't, we need to know about that especially.

Ms. Burke, how many positions do you think have been lost to outsourcing? Is that a widespread problem that we need to be concerned about or are there just specific cases here and there?



Ms. BURKE. Traditionally, we have used the quote about four-fifths of the jobs that have been targeted for outsourcing are held by veterans. Our fellow panelist has mentioned there are some targeted positions that are reserved especially for preference eligibles, but I think it would be a good idea to update that and take a look at that. What I think veterans who are highly service connected need are more simple jobs to get them used to showing up for work every day, just the routine of social interaction and so forth.

Mr. MCNERNEY. Thank you.

This outsourcing is kind of hard to get your hands around. Mr. Guffey, do you think that the jobs that are outsourced are targeted as being veterans jobs?

Mr. GUFFEY. No, I won't make that comment against the Postal Service because we have a union, and we represent the people well, and those jobs are reserved for veterans. We have probably disproportionately—those jobs pay very well, and they believe—compared to the jobs in the private sector.

So it becomes more economically favorable for the Postal Service to contract out those jobs as opposed to hire someone for those jobs. And we just don't believe that is a good public policy issue when the Postal Service is supposed to be the ideal employer, set up as a model employer.

Mr. MCNERNEY. Okay. So a lot of it is just the evolution of the postal system, a lot of the jobs are going to be outsourced anyway. Although I don't agree with outsourcing postal jobs, but—I will make that little plug—there is nothing specific about veterans' positions, in your opinion anyway?

Mr. GUFFEY. No. I don't believe anyone in the Postal Service is targeting veterans. I believe that it is just a position that happens to be one of the reserve positions that they contract out in great numbers.

Mr. MCNERNEY. Mr. Lawrence, what is the most common complaint you receive from veterans that are having problems in placement?

Mr. LAWRENCE. Well, as I said, there are a number of ways that veterans feel their preference was avoided. They feel that they lose out to Outstanding Scholar Program picks or other special interests; or if, you know, the job order, if that is the right terminology, was just canceled altogether. A position was posted and they applied for it, and they felt that they were leading the certificate and then the job was just cancelled. And that is, to my understanding, a legal way of avoiding granting the job to the preference eligible. But veterans really just don't know.

The anecdotes I have heard, you know, they check the veterans' preference box and, you know, they are getting a notice back that they weren't selected and they have absolutely no idea why. I mean, they don't know who to appeal to. They don't know what good it did to check the veterans' preference box in the first place.

Mr. MCNERNEY. So, it is not a real targeted area then either. In terms of—

Mr. LAWRENCE. No, I think there is an array of areas that needs to be looked at.

Mr. MCNERNEY. Thank you. That is all my questions.

Ms. HERSETH SANDLIN. Thank you, Mr. McNerney.

Mr. Hall?

Mr. HALL. Thank you, Madame Chair. And I just have a couple of questions.

Mr. Guffey, if you could, what are the others of the six jobs that are reserved by 5 U.S.C. § 3310 for veterans? I have heard you mention custodial services and elevator operators.

Mr. GUFFEY. Elevator operators is a job that has disappeared. I would probably have to turn and get some help from someone else.

It is custodial, it is mechanical—it is junior-type, mechanic-type jobs that are reserved and two or three other defunct jobs.

If you want to know exactly what they are, I can turn around and ask real quick.

Mr. HALL. I would like to know, sure.

Mr. GUFFEY. Yeah, messenger and guard and those types of jobs have disappeared.

Mr. HALL. Veterans would make good guards.

Mr. GUFFEY. Obviously.

Mr. HALL. Probably better than, or at least as good as, those that would be contracted by an outsourcing company. Well, I will just state for the record that I oppose the outsourcing of these jobs, as well; probably because they should be reserved for veterans, and we don't seem to have a mechanism to make sure that if they are outsourced, the contractor hires veterans for those positions. Maybe that could be specified.

But I wanted to ask, because you had mentioned in your testimony that the VA estimates there are approximately 200,000 homeless veterans on the streets every night. In my district of New York, the 19th District, which includes one of the wealthiest counties in the country, Westchester County, where it is estimated that 23 percent or so of the homeless population on any given night is made up of veterans—and maybe Mr. Lawrence you might be in a good position to respond to this.

But all of you, do you think that the Capital Asset Realignment for Enhanced Services (CARES) Commission has considered homelessness adequately in looking at the use of VA facilities and the reduction of VA facilities or the disposal of some of them to other purposes?

Mr. LAWRENCE. I am not sure I understand. Has the VA addressed—

Mr. HALL. There are a lot of ways to address it, but one of them would be to use facilities that are—like, for instance, we have in my district the Montrose VA Hospital, which has at least five empty buildings. There are proposals by Westchester County and by the town of Cortland and by veterans groups, the Montrose Elders being one, of all veterans that came up with the proposal for independent living, assisted living and nursing care, transitional care for homeless veterans while they are training for a job, et cetera, to be—you know, these buildings to be, which are currently standing empty, falling into disrepair—and my understanding is they are about to be—the CARES Commission may be about to sell them off because it is invaluable real estate on the Hudson River.

You know, I would just—my own personal opinion is these things, these properties should be used only for the care of veterans. And I am just curious if you—what your opinions might be

about that in terms of whether they have been—the homelessness problem has been looked at adequately by CARES?

Mr. LAWRENCE. I think the VA has found it more effective to provide grants to homeless veteran operations that are up and running. And I think there was a proposal—and I don't know if this could be a similar problem, where your district is, but Balboa Hospital in San Diego, there was a proposal to use the old hospital for a homeless veterans shelter, and it wasn't Earthquake proof, wasn't up to standard; so that was denied.

I have no clue as to what reasoning might be behind not using the buildings in your district, but it could be something along that line.

Mr. HALL. I understand there are various ways of dealing with the problem, and this may not be the best one. I just, off the top a little bit, but I wanted to get your expert observations on that.

And last I just wanted to ask, Ms. Burke, if you would say—in your observation, is the outsourcing succeeding in improving the government's bottom line or are the contractors merely building a profit and paying less to the people that they are hiring?

Ms. BURKE. Well, what I would like to say in regard to that is, really, my personal experience with veterans who are on compensated work therapy programs that, I think—I think if I even personally ask them, would you rather have a Federal Government job or work for Goodwill Industries, which has taken over a lot of these cleaning, custodial type of jobs, and overwhelmingly he would say, I would rather have good health benefits and possibly Federal employment.

I think that is the design and the purpose of these programs. It is to allow the government to serve as a role model, a safety net for these people who are in a fragile state.

Mr. HALL. We would like to think so. Thank you very much.

I yield back, Madame Chair.

Ms. HERSETH SANDLIN. Thank you, Mr. Hall.

We have also been joined by Mr. Donnelly of Indiana. I would ask Mr. Donnelly if he has any questions or comments?

Mr. DONNELLY. No, thank you, Madam Chair.

Ms. HERSETH SANDLIN. I have one last question. A simple response, yes or no. Would you agree with this statement?

Does the Office of Personnel Management need additional resources to be the agency of primary responsibility, to continue to be, to ensure that veterans' preference laws are fully implemented; and not just abdicate that responsibility by going to the agencies and having the agencies give a short response to the issue of veterans' preference if there is a complaint that has been filed?

That is a very convoluted question.

Do you disagree with the statement that OPM needs additional resources to ensure adequate implementation of these laws?

Mr. LAWRENCE. Yes, I agree. And I had in my written statement that vets also need additional resources to be able to investigate such cases.

Ms. HERSETH SANDLIN. Both OPM and vets. I know you had mentioned OPM in your testimony, but vets as well?

Mr. LAWRENCE. Yes.

Mr. GUFFEY. I would say yes and no. In the areas where we represent the veterans once they come in and their promotions and everything, I say no.

Once they leave the umbrella of the union, move up into management and how the selection process occurs in management and beyond our union control, they may very well be, but I am not very familiar with it. They may need the additional resources.

Ms. BURKE. I think oversight definitely is helpful in a reporting-back system so we get better data than we are getting right now. I also think that the laws need to be changed to cover all employees or applicants.

Ms. HERSETH SANDLIN. Thank you. I appreciate your testimony today. There may be some questions from other Subcommittee Members that we would submit to you in writing.

Thanks again.

I now invite Panel 3 to the witness table. Joining us on our third panel of witnesses is the Honorable Neil McPhie, Chairman of the U.S. Merit System Protection Board; Ms. Patricia Bradshaw, Deputy Under Secretary of Defense for Civilian Personnel Policy for the U.S. Department of Defense (DoD); and the Honorable Boyd Rutherford, Assistant Secretary For Administration for the U.S. Department of Agriculture (USDA).

Thank you for joining us today and for your written testimony.

We will go right to Mr. McPhie and recognize you if you are ready. Again, everybody's written statements will be made part of the record in their entirety. You are recognized for 5 minutes.

**STATEMENTS OF HON. NEIL A.G. MCPHIE, CHAIRMAN, U.S. MERIT SYSTEMS PROTECTION BOARD; HON. PATRICIA S. BRADSHAW, DEPUTY UNDER SECRETARY OF DEFENSE (CIVILIAN PERSONNEL POLICY), U.S. DEPARTMENT OF DEFENSE; AND HON. BOYD K. RUTHERFORD, ASSISTANT SECRETARY FOR ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE**

**STATEMENT OF HON. NEIL A.G. MCPHIE**

Mr. MCPHIE. Thank you, Madame Chair. Glad to be here with the Subcommittee Members. I am Neil McPhie and I am the seventh Chairman of the Merit System Protection Board. And I ask that my official statement be submitted for the record.

Today I will give a short description of the MSPB structure and operations, a summary of the most common veterans' preference issues that the Board considers in the course of deciding cases and a review of some of the findings concerning the employment of veterans.

The Board is an independent, quasi-judicial agency in the executive branch, whose main responsibilities are deciding individual cases arising under the civil service laws and performing studies of the civil service. The Board has three members appointed by the President and confirmed by the Senate who serve staggered 7-year terms.

Cases are first filed in one of the agency's eight regional offices, where an administrative judge considers the evidence and renders an initial decision. Either party can seek review of the decision be-

fore the full board. The Board receives about 7,000 cases in its regional offices every year, and in about 20 percent of those cases, roughly one-fifth, one of the parties files a petition for review which comes before the full board in Washington, D.C.

Regarding the subject of the hearing, veterans' preference in Federal employment has existed in some form since the Civil War era. The Veterans' Preference Act 1944 consolidated veterans' preference rules found in prior laws, regulations and executive orders. The 1944 act remains the main source of veterans' preference rights to this day.

Veterans' preference rules apply in two major areas, reduction in force or RIFs and hiring. Since its creation in 1978, the MSPB has had the authority to resolve veterans' preference issues in the RIF context as part of its general jurisdiction over RIF appeals.

There does not appear to be much confusion over how veterans' preference operates in RIFs. In fact, the Board has not received large numbers of RIF cases in recent years. The last reported RIF case was back in the nineties.

Veterans' preference in hiring is another matter. The Veterans Employment Opportunities Act (VEOA) became law in 1998. That act for the first time gave the Board the power to decide cases brought by preference eligibles and certain other veterans who allege a violation of their employment rights. Since 1998, the Board has received approximately 1,600 VEOA cases, most of which have been filed by unsuccessful applicants for Federal jobs.

The most common claims that the Board sees in VEOA cases are that the hiring agency failed to conduct a competitive examination with written ranking and veterans' preference points, failed to correctly apply veterans' preference rules in a comparative examination, failed to provide veterans' preference in a promotion action, denied a veteran the right to compete for a vacancy and improperly cancelled a vacancy announcement.

As a neutral adjudicator, the MSPB has been hesitant to maintain statistics on the success rates for individuals who bring cases. However, the MSPB would certainly be willing to consider developing a data collection system for VEOA cases if Congress prefers that this information be gathered.

I would like to emphasize that the Board decides only those cases that individuals choose to file and ordinarily addresses only the arguments raised in those cases. The Board's Office of Policy and Evaluation does perform studies of the civil service and has gathered some noteworthy information concerning the hiring of veterans by the Federal Government.

For example, in fiscal year 2005, 18 percent of the new hires in full-time, permanent, professional and administrative jobs at GS-5, -7 and -9 levels were veterans. The rate of hiring veterans for entry level positions, which includes technical and blue collar operations, was 21.5 percent.

In higher level positions, that is, grades 12 through 15, 42 percent of all hires in fiscal year 2005 were veterans, which is a 12-percent increase from the level of veteran hiring in fiscal year 2001. About 55 percent of veterans hired for upper level positions in fiscal year 2005 were appointed under the authority of the VEOA, which requires agencies to allow vets to compete for vacan-

cies that would otherwise have been closed to non-status, outside candidates. The total number of veterans appointed under the VEOA in 2005 was 3,132.

The MSPB has not yet undertaken any study aimed at determining the extent to which agencies are following veterans' preference rules. Furthermore, I would not be comfortable venturing an opinion on how well agencies are following veterans' preference rules based on results of individual cases that are brought before the MSPB. The MSPB will be happy to work with Subcommittee Members and their staffs to discuss the potential for any study topic along those lines.

The MSPB feels secure in its record of being a neutral, objective adjudicator of cases. We take the law as we find it. We try very hard to get it right. And I will tell you about—of the cases appealed to our reviewing court, the Court of Appeals for the Federal Circuit, 93 percent of those cases across the board are affirmed. We think we are getting most of them right.

I am happy to take any questions you may have.

[The prepared statement of Mr. McPhie appears on p. 60.]

Ms. HERSETH SANDLIN. Thank you, Mr. McPhie.

Ms. Bradshaw, you are recognized for 5 minutes.

#### **STATEMENT OF HON. PATRICIA S. BRADSHAW**

Ms. BRADSHAW. Thank you, Madame Chair and Members of the Subcommittee. Thank you for the invitation to be here today. I appreciate this opportunity to discuss the Department of Defense views on veterans' preference as it applies to employment and our successes.

The DoD values the expertise and commitment of our service members, and we place special emphasis on supporting our wounded service members. We currently have over 227,000 veterans with preference working for the Department or about one-third of our DoD civilian workforce. As the largest Federal employer of veterans, we are committed to providing employment opportunities as civil service employees for the men and women who have served so honorably on behalf of our Nation.

We recognize that the transition from military service to civil service can be challenging. To ease this transition, the military components—the Army, the Navy, the Air Force, as well as the Coast Guard—in coordination with the Department of Veterans Affairs, the Department of Labor (DoL) and the Office of Personnel Management provide comprehensive assistance and support to separating veterans, including pre-separation counseling, benefits, job coaching, resume writing and information on employment opportunities not only in the Department of Defense but also the rest of government and the private sector.

Within the Federal authorities, there are three special appointment authorities available to all Federal agencies that are primarily used by the Department of Defense to appoint eligible veterans. The first one, with which I am sure you are familiar, is the Veterans Recruitment Appointment, or the VRA, which is an authority which is used to fill both permanent and temporary positions noncompetitively up to the GS-11 level or equivalent. To date

in fiscal year 2007, DoD has hired almost 11,000 vets using this authority. That is out of 109,000 hires to date.

The second authority is the 30 percent or more disabled veteran hiring authority. This authority can also be used to fill both temporary and permanent positions noncompetitively. This authority, however, has no grade level restrictions, and the veteran must have a compensable, service-connected disability of 30 percent or more. To date, fiscal year 2007, about 2,200 vets have been hired under this authority for a total of 33,681 veterans with a compensable service disability of 30 percent or more currently working for the department.

The third authority is the Veterans Employment Opportunity Act, or VEOA, which provides veterans with the opportunity to apply under merit promotion procedures when the agency is recruiting from outside its own workforce. There is no grade limit limitation there either. And to date in fiscal year 2007, DoD has hired over 8,600 veterans under this authority. Again, approximately one-third, or over 227,000 employees of DoD civilians, are veterans with preference. Of that total, 34 percent are in GS-9 or above positions in a variety of occupations. It is also noteworthy that currently 24 percent of our career SES members are veterans.

The Department is actively engaged in a targeted recruitment program that we call Hiring Heroes. The goal of the Hiring Heroes career fairs is to inform and educate our wounded service members on the various employment opportunities available to them after they complete their military service, as well as to introduce them to potential employers and nonprofit organizations that can offer assistance to them during their transition. The fairs provide a unique environment where our service members can meet face-to-face with employment recruiters, learn firsthand about jobs and career choices and establish connections with potential employers. Typically, 50 to 70 organizations, including State and local governments, nonprofits and other Federal organizations, participate in these fairs. Generally lasting 2 days, the fairs provide our service members with technical workshops covering a variety of topics, resume writing, job interview skills, other benefits to which they are entitled.

To date we have held 11 job fairs. Nine of them have actually been held at medical treatment facilities. Two of them have been held offsite on military installations, but away from the military facilities in order to attract a greater area of veterans. The most recent Hiring Heroes career fair was held at the Marine Corps Air Station in San Diego, California. This location was ideal because Miramar is a central location in southern California and could target service members at Balboa, the hospital at Camp Pendleton, 29-Palms and any other service members in the area.

While each job fair was a success, I would submit that this was the best. We had over 350 attendees, 70 employers. Of significance was the number of medical holdover patients from Balboa and the hospital at Camp Pendleton. These are the service members who are waiting for final evaluation and still in rehabilitation, but still looking at what will they do when they decide to get out. So while we expanded the audience to include any veteran in the sur-

rounding area, we were able to concentrate on ensuring that the targeted audiences received particular attention.

The most impressive part of this job fair was the coordination of efforts with the staff at Balboa and Camp Pendleton and their transition centers, which are staffed by Department of Defense, Navy, VA and Department of Labor-funded State government personnel to provide transition employment assistance services. The collaboration efforts for these centers can serve as a model for how we can structure others to successfully coordinate member transition preparation.

As a result of this specific career fair, 50 onsite job offers were extended and employers advised us that they planned to extend approximately 191 additional ones immediately following the event.

We continue to support our Hiring Heroes job fairs. We have our next one planned for this month at Madigan Army Center in Fort Lewis, Washington; another one at Brooke Army Medical Center at Fort Sam Houston.

In addition to that, we have a multitude of Web resources as well online. We recognize that not everybody can show up at these job fairs. We have developed an interactive Web site titled Disabled Veterans: Opportunities to Use Your Abilities, and in my statement, you can find the Web site. It contains a section with clear and detailed answers to commonly asked questions regarding veterans' preference and the transition to civilian employment.

Additionally, it contains information on scholarships, grants, loans, financial aid. Furthermore, more importantly, there is a section that provides information for our managers, those individuals who are making the decisions. Our managers are on the frontline and are able to help break the barriers to employment by thinking creatively and resourcefully and ensuring that they understand the rules. Within DoD, we have a wide range of occupations that offer disabled veterans diverse, challenging and rewarding careers.

Ms. HERSETH SANDLIN. Ms. Bradshaw, are you close to summing up?

Ms. BRADSHAW. I am done.

[The prepared statement of Ms. Bradshaw appears on p. 63.]

Ms. HERSETH SANDLIN. Again, your entire written statement is made part of the record. Thank you.

Mr. Rutherford, you are now recognized.

#### **STATEMENT OF HON. BOYD K. RUTHERFORD**

Mr. RUTHERFORD. Thank you, Madame Chair, Ranking Member Boozman and Members of the Subcommittee. Thank you for the opportunity to come before you to discuss veterans' preferences and the success the U.S. Department of Agriculture is having in recruiting and retaining its veteran workforce.

As you know, USDA is a leader in America's food and agricultural systems, helping the farm and food sectors operate in a highly competitive marketplace, to respond to changing consumer demands for high-quality, nutritious and convenient food in agricultural products. USDA also carries out a wide variety of services and activities related to the management, research and conservation of the Nation's agricultural resources.



In carrying out its mission and achieving its goals, USDA's human capital is its greatest asset. As the Department's Chief Human Capital Officer, I have the duty to assure that USDA has the workforce capable to carry out the Department's mission.

With a growing retirement-eligible workforce, USDA is compelled to design and implement a multifaceted approach to succession planning and recruitment that will ensure the continued existence of mission-critical talent pools. The challenge of an aging workforce is exacerbated by the increase in competition for skilled employees in an increasingly technical environment. The demand for people with expertise in information technology, public health and science-based technologies requires more attention toward effective recruitment training, retention and knowledge-transfer strategies. At USDA, we use these strategies to fill the more than 300 different job series that include everyone from firefighters to research scientists, agricultural economists to food inspectors and veterinarians, as well as procurement and human resources professionals.

To attract a diverse and highly skilled workforce, USDA markets itself as an employer of choice. All USDA job opportunities, including announcements identifying noncompetitive appointing authorities and merit promotion authorities for veterans, are posted on OPM's USAjobs.gov Web site. All vacancy announcements post name and telephone numbers for applicants to contact if they want to obtain reasonable accommodation for any part of the application process. Vacancy announcements are also sent weekly to State employment services, various veterans organizations, rehabilitation agencies to help alert veterans to career opportunities with the USDA.

I have become personally involved in the Coming Home to Work Initiative, which is sponsored by the Veterans Administration in their vocational rehabilitation and employment program. This initiative places special emphasis on assisting Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) service members.

Through the Coming Home to Work Initiative, civilian work experience is made available to these eligible service members pending their medical separation from active duty at military treatment facilities. Through these positions, we hope to provide not only work experience to our Nation's veterans, but a stepping stone to permanent positions in the Federal workforce.

Our human resources offices continue to use various electronic resume databases to establish contact with a variety of veterans' programs, as well as attend veterans, or I should say, attend job fairs that target veterans. However, in many instances we find that our own veteran employees tend to be our best recruiters.

I am pleased to report that of the 108,000-plus USDA employees, 10.6 percent, or 11,000, are veterans of which 6,700 occupy positions at GS-9 salary levels or above. In 2006, USDA hired 21,000 new full-time employees, of which 1,332 were disabled veterans.

But statistics and recruitment efforts do not tell the whole story. In 2003, Steve Dickerson was just completing his Masters' program in social work at the University of Nevada, Reno, when he came to the attention of our Forest Service recruiters. Mr. Dickerson is a Vietnam vet who was injured during the war in an aircraft inci-

dent that left him blind and requiring a wheelchair for mobility. In spite of his injuries, he returned to school earning his undergraduate degree and went on to pursue a Masters' degree as well.

USDA's Forest Service recognized Mr. Dickerson's potential and referred him for vacancies within the agency. He was eventually hired in a competitive selection in our Forest Service's intermountain regional office in Ogden, Utah. Mr. Dickerson is a valuable member of our family not just because he is a veteran, but because of who he is and what he has accomplished and what he continues to contribute to the agency.

At USDA, veterans' preference is not only the law, it is an honor and a commitment we make to our Nation's heroes who have sacrificed so much to keep this Nation free and safe.

Thank you very much.

[The prepared statement of Mr. Rutherford appears on p. 65.]

Ms. HERSETH SANDLIN. Thank you very much, Mr. Rutherford. I appreciate your testimony. I serve on the Agriculture Committee as well, so I have a few questions about what USDA has been doing on the veterans' preference issue.

I would like to start with Ms. Bradshaw, if I might. I also understand that you are a South Dakota native; is that correct?

Ms. BRADSHAW. I have lots of family in Aberdeen.

Ms. HERSETH SANDLIN. Oh, very good. My family is from that area as well. A lot of what I heard in your testimony is what we offer to service members who are transitioning through the Transition Assistance Program (TAP), which I don't believe is mandatory, save for the Marines. I appreciated a lot of what you were saying in terms of these fairs that you are hosting and how successful those have been.

Are you aware of whether or not the Federal agencies and their State or county offices have been invited to participate in the fairs?

Ms. BRADSHAW. Yes, ma'am, they are. We are very closely connected. Every time we hold a fair, the VA is invited, Labor Department and OPM.

The reason I highlighted Miramar is because it was unique, and I can share with you more specifics. But every place we go, all of these agencies—we are joined together in making sure that the local folks know about that.

Now, whether they send someone every time, I can't really tell you. But I am sure we have representatives at least from the—

Ms. HERSETH SANDLIN. From those four agencies?

Ms. BRADSHAW. Yes.

Ms. HERSETH SANDLIN. Say, for example, that we had a TAP program at Ellsworth Air Force Base in western South Dakota. If there were other Federal agencies, say the U.S. Department of Agriculture, that have a presence either through their State office being invited or the county offices that might have vacancies, are other Federal agencies being invited that have a presence near or in the region of the base?

Ms. BRADSHAW. There are two things. There is the TAP program, which is the Transition Assistance Program, and that is now—that was an initiative that was started by the Defense Department actually in the early nineties, and fortunately I was around then when we were actually drawing down—and now I understand the De-

partment of Labor actually has ownership of that—and the objective of that is the resume writing, the preseparation counseling. It is strictly that.

The job fairs about which I was speaking are ones that the Department of Defense run, and we do a front end that looks like the TAP, but we target earlier while people are still on active duty. It is a much more—again, we started out targeting our wounded and injured folks because we could get to the medical treatment facilities where individuals, like I said, are still in medical holdover. But State, local, county, every level of government is invited to send people to the job fair portion of that. So that is the actual opportunity for them to hire.

The TAP piece is run and is available to—I don't know that the Marines do not require it, but it is available to every exiting service member.

Ms. HERSETH SANDLIN. Great, and I appreciate that. We are very familiar with the TAP program, but I was specifically asking about the fairs. My recommendation would be, if they have been successful, to help with the particular issue that we are focused on today: veterans' preference rights. I think it would be helpful to make sure that other Federal agencies that have a presence be invited to the job fair, because even if you have many employers locally, it is particularly helpful when it comes to veterans' preference rights to have any Federal agency that has a presence locally be invited, as well, outside of just those four.

Ms. BRADSHAW. Yes. And that is the case. I apologize; I was focusing on the State and local. But it is every Federal agency is invited if they care to come.

Ms. HERSETH SANDLIN. Okay.

I am sorry I cut you off—we have one more panel. I appreciated you referencing the Web site. As we know, a Web site can be a very helpful tool for people who can't get to the fairs. I know that even with TAP having recently become an electronic format for people to utilize, there are always a few bumps to iron out whenever you make that transition; and I have been informed that even as of today, there are a number of links that aren't working on the DoD Web site. We wanted to just bring that to your attention.

