(3) the employing office shall state clearly that applicants may request information about the employing office's veterans' preference policies as they relate to appointments to covered positions, and shall describe the employing office's procedures for making such requests.

(c) Upon written request by an applicant for a covered position, an employing office shall provide the following information in writing:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition in a manner designed to be understood by applicants, along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions, including any procedures the employing office shall use to identify preference eligible employees;

(3) the employing office may provide other information to applicants regarding its veterans' preference policies and practices, but is not required to do so by these regulations.

(d) Employing offices are also expected to answer questions from applicants for covered positions that are relevant and non-confidential concerning the employing office's veterans' preference policies and practices.

SEC. 1.119. INFORMATION REGARDING VETERANS' PREFERENCE DETERMINATIONS IN APPOINTMENTS.

Upon written request by an applicant for a covered position, the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's appointment decision regarding that applicant. Such explanation shall include at a minimum:

(a) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions; and

(b) a statement as to whether the applicant is preference eligible and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not preference eligible.

SEC. 1.120. DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO COVERED EMPLOYEES.

(a) If an employing office that employs one or more covered employees provides any written guidance to such employees concerning employee rights generally or reductions in force more specifically, such as in a written employee policy, manual or handbook, such guidance must include information concerning veterans' preference under the VEOA, as set forth in subsection (b) of this regulation.

(b) Written guidances described in subsection (a) above shall include, at a minimum:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to reductions in force, including the procedures the employing office shall take to identify preference eligible employees.

(3) the employing office may provide other information in its guidances regarding its veterans' preference policies and practices, but is not required to do so by these regulations.

(c) Employing offices are also expected to answer questions from covered employees that are relevant and non-confidential concerning the employing office's veterans' preference policies and practices.

SEC. 1.121. WRITTEN NOTICE PRIOR TO A REDUCTION IN FORCE.

(a) Except as provided under subsection (c), a covered employee may not be released due to a reduction in force, unless the covered employee and the covered employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (b), at least 60 days before the covered employee is so released.

(b) Any notice under paragraph (a) shall include—

(1) the personnel action to be taken with respect to the covered employee involved;

(2) the effective date of the action;

(3) a description of the procedures applicable in identifying employees for release;

(4) the covered employee's competitive area;

(5) the covered employee's eligibility for veterans' preference in retention and how that preference eligibility was determined;

(6) the retention status and preference eligibility of the other employees in the affected position classifications or job classifications within the covered employee's competitive area, by providing:

(A) a list of all covered employee(s) in the covered employee's position classification or job classification and competitive area who will be retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible, and

(B) a list of all covered employee(s) in the covered employee's position classification or job classification and competitive area who will not be retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible.

(7) a description of any appeal or other rights which may be available.

(c) The director of the employing office may, in writing, shorten the period of advance notice required under subsection (a), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(d) No notice period may be shortened to less than 30 days under this subsection.

SENATE CONCURRENT RESOLUTION 77—TO PROVIDE FOR THE APPROVAL OF FINAL REGULATIONS ISSUED BY THE OFFICE OF COMPLIANCE TO IMPLEMENT THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1998 THAT APPLY TO CERTAIN LEGISLATIVE BRANCH EMPLOYING OFFICES AND THEIR COVERED EMPLOYEES

Mr. SCHUMER (for himself and Mr. BENNETT) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the following regulations issued by the Office of Compliance on March 21, 2008, and stated in section 4, with the technical corrections described in section 3 and to the extent applied by section 2, are hereby approved:

SEC. 2. APPLICATION OF REGULATIONS.

(a) IN GENERAL.—For purposes of applying the issued regulations as a body of regulations required by section 304(a)(2)(B)(iii) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(a)(2)(B)(iii)), the portions of the issued regulations that are unclassified or classified with a ''C'' designation shall apply to all covered employees that are not employees of the House of Representatives or employees of the Senate, and employing offices that are not offices of the House of Representatives or the Senate.

(b) DEFINITIONS.—In this section, the terms ''employee of the House of Representatives'', ''employee of the Senate'', ''covered employee'', and ''employing office'' have the meanings given the terms in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), except as limited by the regulations (as corrected under section 3).

SEC. 3. TECHNICAL CORRECTIONS.

