

105TH CONGRESS
1ST SESSION

H. R. 240

IN THE SENATE OF THE UNITED STATES

APRIL 10, 1997

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Veterans Employment
3 Opportunities Act of 1997”.

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

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

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

15 “(A) not having acquired competitive status; or

16 “(B) not being an employee of such agency.

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

24 (b) CIVIL SERVICE EMPLOYMENT INFORMATION.—

25 (1) VACANT POSITIONS.—Section 3327(b) of
26 title 5, United States Code, is amended by striking

1 “and” at the end of paragraph (1), by redesignating
2 paragraph (2) as paragraph (3), and by inserting
3 after paragraph (1) the following:

4 “(2) each vacant position in the agency for
5 which competition is restricted to individuals having
6 competitive status or employees of such agency, ex-
7 cluding any position under paragraph (1), and”.

8 (2) ADDITIONAL INFORMATION.—Section 3327
9 of title 5, United States Code, is amended by adding
10 at the end the following:

11 “(c) Any notification provided under this section
12 shall, for all positions under subsection (b)(1) as to which
13 section 3304(f) applies and for all positions under sub-
14 section (b)(2), include a notation as to the applicability
15 of section 3304(f) with respect thereto.

16 “(d) In consultation with the Secretary of Labor, the
17 Office shall submit to Congress and the President, no less
18 frequently than every 2 years, a report detailing, with re-
19 spect to the period covered by such report—

20 “(1) the number of positions listed under this
21 section during such period;

22 “(2) the number of preference eligibles and
23 other individuals described in section 3304(f)(1) re-
24 ferred to such positions during such period; and

1 “(3) the number of preference eligibles and
2 other individuals described in section 3304(f)(1) ap-
3 pointed to such positions during such period.”.

4 (c) GOVERNMENTWIDE LISTS.—

5 (1) VACANT POSITIONS.—Section 3330(b) of
6 title 5, United States Code, is amended to read as
7 follows:

8 “(b) The Office of Personnel Management shall cause
9 to be established and kept current—

10 “(1) a comprehensive list of all announcements
11 of vacant positions (in the competitive service and
12 the excepted service, respectively) within each agency
13 that are to be filled by appointment for more than
14 1 year and for which applications are being or will
15 soon be accepted from outside the agency’s work
16 force; and

17 “(2) a comprehensive list of all announcements
18 of vacant positions within each agency for which ap-
19 plications are being or will soon be accepted and for
20 which competition is restricted to individuals having
21 competitive status or employees of such agency, ex-
22 cluding any position required to be listed under
23 paragraph (1).”.

24 (2) ADDITIONAL INFORMATION.—Section
25 3330(c) of title 5, United States Code, is amended

1 by striking “and” at the end of paragraph (2), by
2 redesignating paragraph (3) as paragraph (4), and
3 by inserting after paragraph (2) the following:

4 “(3) for all positions under subsection (b)(1) as
5 to which section 3304(f) applies and for all positions
6 under subsection (b)(2), a notation as to the applica-
7 bility of section 3304(f) with respect thereto; and”.

8 (3) CONFORMING AMENDMENT.—Section
9 3330(d) of title 5, United States Code, is amended
10 by striking “The list” and inserting “Each list
11 under subsection (b)”.

12 (d) PROVISIONS RELATING TO THE UNITED STATES
13 POSTAL SERVICE.—

14 (1) IN GENERAL.—Subsection (a) of section
15 1005 of title 39, United States Code, is amended by
16 adding at the end the following:

17 “(5)(A) The provisions of section 3304(f) of title 5
18 shall apply with respect to the Postal Service in the same
19 manner and under the same conditions as if the Postal
20 Service were an agency within the meaning of such provi-
21 sions.

22 “(B) Nothing in this subsection shall be considered
23 to require the application of section 3304(f) of title 5 in
24 the case of any individual who is not an employee of the
25 Postal Service if—

1 “(i) the vacant position involved is to be filled
2 pursuant to a collective-bargaining agreement;

3 “(ii) the collective-bargaining agreement re-
4 stricts competition for such position to individuals
5 employed in a bargaining unit or installation within
6 the Postal Service in which the position is located;

7 “(iii) the collective-bargaining agreement pro-
8 vides that the successful applicant shall be selected
9 on the basis of seniority or qualifications; and

10 “(iv) the position to be filled is within a bar-
11 gaining unit.