Ms. BRADSHAW. Which one is it, the DoD—

Ms. HERSETH SANDLIN. It is the [www.DoDvets.com](http://www.DoDvets.com). The links that evidently weren't working earlier today are the Search For Jobs link, various DoD agency links, Defense Intern link, Montgomery GI bill Selective Reserve link, Army Training and Leadership Development link and others. We wanted to bring that to your attention.

Ms. BRADSHAW. Thank you.

Ms. HERSETH SANDLIN. Maybe there is something that happened in the last few days that is causing those problems. I am not sure if that is something that has been a recurring problem, but we know how important the tool is.

Let me ask Mr. McPhie—and this goes to the issue of how well, as Ms. Bradshaw stated in her testimony, when you have got a third of the civilian workforce that are veterans in DoD—although I may come back to Ms. Bradshaw and ask her about retention in that regard.

Why is DoD so high and the rest of the agencies much lower when it comes to hiring from Veterans Employment Opportunities Act selections?

Mr. MCPHIE. You are asking that of me, Madame Chair?

Ms. HERSETH SANDLIN. Yes.

Mr. MCPHIE. I don't know.

Ms. HERSETH SANDLIN. But that is the case, right, that DoD appears to be much higher?

Mr. MCPHIE. I couldn't respond. I just don't know. I don't have that information.

Ms. HERSETH SANDLIN. I thought in your testimony you stated that DoD hired 86 percent of all of the Veterans Employment Opportunities Act selections.

Mr. MCPHIE. No, I did not. I am unaware that I said that.

Ms. HERSETH SANDLIN. I think you also stated—although I am going to have our Staff Director check—that 42 percent of new hires in 2005 were veterans.

Mr. MCPHIE. Let me—I need some wiggle room for myself because it could be in my written testimony. May I inquire quickly?

Ms. HERSETH SANDLIN. Yes. I am sorry. I maybe should have clarified that it came from your written testimony, page 6 of the written testimony.

Mr. MCPHIE. I apologize. I see. I see. From our studies function, yes. We develop information from—I suppose from OPM's Web site and OPM's databases and whatnot, from which we do different studies.

And you are correct in—let us see now, page 6.

Ms. HERSETH SANDLIN. Perhaps you can take this question for the record and provide any explanation from the studies you have compiled to get that percentage. Any reasons that you believe can be documented or backed up with some evidence as to why DoD is much higher. According to pages 6 and 7 of your written testimony, which documents that DoD is responsible for 86 percent of all of the hires under Veterans Employment Opportunities Act selections.

Then we have another 10 percent on page 7 of your testimony from four other agencies.

We have 96 percent of all of those selections coming from five agencies, and I am inquiring as to why the other agencies are so low.

Mr. MCPHIE. And this is data as it exists. We haven't done a study as I said early on. So I can't really—anything I say as to why they have more, others have less would be speculation on my part. We have not done a study that is designed to answer the question of how well our agency is doing.

I suppose a study would look at folks like DoD, that is doing, apparently, quite well, and try to figure out what they are doing that others are not and report objectively in that regard. But at this point in time, I mean, the data is the data. But I can't really tell you why.

Ms. HERSETH SANDLIN. I think that is the issue that we have to get at and the issue we were exploring in some of the earlier panels. Is the issue one of complexity? Is the issue one of inadequate resources for hiring managers, as you mentioned at the beginning of your oral testimony today? I know you would be more than

happy to work with us to find some of the answers to those questions and go beyond just the raw statistics to doing a study and perhaps comparing agencies' performance.

Have you compiled where the complaints that come in to you regarding veterans' preference are coming from? Do you have a listing of the top five agencies in which there have been the most complaints filed on veterans' preference?

Mr. MCPHIE. We don't keep information on veterans' preference in that regard. I suppose you could pull it out by massaging the records, but it requires some special effort.

Again, you know, we have shied away from trying to develop success rates because we think that is a slippery slope.

Ms. HERSETH SANDLIN. Do you share your information in terms of the agency that the complaint is directed at with OPM?

Mr. MCPHIE. Well, we obviously—if a case is filed, it ultimately results in a written decision. And most of our written decisions are published and are readily accessible on our Web site.

Ms. HERSETH SANDLIN. But no one you are aware of? You're not responsible, beyond publishing those written decisions, for maintaining any kind of tracking of the agencies that have had complaints directed at them? That would be—you don't do that?

Mr. MCPHIE. Right. In fact, the way the system works governmentwide, there may be many more complaints in any area of Federal employment than we even are aware of, because if you know the process, it comes up; there is an internal conversation.

I suppose if it is really bad, it is taken care of real quickly. So by the time we get a complaint, it is some—you know, some portion of the big universe of complaints.

Ms. HERSETH SANDLIN. Right. Which is why, if they have come to that level, I think it is important to track which agencies may have a more problematic track record.

I am going to turn it over to Mr. Boozman for some questions he may have. We would like to work with you to perhaps develop something that would better track these complaints once they rise to the level or make their way through the process to the point they get to you for a decision.

Mr. MCPHIE. We would be happy to do that.

Ms. HERSETH SANDLIN. Mr. Rutherford, I will come back, but I want to recognize Mr. Boozman.

Mr. BOOZMAN. I would agree with the Chair. You said it was a slippery slope in doing the tracking and that you didn't want to track success. But I guess the way I view it is just holding people and agencies accountable. That is what it is really all about.

And I think that is to their benefit also and certainly it is to our benefit in the sense of having oversight and things like that and trying to find out how entities are doing. So you don't track veterans—they are not treated any differently than anybody else? Do you track anything?

Mr. MCPHIE. No. There are some—and these data sets have existed for many years. And I know that it is always open.

Recently, another issue came up, similar to this one, with respect to whistleblower cases. I asked the question, how many do we have? It is not a question easily answered given the way our data is kept.

Similarly with—

Mr. BOOZMAN. Why keep the data if you can't use it?

Mr. MCPHIE. We keep lots of data and there were decisions made many years ago as to—as an adjudicative agency, what are the kinds of data that would be necessary for MSPB's function.

Now, data is kept in the Federal Government, lots of it. In fact, I have a complete department, the Office of Policy and Evaluation, which conducts studies. They study the merit systems throughout the civil service. We have to survey sometimes agencies governmentwide. And lots of time, we have to work with OPM and utilize their very extensive database and cull from their database lots of information.

Now, with respect to our own case statistics, we are more case oriented, just like any court. We really pride ourselves in being set up as an adjudicative agency. So we come at it completely different.

Mr. BOOZMAN. So you do keep data on the outcomes of veterans, but it is just not readily accepted?

Mr. MCPHIE. I could have somebody go through our data sets and cull from it outcomes. You would need some sort of a systemic fix to be able to put the query, get the answer and report it.

Mr. BOOZMAN. How many appeals did you have last year and how many were resolved in favor of veterans?

Mr. MCPHIE. I couldn't tell you how many were resolved in favor of veterans. I couldn't give you that information. I could tell you—and if I brought—I brought some numbers with me, as I spoke; and I said, we do roughly 1,600 cases since 1998, and that is only VEOA.

There is another statute called the Uniformed Services Employment and Reemployment Act (USERRA). That is a whole other conversation.

So there are two statutes that we administer for vets, USERRA and VEOA. But the number I have here is how many VEOA cases that we have done since 1998. That number is 1,600. I am not including USERRA, and it seems to me, from just my sense of it, USERRA is perhaps the one that is going to get more active. I have seen a little bit more activity around USERRA and that is for re-employment rights and for discrimination.

Mr. BOOZMAN. Maybe, Madame Chair, since the data is in there, maybe we could submit some questions along that line and maybe you could have your staff dig around and find out some of the specific things that we would like to know.

Mr. MCPHIE. Absolutely. And let me be certain. We are not opposed to keeping data in any particular format. If the Congress decides that this is something it needs, it wants to see, we are more than happy to talk about how that can be done.

[The information was supplied by MSPB in the responses to the post-hearing questions for the record, which appear on p. 84.]

Mr. BOOZMAN. Thank you.

Ms. Bradshaw, the Balboa model seems to be working well. Are there any plans to take and use that same model in other military centers?

Ms. BRADSHAW. We are hoping to expand that this coming year. Right now we have two planned, as I mentioned, at Madigan, which is a treatment facility; and the next one will be at Brooke.

And this will be the third time we have been to Brooke, and we will continue to expand that.

What was significant there—and I don't know exactly how the Army has built in their onsite assistance there, but it was the interaction of the VA, OPM, the local Department of Labor folks; and I know OPM has been working with us to add resources to some of these sites. So there certainly is opportunity, and we are looking at that.

Mr. BOOZMAN. Good. Thank you.

And I also probably might have another question or two, but we will submit it.

[No questions were submitted by Mr. Boozman.]

Ms. HERSETH SANDLIN. Just one additional line of questioning, Mr. Rutherford. I appreciate your testimony.

I am glad to hear some of the numbers that you provided today in terms of what USDA has been doing. How many veterans are in the Senior Executive Service?

Mr. RUTHERFORD. I don't have that number handy. Let me just check. I don't have that. But we can get that information to you.

[The information was supplied by USDA in the response to question two in the post-hearing questions for the record, which appear on p. 88.]

Ms. HERSETH SANDLIN. Okay. And how many veterans' preference cases hires, did the U.S. Department of Agriculture make in the last 3 years? Do you have that number available? If you could, take that for the record, too, if that is not readily available.

How successful has the USDA been in recruiting veterans by sharing vacancy announcements with the American Legion and the VFW?

Mr. RUTHERFORD. We have been doing that. We will have to check to get that specific information for you.

[The information was supplied by USDA in the response to questions one and three in the post-hearing questions for the record, which appear on p. 88.]

Ms. HERSETH SANDLIN. How long have you been doing that?

Mr. RUTHERFORD. That has been done primarily in the individual agencies. But also, as we mentioned—or as I mentioned in the testimony, along with the posting—we send it to the veteran agencies.

But I can see, we will have to get when we started doing that and how long it has been in place.

Ms. HERSETH SANDLIN. That would be helpful.

I am pleased to know of USDA's participation in the Coming Home to Work Program targeted to OEF and OIF veterans. Is that formally implemented now?

Mr. RUTHERFORD. It has been formally implemented. Initially, it was randomly done. As mentioned, some of our veterans knew about the program and went forward with it.

I became aware of it back in March of this year and at that point started the process of working with VA to implement it, first within my department, but then throughout USDA.

Ms. HERSETH SANDLIN. How many veteran employees has that generated thus far?

Mr. RUTHERFORD. We have only had one at this point, but it is just starting.

Ms. HERSETH SANDLIN. Even when it was randomly implemented?

Mr. RUTHERFORD. That was the random one, yes. That was within my office, or I should say, within the offices that I manage.

Ms. HERSETH SANDLIN. Okay. Well, I appreciate that. And if you could, get me those numbers. Some of the anecdotal evidence in the past doesn't rank the Department of Agriculture as high as I would like to see it in terms of veterans' preference rates in hiring veterans.

Again, I appreciate these efforts. I am pleased to know that you are working more closely with the VA to get that more fully implemented.

And the testimony you offered to date, the numbers themselves address in a different way, the anecdotal evidence we have received in the past. So I am pleased that you are here whenever we serve on different Committees given the number of county, and State offices and USDA's presence, and some of the concern that we have expressed on the Subcommittee as well as the full Committee with regard to veterans in more rural areas. I am just hopeful that—it sounds like under your leadership you will continue to be making efforts to ensure that that outreach for hiring veterans continues within the agency.

Mr. RUTHERFORD. Yes. We will work in that direction. I guess I am at somewhat of a disadvantage. And I hate to ask this, but I haven't heard the anecdotal evidence. But if you can provide that to me, we can look into that information as well.

Ms. HERSETH SANDLIN. We will do so. Thank you. I thank the panel for your testimony.

Mr. BOOZMAN. One more thing, Ms. Bradshaw, before you do leave. With Mr. Tadsen's testimony, he implied that the Air Force Audit Agency was not doing a good job. I think he implied, maybe he is right that they weren't doing a good job of promoting veterans. Could you look and give the Subcommittee some data on the agency's hiring, promotion of veterans over the past 5, 10 years?

Ms. BRADSHAW. Specifically for the Air Force Audit Agency?

Mr. BOOZMAN. Yes, ma'am.

Ms. BRADSHAW. I will. I assure you I have taken a few notes myself. Absolutely.

[The information was supplied by DoD in response to question one of the post-hearing questions for the record, which appear on p. 86.]

Mr. MCPHIE. One clarification, if I may. Should I wait until I get some questions and then respond and start the conversation about data sets that way? Or do I—

Ms. HERSETH SANDLIN. Yes. Our Subcommittee staff will be in touch with you following this hearing to talk about some additional information we would like to get and then work through some reporting system of sorts. As I was saying, I was involved a number of years ago in a study on communication between the courts and Congress on issues of statutory interpretation by Federal appellate courts in getting those interpretations and holdings back to the Committees of jurisdiction in the Congress. There is no ready reporting system in place even on that front. I think that as you have those cases, that are published, that we have got to set up a mech-



anism whereby we can see if there are trends given our oversight authority that we can more readily identify as you continue to take these complaints and make records of decision.

Mr. MCPHIE. Sure. Thank you.

Ms. HERSETH SANDLIN. Thank you. I appreciate Mr. Boozman following up with you, Ms. Bradshaw, on the particular issue that was raised by our witness in the first panel. Thank you all for being here, and we look forward to following up with you.

Ms. BRADSHAW. Thank you.

[Additional information was supplied by DoD in response to the post-hearing questions for the record, which appear on p. 88.]

Ms. HERSETH SANDLIN. I would now invite our fourth panel to the witness table. I want to thank not only our third panel but certainly all of our panelists today and everyone's service to our Nation's veterans and working with us on a whole host of issues in this Congress and the previous Congress. I know that with Mr. Boozman's leadership we can work together to best implement the laws that we have enacted and to make changes to some of those laws if need be and some of the updating issues that we addressed earlier with the folks on the first and second panels.

On the fourth panel, we have Anita Hanson, Outreach Group Manager for the U.S. Office of Personnel Management; Mr. John McWilliam, Deputy Assistant Secretary for Veterans' Employment and Training Service (VETS) for the U.S. Department of Labor; and Mr. Willie Hensley, Deputy Assistant Secretary for Human Resources Management and Labor Relations with the U.S. Department of Veterans Affairs. Welcome to the Committee. Thank you for being here.

Ms. Hanson, we will start with you. You are recognized for 5 minutes.

**STATEMENTS OF ANITA R. HANSON, OUTREACH GROUP MANAGER, U.S. OFFICE OF PERSONNEL MANAGEMENT; JOHN M. MCWILLIAM, DEPUTY ASSISTANT SECRETARY, VETERANS' EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR; AND WILLIE HENSLEY, DEPUTY ASSISTANT SECRETARY, HUMAN RESOURCES MANAGEMENT, OFFICE OF RESOURCES AND ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS**

**STATEMENT OF ANITA R. HANSON**

Ms. HANSON. Good afternoon, Madam Chairwoman and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss veterans' preference and the role of the U.S. Office of Personnel Management. I serve as the outreach group manager at OPM where I have the primary responsibility on behalf of Director Linda Springer for outreach to returning service members and to all our Nation's veterans on Federal employment hiring preferences they have earned.

As a disabled Navy veteran, this is a topic I am very passionate about, and I am proud to serve my country and help my fellow veterans. Director Springer and all of us at OPM take very seriously our obligation to ensure veterans have full access to Federal civilian jobs following separation from military service. Our obligation

is grounded in veterans' preference laws that have been the cornerstone of America's civil service since its beginning.

Veterans' preference is also at the very core of OPM's mission, which is to ensure the Federal Government has an effective civilian workforce. I would like to take a few moments today to focus on our efforts across government to promote and preserve veterans' preference, as I work to educate veterans on Federal job opportunities as we help to prepare these American heroes for their transition from military service. As part of our oversight of human capital management responsibilities at OPM, we use an audit-based approach to ensure that competitive hiring practices used by Federal agencies comply with veterans' preference laws and merit system principles. Since 1996, when OPM began broadly delegating examining authorities to Federal agencies, we have conducted almost 1,200 audits of agency delegated examining units. All our audits cover all aspects of competitive examining including the application of veterans' preference. We also annually conduct human resource operations audits that examine a number of agencies' human resources programs, including competitive examining and the use of veterans' preference hiring authorities and practices. As part of every OPM audit, we rigorously examine recruitment actions, how applications are handled and processed and how selection decisions are made. We carefully examine whether veterans' preference was properly applied, and we review certificates of eligibles to see if there are patterns in how those certificates are used or not used that would indicate whether or not veterans' preference veterans are receiving legitimate consideration.

For the past 2 years, OPM has been helping agencies establish sound internal accountability systems to ensure human resources programs operate within merit system principles and comply with veterans' preference laws and regulations. When agencies conduct their own audits, which are key components of these accountability systems, OPM actively participates to ensure compliance with laws and regulations, including the application of all aspects of veterans' preference. When we find violations of law or regulation, we take steps to ensure corrective action is taken. We can direct an agency to give a veteran priority consideration for the next job vacancy he or she is qualified for if we believe a veteran has been denied preference previously. If we find evidence that veterans' preference is knowingly denied, which is a prohibited personnel practice, we would then refer the matter to the Office of the Special Counsel or the agency's Inspector General. We may also withdraw an agency's delegated examining authority if we find systemic problems. In our experience, the vast majority of Federal agencies follow veterans' preference laws to the letter of the law. We typically do not see systemic violations of veterans' preference across an entire agency. When we do find problems, they tend to be isolated to a specific installation or organization and are typically caused by inadequate direction or lack of adequate accountability systems. OPM works diligently to make sure all Federal agencies understand the value and the importance of hiring those who have answered the call to duty. As you may know, we have predicted more than 60 percent of the Federal workforce will be eligible to retire over the next decade. As such, we have an enormous recruitment challenge ahead

of us where we simply cannot afford to overlook a talent pool as rich and varied as veterans. The dedication and professionalism of these men and women who have served in the armed forces are without equal. And members of the best trained military—volunteer military in the world, veterans have demonstrated an aptitude for excellence, hands-on experience and teamwork. OPM works directly with veterans to educate them on employment opportunities with the Federal Government. Our educational and recruitment initiatives provide veterans and agency hiring managers with timely and useful information on veterans' preference and Federal employment opportunities.

Over the past 2 years, OPM has established veterans outreach offices at Walter Reed Army Medical Center in Washington, D.C., at Brooke Army Medical Center in San Antonio, Texas, and a third outreach office will soon open at Fort Carson, Colorado. As you know, work at these hospitals is aimed at helping the wounded veterans recover physically and psychologically as they transition back to civilian life. We provide these wounded veterans with Federal job information and counseling. We offer classes that teach resume writing and offer tips on how to translate military accomplishments into a set of documented knowledge, skills and abilities that can be used when applying for Federal jobs. Most recently, OPM hosted the first of its kind Web cast offering comprehensive information on veterans' preference rights and eligibility. A tape of the Web cast is now available to veterans and their families 24 hours a day, 7 days a week on OPM's Web site. Our most recent annual report to Congress in November 2006 indicates that one out of every four Federal workers is a veteran. That is 456,000 out of 1.8 million; 93,000 of those veterans are disabled; nearly 50,000 of whom are seriously disabled, meaning they have a disability rating of 30 percent or more. It is clear from this report that the Federal Government continues to lead the Nation as the employer of choice for veterans and especially disabled veterans. And we expect this to continue to be the case when our next annual report is presented to Congress this coming November. We are particularly proud of our record at OPM where nearly 30 percent of our new hires have been veterans, making us a leader among independent Federal agencies. Your letter of invitation also asked OPM to discuss veteran retention rates. Our review of available data from 93 Federal agencies indicates on average 88.4 percent between fiscal year 2005 and fiscal year 2006. Some of the highest retention rates are found in the Department of Veterans Affairs, the Department of Army and the Department of Homeland Security. Only 9 out of the 93 agencies we reviewed had retention rates less than 60 percent. We believe the numbers confirm that, on average, Federal agencies are succeeding in retaining veterans in the Federal workforce.

Madam Chairwoman, I can see that I am out of time. My statement has been submitted to the record and contains additional information on OPM's outreach efforts and governmentwide activities. OPM is proud of its efforts to preserve and protect veterans' preference, and we are committed to making sure Federal employment opportunities are made available to our veterans. I am happy to answer any questions.

[The prepared statement of Ms. Hanson appears on p. 67.]

Ms. HERSETH SANDLIN. Thank you for your testimony, Ms. Hanson.

Mr. McWilliam, welcome back to the Subcommittee. Good to see you again. You are now recognized for 5 minutes.

**STATEMENT OF JOHN M. McWILLIAM**

Mr. McWILLIAM. Thank you, Madam Chairwoman and Ranking Member Boozman. I appreciate the opportunity to appear before you today to talk about the role of the Department of Labor in ensuring veterans' preference is applied in the Federal Government hiring process. We appreciate the interests of the Subcommittee in this very important benefit to veterans. First, let me say that we have a very close working relationship with the Office of Personnel Management. DoL works with OPM to implement and enforce veterans' preference in Federal hiring. We are both champions of veterans' preference. We believe that the Federal Government has an excellent record in hiring qualified veterans. Both agencies are committed to ensuring veterans receive all the rights and benefits to which they are entitled under Federal employment laws. Labor is responsible for investigating and attempting to resolve veterans' preference complaints against Federal agencies filed under the Veterans Employment Opportunities Act. We carry out our investigative responsibility through the use of trained investigators at each of our 52 State offices. To further support these efforts, VETS has entered into a memorandum of understanding with the Office of Special Counsel (OSC) in December of 2000. All meritorious cases are referred to OSC for review for potential prohibitive personnel practices. My written testimony provides detailed data on our investigations. We have seen a slight decrease in caseload this year.

We believe this decline may be due to several initiatives: First, the efforts of the State employment specialists, the Disabled Veteran Outreach Programs (DVOPs) and the Local Veterans Employment Representatives (LVERs) and the Veterans Service Organizations in explaining veterans' preference to job-seeking veterans. Second, the Department's Employment Laws Assistance for Workers and Small Businesses program. This elaws program is a series of online advisors that provide easy-to-understand information in a question-and-answer format. An advisor is available for veterans' preference. There is also one available for real lifelines for disabled service members that talks about veterans' preference. And finally, VETS focus on informing service members of veterans' preference during the Transition Assistance Program employment workshops. Participants receive information on the Federal hiring program and veterans' preference. Information on veterans' preference is also available in Turbo TAP, which is the new transition Web site that I believe the Subcommittee is very familiar with.

Our data shows that most of our veterans' preference complaints filed with the Department have been determined to have no merit. In fact, only 3 percent result in a meritorious determination. We believe that is because many veterans just don't understand the Federal hiring process.

In addition to our investigative responsibility, we conduct an extensive compliance assistance program focused on educating potential eligibles for the program and Federal agencies with regard to

their rights and responsibilities. My written testimony provides answers to your specific questions regarding the numbers of veterans in various categories.

Let me summarize by saying that DoL has a strong commitment to hiring veterans. Veterans constitute 17 percent of the total workforce and 75 percent of the VETS workforce. Veterans comprise 18 percent of the DoL workforce at the GS-9 level or above and 80 percent within VETS. Madam Chairwoman, this concludes my statement. I would be happy to answer any questions.

[The prepared statement of Mr. McWilliam appears on p. 70.]

Ms. HERSETH SANDLIN. Thank you very much.

Mr. Hensley, you are now recognized for 5 minutes.

#### **STATEMENT OF WILLIE HENSLEY**

Mr. HENSLEY. Thank you, Madam Chairman. Good afternoon, Madam Chairwoman, and Members of the Subcommittee. Thank you for your invitation to appear before the Subcommittee and to offer testimony on veterans' preference and the Department of Veterans Affairs success of recruiting and hiring veterans.

Also, thank you, Madam Chairwoman, for entering my full testimony into the record. In the remaining time allotted, I would like to highlight the Department's commitment to hiring veterans. We believe that affording veterans their statutory preference in employment is not merely the obligation of a grateful Nation, it is good government and good business. It gives us an advantage in recruiting and retaining employees from a pool of the Nation's most highly motivated, disciplined and experienced preference veterans. In addition, establishing internal policies that address veterans' preference, VA Human Resources Oversight and Effectiveness Office evaluates compliance with veterans' preference laws, regulations and policies, doing onsite evaluations of human resources offices throughout VA. VA has focused on veterans' hiring for many years. We are able to track employment of veterans by facilities VA-wide. We have launched various programs and initiatives that have resulted in VA placing in the top tier of agencies employing veterans. As of July 31, 2007, over 77,000 or 31 percent of VA's 250,000 employees are veterans. Over 60,000 of the 31 percent are veterans' preference eligibles. And 19,000, approximately 8 percent, are disabled veterans.

VA ranks first among non-Defense agencies in hiring veterans. VA regularly uses the special hiring authorities that target veterans, and we have also hired veterans using other hiring authorities as well. For example, in the first 7 months of 2007, VA hired 5,094 veterans' preference eligibles and another 729 nonpreference veterans. The Department has established a strategic target of 33 percent veterans in the employee population. One of the challenges that we face is the rate at which veterans are leaving the Department. While recognized by OPM early as having one of the better retention rates in government, the cohort of veterans who joined the Department of Veterans Affairs after the Vietnam War is now eligible to retire.

In addition, younger veterans similar to other U.S. workers their age are frequently more mobile and change jobs and employers more often than many older employees. On average, VA has lost

about 810 veteran employees a month during the last 12 months. Countering these losses, we have on average hired about 787 veterans a month during the past year. This has allowed the Department to maintain an overall employment rate of 31 percent over the last year. Nonetheless, we are concerned that VA loses too many veterans, especially veteran hires who are within their first year of employment.