(a) CURRENT NAMES OF OFFICES AND HEADS OF OFFICES.—A reference in the issued regulations—

(1) to the Capitol Guide Board or the Capitol Guide Service (which no longer exist) shall be considered to be a reference to the Office of Congressional Accessibility Services;

(2) to the Capitol Police Board shall be considered to be a reference to the Capitol Police;

(3) to the Senate Restaurants (which are no longer public entities) shall be disregarded; and

(4) in sections 1.110(b) and 1.121(c), to the director of an employing office shall be considered to be a reference to the head of an employing office.

(b) CROSS REFERENCES TO PROVISIONS OF REGULATIONS.—A reference in the issued regulations—

(1) in paragraphs (l) and (m) of section 1.102, to subparagraphs (3) through (8) of paragraph (g) of that section shall be considered to be a reference to paragraph (g) of that section;

(2) in section 1.102(l), to subparagraphs (aa) through (dd) of section 1.102(g) shall be considered to be a reference to subparagraphs (aa) through (dd) of that section (as specified in the regulations classified with an ''H'' classification);

(3) in section 1.102(m), to subparagraphs (aa) through (ee) of section 1.102(g) shall be considered to be a reference to subparagraphs (aa) through (ee) of that section (as specified in the regulations classified with an ''S'' classification);

(4) in section 1.111(d), to section 1.102(o) shall be considered to be a reference to section 1.102(p); and

(5) in section 1.112, to section 1.102(h) shall be considered to be a reference to section 1.102(i).

(c) CROSS REFERENCES TO OTHER PROVISIONS OF LAW.—A reference in the issued regulations—

(1) to the Veterans Employment Opportunities Act shall be considered to be a reference to the Veterans Employment Opportunities Act of 1998;

(2) to 2 U.S.C. 43d(a) shall be considered to be a reference to section 105(a) of the Second Supplemental Appropriations Act, 1978;

(3) to 2 U.S.C. 1316a(3) shall be considered to be a reference to section 4(c)(3) of the Veterans Employment Opportunities Act of 1998;

(4) to 5 U.S.C. 2108(3)(c) shall be considered to be a reference to section 2108(3)(C) of title 5, United States Code;

(5) to the Americans with Disabilities Act shall be considered to be a reference to the Americans with Disabilities Act of 1990;

(6) to the Soil Conservation and Allotment Act shall be considered to be a reference to the Soil Conservation and Domestic Allotment Act; and

(7) to the Agricultural Adjustment Act shall be considered to be a reference to the

Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.

(d) OTHER CORRECTIONS.—In the issued regulations—

(1) section 1.109 shall be considered to have an ''and'' after paragraph (a);

(2) the second sentence of section 1.116 shall be disregarded;

(3) section 1.118(b) shall be considered to have an ''and'' after paragraph (2) rather than paragraph (1);

(4) a reference in sections 1.118(c)(1) and 1.120(b)(1) to veterans' ''preference eligible'' shall be considered to be a reference to ''preference eligible'';

(5) sections 1.118(c) and 1.120(b) shall be considered to have an ''and'' after paragraph (1); and

(6) section 1.121(b)(6)(B) shall be considered to have an ''and'' at the end.

SEC. 4. REGULATIONS.

When approved by the House of Representatives for the House of Representatives, these regulations will have the prefix ''H.'' When approved by the Senate for the Senate, these regulations will have the prefix ''S.'' When approved by Congress for the other employing offices covered by the CAA, these regulations will have the prefix ''C.''

In this draft, "H&S Regs" denotes the provisions that would be included in the regulations applicable to be made applicable to the House and Senate, and "C Reg" denotes the provisions that would be included in the regulations to be made applicable to other employing offices.

PART 1—Extension of Rights and Protections Relating to Veterans' Preference Under Title 5, United States Code, to Covered Employees of the Legislative Branch (section 4(c) of the Veterans Employment Opportunities Act of 1998)

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

Sec.
1.101 Purpose and scope.
1.102 Definitions.
1.103 Adoption of regulations.
1.104 Coordination with section 225 of the Congressional Accountability Act.

SEC. 1.101. PURPOSE AND SCOPE.

(a) Section 4(c) of the VEOA. The Veterans Employment Opportunities Act (VEOA) applies the rights and protections of sections 2108, 3309 through 3312, and subchapter I of chapter 35 of title 5 U.S.C., to certain covered employees within the Legislative branch.