12 “(C) The provisions of this paragraph shall not be
13 modified by any program developed under section 1004
14 of this title or any collective-bargaining agreement entered
15 into under chapter 12 of this title.”.

16 (2) CONFORMING AMENDMENT.—The first sen-
17 tence of section 1005(a)(2) of title 39, United States
18 Code, is amended by striking “title.” and inserting
19 “title, subject to paragraph (5) of this subsection.”.

20 **SEC. 3. SPECIAL PROTECTIONS FOR PREFERENCE ELIGI-**
21 **BLES IN REDUCTIONS IN FORCE.**

22 (a) IN GENERAL.—Section 3502 of title 5, United
23 States Code, as amended by section 1034 of the National
24 Defense Authorization Act for Fiscal Year 1996 (Public

1 Law 104–106; 110 Stat. 430), is amended by adding at
2 the end the following:

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

14 “(2) For purposes of paragraph (1)—

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

23 “(B) a preference eligible shall not be consid-
24 ered unqualified solely because such preference eligi-
25 ble does not meet the minimum qualification require-

1 ments relating to previous experience in a specified
2 grade (or occupational level), if any, that are estab-
3 lished for such position by the Office of Personnel
4 Management or the agency.

5 “(h) In connection with any reduction in force, a
6 preference eligible whose current or most recent perform-
7 ance rating is at least fully successful (or the equivalent)
8 shall have, in addition to such assignment rights as are
9 prescribed by regulation, the right, in lieu of separation,
10 to be assigned to any position within the agency conduct-
11 ing the reduction in force—

12 “(1) for which such preference eligible is quali-
13 fied under subsection (g)(2)—

14 “(A) that is within the preference eligible’s
15 commuting area and at the same grade (or oc-
16 cupational level) as the position from which the
17 preference eligible was released, and that is
18 then occupied by an individual, other than an-
19 other preference eligible, who was placed in
20 such position (whether by appointment or oth-
21 erwise) within 6 months before the reduction in
22 force if, within 12 months prior to the date on
23 which such individual was so placed in such po-
24 sition, such individual had been employed in the

1 same competitive area as the preference eligible;
2 or

3 “(B) that is within the preference eligible’s
4 competitive area and that is then occupied by
5 an individual, other than another preference eli-
6 gible, who was placed in such position (whether
7 by appointment or otherwise) within 6 months
8 before the reduction in force; or

9 “(2) for which such preference eligible is quali-
10 fied that is within the preference eligible’s competi-
11 tive area and that is not more than 3 grades (or pay
12 levels) below that of the position from which the
13 preference eligible was released, except that, in the
14 case of a preference eligible with a compensable
15 service-connected disability of 30 percent or more,
16 this paragraph shall be applied by substituting ‘5
17 grades’ for ‘3 grades’.

18 In the event that a preference eligible is entitled to assign-
19 ment to more than 1 position under this subsection, the
20 agency shall assign the preference eligible to any such po-
21 sition requiring no reduction (or, if there is no such posi-
22 tion, the least reduction) in basic pay. A position shall not,
23 with respect to a preference eligible, be considered to sat-
24 isfy the requirements of paragraph (1) or (2), as applica-
25 ble, if it does not last for at least 12 months following

1 the date on which such preference eligible is assigned to
2 such position under this subsection.

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

8 “(j)(1) Not later than 90 days after the date of the
9 enactment of the Veterans Employment Opportunities Act
10 of 1997, each Executive agency shall establish an agency-
11 wide priority placement program to facilitate employment
12 placement for employees who—

13 “(A)(i) are scheduled to be separated from serv-
14 ice due to a reduction in force under—

15 “(I) regulations prescribed under this sec-
16 tion; or

17 “(II) procedures established under section
18 3595; or

19 “(ii) are separated from service due to such a
20 reduction in force; and

21 “(B)(i) have received a rating of at least fully
22 successful (or the equivalent) as the last perform-
23 ance rating of record used for retention purposes; or

24 “(ii) occupy positions excluded from a perform-
25 ance appraisal system by law, regulation, or admin-

1 istrative action taken by the Office of Personnel
2 Management.