To identify the reasons why, we are developing a workgroup to research and develop solutions. In 2001, VA established a national Veterans' Employment Program within the Office of Human Resources and Administration to develop a VA-wide marketing and recruitment strategy for veterans and to provide veterans with information not only about employment opportunities in the Department but also about how to use their veterans' preference status. The National Veterans' Employment Program manager visits transition centers around the country, participates in military job fairs and attends military association and Veterans Service Organization conferences and meetings. Recently the Secretary asked each local VA facility director to appoint a veterans' employment coordinator to conduct outreach at local VA facilities and also to monitor their facilities' adherence to veterans' preference statutes.

In 2006, VA initiated a series of meetings with the surgeon generals of the Army, the Air Force, the Navy to discuss how we might attract separating military health care professionals to health care employment opportunities in VA. We are currently working the details for full implementation of this initiative with the Air Force.

In 2005, VA formally introduced to the Federal sector the Coming Home to Work program. Under this initiative, VA partners with the Departments of Defense and Labor to reach service members and veterans from Operations Enduring Freedom and Iraqi Freedom. Coming Home to Work provides civilian jobs, skills training, exposure to employment opportunities and work experience to service members pending medical separation. This program, now in place at eight major military treatment facilities, gives valuable practical assistance to separating service members as they prepare to enter the Federal and civilian workforce; 442 service members have participated in the program with the following results: 26 returned to active military duty; 10 were direct hires in VA; 23 are in work experience programs in VA; 201 are receiving early intervention services; 182 have transferred from military treatment facilities to local VA regional offices for vocational rehabilitation and employment services.

In closing, Madam Chairwoman, every day at VA we see the sacrifices that veterans have made for our Nation. It is our responsibility and privilege to support their return to employment. We are committed to continue our successful focus on veterans' hiring in VA. Madam Chairwoman, thank you again for the opportunity to testify today. I am prepared to respond to any questions the Subcommittee may have.

[The prepared statement of Mr. Hensley appears on p. 73.]

Ms. HERSETH SANDLIN. Thank you very much, Mr. Hensley.

Ms. Hanson, if I could begin with you. Have you seen any patterns in any agencies over the last 5 years regarding an increase in the number of cancelations of certificates of eligibles?

Ms. HANSON. We don't track the cancelation. We track the usage of or nonusage of certificates.

Ms. HERSETH SANDLIN. Does any agency that you are aware of track the cancellations?

Ms. HANSON. Not that I am aware of. Not the cancelations.

Ms. HERSETH SANDLIN. Do you think we should track the cancellations?

Ms. HANSON. I don't think it would give you enough information, just the number itself. You would have to look very deeply into what the reasons were behind it. You would have to understand—let me give you an example.

Ms. HERSETH SANDLIN. No. I think I know what you are saying. But given that that would be the case, certainly you wouldn't be able to just—even in some of the other questioning we had of the previous panel, you would have to go in and get more information. Don't you think that would be worthwhile as it relates to being able to determine whether or not some of the concern expressed, particularly by the first panel, is warranted, that there is a practice, since the decisions of a few years ago would allow these cancelations?

Ms. HANSON. Well, one of the things we do when we do compliance audits is we look at the application of veterans' preference in competitive hiring. So we look at just those issues. We don't track them per se, but we look at those issues when we go in and do compliance audits with agencies.

Ms. HERSETH SANDLIN. Speaking of compliance audits, along the lines of Mr. Boozman's questions of Ms. Bradshaw in the previous panel, OPM is charged with conducting the periodic systemic reviews of agency hiring practices, which would include audits. When was the last time OPM visited the Air Force Audit Agency or the Air Force?

Ms. HANSON. I don't know specifically. I believe it was in 2006. But let me look into that and get back to the—it was recently.

Ms. HERSETH SANDLIN. If you could. Then perhaps if it was recently in 2006, perhaps the one prior to that—

Ms. HANSON. Okay.

[The information was supplied by OPM in response to the post-hearing questions for the record, which appear on p. 89.]

Ms. HERSETH SANDLIN. And any conclusions that were drawn from those—

Ms. HANSON. Yes, ma'am.

Ms. HERSETH SANDLIN. Audits or periodic reviews.

Mr. McWilliam—well, let me ask this to all of you. Do you agree that the laws for veterans' preference should be updated? Do you think that they are—in some of what your agency does, Ms. Hanson, do you think there is a complexity here for certain hiring managers and certain agencies in which we can be of assistance to simplify the process that would lead to more compliance?

Ms. HANSON. We go out, and we do enough education to work with folks, hiring managers to help them understand. I am not sure that simplifying the rules as they stand would make a difference if somebody is ignorant of the law. But we are going out, and we are doing this education of hiring managers and veterans, as a matter of fact, Veterans Service Organizations, and those peo-

ple who work with veterans to ensure that they understand the laws as they stand right now.

Mr. MCWILLIAM. Madam Chairwoman, our view of the veterans' preference has to be from the cases that we investigate. We have seen that it is really that the veterans themselves who do not understand the law. That is why we have put such an emphasis in the Transition Assistance Program with acquainting people with veterans' preference.

Ms. HERSETH SANDLIN. You mentioned that in your testimony just now. I think you are aware of my concerns; first of all, TAP is not mandatory.

Mr. MCWILLIAM. That is correct.

Ms. HERSETH SANDLIN. I wonder, but maybe you can answer that question. I was going to ask it of Ms. Bradshaw. How much time is given to veterans' preference rights in the TAP program?

Mr. MCWILLIAM. It is a very small portion. It is during the reference made when we talk about other sources that are available to service members. It is included in the booklet. There is a discussion, a short one-page discussion on veterans' preference in the Federal hiring program. We view it within the TAP like many areas, Madam Chairwoman, that we acquaint people with it, and then we give them a reference to go to, to do further information, to do further research in that area.

Ms. HERSETH SANDLIN. Well, I think it is an important area for you and of course the working relationship that you have with the VA as it relates to other recruitment and outreach tracking systems, Mr. Hensley. Do you have a timeline for implementing that system that is going to be used by the veterans employment coordinators so that we can get a sense of how effective their recruitment and outreach is? How much more do we need to do to further explain the veterans' preference rights and follow up in addition to perhaps some information given to a service member in a TAP program?

Mr. HENSLEY. Yes, Madam Chair. We have recently established an automated system that will allow us to track what these veterans employment coordinators are doing in the field in terms of outreach, in terms of explaining to veterans, veterans' preference statutes and how they are used. So we do believe we will have some data that might be useful to us as well in determining how we might best ensure the veterans' preference is being applied across the board.

In response to your earlier question about the law and whether or not it should be simplified, we go to great extents within the Department to ensure that veterans' preference is applied and that it is used across the board. Certainly the establishment of the veterans employment coordinators was one way of making sure that at the local facilities, we did, in fact, ensure or check to ensure that veterans' preference was being used. We believe, too, that in many instances veterans are having great difficulty in understanding how to use their preference status in applying for jobs. And the National Veterans Employment Program was designed with that intent and purpose of helping educate not only the veterans but also the service managers who are making the selection about their re-



sponsibilities in using veterans' preference in the hiring of veterans.

Ms. HERSETH SANDLIN. Just one final question, and then I want to recognize the Ranking Member.

Mr. HENSLEY, I have some concerns based on the testimony we have heard today and the responses to some of the questions and we need to gather additional information. But I have some concerns that certain agencies are not—well, they just have far lower success rates than others in terms of the hiring of veterans under implementation of veterans' preference laws.

Have any agencies, Federal agencies, such as the Department of Health and Human Services, Department of Education, Department of the Treasury, Department of Agriculture, have they approached the VA for assistance in implementing veterans' preference rates?

Mr. HENSLEY. When we, Madam Chair, implemented the Coming Home to Work initiatives, we have several Federal agencies that came to us to talk about how they might launch a similar program. Transportation was one. I believe Commerce may have been another. Beyond that, I am not sure that there were other Federal agencies. But I would be more than happy to check and get you an entire list and provide that to you for the record.

[The information was supplied by VA in response to the post-hearing questions for the record, which appear on p. 91.]

Ms. HERSETH SANDLIN. That would be much appreciated. Thank you. Mr. Boozman.

Mr. BOOZMAN. Thank you, Madam Chair. You stated in regard to the VA about the fact that a lot of veterans were leaving within their first year. And I know that you know it is kind of an ongoing problem. Do you have a preliminarily gut feeling as to what the thinking is? Or—

Mr. HENSLEY. Well, a great number of those who are leaving during the first year, as you might imagine, are within their probationary period. And there could be a variety of reasons. One being that it is not a good job fit might be one of the reasons. But we are very concerned about the attrition trends during the first year of employment, and that is one of the reasons that we are launching this workgroup in order to do further research and more detailed analysis of exactly what is happening to that population of veterans.

Mr. BOOZMAN. So a job fit in terms of being underemployment? Or—

Mr. HENSLEY. I am sorry. I didn't hear your question.

Mr. BOOZMAN. The job fit in terms of perhaps being underemployed?

Mr. HENSLEY. We think maybe along the lines of the job not being exactly what the veteran may have thought it would entail.

Mr. BOOZMAN. Okay. Ms. Hanson, we have had testimony today about various entities, some, they appear to be doing a good job and others not. Some up the top and some of the other—why is there such a difference? What is your gut feeling as to why there is such a difference in the agencies? Why is Ag lagging behind?

Ms. HANSON. Well, I don't know that Ag is lagging behind.

Mr. BOOZMAN. Percentage-wise. So is it lagging behind? Or the others are just doing so much better?

Ms. HANSON. I think the Department of Defense agencies have a mission that is very similar to what these military members did while they were in the service. I think it is a very natural fit for them to go to these Department of Defense agencies. It is their agency of choice, and I think that is why we see the numbers.

When we look at other agencies, it might be the mission. It might be lack of education or fit with experience that they can make the linkages. I think it is both from an agency perspective, from the agencies wanting to do their best to encourage folks to apply for their jobs and make their jobs interesting, but also veterans understanding how their military service translates into government jobs. And we work with military members as they are transitioning and folks after they transition from military service to make those linkages from what they did in the military and how it would translate to a Federal job. So we are trying to make those linkages. As we see that, we see many more applying for Federal jobs they may not have considered applying for before.

Mr. BOOZMAN. We also heard testimony about canceling certificates and playing those kind of games. And again, there is human nature to kind of play the system if you think that is to your advantage in a hiring practice. Is your gut feeling, is that a significant problem? Or is it one that we run across?

Ms. HANSON. Well, that is considered a prohibitive personnel practice, and we would take action when we see those things.

Mr. BOOZMAN. What action would we take? Would we follow up?

Ms. HANSON. Yes. We may withdraw their delegated examining authority. We may have somebody else do their delegated examining for them.

Mr. BOOZMAN. Have you ever done that?

Ms. HANSON. Yes. We have in some agencies. We actually asked a Federal agency who did not give a veteran preference to offer the veteran the next job they were qualified for, he or she were qualified for. We have asked agencies to educate their workforce, make sure that managers—mandatory training of managers to make sure they understand veterans' preference laws. We take those kinds of—

Mr. BOOZMAN. I think that is the other thing. We talk about the veterans not understanding the law. And they have really pretty good access to understanding it. And again, that is the other side is making sure that the people on the other side understand the laws. So I want to thank all of you. I think you work really hard on trying to help veterans and things. But we want to help you and push things along.

The other thing, Mr. McWilliam, I want to compliment you on the Balboa. I think, again, there were reports that I hear that that is very positive. And so I know that you all did an excellent job in setting that up. So give yourselves a pat. I feel very strongly also that TAP should be made mandatory. If it were, it would save us a lot of time and money down the line. But that is a different battle to fight. So thank you all very much.

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman. I do want to thank each of you for your testimony, your responses to our ques-

tions today. Again, as the Ranking Member said, we want to help you do even more in addition to what you have been doing to ensure that our veterans are treated fairly and all the laws that are passed are fully implemented, not just in agencies where there is sort of a natural fit. I agree with Mr. Boozman and Ms. Hanson. I think that is a good response to why DoD is so high and DoD and others and DoL. I think that we want to get at the heart of what might be happening with some of the other agencies, especially when some of the other agencies that don't have the kinds of presence in certain regions of the country as much, and some of those employment opportunities that might be better suited for—not necessarily better suited, but similarly suited for our veterans.

Thank you for your service to the Nation, your continued service to the Nation's veterans. We appreciate your insights and your ideas on this very important topic. With that, the hearing now stands adjourned.

[Whereupon, at 4:51 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### **Prepared Statement of Honorable Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity**

When called to duty, service members must make the sacrifice of leaving behind their loved ones and way of life for an extended period of time. As four of our most recent Subcommittee hearings have highlighted, many of these service members have returned home to find themselves having a difficult time securing employment. From the early years of our Republic, veterans returning from war have been provided assistance in their reintegration back into civilian life, to include being given preference in Federal Government hiring, so they may succeed after their military service.

Generally, to qualify for such preference, a veteran must have been discharged or released from active duty in the U.S. Armed Forces under honorable conditions, and be eligible under one of the preference categories. These categories apply to certain veterans who served during war; veterans with less than or greater than 30 percent service-connected disability; veterans who have a service-connected disability and is receiving benefits due to their disability, but do not qualify for other preferences; and family members of veterans.

Unfortunately, as we will hear today, there are some concerns that still exist today as they have existed in past years. Some of these include veterans improperly denied appointments, and veterans targeted during reductions-in-force.

I hope this hearing will allow the Subcommittee to determine: the success rate of veteran's preference; if veterans' preference has assisted our Nation's heroes in acquiring jobs in the Federal agencies; and if these agencies have implemented veterans' preference properly.

I applaud the Federal agencies that have made strong efforts in hiring veterans, especially disabled veterans. I would also like to take the time to recognize the steadfast dedication of all our panelists in their willingness to bring to light the serious issues that are being faced by our veterans.

I know we, and the Administration officials on the third and fourth panels, look forward to hearing today's testimonies so that we may all work together to properly recognize the sacrifice of those who have answered the call to duty. This is especially true at a time when our country is experiencing an increased retirement rate among Federal employees, and military operations that are creating a larger population of veterans.

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### **Prepared Statement of Honorable John Boozman, Ranking Republican Member, Subcommittee on Economic Opportunity**

Good morning everyone. First, Madame Chairwoman, I hope you had a restful recess and thanks for bringing this important issue before the Subcommittee.

The Federal Government has a special obligation to make veterans part of its workforce and I know that many Federal agencies make a real effort to hire and promote veterans. For example, the military services led by the Army with 43%, Air Force with over 41%, Navy with 38%, and VA with over 23% led the Federal Government in hiring veterans in FY 2005.

Unfortunately, there are also agencies that make little or no effort and I hope that today's hearing will provide us with insights as to how Veterans' Preference laws are working. I would say that overall numbers show the Federal Government is making an effort. For example, according to the OPM report on veterans' employment in the Federal workforce for 2005, veterans comprise 27% of Federal full time permanent employees and veterans hiring was up in all areas.

If I am disappointed, it is that agencies do not make better use of the special hiring authorities such as Veterans Recruitment Appointment (VRA) to hire even more veterans.

I must say that reading OPM website's sections devoted to veterans' preference is not an easy task—probably because of the multiple laws, hiring authorities and programs in effect for veterans and non-veterans.

Madame Chairwoman, since we have no direct authority over title 5 and the rest of the government, I wonder if we should consider using our jurisdiction to simplify veterans' preference just at VA in the same manner we did for small business in PL 109-461? VA has an overall good record relative to hiring veterans but I think we could help them do even better while not tying the hands of the human resources staff.

Madame Chairwoman, I'm eager to hear from our witnesses and yield back.

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**Prepared Statement of Meg Bartley,  
Senior Staff Attorney, National Veterans Legal Services Program**

I am honored to have the opportunity to provide the Subcommittee with this testimony.

During the past 8 years, the National Veterans Legal Services Program (NVLSP) has reviewed and investigated complaints concerning veterans' preference violations in the Federal hiring process. We have filed amicus briefs, on behalf of The American Legion, in several veterans' preference-related cases. These include *Augustine v. Dept. of Veterans Affairs*, *Abrahamsen v. Dept. of Veterans Affairs*, *Dean v. Dept. of Agriculture*, and *Meecker v. MSPB* (known as the *Azdell* case). Our conclusion, based on discussions with individual veterans, review of numerous complaints, and participation in litigation concerning alleged veterans' preference violations, is that there are many violations of the spirit and the letter of veterans' preference laws.

My testimony summarizes three problems that prevent preference eligibles from receiving the preference that Congress intended and I provide some ideas as to how to correct these problems. These are clearly not the only circumstances that create problems for veterans. Other veterans service organization representatives will testify shortly, and they will discuss a variety of other problems. But the three situations I chose to focus on best illustrate some systemic problems with how veterans' preference is applied, and these situations dramatically illustrate that often when a veteran visits usajobs.gov, there is not an even-handed and consistent application of veterans' preference laws.

**1. Cancellation of a Certificate of Eligibles in order to Avoid Hiring a Preference Eligible**

I first address the agency practice of canceling a certificate of eligibles in order to avoid hiring a preference eligible. Let's take a typical hiring situation: an agency posts a vacancy; applicants, including preference eligibles, apply; a certificate of eligibles is generated; and, the certificate is headed by a preference eligible. The law currently provides, and this is a quote from the Merit Systems Protection Board, if the agency subsequently decides to cancel the announcement in order to avoid hiring the preference eligible that heads the list, an appellant's veterans' preference rights are not violated.

The cite for that outrageous statement is *Scharein v. Dept of the Army*, 91 M.S.P.R. 329 (2002). *Scharein* essentially held that an agency that wants to avoid hiring a preference eligible who heads a certificate of eligibles may do so by canceling the certificate. Allowing this situation to continue allows an agency to intentionally foil veterans' preference laws.

**Recommendation:** Require an agency to request permission to cancel a certificate when the certificate is headed by a preference eligible. The agency could be required to file written reasons for the cancellation with OPM and allow the preference eligible time to respond (similar to 5 U.S.C. § 3318(b), the passover provision). OPM could then determine the sufficiency or insufficiency of the reasons submitted by the agency, determine whether cancellation was appropriate or whether its primary purpose was to avoid applying veterans' preference. The agency would be required to comply with the findings of OPM.

**2. An Agency's Ability to Choose from Multiple Certificates or Programs in Filling a Single Vacancy**

Under current veterans' preference laws, emphasis is placed on a preference eligible's rank on a single competitive examining certificate. The preference eligible is at the "top" of the certificate. This process provided meaningful preference to vet-

erans years ago when an agency chose a candidate by reference to only a single certificate or “register” of eligibles. However, at the current time, agencies have the ability to choose a candidate from among multiple certificates and programs. The existence of multiple certificates and programs, any of which may be used to fill a single vacancy, renders the *rank* assigned to the preference eligible on the competitive examining certificate potentially meaningless. Let me put it this way: what is the benefit to heading a list of candidates on a certificate when the agency has the ability to choose from 4 or 5 *other* certificates in deciding who to hire? Veterans are completely confused to find that they were at the very top of a certificate but someone from a completely different certificate was appointed to the job. We believe that an agency cannot claim to have given preference to veterans in such situations. Veterans preference is diluted or nullified when multiple certificates are used.

**Recommendation:** Because Congress contemplates in Title 5 of the United States Code that competitive examination is to be the primary method of entry into the competitive service, we encourage the Subcommittee to ensure that a certificate generated through the competitive process is favored over other hiring methods and over other certificates.

### **3. Agencies Tend to Ignore the Primacy of the Competitive Examination Process, which includes application of Veterans’ Preference, in Federal Hiring**

The issue just mentioned, multiple certificates, leads agencies to a dangerous view of Federal hiring. Agencies may view the choice of the *method* used to select a candidate for a competitive service position as almost completely unrestricted—competitive examination as one hiring method among several, with all being equal. However, the statutory scheme set forth in 5 U.S.C. 187 §3302 and §3304(b), requires that an individual be appointed in the competitive service only if he or she has passed an examination or is of necessity excepted from examination.

Deviations from using competitive examining as the primary entryway into Federal service can lead to serious violations of veterans’ preference laws. This is evidenced by the fact that the Outstanding Scholar Program operated undisturbed for many years and only recently was recognized as violating veterans’ preference and, essentially, being inconsistent with the statutory emphasis on the competitive examination hiring process.

Many veterans and service organizations worry that the growth and increased use of student hiring programs, without adequate oversight of their implementation, is becoming yet another method of evading consistent and rigorous application of veterans’ preference.

The websites of several large agencies contain lists of multiple student-related hiring programs. NVLSP and other service organizations are certainly not opposed to increasing employment opportunities for students—many of whom are veterans and who qualify as preference eligibles. However, we object to any program that attempts to accomplish hires into the competitive service by denying veterans their rights under veterans’ preference laws.

**Recommendation:** Congress should ensure that the competitive examining process, including veterans’ preference laws, remains the primary hiring method for the competitive service. Congress should also ensure that any necessary student or other hiring program **vigorously applies veterans’ preference laws** (including rating and ranking and application of points), and ensure that the **passover provisions of 5 U.S.C. 3318(b) are required** in each of these programs.

I appreciate the opportunity to provide the Subcommittee with this testimony. Thank you.

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### **Prepared Statement of Roger Tadsen, Wetumpka, Alabama (Disabled Veteran)**

Thank you for allowing me to speak with you today concerning my experiences and treatment under the Disabled Veterans Affirmative Action Program (DVAAP) as outlined under 5 CFR 720 Subpart C.

My military career started at the age of 17 with the Air Force (AF) in January 1972. While on active duty I had surgery in 1983, which left me partially paralyzed in both legs. I received a medical discharge from the Air Force in January 1987 with 15 years of active service. As a result of the nerve damage, the Veterans Administration established my service connected disability rating at 70%.

I was hired as a civilian through the AF Palace Acquire Program into the Air Force Audit Agency (AFAA) in June 1991 after graduating college. I started out as

a GS07 series 0511 auditor. I felt my previous military experiences would enhance my opportunities for success. Under the Palace Acquire Program, I would receive a promotion (GS07, GS09, GS11) each year as long as I met the program objectives until reaching the field auditor target grade of GS12.

To begin with my first audit resulted in over \$3 million in savings for the Air Force. I thought I was doing well. Imagine my surprise in my third year when the AFAA Region Chief, meeting me for the first time told me, "You should be satisfied where you are because of your disability and that you can not handle being an Audit Manager." His statement took me aback since he did not even know me. I filed an EEO complaint. His reply, "You misunderstood what I said." However, it was clear to me what he said. I decided to just let it go and let my work speak for itself.

By mid-1995, I became competitive for promotion to GS13. My annual performance ratings during this time were **Above Fully Successful** (excellent) or **Far Above Fully Successful** (superior).

Between 1995 and 2004, 9 years, I submitted my name more than 15 times for these competitive promotions. All the while the AFAA had continuous openings and requests to fill GS13 positions in California, Ohio, Texas, and the Pentagon. Meanwhile, my peers with less time in grade and service were selected.

Prior to October 2002, I had never heard of the Disabled Veterans Affirmative Action Program (DVAAP) even though the law governing its implementation was enacted in the mid-eighties. I discovered the DVAAP while performing research on an audit project. Then on my own time, I started to delve into this law. My first questions were to my first line supervisor and Office Chief, "How is the AFAA implementing this affirmative action program?" After all, other affirmative action programs were publicized by the AFAA Director of Operations as working well for women and minorities within the AFAA. Unfortunately, everyone I contacted initially had never heard of this affirmative action program. My supervisors were either deferred or were told to defer to Veteran's Preferences for hiring. I understood the DVAAP is an affirmative action program, but senior managers in the AFAA disagreed.

In December 2002, the AFAA Director of Operations forwarded me information concerning disabled veterans within the AFAA. He stated, "It is true that agencies are required to develop annual DVAAP plans. However, the term "agencies" refers to the AF. Accordingly, AFAA does not maintain any information in this area." He went on to say, "Financial Management Career Program records indicated that disabled veterans, rated 30% or more, represented 2.1 percent of the auditor workforce in the AFAA." The representation of disabled veterans has remained constant over the past 5 years and well below AF established goals. No one in the AFAA has ever provided me any further guidance even though I continue to ask.

Also during December 2002 I contacted the AFAA Assistant Auditor General (AAG) Financial and Systems (FS) Audits, and his Deputy with the same concerns. I was trying to identify how the AFAA collects and monitors compliance with the DVAAP. The AAG responded but did not address my questions concerning the DVAAP. It was apparent the AFAA did not track how well this affirmative action program performed; although they publicized how well they performed under other affirmative action programs for women and minorities.

As a result, I inquired about the DVAAP to OPM in December 2002. I told them the AFAA did not appear to monitor the hiring and promotion of disabled veterans under the DVAAP. I requested further guidance from them since they oversee the DVAAP and approve agency plans. They replied in April 2003 asking if the issue was resolved. My response back was quite lengthy and OPM never replied.

While attending the Professional Military Comptroller School in January 2003, I wrote a research paper on the DVAAP. As part of my research I interviewed over 75 members across DoD, including SES and General Officers, and only one knew of the DVAAP.

During January 2003, I talked to the new AFAA Auditor General. He was unaware of the requirements of DVAAP. He said he would review the information I provided him and get back with me. He never responded.

I also contacted the disabled representative to the AFAA Workforce Diversity Advisory Committee (WDAC). He was unaware of this affirmative action program and subsequently never responded to my inquiry.

The AF Affirmative Employment for People with Disabilities plan stipulates, "the Air Force establishes agency-wide numerical objectives/goals for the hiring, placement and advancement of people with severe disabilities, to include disabled veterans." However, this AF plan did not reference 5 CFR 720 Subpart C nor did it cite the DVAAP. Nothing I found in any AF publication or AF affirmative action plan cited the DVAAP.

By August 2003 I was trying to work within the AFAA to resolve this issue. However, the AFAA Auditor General stated, "You have made frequent accusations that AFAA is not following rules regarding disabled veterans. The AFAA Director of Operations is in the process of clarifying these rules for you after discussion with AF officials, a review of the appropriate guidance, and confirmation with the Office of Personnel Management. We hope this will explain the program to you and confirm for you, as we have explained on several occasions in the past, that we are indeed complying with the program. In the future, I encourage you to focus your energies on job performance, which is the primary factor to promotion in the AFAA and apply for Audit Manager vacancies. The responsible Assistant Auditor General, as the selecting official, will follow all appropriate personnel rules, make the proposed selection, coordinate with me and then process through the appropriate personnel channels."