(b) Purpose of regulations. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 4(c)(4) of the VEOA, in accordance with the rulemaking procedure set forth in section 304 of the CAA (2 U.S.C. §1384). The purpose of subparts B, C and D of these regulations is to define veterans' preference and the administration of veterans' preference as applicable to Federal employment in the Legislative branch. (5 U.S.C. §2108, as applied by the VEOA). The purpose of subpart E of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the existing employment and retention policies and processes of those employing offices with employees covered by the VEOA, and to provide for transparency in the application of veterans' preference in covered appointment and retention decisions. Provided, nothing in these regulations shall be construed so as to require an employing office to reduce any existing veterans' preference rights and protections that it may afford to preference eligible individuals.

H Regs: (c) Scope of Regulations. The definition of ''covered employee'' in Section 4(c) of the VEOA limits the scope of the statute's applicability within the Legislative branch. The term ''covered employee'' excludes any employee: (1) whose appointment is made by the President with the advice and consent of the Senate; (2) whose appointment is made by a Member of Congress within an employing office, as defined by Sec. 101 (9)(A–C) of the CAA, 2 U.S.C. §1301 (9)(A–C) or; (3) whose appointment is made by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (4) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). Accordingly, these regulations shall not apply to any employing office that only employs individuals excluded from the definition of covered employee.

S Regs: (c) Scope of Regulations. The definition of ''covered employee'' in Section 4(c) of the VEOA limits the scope of the statute's applicability within the Legislative branch. The term ''covered employee'' excludes any employee: (1) whose appointment is made by the President with the advice and consent of the Senate; (2) whose appointment is made or directed by a Member of Congress within an employing office, as defined by Sec. 101(9)(A–C) of the CAA, 2 U.S.C. §1301 (9)(A–C) or; (3) whose appointment is made by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; (4) who is appointed pursuant to 2 U.S.C. §43d(a); or (5) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). Accordingly, these regulations shall not apply to any employing office that only employs individuals excluded from the definition of covered employee.

C Reg: (c) Scope of Regulations. The definition of ''covered employee'' in Section 4(c) of the VEOA limits the scope of the statute's applicability within the Legislative branch. The term ''covered employee'' excludes any employee: (1) whose appointment is made by the President with the advice and consent of the Senate; (2) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (3) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). Accordingly, these regulations shall not apply to any employing office that only employs individuals excluded from the definition of covered employee.

SEC. 1.102. DEFINITIONS.

Except as otherwise provided in these regulations, as used in these regulations:

(a) Accredited physician means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices. The phrase ''authorized to practice by the State'' as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

(b) Act or CAA means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(c) Active duty or active military duty means full-time duty with military pay and allowances in the armed forces, except (1) for training or for determining physical fitness and (2) for service in the Reserves or National Guard.

(d) Appointment means an individual's appointment to employment in a covered position, but does not include any personnel action that an employing office takes with regard to an existing employee of the employing office.

(e) Armed forces means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(f) Board means the Board of Directors of the Office of Compliance.

H Regs: (g) Covered employee means any employee of (1) the House of Representatives; and (2) the Senate; (3) the Capitol Guide Board; (4) the Capitol Police Board; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance, but does not include an employee (aa) whose appointment is made by the President with the advice and consent of the Senate; (bb) whose appointment is made by a Member of Congress; (cc) whose appointment is made by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (dd) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

S. Regs: (g) Covered employee means any employees of (1) the House of Representatives; and (2) the Senate; (3) the Capitol Guide Board; (4) the Capitol Police Board; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance, but does not include an employee (aa) whose appointment is made by the President with the advice and consent of the Senate; (bb) whose appointment is made or directed by a Member of Congress; (cc) whose appointment is made by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; (dd) who is appointed pursuant to 2 U.S.C. §43d(a); or (ee) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

C Reg: (g) Covered employee means any employee of (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; or (6) the Office of Compliance, but does not include an employee: (aa) whose appointment is made by the President with the advice and consent of the Senate; or (bb) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (cc) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

(h) Covered position means any position that is or will be held by a covered employee.

(i) Disabled veteran means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected

disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(j) Employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(k) Employee of the Capitol Police Board includes any member or officer of the Capitol Police.

(l) Employee of the House of Representatives includes an individual occupying a position the pay of which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (g) above nor any individual described in subparagraphs (aa) through (dd) of paragraph (g) above.

(m) Employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (g) above nor any individual described in subparagraphs (aa) through (ee) of paragraph (g) above.

H Regs: (n) Employing office means: (1) the personal office of a Member of the House of Representatives; (2) a committee of the House of Representatives or a joint committee of the House of Representatives and the Senate; or (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate.