3 “(2)(A) Each agencywide priority placement program
4 under this subsection shall include provisions under which
5 a vacant position shall not (except as provided in this
6 paragraph or any other statute providing the right of re-
7 employment to any individual) be filled by the appoint-
8 ment or transfer of any individual from outside of that
9 agency (other than an individual described in subpara-
10 graph (B)) if—

11 “(i) there is then available any individual de-
12 scribed in subparagraph (B) who is qualified for the
13 position; and

14 “(ii) the position—

15 “(I) is at the same grade or pay level (or
16 the equivalent) or not more than 3 grades (or
17 grade intervals) below that of the position last
18 held by such individual before placement in the
19 new position;

20 “(II) is within the same commuting area
21 as the individual’s last-held position (as referred
22 to in subclause (I)) or residence; and

23 “(III) has the same type of work schedule
24 (whether full-time, part-time, or intermittent)
25 as the position last held by the individual.

1 “(B) For purposes of an agencywide priority place-
2 ment program, an individual shall be considered to be de-
3 scribed in this subparagraph if such individual—

4 “(i)(I) is an employee of such agency who is
5 scheduled to be separated, as described in paragraph
6 (1)(A)(i); or

7 “(II) is an individual who became a former em-
8 ployee of such agency as a result of a separation, as
9 described in paragraph (1)(A)(ii), excluding any in-
10 dividual who separated voluntarily under subsection
11 (f); and

12 “(ii) satisfies clause (i) or (ii) of paragraph
13 (1)(B).

14 “(3)(A) If after a reduction in force the agency has
15 no positions of any type within the local commuting areas
16 specified in this subsection, the individual may designate
17 a different local commuting area where the agency has
18 continuing positions in order to exercise reemployment
19 rights under this subsection. An agency may determine
20 that such designations are not in the interest of the Gov-
21 ernment for the purpose of paying relocation expenses
22 under subchapter II of chapter 57.

23 “(B) At its option, an agency may administratively
24 extend reemployment rights under this subsection to in-
25 clude other local commuting areas.

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

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

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

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

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

19 “(A) requests removal in writing;

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

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

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

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

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

13 (b) APPLICABILITY.—

14 (1) IN GENERAL.—Subject to paragraph (2),
15 the amendments made by this section shall apply
16 with respect to—

17 (A) reductions in force taking effect after
18 the end of the 90-day period beginning on the
19 date of the enactment of this Act; or

20 (B) in the case of the Department of De-
21 fense, reductions in force taking effect after the
22 end of the 1-year period beginning on the date
23 of the enactment of this Act.

24 (2) ONGOING REDUCTIONS IN FORCE.—If an
25 agency has given written notice of a reduction in

1 force to any of its employees within a competitive
2 area, in accordance with section 3502(d)(1)(A) of
3 title 5, United States Code, before the effective date
4 under subparagraph (A) or (B) of paragraph (1), as
5 applicable, then, for purposes of determining the
6 rights of any employee within such area in connec-
7 tion with such reduction in force, the amendments
8 made by this section shall be treated as if they had
9 never been enacted. Nothing in the preceding sen-
10 tence shall affect any rights under a priority place-
11 ment program under section 3502(j) of title 5, Unit-
12 ed States Code, as amended by this section.

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

14 (a) IN GENERAL.—Subchapter I of chapter 33 of title
15 5, United States Code, is amended by adding at the end
16 the following:

17 **“§ 3330a. Administrative redress**

18 “(a)(1) Any preference eligible or other individual de-
19 scribed in section 3304(f)(1) who alleges that an agency
20 has violated such individual’s rights under any statute or
21 regulation relating to veterans’ preference, or any right
22 afforded such individual by section 3304(f), may file a
23 complaint with the Secretary of Labor.

24 “(2) A complaint under this subsection must be filed
25 within 60 days after the date of the alleged violation, and

1 the Secretary shall process such complaint in accordance
2 with sections 4322 (a) through (e)(1) and 4326 of title
3 38.