I thanked him for his comments and stated that I used my own time and resources to pursue the DVAAP over the past 9 months.

In August 2003, the AFAA Director of Resource Management advised she had contacted AF/DPPH and OPM about my questions and stated, "The disabled veteran's preference (notification and appeal rights) applies to initial appointments only. The references you cited (5 USC 3312 and 3318) as well as the entire subchapter I, Examination, Selection, and Placement, address people who are being initially hired into the civil service. I believe you assumed the word "certificate" as used in the references meant promotion certificates. However, when new employees are hired, they are also selected from a certificate. In fact, 5 USC 3318 describes in detail the process we use to select new personnel—we receive a certificate with the names of the highest three eligibles, and if a veteran "blocks" selection of a targeted individual, we must select the veteran."

She went on to say, "The AFAA is not required to collect or report DVAAP statistics separately to OPM each year. The Veteran's Employment in the Federal Government lists the agencies required to submit data under this program, and the AFAA's information is contained in the submission from the Air Force. Therefore, while our data are included in the Air Force report to OPM, we have no regulatory requirement to collect or track these statistics at the AFAA level."

On 14 August 2003, a GS13 audit manager and disabled veteran stated, "He and another GS13 audit managers brought the DVAAP to the attention of the AAG AFAA/FS and his Deputy in July 2000. All they got for their trouble was reduced evaluations and grief. He added, "I made all the GS14 certificates in FS 1996–2001 and was not selected. Since then I've stopped wasting my time filling in surveys, and so forth., as AFAA has no intention of promoting a well qualified [MBA, CPA, DoD ADP Level II Acquisition Auditor], older [59], white, male, disabled veteran. Also, I too have received lowered ratings in the past couple of years, to the point I won't make any certificates." This mirrored the same treatment I was receiving from FS management for inquiring about the DVAAP.

In August 2003, I contacted the Headquarters Air Force/Policy Office (HAF/XC) and they spoke to the Civilian Policy Office at the Air Staff.

Per the Civilian Policy Office, "The AF does not normally have a "plan" to hire or promote a specific number of any types of individual. Each base decides based on a comparison to the local population if it needs to have comparability in certain categories of individuals. The Air Force does not have large DVAAP goals, **because DoD hires the most disabled veterans in the Federal Government.** Members cannot be given preference over other candidates just because they are disabled veteran. The only time that veteran's preference is used on the civilian side is for an external appointment INTO the Federal Government or during a reduction in force (RIF)."

After receiving this response in August 2003, I wrote to the AF Director of Personnel Policy office outlining the discrepancy between their response and what 5 CFR 720 Subpart C stated. I provided a copy of the CFR with my letter.

5 CFR 720.301 clearly states requirements for agency disabled veteran affirmative action programs (DVAAPs) designed to promote Federal employment and advancement opportunities for qualified disabled veterans. Further, 5 CFR 720.303(a) states that, each Department, agency, and instrumentality in the executive branch, shall conduct a continuing affirmative program for the recruitment, hiring, placement, and advancement of disabled veterans.

The Chief Force Sustainment Division Directorate Of Personnel Policy, provided me a copy of the FY03 AF DVAAP plan. I received it on 15 October 2003. This was the first time anyone had ever mentioned the AF DVAAP plan, which established a representative goal for disabled veterans of **8.7 percent.**

This DVAAP plan and every annual plan since does not meet the minimum requirements outlined in 5 CFR 720.304(e), which outlines the plan content. It did not



establish key measures for monitoring compliance, review, and evaluating planned efforts and was not coordinated with any other AF office. Also, there was no indication the plan was submitted to OPM for approval as required by 5 CFR 720.304(c), and it was apparent that this affirmative action plan was not disseminated as required by 5 CFR 720.304(b) (2). Personnel responsible for implementation of the plan at the local Base Civilian Personnel Office and the HQ Pacific Air Command (PACAF) Civilian Personnel Office had never seen it.

I provided a copy of the plan to AFAA management and asked how they plan to implement and meet the established goal (8.7%) contained therein. There was no response.

In December 2003, I filed an EEO complaint against the AFAA because of their practice of discrimination against disabled veterans. In January 2004, as the EEO process moved forward, I submitted a request for a humanitarian reassignment.

The AFAA/FS Deputy Assistant Auditor General (AAG) contacted me in February 2004 to offer me a promotion to GS13. He stated, "This will kill two birds with one stone." I assumed he was referring to my EEO complaint and humanitarian reassignment. The position he offered was one that AFAA/FS AAG had previously rejected my self-nomination a few months earlier. As such, I withdrew my EEO complaint.

I continued to inquire how the AFAA was going to implement the AF DVAAP plan. It had taken almost 9 years for my promotion to GS13 while the average for the majority of others is 3 years or less. I continued to track how the AFAA filled GS13 and GS14 positions as well as hiring.

AFAA management never responded to inquiries related to DVAAP implementation. In July 2004 I wrote to the AF General Council.

The Associate Director FSD, my 2nd level supervisor, informed me in September 2004 that the AFAA/FS Deputy AAG sent him a pointed email saying he did not want to hear any more about the DVAAP. My supervisor explained, "It is not a matter of truth. Rather, it is perception indicating I am over stepping AFAA senior management's authority."

By November 2004, my 1st level supervisor required I take annual leave to visit the EEO office if I was going to discuss the DVAAP or any related issue. She also started to single me out for discipline in front of others in the office. I notified my 2nd level supervisor, Associate Director of our division, in writing outlining her abuses. My 1st level supervisor and AFAA/FS Deputy AAG worked together to try and rein in my efforts on the DVAAP. I notified in writing the AFAA/FS AAG in April 2005 outlining this behavior. Nothing was done and the harassment continued.

By April 2005, the VA Medical Center doctors thought I had heart disease and possibly a heart attack because of the stress my 1st level supervisor and AFAA/FS Deputy AAG were applying. No one in AFAA senior management intervened to stop them.

Eventually, I transferred to a new 1st level supervisor. However, the new supervisor's perceptions were already tainted.

I filed a formal complaint in November 2005 with the Office of Special Counsel (OSC) to seek relief from the continued attacks. OSC stated, "My case was being referred for whistleblower retaliation." The case was settled in August 2006.

While the OSC was investigating, I contacted HQ USAF/A1XC, Civilian Policy and Design Division, in February 2006. His office is responsible for implementation of the AF DVAAP Plan. He said, "I met with AFAA Director of Operations, and Chief of Resource Management Division to discuss the DVAAP." Still nothing changed within the AFAA.

In September 2005 and August 2006, the AFAA Workforce Diversity Advisory Committee (WDAC) debated and decided that "the agency" cited in 5 CFR 720.340(e) is the Air Force and AFAA falls under the Air Force. The committee also debated and decided that veterans with a 30 percent or more disability rating receive additional consideration during hiring and this percentage should not factor in for advancement/promotions.

The AFAA Recruiting Manual is a guide used by select AFAA employees with hiring authority. A review of the 21 plus page guide revealed that it offered only 12 lines of text for hiring the disabled without citing the DVAAP or any other Veterans' Preference guidelines. However, the guide did provide specific steps for targeting colleges that contained specific percentages of minorities and women that covered several pages.

In August 2006 I contacted HQ USAF/A1XC, Civilian Policy and Design Division, who referred my concerns to the AFAA Director of Operations. In response to the question—"Who is responsible for monitoring and measuring effectiveness merit system principles including the DVAAP?"—the answer is "agency management." AFAA

senior management **IS** responsible for effective DVAAP implementation and key measures to monitor compliance, perform reviews, and evaluate planned AFAA DVAAP efforts. According to A1XC personnel the AFAA Director of Operations, and Chief of Resource Management Division were informed. He said A1XC can only advise and told me to address concerns to the AFAA Director of Operations, and Chief of Resource Management Division. The same office that over the past 4 years had done nothing to implement this affirmative action program.

SAF/MR (Manpower and Resources) in November 2006 stated AF/A1XC did make some recommendations (not directives) to the AFAA Director of Operations and Chief of Resource Management Division that includes the following items: (a) mentoring of AFAA Employees, (b) review of AFAA policies, procedures, and programs, (c) possible issue of a supplement to SECAF diversity policy memo (d) become familiar with new directive EEO Management Directive 715 (e) involving key management in developing a pipeline for GS-13 and above positions for a more diverse workforce and (f) integration of EEO into all capital human planning. Nothing changed.

In December 2006, the AF Auditor General (AG) published a memo outlining the need to recruit more qualified disabled veterans. He cited an analysis showing the AFAA currently has 52 disabled veterans (6.5 percent). Current AF goals are 8.7 percent. He also cited special consideration should be given for disabled veterans rated at 30% or more. Disabled veterans in this category represented 2.6, 5.7, and 3.1 percent of Federal, Air Force, and AFAA workforces, respectively.

The AG memo in June 2007 requested help to hire qualified disabled veterans. I contacted the Supervisor of Employment Outreach, National VA Headquarters who said he would be glad to help. He stated there were 1,687 disabled veteran candidates in the accounting program who would qualify for the employment with the AFAA. I provided his contact information to AFAA officials. No AFAA selecting officials had contacted him as of 15 August 2007.

Since January 2000, I have completed 23 projects identifying \$54 million in savings for the AF. I have experience in acquisition, field operations, and information systems audits with the AFAA over the past 15 years with total Federal service exceeding 31 years. I also obtained a Certified Fraud Examiner professional certification. Yet, each time I get the same comments from the selecting officials.

To continue my career progression in depth and breadth of experience since January 2006, I have applied 11 times for GS13 and GS14 positions and professional military education schools without being selected.

Meanwhile, selecting officials provided a standard response to my inquiry for non-selection, "They analyze the candidates and consider ratings, depth/breadth of experience, training, mobility, certifications, professional military education, and advanced degrees." Yet, most 2007 selections for GS13 and GS14 position generally went to people with less than 4 years experience with the AFAA.

It all comes back to either AFAA senior leadership (a) truly believes my disabled veteran status hinders my abilities or (b) is tired of me fighting for my rights under 5 CFR 720 Subpart C. I believe this is reflective in the fact that my supervisors would not allow me to have permissive TDY to testify forcing me to use annual leave to be here today.

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**Prepared Statement of Mary Jean Burke,  
First Executive Vice President, National Veterans Affairs Council,  
American Federation of Government Employees, AFL-CIO**

Madam Chairwoman and Members of the Subcommittee:

The American Federation of Government Employees, AFL-CIO, which represents more than 600,000 Federal employees who serve the American people across the nation and around the world, including significant numbers of preference eligibles in the Department of Veterans Affairs (VA) and Department of Defense (DoD), appreciates the opportunity to testify today regarding veterans' preference rules.

An effective veterans' preference policy should promote both the hiring and retention of eligible veterans. Veterans' preference rules need to be regularly updated to remain effective when new personnel rules are put in place. Outsourcing and other policies that have a major impact on the Federal workforce must be assessed for their impact on veterans' employment. Current mechanisms for oversight and enforcement of veterans' preference rules must be significantly enhanced.

### *HIRING*

AFGE has received reports of selecting officials maintaining separate applicant lists to evade veterans' preference requirements. There does not appear to be sufficient oversight of this or other harmful practices. Therefore, as discussed below, AFGE urges Congress to require more training for selecting officials and greater oversight of current hiring practices to ensure more consistent application of veterans' preference rules.

Title 38 employees, most of whom work in VA medical facilities and in some DoD medical facilities, are not currently covered by statutory veterans' preference requirements. Preference eligibles in these positions should be afforded the same protections as their Title 5 counterparts.

Direct-Hire Authority (DHA), implemented in 2003 by Federal regulation (5 CFR part 337, subpart B), has also made it easier for selecting officials to bypass veterans in the hiring process. DHA rules clearly state that veterans' preference does not apply when selecting individuals under DHA. Despite the elaborate process set forth in the DHA rules to establish a "severe shortage of candidates" or a "critical hiring need" in order to fill selected positions through direct hire, it is quite easy for an agency to qualify for DHA and pass over *all* preference eligibles. In addition, OPM can decide independently if certain positions meet the criteria for DHA.

AFGE urges Congress to reject pending proposals to increase the use of DHA for targeted groups, such as proposals for direct hiring of annuitants, Presidential Interns and Americorps alumnae. Veterans' employment will be severely impacted by allowing selecting officials to completely exclude preference eligibles from the applicant pool.

### *RETENTION*

#### *Reductions-in-Force*

AFGE commends Chairwoman Herseth Sandlin for her leadership in protecting preference eligibles in involuntary geographic reassignments through H.R. 728, the Veterans Reassignment Protection Act. We urge the Subcommittee to clarify through additional language that preference eligibles under *all* Federal personnel systems, i.e. Title 5, Title 38, DoD National Security Personnel System (NSPS) and Department of Homeland Security (DHS) personnel rules are equally protected in the event of involuntary geographic reassignment.

#### *New Personnel Rules*

More generally, new DoD and DHS personnel rules threaten the consistency of veterans' preference governmentwide when reductions-in-force (RIF) occur. Lack of consistency, in turn, makes it nearly impossible to counsel veterans as to their RIF rights. DoD claims that NSPS preserves veterans' preference by assigning it the exact same priority as in OPM regulations. This overlooks a key difference between NSPS and OPM RIF rules: OPM rules provide maximum opportunities for retention of those affected by the layoff, including other placement opportunities, while NSPS takes away these opportunities. The overall result of NSPS RIF rules will be the retention of junior employees over senior employees and the retention of non-veterans over veterans.

For example, under the current OPM RIF procedures, an employee who is released from his competitive level in a RIF is permitted to "bump" to a position that is held by an employee in a lower tenure group or in a lower subgroup within the same tenure group. Similarly, a Career employee may bump a Career-Conditional employee. A veteran with a service connected disability of 30% or more may bump a veteran without such a condition, or a non-veteran, and has the right to "retreat" to a position that is the same or essentially the same job that he or she previously held. Thus, a veteran with 15 years of service could displace a veteran with 10 years. A non-veteran with 10 years of service could displace a non-veteran with only 5 years.

These opportunities are eliminated under NSPS Workforce Shaping regulations, allowing, DoD to exploit its broad discretion to select a very narrow area for a RIF. For example, DoD could eliminate a group of three jobs held by veterans with 15–20 years of service and continue other jobs at the same location held by non-veterans with fewer years of service. Under NSPS, the preference eligibles would have no recourse to bump into these jobs.

This limitation on retention opportunities is exacerbated by the discretion DoD gives itself in the final NSPS regulations to determine the scope of competition in a RIF, known as the competitive area and narrow the competition to exclude preference eligibles from the pool.

For example, if DoD cut the number of positions at a depot devoted to major repair of the engines for F-16 aircraft, under OPM rules, all employees who report

to that Depot Commander would be in the same competitive area, allowing them to compete for retention with those holding other similar jobs at the depot, e.g. those who work on the F-16 may also be qualified to work on the F-14 or the C-5.

In contrast, under NSPS, DoD will be able to depart from this procedure, allowing itself to determine competitive areas along divisions it calls "product lines" or "lines of business" or "funding lines." Repair of the F-16 engines could be defined as a "product line," so that would be the entire competitive area. Only those employees who worked on the F-16 engine would compete in the RIF. As a result, the aircraft mechanic who is a disabled veteran would not be able to bump and displace the non-veteran who works on the C-5. In fact, that aircraft mechanic would not even be able to compete with someone who worked on another component of that same aircraft, such as avionics.

In short, the NSPS regulations will narrow the scope of competition and reduce the number of retention opportunities for senior employees and veterans. Management will be able to terminate qualified veterans with high-level performance and retain junior, non-veterans. The discretion NSPS affords DoD managers to evade veterans' preference is central to the NSPS system. This is just one of the many important reasons why Congress should repeal the broad personnel authorities that gave rise to NSPS. AFGE strongly supports the House version of the FY 2008 National Defense Authorization Act which would restore to DoD civilians the veterans' preference rules that they enjoyed prior to the creation of the new rules under NSPS.

#### *Veterans' Preference Rules Should Apply to Promotions and Transfers*

Currently, preference eligibles are only recognized in the hiring and RIF processes. Veterans' preference rules do not apply to internal agency actions such as promotion, transfer, reassignment, and reinstatement. These protections should be extended to internal agency actions. This change would be of particular benefit to Federal employees in the Reserves or National Guard who are deployed, then return to their former positions and seek a transfer or promotion, especially in cases where they acquire a service-connected disability and therefore earn greater preference eligibility during their deployment. These men and women who served our country should not have to transfer to another Federal agency in order to benefit from their veterans' status.

#### *IMPACT OF OUTSOURCING ON VETERANS' EMPLOYMENT*

This Administration's relentless agenda to outsource government functions has had a devastating impact on veterans, particularly those in low wage positions and those who entered Federal Government after rehabilitation for service-connected disabilities.

Ironically, the harm to veterans is especially evident at the Department of Veterans' Affairs itself, where by its own admission, veterans comprise 80% of the low wage workforce. Many of the disabled veterans who participate in VA vocational rehabilitation programs are later hired to work in VA medical facilities. In addition, certain positions in VA medical facilities and other agencies, such as custodians and guards, are restricted to preference eligibles under 5 CFR §330.401 et al.

In instances where Federal employers conduct OMB A-76 privatization reviews or other cost comparison studies prior to converting Federal functions to contract work, Congress should require agencies to factor in the impact of these conversions on veterans' employment as an additional cost.

In other instances, agencies directly convert Federal work held by preference eligibles to contractors by illegally bypassing competition requirements in Federal law (*Section 842 of the FY06 Transportation-Treasury-HUD Appropriations Bill*) and the OMB A-76 Circular. AFGE has received numerous reports from VA sites across the country of direct conversions of a wide range of Federal functions including hospital laundry workers and housekeepers and cemetery groundskeepers. AFGE hopes these reports serve as an additional catalyst for Congress to impose restrictions on outsourcing of Federal work and increase oversight of taxpayer dollars used for cost comparison studies, direct conversions and other outsourcing activities.

The highly publicized crisis at Walter Reed Army Medical Center (WRAMC) produced similar reports of the adverse effects of privatization on both preference eligibles and veterans receiving care. At WRAMC, preference eligible employees held the majority of base operations support positions that were subjected to a prolonged A-76 competition, causing great job uncertainty, which in turn led to a wave of resignations and loss of jobs.

While contractors regularly assure agencies that they will make every effort to consider former Federal employees for contractor jobs, they are under no obligation to hire them, much less consider veterans' status in the hiring process, with one ex-

ception: 5 CFR § 330.404 places “additional responsibilities” on agencies and OPM when the aforementioned positions that are restricted to preference eligibles are contracted out through the OMB A-76 process. AFGE urges Congress to ascertain whether OPM and agencies engaged in contracting out these low wage preference eligible positions have in fact met their responsibilities.

*LACK OF ACCOUNTABILITY*

Meaningful oversight of veterans’ preference policies and the ability to track compliance are hampered by inadequate data collection. Currently, agencies are generally responsible for enforcement, not OPM (5 USC § 3320).

AFGE urges Congress to adopt a tracking system modeled after the EEOC Management Directive 715 that provides policy guidance and standards for establishing and maintaining effective affirmative programs and reporting. This tracking system should include information about the number of preference eligibles who applied for each vacant position, and whether the applicant applied for and was turned down for other positions previously, in order to determine how many veterans were turned away from each vacant position.

*COMPETENCE OF SELECTING OFFICIALS*

Mandatory compliance training and certification is needed to ensure that selecting officials apply veterans’ preference rules in a consistent, effective manner. This will ensure that employees are provided updated information on veterans’ preference rules, and that in hiring and RIF actions, they properly consider veteran status. In addition, AFGE has received reports that indicate that some preference eligibles are not being properly rated for their military experience, e.g. medics applying for Licensed Practical Nurse positions.

*PHYSICAL TRAINING FOR MILITARY GUARDS*

AFGE is also concerned about the adverse impact of new physical testing requirements for DoD Police and Guards, many of whom were hired under special hiring authorities designed to increase veterans hiring in DoD. Many GS-083 (Police) and GS-085 (Guards) have been grandfathered or had waivers for any physical testing requirements as many were hired under special hiring authorities designed to give veterans jobs in DoD. Now, the Army, and ultimately DoD, are seeking to force these requirements on existing employees, many of whom are disabled veterans hired under Veterans Readjustment Act.

This concludes my testimony. I would be happy to answer any questions that Members of the Subcommittee may have. Thank you.

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**Prepared Statement of C.J. “Cliff” Guffey, Vice President,  
American Postal Workers Union, AFL-CIO**

Madame Chairwoman and Members of the Committee. I am Cliff Guffey, Executive Vice President of the American Postal Workers Union, AFL-CIO—the APWU. On behalf of the APWU, thank you for providing me this opportunity to testify on behalf of our more than 300,000 members. Postal workers and the United States Postal Service have a long and proud tradition of veterans’ employment. The APWU and its members strongly support veterans’ preference.

I am proud to say that I am a 10 point preference eligible veteran. I served with the Second Battalion of the 3d Marines in Vietnam in 1968 and 1969. APWU President William Burrus and Legislative Director Myke Reid are also preference eligible veterans. Bill served with the 101st Airborne Division, and Myke served with the 502d Air Force Band.

It is no coincidence that the three of us are veterans. More than 187,000 veterans were employed by the Postal Service in fiscal 2005. On behalf of these veterans, and on behalf of all postal workers, I thank the Committee for holding this hearing to address the needs of our returning veterans. We know the Committee will want to consider how best to ensure that postal employment will continue to be accessible to veterans.

Postmaster General Potter recently reported that nearly 25 percent of postal employees are veterans. In the recent past, among postal workers of my generation, the numbers and percentages of veterans in the Postal Service have been even higher.

The fact that large numbers of veterans are employed by the Postal Service tends to obscure the fact that the Postal Service effort on behalf of our veterans is not as strong and beneficial as it could be.

The Postal Service's Annual Reports to Congress from 1999 through 2005 show that the Postal Service has experienced a continuous decline in the number and proportion of its workers who are veterans. In FY 1999, the Service employed 251,788 veterans, accounting for 31.6% of its workforce. In FY 2005, the Service employed only 187,144 veterans, decreasing its veteran population to 26.6%. Also noteworthy is the fact that the USPS' disabled veteran workforce decreased to only 9% and veterans with a 30% or greater disability rating decreased to only 2.4%.

This trend is particularly significant in light of the large numbers of veterans, particularly disabled veterans, who are returning from fighting in the Middle East. The U.S. has nearly 1.4 million active military personnel, 369,000 of whom are deployed outside the United States and its territories. Currently 169,200 U.S. troops are deployed to Iraq and Afghanistan. Since the start of Operation Iraqi Freedom and Operation Enduring Freedom, more than a million U.S. Service members have been deployed to the Middle East. According to the Department of Defense's Casualty Report, between March 20, 2003 and August 29, 2007, 4,159 troops—including at least 13 people who were members or closely related to members of the APWU—have died in the line of duty; 27,782 service men and women have been wounded in action; and 13,353 of the wounded have been classified as not able to return to duty.

The Veteran's Administration has reported that our returning veterans are suffering levels of unemployment and homelessness that I am sure the Committee will agree are not acceptable. According to the Veterans' Administration, the reality is that unemployment usually affects younger, less experienced workers the most, and that includes young veterans who are attempting to enter the civilian workforce after their discharge from military service. The VA estimates nearly 200,000 veterans are homeless on any given night and nearly 400,000 to one million veterans experience homelessness over the course of a year. Conservatively, one out of every three homeless men who is sleeping in a doorway, alley or box in our cities and rural communities has served in our military service. While great efforts have been made to provide housing, these have not been nearly enough. More importantly, our veterans need good jobs paying a living wage and with adequate fringe benefits. Studies show that gainful employment at a living wage with the opportunity for advancement is the foundation for maintaining economic stability and reducing the risk of homelessness.

There is no doubt that the Veterans' Preference Act has provided important assistance to veterans. The point preferences given to veterans and disabled veterans, and the restrictions that reserve certain jobs for qualified veterans if any have applied for them, are important and effective means of ensuring that veterans are provided employment opportunities in the Federal Government, including the Postal Service. But these opportunities are not as effective as they should be, for several reasons.

Perhaps the largest problem is that veterans are not aware of their veterans' preference rights. It is our understanding, gained from speaking with many discharged troops, that neither the military nor the Veteran's Administration, nor the Postal Service is doing enough to inform veterans of their veterans' preference rights. In our experience, veterans are unaware that 10 point eligible veterans have a right to apply at any time for any position for which a non-temporary appointment has been made from a list of eligibles within the past 3 years. Veterans also need to be informed that they can file for an open competitive examination after the closing date if they could not file in time because of their military service.

Of course, even knowing their rights under the law will not really assist veterans unless the Postal Service makes an effective effort to inform them of employment opportunities. Veterans who are informed of their rights and also informed of available postal positions are more likely to gain USPS employment because they will have access to the entrance exam upon discharge, rather than waiting for what can be years before the examination is again offered to the public.

Currently the best employment information vets are offered is at sporadic job fairs that do not regularly include a representative from the USPS. We recommend that all Federal agencies be given timely notice of these fairs, and that all agencies within the geographical area of the fairs be required to send knowledgeable representatives. Additionally, we urge the Committee to take steps to ensure that the Veterans' Administration and the military provide exit counseling that includes useful information regarding Federal sector employment, recruitment and available positions.

The Committee also needs to be aware of two other significant impediments to veterans' preference in the Postal Service. One is that the Postal Service has systematically eliminated or contracted out the six jobs that, under section 3310 of Title 5, the Veterans' Preference Act restricts to applying veterans. The APWU has

monitored this development as part of our effort to enforce the APWU's collective bargaining agreement with the Postal Service. For years, the Postal Service has sought to contract out more and more of these restricted jobs over the objections of the APWU. We think that this effort by the Postal Service is contrary to the spirit of the Veterans' Preference Act and not in the best interests of the Postal Service. Most often, the savings the Postal Service purports to be seeking through contracting out prove to be illusory. Veterans are losing their postal employment rights because the Postal Service is not preserving these restricted jobs for them in accordance with Federal policy. The Postal Service should be required to bargain with the APWU before it can contract out any restricted job, and that if the parties cannot reach agreement on the decision to contract out, the dispute resolution procedures of the Postal Reorganization Act should be applied.