S Regs: (n) Employing office means: (1) the personal office of a Senator; (2) a committee of the Senate or a joint committee of the House of Representatives and the Senate; or (3) any other office headed by a person with the final authority to appoint, or be directed by a Member of Congress to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate.

C Reg: (n) Employing office means: the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(o) Office means the Office of Compliance.

(p) Preference eligible means veterans, spouses, widows, widowers or mothers who meet the definition of ''preference eligible'' in 5 U.S.C. §2108(3)(A)–(G).

(q) Qualified applicant means an applicant for a covered position whom an employing office deems to satisfy the requisite minimum job-related requirements of the position. Where the employing office uses an entrance examination or evaluation for a covered position that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has received a passing score on the examination or evaluation.

(r) Separated under honorable conditions means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(s) Uniformed services means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(t) VEOA means the Veterans Employment Opportunities Act of 1998 (Pub. L. 105–339, 112 Stat. 3182).

(u) Veterans means persons as defined in 5 U.S.C. §2108(1), or any superseding legislation.

SEC. 1.103. ADOPTION OF REGULATIONS.

(a) Adoption of regulations. Section 4(c)(4)(A) of the VEOA generally authorizes the Board to issue regulations to implement section 4(c). In addition, section 4(c)(4)(B) of the VEOA directs the Board to promulgate regulations that are ''the same as the most relevant substantive regulations (applicable with respect to the Executive branch) promulgated to implement the statutory provisions referred to in paragraph (2)'' of section 4(c) of the VEOA. Those statutory provisions are section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code. The regulations issued by the Board herein are on all matters for which section 4(c)(4)(B) of the VEOA requires a regulation to be issued. Specifically, it is the Board's considered judgment based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations (applicable with respect to the Executive branch) promulgated to implement the statutory provisions referred to in paragraph (2)'' of section 4(c) of the VEOA that need be adopted.

(b) Modification of substantive regulations. As a qualification to the statutory obligation to issue regulations that are ''the same as the most substantive regulations (applicable with respect to the Executive branch)'', section 4(c)(4)(B) of the VEOA authorizes the Board to ''determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under'' section 4(c) of the VEOA.

(c) Rationale for Departure from the Most Relevant Executive Branch Regulations. The Board concludes that it must promulgate regulations accommodating the human resource systems existing in the Legislative branch; and that such regulations must take into account the fact that the Board does not possess the statutory and Executive Order based government-wide policy making authority underlying OPM's counterpart VEOA regulations governing the Executive branch. OPM's regulations are designed for the competitive service (defined in 5 U.S.C. §2102(a)(2)), which does not exist in the employing offices subject to this regulation. Therefore, to follow the OPM regulations would create detailed and complex rules and procedures for a workforce that does not exist in the Legislative branch, while providing no VEOA protections to the covered Legislative branch employees. We have chosen to propose specially tailored regulations, rather than simply to adopt those promulgated by OPM, so that we may effectuate Congress' intent in extending the principles of the veterans' preference laws to the Legislative branch through the VEOA.

SEC. 1.104. COORDINATION WITH SECTION 225 OF THE CONGRESSIONAL ACCOUNTABILITY ACT.

Statutory directive. Section 4(c)(4)(C) of the VEOA requires that promulgated regulations must be consistent with section 225 of the CAA. Among the relevant provisions of section 225 are subsection (f)(1), which prescribes as a rule of construction that definitions and exemptions in the laws made applicable by the CAA shall apply under the CAA, and subsection (f)(3), which states that the CAA shall not be considered to authorize enforcement of the CAA by the Executive branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

Sec.

1.105 Responsibility for administration of veterans' preference.
1.106 Procedures for bringing claims under the VEOA.

SEC. 1.105. RESPONSIBILITY FOR ADMINISTRATION OF VETERANS' PREFERENCE.

Subject to section 1.106, employing offices with covered employees or covered positions are responsible for making all veterans' preference determinations, consistent with the VEOA.

SEC. 1.106. PROCEDURES FOR BRINGING CLAIMS UNDER THE VEOA.

Applicants for appointment to a covered position and covered employees may contest adverse veterans' preference determinations, including any determination that a preference eligible applicant is not a qualified applicant, pursuant to sections 401–416 of the CAA, 2 U.S.C. §§1401–1416, and provisions of law referred to therein; 206a(3) of the CAA, 2 U.S.C. §§1401, 1316a(3); and the Office's Procedural Rules.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

Sec.