4 “(b)(1) If the Secretary of Labor is unable to resolve
5 the complaint within 60 days after the date on which it
6 is filed, the complainant may elect to appeal the alleged
7 violation to the Merit Systems Protection Board in accord-
8 ance with such procedures as the Merit Systems Protec-
9 tion Board shall prescribe, except that in no event may
10 any such appeal be brought—

11 “(A) before the 61st day after the date on
12 which the complaint is filed under subsection (a); or

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

16 “(2) An appeal under this subsection may not be
17 brought unless—

18 “(A) the complainant first provides written no-
19 tification to the Secretary of Labor of such com-
20 plainant’s intention to bring such appeal; and

21 “(B) appropriate evidence of compliance with
22 subparagraph (A) is included (in such form and
23 manner as the Merit Systems Protection Board may
24 prescribe) with the notice of appeal under this sub-
25 section.

1 “(3) Upon receiving notification under paragraph
2 (2)(A), the Secretary of Labor shall not continue to inves-
3 tigate or further attempt to resolve the complaint to which
4 such notification relates.

5 “(c) This section shall not be construed to prohibit
6 a preference eligible from appealing directly to the Merit
7 Systems Protection Board from any action which is ap-
8 pealable to the Board under any other law, rule, or regula-
9 tion, in lieu of administrative redress under this section.

10 **“§ 3330b. Judicial redress**

11 “(a) In lieu of continuing the administrative redress
12 procedure provided under section 3330a(b), a preference
13 eligible or other individual described in section 3304(f)(1)
14 may elect, in accordance with this section, to terminate
15 those administrative proceedings and file an action with
16 the appropriate United States district court not later than
17 60 days after the date of the election.

18 “(b) An election under this section may not be
19 made—

20 “(1) before the 121st day after the date on
21 which the appeal is filed with the Merit Systems
22 Protection Board under section 3330a(b); or

23 “(2) after the Merit Systems Protection Board
24 has issued a judicially reviewable decision on the
25 merits of the appeal.

1 “(c) An election under this section shall be made, in
2 writing, in such form and manner as the Merit Systems
3 Protection Board shall by regulation prescribe. The elec-
4 tion shall be effective as of the date on which it is received,
5 and the administrative proceeding to which it relates shall
6 terminate immediately upon the receipt of such election.

7 **“§ 3330c. Remedy**

8 “(a) If the Merit Systems Protection Board (in a pro-
9 ceeding under section 3330a) or a court (in a proceeding
10 under section 3330b) determines that an agency has vio-
11 lated a right described in section 3330a, the Board or
12 court (as the case may be) shall order the agency to com-
13 ply with such provisions and award compensation for any
14 loss of wages or benefits suffered by the individual by rea-
15 son of the violation involved. If the Board or court deter-
16 mines that such violation was willful, it shall award an
17 amount equal to backpay as liquidated damages.

18 “(b) A preference eligible or other individual de-
19 scribed in section 3304(f)(1) who prevails in an action
20 under section 3330a or 3330b shall be awarded reasonable
21 attorney fees, expert witness fees, and other litigation ex-
22 penses.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of chapter 33 of title 5, United States

1 Code, is amended by adding after the item relating to sec-
 2 tion 3330 the following:

“3330a. Administrative redress.

“3330b. Judicial redress.

“3330c. Remedy.”.

3 **SEC. 5. EXTENSION OF VETERANS’ PREFERENCE.**

4 (a) AMENDMENT TO TITLE 5, UNITED STATES
 5 CODE.—Paragraph (3) of section 2108 of title 5, United
 6 States Code, is amended by striking “the Federal Bureau
 7 of Investigation and Drug Enforcement Administration
 8 Senior Executive Service, or the General Accounting Of-
 9 fice;” and inserting “or the Federal Bureau of Investiga-
 10 tion and Drug Enforcement Administration Senior Execu-
 11 tive Service;”.

12 (b) AMENDMENTS TO TITLE 3, UNITED STATES
 13 CODE.—

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

17 **“§ 115. Veterans’ preference**

18 “(a) Subject to subsection (b), appointments under
 19 sections 105, 106, and 107 shall be made in accordance
 20 with section 2108, and sections 3309 through 3312, of
 21 title 5.