Another problem is that, in a time of continuing automation and stable or declining First Class Mail volume, the Postal Service is not likely to be hiring a large number of new workers. It may be that the most effective way to provide employment opportunities for veterans would be to identify additional positions that could be restricted for the employment of veterans.

If veterans are to be provided meaningful postal employment opportunities as they have in the past, effective steps need to be taken to inform veterans of their rights. The military should be required to provide effective exit counseling to discharging veterans informing them of their preference rights. The Veterans' Administration needs to provide effective job counseling services that include information about veteran's preference rights and employment opportunities. And the Postal Service must systematically provide information about employment opportunities to the military, to the Veterans' Administration, and to veterans themselves.

In closing, I want to thank the Committee for providing the APWU this opportunity to speak out for returning veterans. We hope that our testimony will assist the Committee in determining what needs to be done to benefit our newest generation of veterans. APWU and its members look forward to welcoming additional veterans who will be joining our ranks. We will be proud to have them as new union brothers and sisters. We very much appreciate your assistance in achieving this goal.

I will be happy to respond to any questions the Committee may have.

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**Prepared Statement of Brian E. Lawrence,  
Assistant National Legislative Director, Disabled American Veterans**

Madame Chair and Members of the Subcommittee:

On behalf of the 1.3 million members of the Disabled American Veterans (DAV), I appreciate the opportunity to present our views on veterans' preference.

For four and a half years members of the Armed Forces have sacrificed more for our freedom and security than the vast majority of our citizens will ever be able to imagine. Aside from death, severe injury, and the atrocities of war, service members face multiple, long separations from their homes, families, and the lifestyles they would prefer to live. While such a proportionately small segment of our population willingly faces some of the greatest challenges life can present, the rest of us enjoy a level of liberty and prosperity known in few places throughout the world. We must never forget that such blessings would not exist without the bravery and self-sacrifice of those who are willing to serve.

We as a nation have a moral obligation to ensure that those who have served, and especially those who are injured while serving, are provided benefits that will allow them to rejoin society and lead as normal lives as possible. Along with health care and compensation for service connected disabilities, we must ensure that disabled veterans and other veterans have opportunities to obtain gainful employment. Doing so is not only a moral obligation, it is wise economic policy from a national perspective.

By virtue of their service, military veterans have already established that they are disciplined, task-oriented workers who are drug-free. Veterans hold great potential to fortify any job market, but more than any other segment of the workforce, our Federal Government should be first in line to offer positions to those who have already served the Federal Government in its most demanding roles. While this would appear to be a common sense practice that requires no encouragement, it is far from being a routine occurrence. It seems implausible that Congress would be forced to require by law that veterans be given a preference in Federal employment. Yet, it is so, and Congress must continually provide oversight to ensure veterans' preference laws are upheld.

Madame Chair, the DAV is grateful that you, Ranking Member Boozeman and the Members of the Subcommittee have directed your focus toward this issue. On nearly a daily basis, my office receives inquiries from disabled veterans who believe their preference rights have been overlooked or ignored. From their perspective, veterans' preference is little more than lofty rhetoric, and there is no enforceable mechanism in place to verify that consideration was given to their status. Bureaucratic techniques used by hiring officials to avoid granting veterans their preference are common knowledge to anyone who has struggled to obtain a Federal position. Job seekers wishing to use veterans' preference points quickly become familiar with terms, such as 'use of multiple certificates' and 'outstanding scholar program', which are two methods used to dodge veterans' preference. Additionally, when veterans feel their preference rights were ignored, there is no clear authority to which they may appeal. Having no enforcement or redress capability, veterans have lost confidence in the value of their employment preference. It is a bitter notion that those whose Federal service placed them in peril must standby as others cut into line ahead of them for Federal employment.

The DAV would like to reiterate how important veterans' preference is to returning service members and veterans. We believe that efforts to promote and enforce veterans' preference laws are inadequate. The DAV urges the Subcommittee to support legislation that will restore the value of veterans' preference laws. Additionally, we urge the Subcommittee to support adequate funding for the Department of Labor (DoL) Veterans Employment and Training (VETS) which is responsible for investigating when veterans believe their preference was denied. Veterans' preference should be a simple, unavoidable advantage for Federal employment, and there should be a clear procedure for veterans to appeal when consideration has not been afforded to their military service. Should a fellow job candidate be selected over a veteran based on greater credentials, it is proper. However, the hiring official must be able to state in specific and certain terms precisely why the veteran was less qualified than the job recipient.

In August, during the DAV National Convention in New Orleans, Louisiana, our membership voted to again adopt a long standing resolution calling for a substantive preference for veterans seeking Federal employment. Several DAV members serve under DoL as Disabled Veteran Outreach Program (DVOP) specialists, and Local Veterans Employment Representatives (LVER). These employment specialists know firsthand that preference laws offer little leverage to veterans seeking a Federal position.

Madame Chair and Members of the Subcommittee, the DAV appreciates the opportunity to present our views on this issue. We look forward to our continued work with the Subcommittee to serve our nation's disabled veterans and their families.

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**Prepared Statement of the Honorable Neil A. G. McPhie, Chairman,  
U.S. Merit Systems Protection Board**

I am delighted to accept the invitation from Chairwoman Herseth Sandlin, Ranking Member Boozman, and Members of the Subcommittee for the opportunity to share the views of the Merit Systems Protection Board (MSPB) regarding the application of veterans' preference in Federal employment policies and practices. The Subcommittee has asked me to address the following questions:

1. How many cases involving veterans' preference were brought before MSPB and what were the rulings in those cases?
2. How many were of merit?
3. What are the most common complaints you received from veterans' regarding hiring through veterans' preference?
4. What is your opinion on agencies' adherence to veterans' preference?

I will first provide a brief overview of MSPB's structure and operations followed by responses to the Subcommittee's inquiries.

**BACKGROUND**

The Merit Systems Protection Board (MSPB) is an independent quasi-judicial agency established to protect Federal merit systems and the rights of individuals within those systems. The MSPB carries out its statutory missions by adjudicating certain employee appeals and conducting studies of the Federal civil service and other merit systems in the Executive Branch to determine whether they are free from prohibited personnel practices.



I am honored to serve as the 7th Chairman of the Merit Systems Protection Board. The Merit Systems Protection Board has three members, appointed by the President with Senate confirmation, who serve staggered 7-year terms. Individual appeals are initially filed in one of MSPB's 6 regional or 2 field offices, where an administrative judge considers evidence from the parties and renders an initial decision. Either party can seek review of that decision before the full Board. The MSPB receives about 7,000 appeals in its regional and field offices each year, and in about 20% of those cases, one of the parties files a petition for review before the 3-member Board.

Veterans' preference in Federal employment has existed in some form since the Civil War era. The Veterans' Preference Act of 1944 consolidated the various veterans' preference rules found in prior statutes, regulations, and executive orders. This Act remains the primary source of veterans' preference rights to this day. Veterans' preference rules apply in two major areas: reductions in force (RIFs) and hiring.

#### ***THE MERIT SYSTEMS PROTECTION BOARD'S VETERANS' PREFERENCE CASELOAD***

Since its creation in 1978, MSPB has had the authority to resolve veterans' preference issues in the RIF context as part of its general jurisdiction over RIF appeals. The last time that the Board was called on to decide significant questions involving the application of veterans' preference in RIFs was in the early nineties, when hundreds of veterans filed MSPB appeals challenging how they were treated in a nationwide reorganization of the Postal Service. Based on the cases I have seen since joining MSPB in 2003, there does not appear to be much confusion over how veterans' preference operates in RIFs, and in fact MSPB has not received large numbers of RIF appeals in recent years.

Veterans' preference in hiring is another matter. Until 1998, MSPB did not have authority to decide claims for violation of veterans' preference rules in hiring. That year, Congress enacted the Veterans Employment Opportunities Act (VEOA), which granted MSPB authority to decide appeals brought by preference eligibles and certain other veterans who allege a violation of their employment rights. The Veterans' Preference Act and the Pendleton Act together require that when a preference eligible has applied for a position in the competitive service, the agency may make an appointment only after conducting a competitive examination with application of veterans' preference, unless the agency chooses to fill the position under a non-competitive appointing authority created by statute or regulation. Since 1998 MSPB has received approximately 1,600 VEOA appeals in its regional and field offices, the vast majority of which contained allegations that the appellant's nonselection constituted a violation of veterans' preference rules. The most common claims that MSPB sees in VEOA appeals are that the hiring agency:

- Failed to conduct a competitive examination with rating, ranking, and veterans' preference points;
- Failed to correctly apply veterans' preference rules in a competitive examination;
- Failed to provide veterans' preference in a promotion action;
- Denied a veteran the right to compete for a vacancy; and/or
- Improperly canceled a vacancy announcement.

Some of these claims are resolved under what are now well-established legal principles. For example, veterans' preference rules do not apply to promotion from among a pool of internal candidates, nor do veterans' preference rules prohibit cancellation of a vacancy announcement after applications are received. Cancellation of a vacancy announcement when a veteran appears at the top of a certificate of eligibles is sometimes cited as evidence of discrimination against veterans, and MSPB has authority to decide such a claim under the Uniformed Services Employment and Reemployment Rights Act. The result in such a case depends on the strength of the evidence and the particular facts of the case.

Likewise, whether an agency violated rules governing veterans' preference in a competitive examination is decided on a case-by-case basis. For example, in 2005, MSPB determined that some appointments under the Outstanding Scholar Program violated the rights of preference-eligible veterans.

The Homeland Security Act of 2002 authorized governmentwide use of "category rating" as an alternative to traditional competitive examinations with rating and ranking and addition of veterans' preference points. Category rating is a flexibility that agencies may, but are not required, to use. So far, the Board has not seen a large number of VEOA appeals challenging how veterans' preference is applied in the category rating context.

The Merit Systems Protection Board's Office of Policy and Evaluation conducts studies of the Federal civil service, and has gathered some noteworthy information concerning the employment of veterans by the Federal Government. We have recently conducted two studies that provide some information related to veteran's perceptions of the hiring process. The first was a study focusing on entry-level hiring, while the second looked at upper-level hiring.

We found that in FY 2005, 18% of the new hires in full-time, permanent professional and administrative positions at the GS-5, -7, -9 levels were veterans. The rate of hiring of veterans for all entry-level positions, which includes technical and blue-collar occupations, was 21.5%. In higher level positions (grades 12 through 15), 42% of all new hires in FY 2005 were veterans, a 12% increase from the level of veteran hiring in FY 2001. About 55% of veterans hired for upper-level positions in FY 2005 were appointed under authority of the VEOA, which requires agencies to allow veterans to compete for vacancies that would otherwise have been closed to non-status outside candidates.

The use of VEOA as a hiring authority has increased steadily since its enactment. In FY 2000, 520 veterans were hired under VEOA to fill these upper level positions; by FY 2005, the number had grown to 3,132. During FY 2005, DoD and its components made 86 percent of all VEOA selections; while the Department of Homeland Security, the Department of Energy, the Veterans Administration and the General Services Administration accounted for another 10 percent.

During the course of responding to the 2005 survey questions a few of the respondents articulated the following concerns with the Federal hiring process:

- Military experience was not given enough credit when agencies set starting pay;
- Agencies did not award appropriate credit for military experience when determining a veteran's accrual rate of annual leave;
- Military organizations did not adequately equip military personnel transitioning to civilian life with the skills needed to prepare resumes;
- The process was too long; and
- The process was too complex.

#### ***MERIT OF VETERANS' PREFERENCE APPEALS***

You asked for the number of veterans' preference appeals "that are of merit." Because there has been no compelling need in the past to maintain adequate statistics regarding veterans' preference cases, MSPB has not maintained statistics on the number of decisions that are rendered in favor of the appellant in veterans' preference appeals. Similarly, MSPB has not maintained statistics on the specific percentage of VEOA appeals that are resolved through settlement agreements. However, we can say that more than half of all appeals that are within the MSPB's jurisdiction and filed on time are settled, with no MSPB decision on the merits. If Congress would like for MSPB to maintain this data in the future, we would be happy to work with Subcommittee Members and staff to provide such information.

#### ***ADHERENCE TO VETERANS' PREFERENCE REQUIREMENTS BY OTHER FEDERAL AGENCIES***

Finally, you asked for my opinion regarding the adherence of other Federal agencies to veterans' preference requirements. The MSPB has not conducted any studies that systematically address the issue of agencies' adherence to veterans' preference. For this reason, we have no basis to form an opinion on how well other agencies are complying with veterans' preference requirements. Instead, adherence to veterans' preference is best determined on a case-by-case basis, and assessing overall agency adherence to veterans' preference requires an in-depth understanding of each agency's particular hiring practices and decisions.

In conclusion, the MSPB is proud of its record of providing fair and efficient resolution of individual disputes within its jurisdiction, including those filed alleging violations of veterans' rights. Additionally, the MSPB will continue to provide valuable objective analyses of the Federal civil service through the studies it conducts. We would be happy to be of further assistance or provide additional information to the Subcommittee as its Members and staff carry out this important work.

**Prepared Statement of the Honorable Patricia S. Bradshaw,  
Deputy Under Secretary of Defense (Civilian Personnel Policy),  
U.S. Department of Defense**

**INTRODUCTION**

Mr. Chairman and Members of the Subcommittee, thank you for the invitation to be here today. I appreciate this opportunity to discuss the Department of Defense (DoD) views on veteran preference, as it applies to employment, and our success with the program. The DoD values the expertise and commitment of our service members and we place special emphasis on supporting our wounded service members. We currently have over 227,000 veterans with preference working for the Department or about one-third of the DoD civilian workforce. As the largest Federal employer of veterans, we are committed to providing employment opportunities as civil service employees for the men and women who have served honorably on behalf of our Nation.

**COMMITMENT TO VETERANS' PREFERENCE**

We recognize that the transition from military service to civilian service can be challenging. To ease this transition, the Military Components (in coordination with the Department of Veterans Affairs (VA) and the Department of Labor (DoL)) provide assistance and support to separating veterans including pre-separation counseling, benefits, job coaching, resume writing, and information on employment opportunities, including those in the Department of Defense as well as the rest of Federal Government.

There are two special appointment authorities available to all Federal agencies that are primarily used by the Department to appoint eligible veterans without competition. These are:

***The Veterans' Recruitment Appointment (VRA) is an authority that can be used when:***

- The grade level of the position does not exceed GS-11 (or equivalent in other pay systems); and
- The veteran is "qualified," i.e., able to perform the essential duties of the position.
- Agencies must establish a training or education program for any VRA appointee who has less than 15 years of education. The program should meet the needs of both the agency and the employee.
- After 2 years of successful employment, the employee must be converted to a permanent career/career-conditional appointment; and
- When used for temporary or term appointment, the VRA authority does not lead to conversion to a permanent position; and

***30 percent or more Disabled Veteran Hiring Authority. This authority can be used when:***

- The veteran must have a compensable service-connected disability of 30 percent or more.
- The disability must be documented by a notice of retirement or discharge due to service-connected disability from active military service dated at anytime, or by a notice of compensable disability rating from the Department of Veterans Affairs.
- The veteran must meet all qualification requirements for the position.
- The veteran can be appointed to any grade level or equivalent in a variety of occupations.

Currently, we have 33,681 veterans with a compensable service-connected disability of 30% or more working for the Department. Again, approximately one-third or over 227,000 employees of the Department's civilian employees are veterans with preference. Of that total, 34 percent are in GS-09 or above positions in a variety of occupations.

Veterans in Department of Defense	Number of Employees
30 Percent or More Disabled Veterans	33,681
Other Veterans (5 point and 10 point)	194,049
Total Veterans with preference in DoD	227,730

### TARGETED RECRUITMENT

The Department is actively engaged in a targeted recruitment program titled “Hiring Heroes”. The goal of the “Hiring Heroes” career fairs is to inform and educate our wounded service members on the various employment opportunities available to them after they complete their military service, as well as introduce them to potential employers and non-profit organizations that can offer assistance to them during their transition. The fairs provide a unique environment where our service members can meet face-to-face with employment recruiters, learn first hand about jobs and career choices, and establish connections with potential employers. Typically 50 to 70 organizations, including state and local governments, non-profit organizations, and other Federal organizations participate in the career fairs and offer their services to our members. I am proud to say that the fairs are conducted in concert with our DoL and VA partners.

Generally lasting 2 days, the fairs provide our service members with technical workshops covering a variety of topics such as resume writing, job interview skills, and learning about other benefits to which they are entitled. To date, nine of the eleven career fairs have been held at or near Medical Treatment Facilities. Many of the service members who attend these fairs are still in the recovery period and actively engaged in rehabilitation. Although they are not ready to begin work, the fairs provide an opportunity for them to visit with potential employers and make valuable connections which will help the veterans when they are ready to rejoin the workforce. Although the focus of the fairs is primarily the severely wounded and injured service members, we also welcome their spouses and other family members who may be acting as the injured service members’ main care givers.

The most recent Hiring Heroes career fair was held at the Marine Corps Air Station in San Diego, California. This location was ideal because Miramar is a central location in southern California and could target service members at Balboa, the hospital at Camp Pendleton, Twenty-nine Palms, and any other service members in the area. While each job fair has been a success, I would submit that, measured by several factors, this has been the most noteworthy to date. We had over 350 attendees and 70 employers. Of significance was the number of Medical Holdover patients from Balboa and the hospital at Camp Pendleton in attendance. So, while we expanded the audience, we were able to concentrate on ensuring that the targeted audience received particular attention.

The most impressive element of this event was the coordination of efforts with the staff at Balboa and Camp Pendleton in their transition centers. The transition centers are staffed by DoD, Navy and VA personnel. DoL-funded state government personnel also provide transition employment assistance services. This collaboration of efforts can serve as a model for how to successfully coordinate service member transition preparation. It was particularly rewarding to observe service members at the career fair with their resumes and renewed confidence.

We will continue our Hiring Heroes job fairs with the next ones planned for mid-September to reach out to our service members located at Madigan Army Medical Center, Fort Lewis, Washington and Brooke Army Medical Center, Fort Sam Houston, Texas.

### WEB-BASED RESOURCES

In addition to the job fairs, we have developed an interactive website titled “Disabled Veterans: Opportunities to Use Your Abilities.” The interactive website can be found at [www.dodvets.com](http://www.dodvets.com). The website provides individuals with information about DoD and Federal career possibilities and helps them navigate through the hiring procedures more easily. Also available is a video that showcases several injured service members who have transitioned from military service and now have rewarding careers as civilians with the DoD.

The website contains a section with clear and detailed answers to commonly asked questions regarding veteran’ preference and the transition to civilian employment. The website also contains links to additional information on internships, scholarships, fellowships, grants, loans and financial aid, transition centers, and education and training.

Furthermore, there is a section that provides information for our managers—those individuals who are making the hiring decisions. Our managers are on the front lines and are able to help break barriers to employment by thinking creatively and resourcefully. Within DoD, we have a wide range of occupations that can offer disabled veterans diverse, challenging and rewarding careers. The DoD work-life initiatives such as telework and alternative work schedules offer options that can enable disabled veterans to contribute their talents. This website provides links for managers to obtain general information and resources about tools to hire talented, dis-

abled veterans. Last, any unanswered questions can be sent to us via email or by phone and we will respond within 48 hours.

### CONCLUSION

In summary, today's veteran brings a wealth of knowledge, skills, and abilities to the job. The Department is well positioned with hiring flexibilities that can be used to place veterans easily and quickly into the DoD workforce. The statistical numbers show that the Department is committed to the employment of veterans. However, we are not resting on our laurels. We continue to reach out to veterans and wounded warriors through aggressive marketing campaigns such as the Hiring Heroes program and by providing access to employment related information via the Internet.

Thank you for the opportunity to present our views on the veteran's preference program. I look forward to your questions.

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### Prepared Statement of the Honorable Boyd K. Rutherford, Assistant Secretary for Administration, U.S. Department of Agriculture

Madam Chair Herseth-Sandlin, Ranking Member Boozman, and Members of the Subcommittee, thank you for the opportunity to come before you to discuss veterans' preference and the success the United States Department of Agriculture (USDA) is having in recruiting and retaining veterans in its workforce.

USDA is a leader in America's food and agricultural systems, helping the farm and food sectors operate in a highly competitive marketplace to respond to changing consumer demands for high quality, nutritious, and convenient food and agricultural products. USDA also carries out a wide variety of services and activities related to the management, research, and conservation of the Nation's agricultural resources. In carrying out its mission and achieving its goals, USDA's human capital—its employees—is its greatest asset.

As the Department's Chief Human Capital Officer, I have a duty to assure USDA has the workforce capable of carrying out the Department's mission. With a growing retirement eligible workforce, USDA is compelled to design and implement a multifaceted approach to succession planning and recruitment that will ensure the continued existence of the mission-critical talent pools. The challenge of an aging workforce is exacerbated by an increase in competition for skilled employees and an increasingly technical environment. The demand for people with expertise in information technology, public health, and science-based technologies requires more attention toward effective recruitment, training, retention, and knowledge transfer strategies. At USDA, we use these strategies to fill the more than 340 different job series that include everyone from firefighters to research scientists, agricultural economists to food inspectors, veterinarians to procurement and human resources professionals. Almost any career a veteran could imagine is possible at USDA.

#### Veteran Preferences

As you are well aware, veterans' preference laws were initially enacted by Congress as early as the Civil War to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by our citizens who have served their country in uniform, restores veterans to a favorable competitive position for government employment, and acknowledges the larger obligation owed to our veterans and particularly those who were injured in their service to our country.

Preference has been reserved for those who were either disabled or who served in combat areas. Veterans' preference in its present form comes from the Veterans' Preference Act 1944, as amended, and is now codified in various provisions of title 5, United States Code. Preference applies to hiring for virtually all Federal jobs, whether in the competitive or excepted service. In addition to receiving preference in **competitive** appointments, veterans may be considered for special **noncompetitive** appointments for which only they are eligible.

#### Appointment Authorities

There are three ways veterans can be appointed to jobs in the competitive civil service: by **competitive appointment** through a list of eligibles developed by the Office of Personnel Management (OPM) or agency equivalent, by **noncompetitive appointment** under special authorities that provide for conversion to a permanent appointment, or by **Merit Promotion selection** under the Veterans Employment Opportunities Act (VEOA).

A **competitive appointment** is one in which the veteran competes with other candidates on an OPM list of eligibles (or agency equivalent under delegated examining authority). This is the normal entry route into the civil service for most employees. Veterans' preference applies in this situation, and those veterans who qualify as preference eligibles have an additional 5 or 10 points added to their passing examination score under traditional rating and ranking or are listed ahead of non-preference eligibles within a category under category rating and ranking.

A **noncompetitive appointment under special authority** is one such as the Veterans Recruitment Appointment (VRA) authority (formerly known as the Veterans Readjustment Appointment authority) and the special authority for 30 percent or more disabled veterans. Eligibility under these special authorities provides veterans a significant advantage in that an agency may simply appoint the eligible veteran to any position for which he or she is qualified (limited to the GS-11 grade level, or equivalent, and below for VRAs.). There is no red tape or special appointment procedures. However, use of these special authorities is discretionary with the agency. Veterans' preference applies when making appointments under these special authorities if there are two or more candidates and one or more is preference eligible. These authorities provide for noncompetitive conversion to the competitive service after a suitable period of satisfactory service.

A **Merit Promotion selection** under the VEOA is one in which the veteran competes with current Federal employees under an agency's merit (or internal) promotion procedures. The VEOA allows preference eligibles or veterans to apply under an agency merit promotion announcement open to candidates outside the agency. However, agencies do not apply veterans' preference when considering individuals under merit promotion procedures or under the VEOA. Selection under this special authority, as with other authorities, is discretionary with the agency. A VEOA eligible who competes under merit promotion procedures and is selected will be given a career or career conditional appointment.

### **Recruitment Activities**

To attract a diverse, highly skilled workforce, USDA markets itself as the "Employer of Choice" in the Federal Government. All USDA job opportunities, including announcements identifying noncompetitive appointing authorities and merit promotion authorities for veterans, are posted on the OPM's USAJobs.gov website. All vacancy announcements post the name and telephone number for applicants to contact if they want to obtain reasonable accommodation for any part of the application process. Vacancy announcements are sent weekly to State Employment Services, various Veterans' organizations, and rehabilitation agencies to help alert veterans to career opportunities with USDA.

As a large, decentralized agency, USDA has implemented a myriad of recruitment efforts through its individual agencies. The Food Safety and Inspection Service (FSIS), for example, often advertises vacancies in the Vet Forum and Veteran's Life magazines. In 2006, FSIS entered into a partnership with Virginia's Department of Rehabilitative Services (DRS) and provided training to DRS employees and other affiliated organizations on special hiring authorities for persons with disabilities, as well as guidance on resume writing and interviewing. The Rural Development State office in Maine developed a relationship with the local Department of Defense military installations, forwarding vacancy announcements directly to them. They also e-mail all vacancy announcements to the American Legion and Veterans of Foreign Wars to ensure that local veterans are aware of job opportunities through state-wide newsletters and bulletins.

On behalf of the entire Department, I have become personally involved in the "Coming Home to Work" initiative sponsored by the Department of Veterans Affairs' Vocational Rehabilitation and Employment Program (VR&E). This Initiative places a special emphasis on assisting Operation Iraqi Freedom and Operation Enduring Freedom service members.

Through the "Coming Home to Work" initiative, civilian work experience is made available to VR&E eligible service members, pending their medical separation from active duty at major military treatment facilities. Participants work with a Vocational Rehabilitation Counselor to obtain unpaid work experience in a Federal, State or local government facility. The goal of this program is for VR&E eligible service members facing medical separation to gain or sharpen civilian job skills at a point in their recovery when they are deemed "work-ready" by a Vocational Rehabilitation Counselor. The types of work may include administrative, clerical, professional, technical, or wage grade positions. Work assignments are dependent on the aptitudes, interests, and abilities of the participant.

This program assists veterans in establishing an *employment history* and expands their ability to hone the skills developed under their vocational rehabilitation plans.