1.107 Veterans' preference in appointments to restricted covered positions.
1.108 Veterans' preference in appointments to non-restricted covered positions.
1.109 Crediting experience in appointments to covered positions.
1.110 Waiver of physical requirements in appointments to covered positions.

SEC. 1.107. VETERANS' PREFERENCE IN APPOINTMENTS TO RESTRICTED POSITIONS.

In each appointment action for the positions of custodian, elevator operator, guard, and messenger (as defined below and collectively referred to in these regulations as restricted covered positions) employing offices shall restrict competition to preference eligible applicants as long as qualified preference eligible applicants are available. The provisions of sections 1.109 and 1.110 below shall apply to the appointment of a preference eligible applicant to a restricted covered position. The provisions of section 1.108 shall apply to the appointment of a preference eligible applicant to a restricted covered position, in the event that there is more than one preference eligible applicant for the position.

Custodian—One whose primary duty is the performance of cleaning or other ordinary routine maintenance duties in or about a government building or a building under Federal control, park, monument, or other Federal reservation.

Elevator operator—One whose primary duty is the running of freight or passenger elevators. The work includes opening and closing elevator gates and doors, working elevator controls, loading and unloading the elevator, giving information and directions to passengers such as on the location of offices, and reporting problems in running the elevator.

Guard—One whose primary duty is the assignment to a station, beat, or patrol area in a Federal building or a building under Federal control to prevent illegal entry of persons or property; or required to stand watch at or to patrol a Federal reservation, industrial area, or other area designated by Federal authority, in order to protect life and property; make observations for detection of fire, trespass, unauthorized removal of public property or hazards to Federal personnel or property. The term guard does not include law enforcement officer positions of the Capitol Police Board.

Messenger—One whose primary duty is the supervision or performance of general messenger work (such as running errands, delivering messages, and answering call bells).

SEC. 1.108. VETERANS' PREFERENCE IN APPOINTMENTS TO NON-RESTRICTED COVERED POSITIONS.

(a) Where an employing office has duly adopted a policy requiring the numerical scoring or rating of applicants for covered positions, the employing office shall add points to the earned ratings of those preference eligible applicants who receive passing scores in an entrance examination, in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309. For example, five preference points shall be granted to preference eligible applicants in a 100-point system, one point shall be granted in a 20-point system, and so on.

(b) In all other situations involving appointment to a covered position, employing offices shall consider veterans' preference eligibility as an affirmative factor in the employing office's determination of who will be appointed from among qualified applicants.

SEC. 1.109. CREDITING EXPERIENCE IN APPOINTMENTS TO COVERED POSITIONS.

When considering applicants for covered positions in which experience is an element of qualification, employing offices shall provide preference eligible applicants with credit:

(a) for time spent in the military service (1) as an extension of time spent in the position in which the applicant was employed immediately before his/her entrance into the military service, or (2) on the basis of actual duties performed in the military service, or (3) as a combination of both methods. Employing offices shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible applicant.

(b) for all experience material to the position for which the applicant is being considered, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he/she received pay therefor.

SEC. 1.110. WAIVER OF PHYSICAL REQUIREMENTS IN APPOINTMENTS TO COVERED POSITIONS.

(a) Subject to (c) below, in determining qualifications of a preference eligible for appointment, an employing office shall waive:

(1) with respect to a preference eligible applicant, requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) with respect to a preference eligible applicant to whom it has made a conditional offer of employment, physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible applicant, the preference eligible applicant is physically able to perform efficiently the duties of the position;

(b) Subject to (c) below, if an employing office determines, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible applicant, that an applicant to whom it has made a conditional offer of employment is preference eligible as a disabled veteran as described in 5 U.S.C. §2108(3)(c) and who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible applicant of the reasons for the determination and of the right to respond and to submit additional information to the employing office, within 15 days of the date of the notification. The director of the employing office may, by providing written notice to the preference eligible applicant, shorten the period for submitting a response with respect to an appointment to a particular covered position, if necessary because of a need to fill the covered position immediately. Should the preference eligible applicant make a timely response, the highest ranking individual or group of individuals with authority to make employment decisions on behalf of the employing office shall render a final determination of the physical ability of the preference eligible applicant to perform the duties of the position, taking into account the response and any additional information provided by the preference eligible applicant. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible applicant.

(c) Nothing in this section shall relieve an employing office of any obligations it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the Act, 2 U.S.C. §1302(a)(3).