22 “(b) Subsection (a) shall not apply to any appoint-
 23 ment to a position the rate of basic pay for which is at
 24 least equal to the minimum rate established for positions

1 in the Senior Executive Service under section 5382 of title
 2 5 and the duties of which are comparable to those de-
 3 scribed in section 3132(a)(2) of such title or to any other
 4 position if, with respect to such position, the President
 5 makes certification—

6 “(1) that such position is—

7 “(A) a confidential or policy-making posi-
 8 tion; or

9 “(B) a position for which political affili-
 10 ation or political philosophy is otherwise an im-
 11 portant qualification; and

12 “(2) that any individual selected for such posi-
 13 tion is expected to vacate the position at or before
 14 the end of the President’s term (or terms) of office.

15 Each individual appointed to a position described in the
 16 preceding sentence as to which the expectation described
 17 in paragraph (2) applies shall be notified as to such expec-
 18 tation, in writing, at the time of appointment to such posi-
 19 tion.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
 21 tions at the beginning of chapter 2 of title 3, United
 22 States Code, is amended by adding at the end the
 23 following:

“115. Veterans’ preference.”.

24 (c) LEGISLATIVE BRANCH APPOINTMENTS.—

1 (1) DEFINITIONS.—For the purposes of this
2 subsection, the terms “employing office”, “covered
3 employee”, and “Board” shall each have the mean-
4 ing given such term by section 101 of the Congres-
5 sional Accountability Act of 1995 (2 U.S.C. 1301).

6 (2) RIGHTS AND PROTECTIONS.—The rights
7 and protections established under section 2108, sec-
8 tions 3309 through 3312, and subchapter I of chap-
9 ter 35, of title 5, United States Code, shall apply to
10 covered employees.

11 (3) REMEDIES.—

12 (A) IN GENERAL.—The remedy for a viola-
13 tion of paragraph (2) shall be such remedy as
14 would be appropriate if awarded under applica-
15 ble provisions of title 5, United States Code, in
16 the case of a violation of the relevant cor-
17 responding provision (referred to in paragraph
18 (2)) of such title.

19 (B) PROCEDURE.—The procedure for con-
20 sideration of alleged violations of paragraph (2)
21 shall be the same as apply under section 401 of
22 the Congressional Accountability Act of 1995
23 (and the provisions of law referred to therein)
24 in the case of an alleged violation of part A of
25 title II of such Act.

1 (4) REGULATIONS TO IMPLEMENT SUB-
2 SECTION.—

3 (A) IN GENERAL.—The Board shall, pur-
4 suant to section 304 of the Congressional Ac-
5 countability Act of 1995 (2 U.S.C. 1384), issue
6 regulations to implement this subsection.

7 (B) AGENCY REGULATIONS.—The regula-
8 tions issued under subparagraph (A) shall be
9 the same as the most relevant substantive regu-
10 lations (applicable with respect to the executive
11 branch) promulgated to implement the statu-
12 tory provisions referred to in paragraph (2) ex-
13 cept insofar as the Board may determine, for
14 good cause shown and stated together with the
15 regulation, that a modification of such regula-
16 tions would be more effective for the implemen-
17 tation of the rights and protections under this
18 subsection.

19 (C) COORDINATION.—The regulations is-
20 sued under subparagraph (A) shall be consist-
21 ent with section 225 of the Congressional Ac-
22 countability Act of 1995 (2 U.S.C. 1361).

23 (5) APPLICABILITY.—Notwithstanding any
24 other provision of this subsection, the term “covered

1 employee” shall not, for purposes of this subsection,
2 include an employee—

3 (A) whose appointment is made by the
4 President with the advice and consent of the
5 Senate;

6 (B) whose appointment is made by a Mem-
7 ber of Congress or by a committee or sub-
8 committee of either House of Congress; or

9 (C) who is appointed to a position, the du-
10 ties of which are equivalent to those of a Senior
11 Executive Service position (within the meaning
12 of section 3132(a)(2) of title 5, United States
13 Code).