It provides exposure to Federal employment opportunities and the special Federal hiring authorities for which veterans *qualify*.

While USDA has already randomly used this program in our Departmental Human Resources Division, we are in the process of expanding the Department's involvement with the program. USDA is developing administrative, human resources, and procurement position descriptions to meet the specific talents and needs of those participating in the "Coming Home to Work" initiative. Through these positions, we hope to provide not only interim work opportunities to our Nation's veterans, but a stepping stone to a permanent position in the Federal workforce.

USDA Human Resources offices continue to use various electronic national resume databases to establish contact with a variety of veterans programs and organizations as well as to participate in veteran targeted job and career fairs. However, in many instances, we find that our own veteran employees are our best recruiters. Through their associations with veteran organizations, our current veteran employees serve as conduit to the veteran community to promote employment opportunities throughout USDA.

I am pleased to report that of the 108,840 USDA employees, 11,517 or 10.6 percent are veterans, of which 6,776 occupy positions at the GS-9 salary level or above. In 2006, USDA hired 21,023 new, full-time employees of which 1,332 were disabled veterans. More than 10 percent of the disabled veterans employed by the Department are 30 percent or more compensable.

Statistics and recruitment efforts, however, only tell a portion of the story. In 2003, Steven Dickerson was just completing his masters program in social work at the University of Nevada at Reno when he came to the attention of the Forest Service who was interviewing candidates under the government's Workforce Recruitment Program (WRP). The WRP, cosponsored by the Department of Labor and the Department of Defense, is a program that identifies college students with disabilities to work as interns for Federal Government agencies in summer and permanent jobs. As a result of WRP, DoL recently announced the availability of a national database of students with disabilities who have expressed interest in working for the government.

Mr. Dickerson, a Vietnam veteran, was injured during the war in an aircraft incident resulting in him being both blind and using a wheel chair for mobility. In spite of these injuries, he returned to school and earned his undergraduate degree in Paralegal Studies—*summa cum laude*—and went on to graduate school to complete his Masters degree, as well.

Gerry McGaughran, the Person's With Disabilities College Recruitment Liaison for the Forest Service, recognized Mr. Dickerson's potential value to the agency and referred him for consideration for vacancies within the agency. Later that same year, Mr. Dickerson was competitively selected by the Forest Service's Intermountain Regional Office as the Region's Employee Assistance Program Coordinator in Ogden, Utah.

As a member of the Forest Service civil rights staff, Mr. Dickerson's duties include administering the Region's alternative dispute resolution and employee assistance programs where he mediates workplace disputes and trains other agency mediators. He has also enhanced the region's employee assistance program, which is now available 24 hours a day—7 days a week. He also counsels other veterans and people with disabilities having workplace issues. In order to perform his job, Mr. Dickerson uses a number of technical accommodations including a docking pen that interfaces with a computer to download messages and voicing software that converts text to speech.

Steven Dickerson is a valuable member of the USDA family, not just because he's a veteran, but because of who he is, what he has accomplished, and what he continues to contribute to the mission of our agency.

At USDA, veterans' preference is not only the law; it is an honor and a commitment we make to our National heroes who have sacrificed so much to keep our Nation free and safe.

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**Prepared Statement of Anita R. Hanson, Outreach Group Manager,  
U.S. Office of Personnel Management**

Good afternoon, Chairwoman Herseth Sandlin and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss veterans' preference and the role of the U.S. Office of Personnel Management (OPM). I serve as Outreach Group Manager at OPM where I have primary responsibility on behalf of Director Linda Springer for outreach to returning service members and to all our

Nation's veterans on the Federal employment hiring preferences they have earned. As a disabled Navy veteran, I care deeply about this topic and am proud to serve my country helping my fellow veterans.

#### **OPM's Role**

Director Springer and all of us at OPM take very seriously our obligation to ensure that veterans have full access to Federal civilian jobs following their separation from military service. Our obligation is grounded in veterans' preference laws that have been a cornerstone of America's civil service since its inception.

Veterans' preference is also at the very core of OPM's mission, which is to ensure the Federal Government has an effective civilian workforce. I would like to take a few moments to focus on our efforts across Government to promote and preserve veterans' preference and our work to educate veterans about Federal job opportunities as we help to prepare these American heroes for their transition from military service.

#### **Oversight and Accountability**

As part of our oversight of human capital management responsibilities at OPM, we use an audit-based approach to ensure that competitive hiring practices used by Federal agencies comply with veterans' preference laws and merit system principles. Since 1996, when OPM began broadly delegating examining authority to Federal agencies, we have conducted almost 1200 audits of agency delegated examining units (DEUs). Our audits cover all aspects of competitive examining, including the application of veterans' preference. We also annually conduct Human Resource Operations Audits that examine a number of agency human resources (HR) programs, including competitive examining and the use of veteran hiring authorities and practices.

As part of every OPM audit, we rigorously examine recruitment actions, how applications are handled and processed, and how selection decisions are made. We carefully examine whether veterans' preference was properly applied, and we review certificates of eligible candidates to see if there are patterns in how those certificates are used—or not used—that would indicate whether or not veterans are receiving legitimate consideration.

For the past 2 years, OPM has been helping agencies establish sound internal accountability systems to ensure HR programs operate within merit system principles and comply with veterans' preference laws and regulations. When agencies conduct their own audits, which are key components of these accountability systems, OPM actively participates to ensure compliance with laws and regulations, including the application of all aspects of veterans' preference.

When we find violations of law or regulation, we take steps to ensure corrective action is taken. We can direct an agency to give a veteran priority consideration for the next job vacancy for which he or she is qualified if we believe that veteran was denied preference previously. If we find evidence that veterans' preference was knowingly denied, which is a prohibited personnel practice, we would then refer the matter to the Office of Special Counsel or the agency's Inspector General. We may also withdraw an agency's delegated examining authority if we find systemic problems.

In our experience, the vast majority of Federal agencies follow veterans' preference requirements to the letter of the law. We typically do not see systemic violations of veterans' preference across an entire agency. When we do find problems, they tend to be isolated to a specific installation or organization and are typically caused by inadequate direction or lack of adequate accountability systems.

#### **Hiring and Retention**

OPM works diligently to make sure all Federal agencies understand the value and importance of hiring those who have answered the call to duty. As you may know, we have predicted that more than 60 percent of the Federal workforce will be eligible to retire over the next decade. As such, we have an enormous recruitment challenge where we simply cannot afford to overlook a talent pool as rich and varied as veterans. The dedication and professionalism of the men and women who serve in the armed forces are without equal. As members of the best trained volunteer military in the world, veterans have demonstrated an aptitude for excellence, hands-on experience, and teamwork.

Our most recent annual report to Congress in November, 2006 indicates that one of every four Federal workers is a veteran—456,000 out of 1.8 million. 93,000 of those veterans are disabled, nearly 50,000 of whom are “seriously” disabled, meaning they have disability ratings of 30 percent or more. It is clear from this report that the Federal Government continues to lead the nation as an employer of choice for veterans and especially disabled veterans—and we expect this will continue to



be the case when our next annual report is presented to the Congress this coming November. We are particularly proud of our record at OPM where nearly 30 percent of our new hires have been veterans, making us a leader among independent Federal agencies.

Your letter of invitation also asked OPM to discuss veteran retention rates. Our review of available data from 93 Federal agencies indicates an average veteran retention rate of 88.4 percent between Fiscal Year 2005 and Fiscal Year 2006. Some of the highest retention rates are found at the Department of Veterans Affairs, Department of the Army, and Department of Homeland Security. Only 9 of the 93 agencies we reviewed had retention rates less than sixty percent. We believe these numbers confirm that, on average, Federal agencies are succeeding in retaining veterans as part of the Federal workforce.

### **Outreach Efforts**

OPM also works directly with veterans to educate them on employment opportunities with the Federal Government. Our educational and recruitment initiatives provide veterans and agency hiring managers with timely and useful information on veterans' preference and Federal employment opportunities.

Most recently, OPM hosted a first-of-its-kind live webcast offering comprehensive information on veterans' preference rights and eligibilities. A tape of the webcast is now available to veterans and their families 24 hours a day, 7 days a week, on OPM's website—[www.opm.gov/veterans](http://www.opm.gov/veterans).

OPM staff frequently visit veterans' medical facilities and military installations where we speak with transitioning military members about opportunities to continue serving their country as part of the Federal civilian workforce. We provide training on how to effectively use our USAJOBS website where job vacancy announcements and applications can be found. We also provide training on resume writing, interviewing techniques, and general information on veterans' preference and other special appointing authorities for veterans. We provide similar employment help to veterans at job fairs across the country.

Over the past 2 years, OPM has established veterans' outreach offices at Walter Reed Army Medical Center here in Washington, DC and Brooke Army Medical Center in San Antonio, Texas. A third outreach office will soon open at Ft. Carson, Colorado. As you know, work at these hospitals is aimed at helping wounded veterans recover physically and psychologically as they transition back to civilian life. We provide these wounded veterans with Federal job information and counseling; we offer classes that teach resume-writing and offer tips on how to translate military accomplishments into a set of documented knowledge, skills, and abilities (KSAs) that can be used when applying for Federal jobs.

As another part of our outreach efforts, OPM meets quarterly with the major Veterans' Service Organizations (VSOs) to address important veterans' issues and to provide an opportunity for VSOs to share their concerns. We work closely with VSO leadership to ensure that veterans' preference rights are honored and protected throughout government, and we value the constructive working relationships we have developed.

### **Governmentwide Activities**

Issuing regulations and guidance is another way OPM fulfills its obligation to ensure veterans' preference is adhered to throughout the Federal Government. For example, we published regulations in January 2006 making it a prohibited personnel practice to violate veterans' preference when using alternative rating and selection procedures commonly known as category rating.

We continue to update our veterans' employment guidance, contained in our VETGUIDE and Delegated Examining Operations Handbook. Our website contains extensive guidance describing the rights and benefits of reservists called to active duty. We have also published a set of Frequently Asked Questions on military leave in recognition of the significant number of Federal employees currently serving in Iraq and Afghanistan.

OPM has improved our web-based veterans' products in an effort to provide better customer service to veterans who are seeking Federal jobs. For example, we have enhanced our USAJOBS website to make it more veteran-friendly by providing prominent home page links to veterans' employment information and web resources at agencies and elsewhere.

We have partnered with our colleagues in other Federal agencies to safeguard veterans' preference entitlements. We are proud of our teamwork with the Department of Labor's Veterans' Employment and Training Service (VETS) to help resolve veterans' preference and veterans' reemployment rights issues. And last year we revised and streamlined our most used Federal form—Standard Form 15, Application

for 10 Point Veteran's Preference—by aligning it with current policy of the Department of Veterans Affairs and making it more user-friendly for both veterans and agencies.

Most recently, OPM was proud to play an active role in the deliberations of the Task Force on Returning Global War on Terror Heroes established by President Bush on March 6, 2007. We believe the interagency recommendations produced by this task force will be very helpful to veterans as they transition back to civilian life.

### **Conclusion**

Madam Chairwoman, OPM is proud of its efforts to preserve and protect veterans' preference and we are committed to making sure Federal employment opportunities are made available to our veterans. I would be happy to answer any questions you or other Subcommittee Members may have regarding my statement.

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### **Prepared Statement of John M. McWilliam, Deputy Assistant Secretary, Veterans' Employment and Training, U.S. Department of Labor**

Madam Chairwoman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to talk about the role of the Department of Labor's Veterans' Employment and Training Service (VETS) in assuring Veterans' Preference is applied in the Federal Government hiring process. We appreciate the interest of the Committee on this very important benefit for veterans, especially veterans returning from the Global War on Terror who are interested in working for the Federal Government.

First let me say that we enjoy a very close working relationship with officials at the Office of Personnel Management (OPM). Our staffs are in regular contact with each other on both investigative and educational/outreach efforts. We work collaboratively with OPM to implement, enforce and improve Veterans' Preference in Federal hiring. We are both champions of Veterans' Preference, and we regularly communicate that to all Federal agencies and departments. We believe the Federal Government has an excellent record in hiring qualified veterans, and both agencies are committed to ensuring veterans receive all rights and benefits to which they are entitled under Federal employment laws.

#### *Agency Responsibilities*

OPM is responsible for providing information to veterans and agencies on Veterans' Preference and the procedures for implementing the preference. OPM promulgates the regulations for Veterans' Preference and special hiring authorities for veterans, in addition to conducting periodic, systemic reviews of agency hiring practices.

VETS is responsible for investigating and attempting to resolve Veterans' Preference complaints against Federal agencies filed under the Veterans Employment Opportunities Act (VEOA). The VEOA provides that a veteran or other preference eligible who believes that his or her rights under any law or regulation related to Veterans' Preference have been violated, may file a written complaint with VETS. We carry out our responsibility under the VEOA through the use of trained investigators in each of our state offices.

The Merit Systems Protection Board (MSPB) is responsible for adjudicating Veterans' Preference complaints filed by a veteran or preference eligible person, if VETS has investigated and is unable to resolve the issue. The Office of Special Counsel (OSC) is responsible for investigating alleged prohibited personnel practices (PPPs) relating to failure to comply with Veterans' Preference requirements.

#### *VETS' Investigative Procedures*

VETS investigates all official written Veterans' Preference complaints and if the case is found to have merit, we will make every effort to work with the agency to resolve it. If resolution cannot be achieved within 60 days, the claimant may elect to appeal to the MSPB.

If VETS determines that a complaint has no merit, or, if the agency refuses to comply with VETS' determination that a veteran has presented a meritorious claim, the veteran has the right to appeal the original Federal agency's action to the MSPB within 15 days after the claimant is notified of the unfavorable resolution of his case. If the MSPB has not issued a judicially reviewable decision within 120 days, the claimant may file a claim in the appropriate U. S. District Court and the MSPB will cease all activity on the claim. If the MSPB or the U.S. District Court finds in favor of the claimant, the MSPB or the Court may order the agency to comply

with the applicable provisions of law and award compensation for any loss of wages or benefits.

To further support these efforts, VETS entered into a Memorandum of Understanding (MOU) with OSC in December 2000 requiring that any meritorious Veterans' Preference cases be automatically referred to OSC for review as potential PPPs.

*Recent Veterans' Preference Investigative Data*

The table below shows Veterans' Preference investigative actions by VETS for Fiscal Years (FYs) 2005 and 2006, and through July for FY 2007.

	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007 (thru July)</b>
<b>Carried in from previous years</b>	<b>45</b>	<b>67</b>	<b>29</b>
<b>Cases opened</b>	<b>527</b>	<b>479</b>	<b>338</b>
<b>Cases closed</b>	<b>506</b>	<b>517</b>	<b>335</b>
<b>Average Days Open</b>	<b>24</b>	<b>31</b>	<b>30</b>
<b>Merit</b>	<b>15</b>	<b>18</b>	<b>9</b>
<b>No merit</b>	<b>380</b>	<b>369</b>	<b>220</b>
<b>Merit determination not made (Admin. Closure/Withdrawn/Not Eligible)</b>	<b>111</b>	<b>130</b>	<b>106</b>

From the table above, it might appear that we are seeing a steady decrease in the number of Veterans' Preference cases. However, in FY 2005, 156 cases were filed by one individual, which skews the data for that year. Based on numbers from FY 2006 and thus far in FY 2007, it appears there will be a decrease in caseload of approximately 16% in the current fiscal year. We believe this decline may be due in part to the efforts of Disabled Veterans Outreach Program (DVOP) specialists, Local Veterans Employment Representatives (LVERs), and Veterans Service Organizations (VSOs) in explaining Veterans' Preference to job-seeking veterans. Additionally, the Department's Employment Laws Assistance for Workers and Small Businesses (elaws) program (described below) and VETS' focus on informing service members of Veterans' Preference during Transition Assistance Program (TAP) employment workshops also have been instrumental in the decrease.

The table also shows that most of the recent Veterans' Preference complaints filed with the Department have been determined to have no merit. There are three primary reasons for this:

1. There is significant confusion among veterans regarding the difference between open competitive and merit promotion job announcements. Since Veterans' Preference does not apply in merit promotion situations, many cases are closed with no merit findings because Veterans' Preference did not apply.
2. Many agencies do not respond to individual inquiries from veterans regarding the status of their applications. As a result, we receive numerous complaints that were filed before the veteran was notified of the results of the hiring process. In these cases, VETS opens a case file and then discovers that the position either still is pending, has been canceled, or that another veteran has been selected for the position and the agency had not yet notified other applicants of their hiring decision.
3. We also receive many complaints from preference eligible veterans because an agency makes a determination that the veteran is not qualified for the position. Since Veterans' Preference is only applied after an individual is determined to be qualified for the position, we cannot conduct an investigation on qualification issues. However, we will advise the claimant that he or she may request a second level review of their qualification issue with the agency, or to contact their OPM Service Center for additional assistance.

*Outreach and Education Efforts*

In addition to our investigative responsibility, VETS conducts an extensive compliance assistance program. This outreach is focused on educating potential Veterans' Preference eligibles and Federal agencies with regard to Veterans' Preference rights and responsibilities.

In 1997, the Department launched its Employment Laws Assistance for Workers and Small Businesses (elaws) program. This program consists of interactive e-tools

or “Advisors” that provide easy-to-understand information about many of the Federal employment laws administered by DoL. The Advisor simulates the interaction a person might have with an employment law expert. It asks questions and provides answers based on the responses given.

As part of the elaws program, VETS has developed a Veterans’ Preference elaws Advisor (<http://www.dol.gov/elaws/vetspref.htm>). The Veterans’ Preference Advisor was the first online elaws Advisor developed by DoL. This Advisor is consistently among the top five most popular elaws Advisors, just behind Advisors for the Fair Labor Standards Act and the Family and Medical Leave Act, even though Veterans’ Preference applies to a much smaller population of eligible persons. In FY 2006, the Advisor had an average of over 10,000 visitors a month; and through June in FY 2007, an average of over 11,500 visitors a month. The Advisor has been consistently updated to reflect regulatory changes, as well as advances in technology.

*Complaints may now be filed electronically*

It is now possible for users to access and file Veterans’ Preference complaints through the Veterans’ Preference Advisor. After responding to the questions in the Advisor, and gaining a better understanding of his or her Veterans’ Preference rights, the veteran or preference eligible is given the opportunity to file a complaint electronically. The electronic filing goes directly to a VETS investigator for processing.

State of the art technology allows us to serve our customers with up-to-date information through the Advisor, 24 hours a day, 7 days a week, and to begin the complaint process in a most expeditious manner. The Advisor enables us to be at the forefront in providing outreach and information on Veterans’ Preference, and to more quickly address and prevent violations of the law.

*Disabled Veterans Hiring Initiative (DVHI)*

VETS also conducts outreach activities through our Disabled Veterans Hiring Initiative (DVHI). DVHI was developed several years ago to educate Federal agency human resources personnel and agency hiring officials on how to better use the available special non-competitive hiring authorities to hire certain veterans and disabled veterans.

The DVHI initiative first focused on Federal agencies in the metropolitan Washington, D.C. area. We conducted presentations to the Federal Executive Boards in regions where there is significant Federal hiring. In addition, we have continued our special emphasis in the national capital region by hosting Federal job fairs specifically for veterans.

In response to your questions regarding data about the number of veterans and/or disabled veterans applying for positions at DoL, we provide the following information:

In FY 2006, 14,161 veterans applied for employment at DoL (4,970 of them were disabled veterans). Of these veterans, 1,311 applied for positions with VETS, of which 630 were disabled. In FY 2007, 15,273 veterans applied for employment at DoL, of which 5,219 were disabled. Of these veterans, 1,285 applied for positions at VETS, of which 571 were disabled.

As of August, 26, 2007, veterans constitute 17% of DoL’s total workforce, and 5.4% are disabled. Veterans comprise 75% of VETS’ workforce, of which 53.6% are disabled.

Further, of the DoL workforce in GS-9 or above positions, 18% are veterans and 4.7% are disabled veterans. In VETS, 80.4% of veterans are in a GS-9 or above positions, and 47.3% are disabled veterans.

In FY 2006, through Special Hiring Authorities and under the VEOA, the Department hired 35 veterans including 3 veterans in VETS. Under the Veterans Recruitment Authority (VRA) the Department hired 16 veterans, including 8 veterans in VETS. And, under the “30% or more disabled” veteran hiring authority, the Department hired 2 such veterans in VETS.

Through August 27, 2007, the Department hired 28 veterans through the VEOA, 15 veterans under the VRA, 1 veteran in VETS, and 2 veterans under the “30% or more disabled veteran” hiring authority in VETS.

*Partnership with OPM*

VETS collaborates continuously with OPM to help improve representation of veterans in the Federal workforce. Our respective staff members are in frequent communication regarding specific investigative issues and general trends in Veterans’ Preference. Moreover, VETS makes regular use of the excellent material that has been developed by OPM.

For example, the OPM "Veteran Invitational Program" provides information that promotes hiring of veterans and explains how veterans can apply for Federal employment. VETS has provided this information to all field staff that provide information to veteran employment specialists in America's workforce system, as well as directly to veterans and disabled veterans. VETS also distributed the OPM-produced DVD, "What Veterans Need to Know About Veterans' Preference," to field offices for their use in making presentations to veterans.

Finally, through the TAP Employment Workshops, VETS ensures that transitioning service members are provided essential information about Veterans' Preference as well as general information about the Federal hiring process and resources available. In addition, VETS developed a REALifelines (Recovery and Employment Assistance Lifelines) elaws Advisor. This Advisor was designed for wounded and injured service members and veterans transitioning to the civilian workforce and provides specific information on Federal employment, including Veterans' Preference and special hiring authorities, as well as one-on-one employment assistance in each of our states.

Madam Chairwoman, that concludes my statement and I would be happy to respond to any questions.

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**Prepared Statement of Willie Hensley,  
Deputy Assistant Secretary for Human Resources Management,  
Office of Resources and Administration,  
U.S. Department of Veterans Affairs**

Madam Chairwoman and Members of the Subcommittee, good afternoon. Thank you for your invitation to appear before you this afternoon to offer testimony on veterans' preference and the Department of Veterans Affairs' (VA) success in recruiting, and hiring veterans.

At VA, we see veterans every day who have sacrificed to defend and support this country. The Department fully supports the laws that place veterans, and particularly disabled veterans, in a favorable competitive position for government employment. We believe that affording veterans their statutory preference in employment is not merely the obligation of a grateful nation; it is good government and good business. It gives us an advantage in recruiting and retaining employees from a pool of the nation's most highly motivated, disciplined and experienced candidates. In addition to establishing internal policies that address veterans' preference, VA's Human Resources Oversight and Effectiveness program reviews specifically evaluate compliance with veterans' preference laws, regulations, and policies during on-site evaluations of Human Resources Offices throughout all parts of VA.

VA has focused on veteran hiring for many years. In the last 15 years, our efforts have included tracking the employment of veterans and veterans with disabilities by facility and working with lists of separating military members to contact and recruit veterans to employment in the Department. These programs have developed into much broader efforts and more focused programs and have resulted in VA placing in the top tier of agencies employing veterans. As of July 31, 2007, over 77,000, or 31%, of VA's 250,000 employees are veterans. Over 60,000 of the 31% are veterans' preference eligibles, and 19,000 (7.6% of all VA employees) are disabled veterans. VA ranks first among non-Defense agencies in the hiring of veterans. This data, and all the data points that I will note today, are as of July 31, 2007. For cumulative data, the period is January 1, 2007 through July 31, 2007. We have used this period because in December 2006, VA implemented system changes that enable us to improve the accuracy and thoroughness of our veteran employment data. We are now able to identify and report on hiring of veterans who are not preference eligibles.

VA regularly uses the special hiring authorities that target veterans: Veterans Recruitment Appointment, Veterans Employment Opportunities Act appointment, and 30% compensably disabled veteran appointment. Veterans are hired using other hiring authorities as well. In the first 7 months of 2007, VA has hired 5,094 veterans' preference eligibles and another 729 non-preference veterans.

The Department has established a strategic target of 33% veterans in the employee population. One of the challenges that we face is the rate at which veterans are leaving the Department. The cohort of veterans who joined the Department after the Vietnam War is now eligible to retire. The number of Vietnam Era veterans, which was the largest veteran category in VA only 2 years ago, will continue to decline as our workforce ages. In addition, younger veterans, similar to other U.S. workers their age, are frequently more mobile and change jobs and employers more

often than many older employees. On average, VA has lost about 810 veteran employees a month during the past 12 months. Countering these losses we have, on average, hired about 787 veterans a month during the past year. This has allowed the Department to maintain an overall employment rate of 31% for the last year. The success of our outreach and recruiting efforts has enabled us to maintain the high percentage of veterans in our workforce. Nonetheless, we are concerned that VA loses too many new veteran hires within their first year of employment. To identify the reasons why, we are developing a work group to research and develop solutions.

VA's success in attracting and hiring veterans is due to a variety of programs that have become more sophisticated over the past 6 years. In 2001, VA established the National Veterans Employment Program (NVEP) within the Office of Human Resources & Administration with the mission of developing a VA-wide marketing and recruitment strategy to enhance the quality of employment information available to service members and veterans. A major goal of the program is to provide greater access to VA career information to veterans and separating active duty service members. NVEP is the Department's leading advocate for the employment of veterans and promotes efforts to assist veterans in understanding and using veterans' preference and other special hiring authorities to obtain employment in VA and the Federal sector. NVEP staff visit military transition centers, participate in military job fairs, and attend military association and veteran service organization conferences and meetings, as well as, other events that target veterans and transitioning military members, such as, the *New York Times* Salute Our Heroes Job Fair and Career Expo. NVEP staff also work with VA Human Resources staff throughout the Department to provide guidance and assistance in their local efforts to recruit, educate, and hire veterans.

To assist local VA facilities in attracting and recruiting veterans, NVEP helped establish the Veteran Employment Coordinator (VEC) concept in HR offices VA-wide. NVEP is currently developing a recruitment and outreach tracking system, designed to provide VECs with some of the tools necessary for an effective outreach program. The tracking system provides a means to document and track outcomes of VA participation at career fairs or other events targeting veterans. This information can then be analyzed to determine the effectiveness of those outreach activities. Other NVEP initiatives/collaborations are:

**VA Career Opportunities for Transitioning Healthcare Professionals**—NVEP works through the Offices of the Surgeon Generals of the Air Force, Navy, and Army, to attract separating military healthcare professionals to VA career opportunities by providing greater access to information on VA healthcare occupations. NVEP also looks at methods to establish training programs that enhance the training and experience of service members and prepare them to fill critical positions in VA's healthcare system.