14 (6) EFFECTIVE DATE.—Paragraphs (2) and (3)
15 shall be effective as of the effective date of the regu-
16 lations under paragraph (4).

17 (d) JUDICIAL BRANCH APPOINTMENTS.—

18 (1) IN GENERAL.—Subject to paragraphs (2)
19 through (4), the Judicial Conference of the United
20 States shall prescribe regulations to provide for—

21 (A) veterans’ preference in the consider-
22 ation of applicants for employment, and in the
23 conduct of any reductions in force, within the
24 judicial branch; and

1 (B) redress procedures for alleged viola-
2 tions of any rights provided for under subpara-
3 graph (A).

4 (2) REGULATIONS TO BE BASED ON EXISTING
5 PROVISIONS.—Under the regulations—

6 (A) a preference eligible (as defined by sec-
7 tion 2108 of title 5, United States Code) shall
8 be afforded preferences similar to those under
9 sections 3309 through 3312, and subchapter I
10 of chapter 35, of such title 5; and

11 (B) the redress procedures provided for
12 shall be similar to those under the amendments
13 made by section 4.

14 (3) EXCLUSIONS.—Nothing in the regulations
15 shall apply with respect to—

16 (A) an appointment made by the Presi-
17 dent, with the advice and consent of the Senate;

18 (B) an appointment as a judicial officer;

19 (C) an appointment as a law clerk or sec-
20 retary to a justice or judge of the United
21 States; or

22 (D) an appointment to a position, the du-
23 ties of which are equivalent to those of a Senior
24 Executive Service position (within the meaning

1 of section 3132(a)(2) of title 5, United States
2 Code).

3 (4) CONSULTATION.—The regulations under
4 this subsection shall be prescribed by the Judicial
5 Conference of the United States, in consultation
6 with—

7 (A) the largest congressionally chartered
8 veterans' service organization;

9 (B) 2 congressionally chartered veterans'
10 service organizations that represent former non-
11 commissioned officers;

12 (C) a congressionally chartered veterans'
13 service organization that represents veterans
14 who have fought in foreign wars;

15 (D) a congressionally chartered veterans'
16 service organization that represents veterans
17 with service-connected disabilities;

18 (E) a congressionally chartered veterans'
19 service organization that represents veterans of
20 the Vietnam era; and

21 (F) a congressionally chartered veterans'
22 service organization that represents veterans of
23 World War II, the Korean conflict, the Vietnam
24 era, and the Persian Gulf War.

1 (5) DEFINITIONS.—For purposes of this sub-
2 section—

3 (A) the term “judicial officer” means a
4 justice, judge, or magistrate judge listed in sub-
5 paragraph (A), (B), (F), or (G) of section
6 376(a)(1) of title 28, United States Code; and

7 (B) the term “justice or judge of the Unit-
8 ed States” has the meaning given such term by
9 section 451 of such title 28.

10 (6) SUBMISSION TO CONGRESS; EFFECTIVE
11 DATE.—

12 (A) SUBMISSION TO CONGRESS.—Within 5
13 months after the date of the enactment of this
14 Act, the Judicial Conference of the United
15 States shall submit a copy of the regulations
16 prescribed under this subsection to the Commit-
17 tee on Government Reform and Oversight and
18 the Committee on the Judiciary of the House of
19 Representatives and the Committee on Govern-
20 mental Affairs and the Committee on the Judi-
21 ciary of the Senate.

22 (B) EFFECTIVE DATE.—The regulations
23 prescribed under this subsection shall take ef-
24 fect 6 months after the date of the enactment
25 of this Act.

1 **SEC. 6. VETERANS' PREFERENCE REQUIRED FOR REDUC-**
2 **TIONS IN FORCE IN THE FEDERAL AVIATION**
3 **ADMINISTRATION.**

4 Section 347(b) of the Department of Transportation
5 and Related Agencies Appropriations Act, 1996 (109 Stat.
6 460) is amended by striking “and” at the end of para-
7 graph (6), by striking the period at the end of paragraph
8 (7) and inserting “; and”, and by adding at the end the
9 following:

10 “(8) sections 3501–3504, as such sections re-
11 late to veterans’ preference.”.