**VA/Army National Guard Speaker Series**—NVEP provides consulting services to VA's Veterans Health Administration (VHA) and the Army National Guard (ANG) on an initiative to attract physicians to careers in both VA and the National Guard. Through the joint partnership, physicians are eligible for dual compensation benefits for professional education, development and training.

**Community Prosperity Partnership (CPP)**—Led by VA's Office of Diversity Management and Equal Employment Opportunity, CPP is a mutually supportive coalition of Federal, state, and local government agencies, veteran service organizations, academic institutions, and non-profit community service organizations that work together to address the needs of veterans and their dependents through employment, education, youth initiatives and business development. NVEP coordinates career fairs targeting veterans in support of CPP activities.

#### **Other VA Employment Outreach Efforts**

**Coming Home to Work Program**—VA's Veterans Benefits Administration (VBA) has partnered with the Departments of Defense and Labor (DoD and DoL) to reach out to service members and veterans from Operation Enduring Freedom and Operation Iraqi Freedom. Coming Home to Work provides civilian job skills training, exposure to employment opportunities, and work experience to service members pending medical separation from the military. This program, now in place at eight primary military treatment facilities, gives valuable, practical assistance to these separating service members as they prepare to rejoin the civilian workforce. As of June 2007, 442 service members have participated in the program with the following results:

- 26 returned to active duty
- 10 were direct hires
- 23 are in active work-experience programs
- 201 are receiving early intervention services

- 182 transferred from military treatment facilities to local Regional Office for continued vocational rehabilitation and employment services

Every day at VA, we see the sacrifice that our veterans have made for our Nation. It is our responsibility and privilege to support their return to employment. We are committed to continue our successful focus on veteran hiring in VA.

Madam Chairwoman, thank you again for the opportunity to testify today. I am prepared to respond to any questions Members may have.

#### **Appendix—Veteran Employment in the Department of Veterans Affairs**

This data was extracted from the Department of Veterans Affairs (VA) personnel-payroll system as of July 31, 2007.

For cumulative data, the reporting period is January 1, 2007 through July 31, 2007. System changes implemented in December 2006, provide improved accuracy and thoroughness of VA's veteran employment data. The data now includes veterans who are not preference eligibles.

##### *How many veterans and/or disabled veterans applied for jobs at VA?*

While VA currently does not have a Department-wide automated system that captures data on applicants for all VA positions, we can provide a count of applications VA processed in CY 2007 under its delegated authority to announce Title 5 competitive positions to the general public. The 177,555 applications received under these delegated examining announcements resulted in 3,706 selections, of whom 1,056 or 28.5% of the selectees are preference eligibles.

Over the next 2 years VA is aggressively expanding its use of the automated USA Staffing system, which will enable us to more fully capture data on veterans' preference and other applicants.

##### *How many vets were hired through each of the various hiring authorities at VA?*

In the first 7 months of 2007, VA hired 23,912 employees, of whom 5,823 or 24.4% are veterans. 1,769 of these veterans have earned 10-point disability preference for Federal jobs, including 1,098 who have 30% or higher service-connected disabilities, and another 515 who have disability ratings below 30% but high enough to warrant VA compensation. VA also appointed 87 others entitled to 10-point veterans' preference based on derived preference as the wife or mother of a permanently, totally disabled veteran, or widow or widower of a service member who died in a war or campaign-badge military action.

The Veterans Employment Opportunities Act (VEOA) authority for appointing honorably discharged veterans with 3 years military service and veterans and others entitled to veterans' preference accounts for 2,115, or 8.8%, of the total hires in CY 2007 to date.

Another 769 veterans, or 3.2% of the total hires, were hired under the excepted Veterans Recruitment Appointment (VRA) authority.

VA also appointed 37 disabled veterans under the non-competitive hiring authority for disabled veterans with 30% or higher service-connected disabilities.

##### *What percentage of your employees are veterans and or disabled vets?*

Non-preference veterans	16,336 = 6.5%
5-point veterans' preference (vp) eligible veterans	41,937 = 16.8%
10-point vp disabled veterans	1,790 = 0.7%
10-point vp compensably disabled veterans	6,196 = 2.5%
10-point vp 30%-up compensably disabled veterans	11,050 = 4.4%
<b>Grand total for combined 5 veteran categories above</b>	<b>77,309 = 31 %</b>

(VA Total Population 250,058)

##### *What percentage of your employees in GS 9 and above are veterans?*

VA has 95,547 employees at GS-9 and above, including 19,578 veterans or 20.5%. We note that many higher-level positions in VA require advanced degrees and professional certifications or registrations. Since VA does not have a comprehensive applicant count, the number of veterans who have applied for such professional positions is unknown. We can state that VA employs 67,070 physicians, dentists, chiropractors, nurse anesthetists, registered nurses, physician assistants and expanded function dental auxiliaries, and 10,458 or 15.6% of them are veterans.

**Prepared Statement of Ronald F. Chamrin,  
Assistant Director, Economic Commission, American Legion**

Madam Chairwoman and Members of the Subcommittee:

The American Legion commends the Subcommittee for addressing the important issue and value of veterans' preference in hiring.

Veterans' Preference is and must always be regarded as an earned privilege afforded to those veterans who have answered the call of duty and served their country in one of our Nations Armed Forces. It should not be categorized as an affirmative action program for veterans in order to become competitive and gain employment within the Federal Government.

The American Legion urges this Congress to take action and correct the current faults in the administering of veterans' preference in hiring. The veteran must be the ultimate benefactor of veterans' preference and regulatory laws as compared to the current systems limited post violation punishment of non-compliant actions by Federal agencies.

**Viewpoints on Veterans' Preference**

The American Legion supports the strongest veterans' preference laws possible at all levels of government and opposes any attempt to weaken such laws.

The American Legion opposes the outsourcing of all Federal Jobs held by veterans and disabled veterans without the protection of Reduction in Force policies and veterans' preference.

The American Legion strongly urges the strengthening of veterans' preference in Federal, state, and local government and opposes any efforts to reduce or circumvent veterans' preference.

The American Legion seeks to ensure that veterans receive employment preference from employers who receive grants and contracts from the Federal Government and employment preference from employers that receive funding on all Federally assisted projects.

The American Legion urges Congress to amend Public Law 101-509 to include age waivers or other means to allow those who have served honorably in the military as law enforcement officers to continue their professional careers in Federal law enforcement positions after retirement.

**STRENGTHENING THE ENFORCEMENT OF VETERANS' PREFERENCE**

The Office of Personnel Management (OPM), Department of Labor Veterans and Employment Training Service (DoL-VETS), and the Merit Systems Protection Board (MSPB) all have roles in veterans' preference but there is no clear enforcement of the regulatory authority within any of these agencies. There are no effective consequences for non-compliance or proactive regulation of veterans' preference and veterans hiring to ensure that veterans do indeed benefit from this earned benefit.

**OFFICE OF PERSONNEL AND MANAGEMENT (OPM)**

OPM testified to Congress that their role is Oversight and Accountability that entails audits and their corrective actions are limited. Because they delegated examining authority to Federal agencies, one of their main tools is an audit.

"As part of our oversight of human capital management responsibilities at OPM, we use an audit-based approach to ensure that competitive hiring practices used by Federal agencies comply with veterans' preference laws and merit system principles. Our audits cover all aspects of competitive examining, including the application of veterans' preference. We also annually conduct Human Resource Operations Audits that examine a number of agency human resources (HR) programs, including competitive examining and the use of veteran hiring authorities and practices."

OPM further states that their corrective actions are:

1. Direct an agency to give a veteran priority consideration for the next job vacancy for which he or she is qualified if OPM believes that veteran was denied preference previously.
2. If evidence is found that veterans' preference was knowingly denied, which is a prohibited personnel practice, the matter is referred to the Office of Special Counsel or the agency's Inspector General.
3. Withdrawal of an agency's delegated examining authority if systemic problems are found.



The American Legion notes that OPM does not state the extent and over reaching implications of their corrective actions. Referral to the Inspector General of the respective agency must be followed up with an assessment of the outcome of the IG's findings and the action taken to address the claim of denial. Unfortunately, there appears to be no mechanism in place apart from the appropriate Congressional Authorizing Committee and their influential legislative power to provide oversight.

Furthermore, if an agency must then refer to OPM for examinations it is unclear what insurances are afforded to veterans to regain their competitive advantage within that agency for hiring if OPM must take on the examining role. Any anti-veteran reprisal or culture must quickly be stopped.

#### **DOL-VETS**

DOL-VETS states that they are an investigatory body of veterans' preference laws and may refer cases to the Merit Systems Protection Board (MSPB) or the Department of Justice Office of Special Counsel (OSC). DOL-VETS has absolutely no enforcement, punishment, or regulatory authority over any agency regarding infractions or complaints of unjust application of veterans' preference. DoL-VETS can question and advise a Federal hiring division but the Federal agency is not mandated to follow this advice.

VETS testified to the Senate Committee on Homeland Security and Government Affairs on March 2006 on their veterans' preference actions the following:

"VETS is responsible for investigating and attempting to resolve Veterans' Preference complaints against Federal agencies filed under the Veterans Employment Opportunities Act (VEOA). The VEOA provides that a veteran or other preference eligible who believes that his or her rights under any law or regulation related to Veterans' Preference have been violated, may file a written complaint with VETS. We carry out our responsibility under the VEOA through the use of trained investigators in each of our state offices.

DOL-VETS investigatory authority is just that, an investigation, however hollow inquiries without the support of enforcing corrective actions when a fault is found is non-productive and does not help veterans to the full extent possible.

#### **The Merit Systems Protection Board (MSPB)**

The MSPB states:

"The relationship of the Special Counsel to the Board is like that of a prosecutor to a judge; the Special Counsel prosecutes cases before the Board. If, after an investigation, the Special Counsel determines that there are reasonable grounds to believe that a violation has occurred or may occur it may seek corrective actions."

However, the OSC refutes the responsibility of enforcing orders in Title V section 2302 in relation to veterans' preference. (See below)

While the MSPB serves as an independent, bipartisan guardian of the Federal Employees merit system they do not track or have research analysis of any veterans' preference cases and violations. The MSPB has further stated that they do not work with Federal agencies of which The American Legion finds unacceptable.

The MSPB has stated in testimony the following:

"The MSPB has not conducted any studies that systematically address the issue of agencies' adherence to veterans' preference. For this reason, we have no basis to form an opinion on how well other agencies are complying with veterans' preference requirements. Instead, adherence to veterans' preference is best determined on a case-by-case basis, and assessing overall agency adherence to veterans' preference requires an in-depth understanding of each agency's particular hiring practices and decisions."

MSPB's failure to conduct studies of veterans' preference is counterproductive to enforcing the law. The American Legion urges MSPB to study and track compliance with veterans' preference laws in hiring within the respective Federal agencies. Tracking by MSPB will not only serve to ensure that veterans' preference is indeed being implemented, but will also improve oversight of specific cases of denial of this benefit.

#### **The Department of Justice Office of Special Counsel (OSC) relation to veterans' preference**

If an agency fails to remedy a prohibited personnel practice upon request by the OSC, corrective action may also be obtained through litigation before the MSPB. Such litigation begins with the filing of a petition by the OSC, alleging that there are reasonable grounds to believe that a prohibited personnel practice has occurred,

exists, or is about to occur. Corrective actions that can be ordered by the MSPB include job restoration, reversal of suspensions and other adverse actions, reimbursement of attorney's fees, back pay, medical and other costs and damages.

The OSC testified to the Senate Committee on Homeland Security and Government Affairs on March 2006 that:

“OSC provides relief under Title 5 of the U.S. Code to veterans under our authority granted in the Civil Service Reform Act, also known as a prohibited personnel practices. section 2302 (b) (11) forbids managers from taking, or failing to take, a personnel action if it would violate a veteran's preference law. **However, for OSC purposes, the most significant change to title 5 is set forth in section 2302(e)(2), which states that the MSPB does not have authority to order corrective action for (b)(11) violations and, in turn, divests OSC of authority to seek corrective action for such violations. Hence, OSC's role with respect to allegations of violations of §2302(b)(11) is limited to seeking disciplinary action in appropriate cases.**”

“Title 5, United States Code, section 2302 (e) states that ‘no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11)’ [providing that violating veterans' preference requirements is a prohibited personnel practice].”

OSC continues to state:

“A person alleging a prohibited personnel practice under §2302(b)(11) may seek redress by filing a written complaint with the Secretary of Labor within 60 days of the alleged violation. Further, the veterans' preference laws require the Secretary of Labor to investigate the complaint and, upon determining that a violation occurred, to attempt to resolve the complaint by making reasonable efforts to ensure that the agency complies with the statute or regulation relating to veteran's preference. The task of investigating the complaint is delegated to Department of Labor's Veterans' Training and Employment Service (VETS). If VETS is unable to resolve a complaint within 60 days, it is to provide notification of an unsuccessful effort to resolve the complaint to the complainant. Upon receipt of a notification of an unsuccessful effort to resolve the complaint to the complainant, the complainant may elect to appeal the alleged violation to the MSPB.”

As stated earlier, the MSPB has not conducted any studies and has even stated that they do not work with Federal agencies. There is clearly a vacuum; there is no clear authority and proactive corrective measures or even actions taken.

The American Legion is deeply concerned with the protection of the veteran and the prevention of illegal and egregious hiring practices. Currently, veterans are filing claims after the non-compliance employment event occurred and therefore may become financially disadvantaged.

The American Legion asserts our position that protection of veterans' employment rights should be concurrent and continuous oversight must be emplaced to protect veterans from unfair hiring practices, not just reactionary investigations and lawsuits. We further state that the veteran must be protected at the onset of the hiring process, especially because a corrective action to remedy the veteran's plight is not guaranteed.

#### **Use of Multiple Certificates for a Single Position Weakens “Pass over” Rules**

Title 5, United States Code, section 3318(b) protects veterans' preference by requiring a special review process where an appointing authority proposes to *pass over* a preference eligible on a certificate in order to select “an individual who is not a preference eligible. “ In addition, certain disabled veterans' are provided notice and the opportunity to respond to the proposed *pass over*. (See 5 U.S.C. § 3318(b)(2).)

When this *pass over* law was passed, agencies prepared only a single certificate for each open position. However, over time agencies began to prepare separate certificates for each different hiring flexibility option that might be used to fill the position. Agencies began to fill a single position by choosing from among multiple certificates. The use of multiple certificates at the current time means that an appointing authority may *pass over* a preference eligible, at the top of one certificate, simply by choosing from another certificate drawn from a hiring authority that does not require application of veterans' preference. This weakens veterans' preference and renders impotent the important section 3318 protections against *pass overs*.

The National Security Personnel System (NSPS) should incorporate important pass over protections into its system. Additionally, the NSPS should not allow the creation of multiple certificates or lists for a single position.

#### **Lack of Hierarchy in Appointment Methods**

A number of hiring flexibility options are available under the current Federal hiring system. If hiring authorities that do not apply veterans' preference continue to exist, The American Legion believes that appointment methods requiring application of veterans' preference should explicitly be favored over other methods and top the hierarchy of appointment methods. The NSPS should only be able to resort to a lower hiring flexibility in limited cases when there is an absolute necessity.

### **RECOMMENDATIONS**

#### **TAP recruitment**

The Federal Government should heavily recruit transitioning service members because they are qualified and they have at least a 5-point veterans' preference if honorably discharged. Hiring agencies can easily use the Veteran Recruitment Authority (VRA) to hire veterans. OPM regulations state that this can be applied to:

- Veterans who served on active duty in the Armed Forces during a war declared by Congress, or in a campaign or expedition for which a campaign badge has been authorized;
- Veterans who, while serving on active duty in the Armed Forces, participated in a military operation for which the Armed Forces Service Medal was awarded; and
- Veterans separated from active duty within 3 years

Hundreds of thousands of recently discharged veterans have been awarded medals for their service to defend our country that make them eligible to receive a VRA appointment. These veterans have skills such as an accelerated learning curve, leadership, teamwork, diversity and inclusion in action, efficient performance under pressure, respect for procedures, technology and globalization, integrity, conscious of health and safety standards, and the ability to triumph over adversity.

Executive Order 13289 established the Global War on Terrorism Service Medal and the Global War on Terrorism Expeditionary Medal that is awarded for anti-terrorism operations around the world. (Federal Register Vol. 68, No. 50 Friday, March 14, 2003) The Department of Defense can provide more detailed information about the requirements of such awards and the number of veterans receiving these awards.

#### **Veterans Employment Opportunities Act VEOA 1998**

The American Legion recommends omitting the "knowingly" portion of the VEOA. The wording of knowingly allows for an agency to unintentionally, or in some cases, neglectfully, not apply veterans' preference. We believe that the word "knowingly" be stricken so that the law will have the mandatory effect of enforcing veterans' preference laws. I.e. The law is now in place and even if an agency inadvertently was prejudice against a veteran they failed to adhere to the law.

"The Veterans Employment Opportunities Act 1998 law gives veterans *access* to Federal job opportunities that might otherwise be closed to them. The law requires that:

"The law also establishes a redress system for preference eligibles and makes it a prohibited personnel practice for an agency to **knowingly** take or fail to take a personnel action if that action or failure to act would violate a statutory or regulatory veterans' preference requirement." (DoL-VETS)

Clearly, omitting the verbiage "knowingly" would place lawful prohibition to offenders even for negligence and inattentiveness of veterans' preference.

#### **Disabled Veterans Affirmative Action Program (DVAAP) should be renamed to the "Warrior Recruitment Act"**

OPM states that most departments and agencies in the Federal Government are required to have an affirmative action program for the recruitment, employment, and advancement of disabled veterans. The law requires agencies to develop annual Disabled Veterans Affirmative Action Program (DVAAP) Plans. Each year, agencies must submit DVAAP accomplishment reports to OPM. The accomplishment reports must describe agency efforts to promote the maximum employment and job advancement opportunities for disabled veterans as well as certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and ad-

vancement. As part of their submission package, each agency must include a signed statement certifying that the agency has an up-to-date DVAAP plan.

By amending the DVAAP to “Warrior Recruitment Act”, the lexicon will be harmonious with the current labeling of troops of today’s military. Removal of the term disabled will assist in eliminating unwanted, negative stereotypes and replace it with a confident, capable, proven, dedicated, and disciplined individual.

Furthermore, veterans are not an affirmative action group, do not view themselves as one, and have not requested affirmative action. They are our Nation’s heroes who have unfortunately been injured while performing duties of our country and should be given every opportunity to contribute and thrive in our society.

**Accountability for actions—P.I.P. report (project improvement plans)**

A report from each Federal agency to Congress, specifically, the authorizing Committees of each Federal department, would mandate that each Federal agency have a plan to implement best hiring practices, methodology, and accountability for veterans hiring. If the targets of hiring veterans are met then the mechanics of how these goals were met needs to be shared. If veteran hiring targets are not met, then a plan must be immediately enacted to fix the situation to ensure that they are met. Positive reports will be visible and positive productions for the Federal agencies that meet these goals.

**Mandatory training of Veteran Preference laws with competency based tests**

The Human Resources (HR) personnel and hiring decisionmakers of all Federal agencies should be required to go through performance evaluations on veteran hiring to ensure that each HR and decisionmaker is competent in applying veterans’ preference. The current system, administered by OPM, consists of a tutorial class where simply checking a block to verify that an individual knows veterans’ preference laws is acceptable. The recurring occurrence of knowing veterans’ preference laws, in contrast to applying veterans’ preference laws, will be alleviated.

**A report and the implementation on the 30% hiring authority of all federal agencies**

Each agency should be able to report their scoring mechanism through internal oversight. The scoring mechanism should be uniform throughout the agency and for each position of employment. Because a report is required, this should uncover any inconsistencies within the agencies and force them to “self reflect” and correct inequities in the hiring practices.

**Notification letter of a selection of another applicant or a denial of appointment to a veteran must include why they were not selected for the position**

A veteran deserves to receive notification that their application was received, reviewed, the score that they were awarded, and if denied the reasons why they were denied for the position. By enacting procedural requirements, agencies will also be forced to either revise their job descriptions to synchronize with the denial letter and therefore ensure that if the veteran is denied, it is because they are not qualified or, educate and encourage veterans to improve their skills to meet the requirements for certain positions and therefore strengthening the applicant pool.

This letter can be very similar to the Veterans Claims Assistance Act of 2000 (VCAA) notice in VA compensation and pension claims. These duties would include the duty to notify a applicant of any information necessary to complete an application; the duty to notify the applicant of any information that is necessary to substantiate the application; the duty to notify the applicant of which information the applicant must provide and which portion the agency will attempt to obtain, and the duty to notify the applicant of their score and the relationship to the other candidates.

**U.S. Postal Service is contracting jobs out and no longer applying veterans’ preference (A-76)**

The longstanding policy of the Federal Government has been to rely on the private sector for needed commercial services. To ensure that the American people receive maximum value for their tax dollars, commercial activities should be subject to the forces of competition.

This circular from the Office of Management and Budget has inadvertently allowed for the Postal Service to contract many of their jobs of which do not apply veterans’ preference. The contractors are gouging the labor market by lowering the salaries and standards and therefore are awarded bids by being a low bidder. Because of this, they are hiring whomever they want at a low rate however; there have

been trends of these same contractors are negotiating larger payments in sequential years. Another problem arises because the government has paid to train postal employees and then pays again to a contractor to train more employees thereby doubling the number of qualified specialists. Finally, once the contractor is established they hire the prior postal employees at lower salaries than they previously made. The American Legion reiterates the opposition to outsourcing of all Federal Jobs held by veterans and disabled veterans without the protection of Reduction in Force policies and veterans' preference.

The American Legion seeks to ensure that veterans receive employment preference from employers who receive grants and contracts from the Federal Government and employment preference from employers that receive funding on all Federally assisted projects.

**The 10-Point Derived Preference (XP) must have a better outreach, visibility, and use by Federal agencies**

OPM regulations allow for "Ten points to be added to the **passing** examination score or rating of spouses, widows, widowers, or mothers of veterans meeting certain requirements. This type of preference is usually referred to as "derived preference" because it is based on service of a veteran who is not able to use the preference."

"Both a mother and a spouse (including widow or widower) may be entitled to preference on the basis of the same veteran's service if they both meet the requirements. However, neither may receive preference if the veteran is living **and** is qualified for Federal employment."

The American Legion is concerned for the family members of veterans; the 10 point derived preference should be briefed to family members at Military Treatment Facilities, TAP sites, family support groups, and within each agencies HR division. Recipients of this preference should be actively sought to gain employment with the Federal Government.

**Enforcement mechanism to hold human resource managers accountable for not applying veterans' preference in appointments to the NSPS should be added to NSPS regulations**

There is a definite need for the creation of disciplinary action under 5 U.S.C. § 1215 or a similar statute, should a violation of a veterans' preference prohibited personnel practice occur in the NSPS. Such disciplinary action is available for violations of other prohibited personnel practices.

The NSPS regulations should also establish an Office of Veterans' Preference Compliance in order to ensure an ongoing, vigilant review of NSPS hiring and RIFs with regard to veterans' preference. The Office of Veterans' Preference Compliance within NSPS should have the power to investigate and prosecute violations of veterans' preference so that there is prompt, appropriate corrective action, such as hiring or other actions, to make a veteran "whole" again.

**CONCLUSION**

There have been estimates that approximately 60% of the workforce will retire by 2020 and these people must be replaced by competent, educated, and capable individuals in order to assure the United States competitive edge in the world. The veterans of this nation make up a well-qualified disciplined pool of applicants. Veterans' Preference laws must be strengthened and enforced to ensure that veterans seeking employment are given their due consideration in hiring.

The American Legion appreciates the opportunity to present this statement for the record.

National Association of Postal Supervisors  
Alexandria, VA, 22314  
*September 4, 2007*

Hon. Chairman Stephanie Herseth Sandlin  
Committee on Veterans' Affairs  
Subcommittee on Economic Opportunity  
House of Representatives  
Washington, DC 20515

Dear Chairman Herseth Sandlin and Members of the Subcommittee:

On behalf of the National Association of Postal Supervisors, I am pleased to submit this statement in connection with the Subcommittee's hearing on veterans' preference.

The National Association of Postal Supervisors represents the interests of postal supervisors, managers and postmasters employed by the United States Postal Service. Throughout its 99-year history as a management association, the Association has sought to improve the operations of the Postal Service and the compensation and working conditions of postal management employees. Many of our nearly 35,000 members are involved in the management and supervision of mail processing and delivery operations. We also represent the interests of men and women engaged in every functional unit in the Postal Service, including customer service, marketing, human resources, training, corporate relations, law enforcement, and health and safety.

Significantly large numbers of veterans are employed by the United States Postal Service. As of December 31, 2006, approximately 180,000 military veterans were employed by the Postal Service, accounting for over one-quarter of its workforce. Of these, nearly 17,000 veterans' preference eligibles were employed by the Postal Service in management and supervisory positions.

The National Association of Postal Supervisors is filing this statement to bring to the Subcommittee's attention our strong opposition and concern over the Postal Service's establishment of personnel rules that violate the spirit of veterans' preference protections of postal managers and supervisors. We commend and thank you once again, Chairman Herseth Sandlin, for your initiative in responding to the Postal Service's arbitrary actions by introducing the "Veterans Reassignment Protection Act," H.R. 728, to ensure that veterans' preference rights are recognized and applied by the Postal Service and all executive branch organizations in the course of reorganizations or transfers of function.

The violative Postal Service rules arise against the backdrop of initial downsizing efforts undertaken by the Postal Service, involving the closure and consolidation of mail processing and distribution plants and other facilities. The number and breadth of these postal downsizing actions is expected to grow considerably over the next several years as the Postal Service proceeds more aggressively to cut costs. The Postal Service has euphemistically labeled its violative rules "repositioning rules" to putatively authorize its involuntary reassignment of managers and supervisors to new locations, potentially far from their homes—without regard to their protected status as veterans' preference-covered employees. These rules blatantly undermine the spirit of veterans' preference laws because they abridge the rights of veterans' preference eligibles under reduction-in-force actions and the preferred status that veterans enjoy in connection with bumping and appeal rights under a reduction-in-force. "Repositioning" by the Postal Service embodies so many of the same characteristics as a reduction in force that, regardless of its name, it virtually constitutes a reduction in force, requiring the Postal Service to uphold the statutory application of veterans' preference rights to postal managers and supervisors.

The Postal Service has initially limited the application of its repositioning rules to management employees, not to union-covered employees, due to limitations on USPS latitude to institute reductions-in-force against employees covered by collective bargaining agreements. Nonetheless, nearly 17,000 preference eligible managers and supervisors within the Postal Service are covered by the rules, a significant number. Moreover, substantially greater numbers of preference eligible employees are employed throughout the executive branch, and could become subject to similar arbitrary actions by their departments and agencies were those entities to pursue the same policies as have been adopted by the Postal Service. If Federal agencies like the Postal Service are permitted to engage in RIF-avoidance as carried out under the repositioning rules, they will significantly disregard and critically undermine the respect to which veterans' status historically has been accorded.

Congress should step in and forestall such actions and put an end to such personnel abuses through passage of The "Veterans Reassignment Protection Act," H.R. 728, to amend the veterans' preference statutes to ensure that veterans' preference rights are applied in the course of reorganizations or transfers of function.

Thank you for your hearing on veterans' preference and your continued leadership in support of these concerns.

Sincerely yours,

TED KEATING  
National President

Committee on Veterans' Affairs  
 Subcommittee on Economic Opportunity  
 Washington, DC.  
*September 17, 2007*

Hon. Neil A. G. McPhie,  
 Chairman,  
 U.S. Merit System Protection Board,  
 1800 Diagonal Rd., Suite 205,  
 Alexandria, VA 22314

Dear Mr. McPhie:

In reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on Veterans' Preference on September 6, 2007, I would appreciate it if you could answer the enclosed hearing questions by the close of business on October 17, 2007. In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

STEPHANIE HERSETH SANDLIN  
*Chairwoman*

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U.S. Merit Systems Protection Board  
 Office of the Chairman  
 Alexandria, VA.

Hon. Stephanie Herseth Sandlin, Chairwoman  
 U.S. House of Representatives  
 Committee on Veterans' Affairs  
 Subcommittee on Economic Opportunity  
 336 Cannon House Office Building  
 Washington, DC 20515

It was an honor to testify before your Subcommittee on September 6, 2007 regarding veterans' preference issues. As a follow-up to those proceedings, you requested that I respond to several post-hearing questions. The responses to those questions are enclosed. You will note a significant difference between the number of USERRA claims that were filed in 2006 and 2007. I believe that this variance stems from a temporary spike in the number of cases that were filed which involved the type of military leave issues that were addressed in the Federal Circuit's decision in *Butterbaugh v. Justice*, 336 F.3d 1332 (Fed. Cir. 2003) wherein the Court held that agencies are not entitled to charge military leave for days when employees would not otherwise have been required to work. It is likely, that by 2007, agencies ceased the practice and the number of claims decreased accordingly. While the numbers decreased sharply in 2007, I believe that the Board will experience a gradual increase in the number of USERRA claims due to the high number of veterans who will be returning to the civilian workforce following service in the Iraq and Afghan wars.

I hope that the information I provided during the hearing and in the enclosed documents will be helpful to you and the other members of the Subcommittee.

Sincerely,

NEIL A. G. MCPHIE

**Hearing before the  
House Committee on Veterans' Affairs  
Subcommittee on Economic Opportunity  
Veterans' Preference in Federal Employment  
Held on September 6, 2007  
Responses to Post-Hearing Questions**

**Question #1.** Could you provide any reasons that you believe can be documented or backed up with some evidence as to why the U.S. Department of Defense is responsible to 86 percent of all of the hires under Veterans Employment Opportunities Act selections, as you stated in your written testimony? Why are the other agencies so low?

**Response:** I do not have any evidence to explain the high rate of employment of veterans by the Department of Defense or the comparatively low rate of employment of veterans in other agencies. My hearing testimony was intended to report the findings included in one of the studies conducted by the Merit Systems Protection Board which just looked at the numbers of veterans employed. The study did not examine the reasons underlying those staffing levels. The report of this study has not yet been released. As soon as we have set a date for the release of the report, Rosalyn Wilcots, MSPB's legislative counsel, will advise your subcommittee staff. Of course, we will send a copy of the report to the subcommittee when it is published. There are no other studies addressing veterans' issues planned at this time.

**Question #2.** How many appeals did you receive in 2006 and this year for USERRA? How many were resolved in favor of the veteran?

**Response:** The Merit Systems Protection Board received 953 USERRA appeals in calendar year 2006. Out of those appeals, relief was granted in 15 cases and an additional 396 cases were resolved by execution of settlement agreements. Through September 2007, the Merit Systems Protection Board received 352 USERRA appeals. Out of those appeals, relief was granted in 2 cases and settlements were achieved in an additional 137 cases.<sup>1</sup>

**Question #3.** How many VEOA appeals did you have last year and how many were resolved in favor of veterans?

**Response:** The Merit Systems Protection Board received 92 VEOA appeals in 2006. Out of those appeals, relief was granted in 5 cases and an additional 12 cases were resolved by execution of settlement agreements. In 2007, the Merit Systems Protection Board received 90 VEOA appeals. Out of those appeals, relief was granted in 1 case and settlements were achieved in an additional 4 cases.

**Question #4.** The Subcommittee Members would like the United States Merit Systems Protection Board to provide data on veterans and what agencies receive the most VEOA complaints.

**Response:** Please see the chart.

**Number of VEOA Complaints Against Each Agency**

Agency	Number of Complaints Calendar Year 2006	Calendar Year 2007
DEPT. OF VETERANS AFFAIRS	15	17
UNITED STATES POSTAL SERVICE	15	14
DEPT. OF THE ARMY	11	15
DEPT. OF HOMELAND SECURITY	8	8
DEPT. OF THE AIR FORCE	9	2

<sup>1</sup> The Subcommittee will find a significant difference between the number of USERRA claims that were filed in 2006 and 2007. This variance likely stems from a temporary spike in the number of cases that were filed which involved the type of military leave issues that were addressed in the Federal Circuit's decision in *Butterbaugh v. Justice*, 336 F.3d 1332 (Fed. Cir. 2003) wherein the Court held that agencies are not entitled to charge military leave for days when employees would not otherwise have been required to work. It is likely, that by 2007, agencies ceased the practice and the number of claims decreased accordingly. While the numbers decreased sharply in 2007, I believe that the Board will experience a gradual increase over time in the number of USERRA claims due to the high number of veterans who will be returning to the civilian workforce following service in the Iraq and Afghan wars.



## Number of VEOA Complaints Against Each Agency—Continued

Agency	Number of Complaints Calendar Year 2006	Calendar Year 2007
DEPT. OF LABOR	4	4
DEPT. OF THE NAVY	3	5
DEPT. OF HHS	2	5
DEPT. OF THE INTERIOR	4	1
DEPT. OF TRANSPORTATION	3	1
DEPT. OF DEFENSE	3	0
GSA	2	2
DEPT. OF STATE	2	0
PENSION BENEFIT GUARANTY CORP	1	0
HUD	1	0
DEPT. OF COMMERCE	1	1
DEPT. OF ENERGY	1	0
NASA	1	2
PEACE CORPS	1	2
DEPT. OF THE TREASURY	1	1
OPM	0	2
THE WORLD BANK <sup>2</sup>	0	1
EPA	0	1
SMALL BUSINESS ADMINISTRATION	0	1
SOCIAL SECURITY ADMINISTRATION	1	1

<sup>2</sup>In a recent opinion and order, the Merit Systems Protection Board found that the World Bank is not an agency within the U.S. Government; rather, it is an international organization. *Sedgwick v. The World Bank*, 106 M.S.P.R. 662 (October 4, 2007), *on appeal*, Fed. Cir. No. 2008-3044.

Committee on Veterans' Affairs  
Subcommittee on Economic Opportunity  
Washington, DC.  
*September 17, 2007*

Hon. Patricia S. Bradshaw  
Deputy Under Secretary of  
Defense for Civilian Personnel Policy  
U.S. Department of Defense  
1300 Defense Pentagon  
Washington, DC 20301

Dear Ms. Bradshaw:

In reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on Veterans' Preference on September 6, 2007, I would appreciate it if you could answer the enclosed hearing questions by the close of business on October 17, 2007.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

STEPHANIE HERSETH SANDLIN  
*Chairwoman*

**Hearing Date: August 06, 2007**

**Committee: HVA**

**Member: Congressman Herseth**

**Witness: Ms. Bradshaw**

*Air Force Audit Agency Hiring Process*

**Question #1:** Chairwoman Herseth Sandlin requests the U.S. Department of Defense to look at Air Force Audit Agency hiring process with veterans.

**Answer:** The Air Force Audit Agency (AFAA) uses three primary methods for hiring new personnel. Regardless of the method, selections must comply with Veterans' Preference laws which do not allow selection of a non-preference candidate ranked lower than a candidate with a 5-point or 10-point veteran's preference. The AFAA (like nearly all Air Force activities in the National Capital Region) is serviced by the Air Force District of Washington civilian personnel office. An external servicing arrangement such as this provides additional oversight to ensure hiring and personnel laws are properly followed.

The primary hiring methods are listed below:

- a. The Student Career Education Program (SCEP) is similar to a Co-Op program. The AFAA hires student auditors to work part-time while attending school. The students primarily come from local universities where the AFAA activity is located. Upon graduation and with management agreement, the SCEP employees are offered full-time positions with the AFAA.
- b. The Federal Career Intern Program (FCIP) is designed to help agencies recruit and attract exceptional individuals into a variety of occupations. Created under Executive Order 13162, the program is intended for entry-level positions (General Schedule 5-9). In general, individuals are appointed to a 2-year internship. Upon successful completion, interns may be eligible for permanent placement with an agency. The AFAA uses this program for college recruiting. AFAA recruiter training emphasizes the hiring of disabled veterans.
- c. The third primary hiring method is through job announcements which are posted on the Office of Personnel Management USAJOBS website. Positions are announced either through the Air Force District of Washington Delegated Examining Unit or the Air Force Personnel Center. After the announcement is closed, one of these two personnel offices provides the AFAA with a certificate from which a selection is to be made. These two non-AFAA offices ensure compliance with Veteran's Preference laws.

AFAA management is taking proactive steps to implement the Disabled Veterans Affirmative Action Program (DVAAP) in their organization.

The Air Force Fiscal Year 2007 DVAAP Plan established a program representation goal of 8.7 percent for disabled veterans. Like most other Air Force organizations, the AFAA adopted the Air Force plan. To increase awareness and emphasis, the Air Force Auditor General issued a memorandum to all AFAA personnel indicating the need to do more in recruiting disabled veterans. From October 2006 to June 2007, the Auditor General held six meetings to enhance DVAAP within AFAA. The AFAA invited Headquarters United States Air Force personnel to the meetings to assist in these enhancement efforts. In the last 2 years, AFAA hired three individuals who were 30 percent or more disabled veterans, with the most recent hired in June 2007. Further, the AFAA has recently taken additional initiatives such as:

- a. Two job announcements for Dover (Delaware) and McGuire (New Jersey) Air Force Bases are posted on USAJOBS and close on October 19, 2007. These job announcements are open to Veterans Employment Opportunity Act 1988 (VEOA) and 30 percent Disabled Veteran eligible. The AFAA is notifying their Veterans Affairs (VA) contacts to get the word out. The AFAA also accessed the United States Army Wounded Warrior website and posted the announcements on this site as well.
- b. The AFAA has also received approval to conduct Federal Career Intern Program events at VA centers. The AFAA is determining how to best perform these FCIP events to reach disabled veteran accounting students.

A review of the AFAA DVAAP indicates that at the end of FY 2006 the AFAA workforce had a disabled veteran representation of 5.6 percent. As of August 31, 2007, the AFAA disabled veteran representation increased to 6.3 percent. While still below the Air Force goal, the AFAA has made progress over the last 11 months and continues to be committed to outreach and hiring of our Disabled Veterans.

#### **Veteran E-mail Questions**

**Question#2:** In your written testimony you mentioned that veterans can send questions via e-mail and there would be a respond [sic] within 48 hours. What type of questions are most often asked?

**Answer:** The Civilian Personnel Management Service receives questions from veterans and their spouses via an applicant assistance e-mail address, daao@cpms.osd.mil and toll free telephone calls to its 888-DoD4USA (1-888-363-4872) telephone number.

Typical questions asked by veterans are:

- What government employment opportunities are available following exit or anticipated exit from the military?
  - As a recently separated veteran, what can I do?
  - How soon can I start applying for government positions?
  - What can I do for the government using my military skills? How does veteran's preference help when applying for government jobs?
  - What assistance can you provide to a disabled veteran looking for employment with the Department of Defense?
1. How would I find a list of available jobs on a post near where I live, and how would I apply for those jobs?
  1. Where do I find the necessary forms to apply for a job?

Veterans also ask various questions about disability ratings, programs, veteran's preference, GI Bill, and so forth.

#### **Hiring Heroes**

**Question #3:** How many veterans have been hired by DoD due to the hiring Heroes career fair?

**Answer:** It is hard to pinpoint an exact number of offers because it can take up to a year or more after the career fair for a service member to complete their surgeries, physical therapy, separate from the service and begin in a new job. We have been experimenting with various approaches for determining career fair results; however, accurately tracking the number of placements remains a challenge.

Currently, we track career fair results through both a survey of recruiters during the event and follow up with attendees. Below is a listing of offers made during recent career fairs as identified through our same day recruiter's survey: Fort Dix, 53; Fort Sam Houston, 81; Walter Reed, 39; and San Diego, 50.

Since injured service members may not be ready for employment immediately following a career fair, we have recently begun using follow up e-mail to track hires that may occur months after the event. Information from this approach shows that as of June 2007, 19 service members or their spouses were offered employment opportunities within DoD and private sector organizations following Hiring Heroes Career Fairs. Of those, eleven veterans and one spouse accepted jobs, three veterans are awaiting job offers following interviews, and six veterans declined employment offers.

Agencies/organizations that have hired our injured service members include the Department of Army, Department of Navy, Defense Finance and Accounting Service, Defense Contract Management Agency, Defense Logistics Agency, Northrop Grumman, United Services Automobile Association, CACI, Incorporated, Arrowpoint Company, Bank of America, Western States Fire Protection Company, Wackenhut, Incorporated, Cummings Diesel Company, and Brake Check.

Committee on Veterans' Affairs  
 Subcommittee on Economic Opportunity  
 Washington, DC.  
 September 17, 2007

Hon. Boyd K. Rutherford  
 Assistant Secretary for Administration  
 U.S. Department of Agriculture  
 1400 Independence Ave., S.W.  
 Washington, DC 20250

Dear Mr. Rutherford:

In reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on Veterans' Preference on September 6, 2007, I would appreciate it if you could answer the enclosed hearing questions by the close of business on October 17, 2007.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

STEPHANIE HERSETH SANDLIN  
 Chairwoman

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**Questions for the Record from the House Committee on Veterans' Affairs  
 Subcommittee on Economic Opportunity  
 USDA Witness: Boyd K. Rutherford  
 Assistant Secretary for Departmental Administration  
 Hearing on Veterans' Preference  
 September 6, 2007**

**1. How successful has the USDA been in recruiting veterans by sharing vacancy announcements with the American Legion and the Veterans of Foreign Wars? How long has this cooperation been underway?**

USDA posts all vacancy announcements on the USAJobs link, which is prominently displayed on the Office of Personnel Management website and widely known throughout the country amongst job seekers, including veterans. Most USDA agencies do not routinely send copies of their vacancy announcements to the American Legion and Veterans of Foreign Wars organizations; however, some local offices have engaged in this process. Applicant data indicates that there are an ample number of veterans applying for jobs with USDA agencies. For example, between July 1, 2006, and June 30, 2007, USDA delegated examining units reported that there were qualified veterans on 1,324 (57%) candidate certificates for the 2,306 positions advertised by these units during that period.

**2. How many veterans are in the Senior Executive Service?**

As of September 11, 2007, there were 141 veterans in USDA Senior Executive Service positions, out of a total of 402 USDA senior executives.

**3. How many veterans' preference hires did the Department of Agriculture make in the past three years?**

Between January 2005 and 2007, USDA selected 2, 318 veterans to fill positions at USDA

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Committee on Veterans' Affairs  
 Subcommittee on Economic Opportunity  
 Washington, DC.  
 September 17, 2007

Anita R. Hanson  
 Outreach Group Manager  
 U.S. Office of Personnel Management  
 1900 E. Street, N.W.  
 Washington, DC 20415

Dear Ms. Hanson:

In reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on Veterans' Preference on September 6, 2007, I would appreciate it if you could answer the enclosed hearing questions by the close of business on October 17, 2007.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

STEPHANIE HERSETH SANDLIN  
*Chairwoman*

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**Questions from House Committee on Veterans' Affairs  
 Subcommittee on Economic Opportunity  
 Hearing on Veterans' Preference  
 September 6, 2007**

**1. OPM is charged with conducting the periodic systemic reviews of agency hiring oversight practices, which include audits. Please provide us with the results from your 2006 and 2005 visits with the Air Force Audit Agency and the Air Force?**

OPM did conduct an audit of the Air Force in Fiscal Year (FY) 2005, but did not conduct an audit of the Air Force Audit Agency in FY 2005 or 2006. On September 10, 2007, OPM received an email from Mr. Tadsen requesting a copy of the audit report referenced at the hearing. OPM contacted Mr. Tadsen on October 1, 2007 and upon learning the report did not contain information specific to the Air Force Audit Agency, he withdrew his request. Additionally, OPM referred Mr. Tadsen to Mr. James Carlock, Affirmative Employment and Special Employment Program Manager for the Department of the Air Force and the individual who certified the FY 2006 Disabled Veterans Affirmative Action Program (DVAAP) plan to obtain information on the questions related to the DVAAP requirements under the law and whether the Air Force Audit Agency plan met those requirements.

OPM's FY 2005 review of Air Force found most human resources systems operating in accordance with merit system principles and the standards set fourth in civil service laws, rules, and regulations. OPM's FY 2005 audit report of Air Force contained the following required actions to bring practices into compliance with OPM regulations.

**REQUIRED ACTIONS:**

**Talent**

In making veterans recruitment appointments, provide for consideration of all available eligibles, beyond the individual name requested, and that this consideration is consistent with provisions of 5 CFR 302, including level of veterans' preference. Establish and implement procedures to ensure provisions of 5 CFR 302 are followed. (*5 CFR 302*)

**Results-Oriented Performance Culture**

In the redesign of the position descriptions and the performance management program under the National Security Personnel System (NSPS), ensure that the per-

formance plans are strategically aligned, based on work assignments and responsibilities, and results-oriented. (5 CFR 430.206 (b)(3))

Implementation of NSPS notwithstanding, ensure that the performance plans are based on work assignments and responsibilities; i.e., that the number of critical duties in the core personnel documents (position description, performance plan, evaluations, and so forth.) matches the number of critical elements on Air Force Form 860A for all employees. (5 CFR 430.206(b)(3))

Ensure that performance plans are communicated to employees at the beginning of each appraisal period. (5 CFR 430.206 (b) (2) and AFI 36-1001)

Ensure that progress performance appraisals are completed. (5 CFR 430.207 (b))  
Ensure all employees receive their performance appraisals within a reasonable length of time after the end of the appraisal period, such as 30 days. (5 CFR 430.208 (a) and AFI 36-1001)

Evaluate the performance appraisal systems and performance programs. (5 CFR 430.209(d))

Evaluate the effectiveness of the United States Air Force awards programs. (5 CFR 451.106(d))

Ensure that SF-fifties processed for time-off awards are properly documented with the required standard remarks. (5 CFR 451.106 (e) and OPM's *The Guide to Processing Personnel Actions*)

#### **Leadership/Knowledge Management**

Evaluate training to determine how well it meets short- and long-term program needs by occupations, organization, or other appropriate group. (5 CFR 410.601)

#### **Accountability**

Establish and maintain a system of accountability for merit system principles that sets standards for applying merit system principles, measures effectiveness in meeting these standards, and corrects any deficiencies in meeting these standards. (5 CFR 10.2)

**NOTE:** OPM is charged with the statutory responsibility for establishing and maintaining an oversight program of the Federal personnel system. One way OPM has met this responsibility is to conduct periodic audits. (USC 1104 (b)(2): The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.)

#### **2. How often does each Federal agency get a periodic review from OPM?**

OPM has been on a 4-year cycle for conducting oversight reviews of Federal (executive branch) agencies. (However, with OPM's initiative to Strengthen Agency Accountability systems, which was started in FY 2006 and implemented in FY 2007, OPM has accompanied agencies that have an OPM-approved accountability system [including the Department of Defense] on internal audits agencies lead on a regular basis, in accordance with the agency schedule. Since all President's Management Council (PMC) agencies have an OPM-approved accountability system, there are currently no large agencies on OPM's review schedule for the coming Fiscal Years.)

#### **3. What does a periodic systemic review entail?**

A periodic systemic review entails a human resources operations audit and a delegated examining audit which focus on adherence to merit system principles and civil service laws, rules, and regulations, helping agencies improve their human capital management and supporting the human capital management transformation initiative.

In conducting these reviews, we gather information in advance of the on-site audit, conduct onsite fact-finding to include interviews with managers, supervisors, employees and human resources officials, reviews of policies procedures, program assessments, audits of a sample of personnel actions and supporting documentation, and other fact-finding activities intended to assess and determine whether an agency/installation is in compliance with merit system principles and supporting Federal personnel laws, rules, regulations, and Executive Orders.

At the conclusion of our audits, we issue written reports of our findings which are used by agencies to correct or improve their operations. When we have required actions, we follow up to ensure the agency carries out these required actions.

#### **4. How often do agencies cancel a vacancy announcement after receiving applications for the position?**

OPM does not collect information on how often agencies cancel vacancy announcements after receiving applications for a position.

#### **5. How many audits did OPM conduct last year of agency delegated examining units (DEU)?**

In FY 2006, OPM conducted, or participated on agency-led audits of agency DEUs, in 141 DEU audits. These 141 audits consisted of 109 OPM-led audits of agency DEUs, and OPM participation on 32 DEU audits led by agencies reviewing their own DEUs.

**6. When was OPM's last audit of the Air Force and was OPM satisfied with the results?**

OPM's last audit of the Air Force was in the fourth quarter of FY 2005. OPM's overall report of the Air Force included 11 required actions (see response to Question 1 above). In addition, OPM found many individual cases that needed corrective action from our audit at the Air Force Personnel Center, which processes most of the personnel actions in Air Force. The Air Force Personnel Center has complied with most of the case corrections, and only a few remain to be completed.

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Committee on Veterans' Affairs  
Subcommittee on Economic Opportunity  
Washington, DC.  
*September 17, 2007*

Willie Hensley  
Deputy Assistant Secretary  
Human Resources Management  
U.S. Department of Veterans Affairs  
810 Vermont Ave. NW  
Washington, DC 20240

Dear Mr. Hensley:

In reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on Veterans' Preference on September 6, 2007, I would appreciate it if you could answer the enclosed hearing questions by the close of business on October 17, 2007.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

STEPHANIE HERSETH SANDLIN  
*Chairwoman*

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**Questions for the Record**  
**The Honorable Stephanie Herseth Sandlin Chairwoman**  
**Subcommittee on Economic Opportunity**  
**House Committee on Veterans' Affairs**  
**September 6, 2007**  
**Veterans' Preference**

**Question 1:** Have any Federal agencies, such as the Department of Health and Human Service, Department of Education, Department of Treasury, Department of Agriculture, approached the VA for formal assistance in implementing veterans' preference?

**Response:** Since establishing the Department of Veterans Affairs (VA) National Veterans Employment Program (NVEP) in 2001, VA has hosted several briefings for Federal agencies seeking information on best practices to hire veterans. Most recently, the Federal Aviation Administration sought VA's assistance in helping to develop their veteran employment program, using VA's program as their model. VA continues to provide assistance to any agency expressing an interest in increasing their veteran workforce or establishing programs similar to NVEP. Agencies briefed or assisted with veterans outreach efforts include:

- Department of Commerce
- Department of Energy

- Department of Treasury
- Department of Homeland Security (U.S. Secret Service)
- Defense Logistics Agency
- Social Security Administration
- U.S. Army (Training and Doctrine Command)

Federal agencies who have contacted VA indicating an interest in partnering under VA's "Coming Home to Work Program" are:

- Department of Defense
  - Operation Warfighter\*
- Department of State
- Department of Housing and Urban Development
- Federal Aviation Administration
- Department of Commerce
- Department of Energy

\*DoD's Operation Warfighter program was developed using VA's "Coming Home to Work Program" as the model and now expands volunteer work assignments for wounded service members to any Federal agency with the desire to participate in their program.

**Question 2:** In regards to the "Coming Home to Work Program," what eight facilities are using this program?

**Response:** The national deployment of the "Coming Home to Work Program" occurred during 2006. The program is currently being managed through VA's Office of Vocational Rehabilitation under the Veterans Benefits Administration. VA's Regional Office in Washington, DC, assumed responsibility of providing services to injured service members from Walter Reed Army Medical Center and the National Naval Medical Center in Bethesda, Maryland. These services were formerly provided by VA Headquarters, Six other VA Regional Offices began providing services to major military treatment facilities as follows:

- VA Regional Office, San Diego, CA, serves Balboa Naval Medical Center
- VA Regional Office, Houston, TX, serves Brooke Army Medical Center
- VA Regional Office, Atlanta, GA, serves Eisenhower Army Medical Center
- VA Regional Office, Denver, CO, serves Fort Carson Army Medical Center
- VA Regional Office, Waco, TX, serves Fort Hood and William Beaumont Army Medical Centers
- VA Regional Office, Seattle, WA, serves Madigan Army Medical Center