12 **SEC. 7. DEFINITIONAL AMENDMENT.**

13 Subparagraph (A) of section 2108(1) of title 5, Unit-
14 ed States Code, is amended by inserting “during a mili-
15 tary operation in a qualified hazardous duty area (within
16 the meaning of the first 2 sentences of section 1(b) of
17 Public Law 104–117) and in accordance with require-
18 ments that may be prescribed in regulations of the Sec-
19 retary of Defense,” after “for which a campaign badge
20 has been authorized,”.

21 **SEC. 8. FAILURE TO COMPLY WITH VETERANS' PREF-**
22 **ERENCE REQUIREMENTS TO BE TREATED AS**
23 **A PROHIBITED PERSONNEL PRACTICE FOR**
24 **CERTAIN PURPOSES.**

25 (a) IN GENERAL.—Subsection (b) of section 2302 of
26 title 5, United States Code, is amended—

1 (1) by striking “or” at the end of paragraph
2 (10);

3 (2) by redesignating paragraph (11) as para-
4 graph (12); and

5 (3) by inserting after paragraph (10) the fol-
6 lowing:

7 “(11)(A) knowingly take, recommend, or ap-
8 prove any personnel action if the taking of such ac-
9 tion would violate a veterans’ preference require-
10 ment; or

11 “(B) knowingly fail to take, recommend, or ap-
12 prove any personnel action if the failure to take such
13 action would violate a veterans’ preference require-
14 ment; or”.

15 (b) DEFINITION; LIMITATION.—Section 2302 of title
16 5, United States Code, is amended by adding at the end
17 the following:

18 “(e)(1) For the purpose of this section, the term ‘vet-
19 erans’ preference requirement’ means any of the following
20 provisions of law:

21 “(A) Sections 2108, 3305(b), 3309, 3310,
22 3311, 3312, 3313, 3314, 3315, 3316, 3317(b),
23 3318, 3320, 3351, 3352, 3363, 3501, 3502(b),
24 3504, and 4303(e) and (with respect to a preference

1 eligible referred to in section 7511(a)(1)(B)) sub-
2 chapter II of chapter 75 and section 7701.

3 “(B) Sections 943(c)(2) and 1784(c) of title 10.

4 “(C) Section 1308(b) of the Alaska National
5 Interest Lands Conservation Act.

6 “(D) Section 301(c) of the Foreign Service Act
7 of 1980.

8 “(E) Sections 106(f), 7281(e), and 7802(5) of
9 title 38.

10 “(F) Section 1005(a) of title 39.

11 “(G) Any other provision of law that the Direc-
12 tor of the Office of Personnel Management des-
13 ignates in regulations as being a veterans’ preference
14 requirement for the purposes of this subsection.

15 “(H) Any regulation prescribed under sub-
16 section (b) or (c) of section 1302 and any other reg-
17 ulation that implements a provision of law referred
18 to in any of the preceding subparagraphs.

19 “(2) Notwithstanding any other provision of this title,
20 no authority to order corrective action shall be available
21 in connection with a prohibited personnel practice de-
22 scribed in subsection (b)(11). Nothing in this paragraph
23 shall be considered to affect any authority under section
24 1215 (relating to disciplinary action).”.

25 (c) REPEALS.—

1 (1) PROVISIONS OF TITLE 10, UNITED STATES
2 CODE.—Section 1599c of title 10, United States
3 Code, and the item relating to such section in the
4 table of sections at the beginning of chapter 81 of
5 such title are repealed.

6 (2) SECTION 2302(a)(1) OF TITLE 5, UNITED
7 STATES CODE.—Subsection (a)(1) of section 2302 of
8 title 5, United States Code, is amended to read as
9 follows:

10 “(a)(1) For the purpose of this title, ‘prohibited per-
11 sonnel practice’ means any action described in subsection
12 (b).”.

13 (d) SAVINGS PROVISION.—This section shall be treat-
14 ed as if it had never been enacted for purposes of any
15 personnel action (within the meaning of section 2302 of
16 title 5, United States Code) preceding the date of the en-
17 actment of this Act.

Passed the House of Representatives April 9, 1997.

Attest:

ROBIN H. CARLE,

Clerk.