SUBPART D—VETERANS' PREFERENCE IN REDUCTIONS IN FORCE

Sec.
1.111. Definitions applicable in reductions in force.
1.112. Application of preference in reductions in force.
1.113. Crediting experience in reductions in force.
1.114. Waiver of physical requirements in reductions in force.
1.115. Transfer of functions.

SEC. 1.111. DEFINITIONS APPLICABLE IN REDUCTIONS IN FORCE.

(a) Competing covered employees are the covered employees within a particular position or job classification, at or within a particular competitive area, as those terms are defined below.

(b) Competitive area is that portion of the employing office's organizational structure, as determined by the employing office, in which covered employees compete for retention. A competitive area must be defined solely in terms of the employing office's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an employing office. The minimum competitive area is a department or subdivision of the employing office within the local commuting area.

(c) Position classifications or job classifications are determined by the employing office, and shall refer to all covered positions within a competitive area that are in the same grade, occupational level or classification, and which are similar enough in duties, qualification requirements, pay schedules, tenure (type of appointment) and working conditions so that an employing office may reassign the incumbent of one position to any of the other positions in the position classification without undue interruption.

(d) Preference Eligibles. For the purpose of applying veterans' preference in reductions in force, except with respect to the application of section 1.114 of these regulations regarding the waiver of physical requirements, the following shall apply:

(1) ''active service'' has the meaning given it by section 101 of title 37;

(2) ''a retired member of a uniformed service'' means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his/her service as such a member; and

(3) a preference eligible covered employee who is a retired member of a uniformed service is considered a preference eligible only if

(A) his/her retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his/her service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he/she was employed in a position to which this subchapter applies and thereafter he/she continued to be so employed without a break in service of more than 30 days.

The definition of ''preference eligible'' as set forth in 5 U.S.C §2108 and section 1.102(o) of these regulations shall apply to waivers of physical requirements in determining an employee's qualifications for retention under section 1.114 of these regulations.

H&S Regs: (e) Reduction in force is any termination of a covered employee's employment or the reduction in pay and/or position grade of a covered employee for more than 30 days and that may be required for budgetary or workload reasons, changes resulting from reorganization, or the need to make room for an employee with reemployment or restoration rights. The term ''reduction in force'' does not encompass a termination or other personnel action: (1) predicated upon performance, conduct or other grounds attributable to an employee, or (2) involving an employee who is employed by the employing office on a temporary basis, or (3) attributable to a change in party leadership or majority party status within the House of Congress where the employee is employed.

C Reg: (e) Reduction in force is any termination of a covered employee's employment or the reduction in pay and/or position grade of a covered employee for more than 30 days and that may be required for budgetary or workload reasons, changes resulting from reorganization, or the need to make room for an employee with reemployment or restoration rights. The term ''reduction in force'' does not encompass a termination or other personnel action: (1) predicated upon performance, conduct or other grounds attributable to an employee, or (2) involving an employee who is employed by the employing office on a temporary basis.

(f) Undue interruption is a degree of interruption that would prevent the completion of required work by a covered employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, work generally would not be considered to be unduly interrupted if a covered employee needs more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a program accorded low priority by the employing office, or to a vacant position.

SEC. 1.112. APPLICATION OF PREFERENCE IN REDUCTIONS IN FORCE.

Prior to carrying out a reduction in force that will affect covered employees, employing offices shall determine which, if any, covered employees within a particular group of competing covered employees are entitled to veterans' preference eligibility status in accordance with these regulations. In determining which covered employees will be retained, employing offices will treat veterans' preference as the controlling factor in retention decisions among such competing covered employees, regardless of length of service or performance, provided that the preference eligible employee's performance has

not been determined to be unacceptable. Provided, a preference eligible employee who is a ''disabled veteran'' under section 1.102(h) above who has a compensable service-connected disability of 30 percent or more and whose performance has not been determined to be unacceptable by an employing office is entitled to be retained in preference to other preference eligible employees. Provided, this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. §1302(a)(9).

SEC. 1.113. CREDITING EXPERIENCE IN REDUCTIONS IN FORCE.

In computing length of service in connection with a reduction in force, the employing office shall provide credit to preference eligible covered employees as follows:

(a) a preference eligible covered employee who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(b) a preference eligible covered employee who is a retired member of a uniformed service is entitled to credit for:

(1) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) the total length of time in active service in the armed forces if he is included under 5 U.S.C. §3501(a)(3)(A), (B), or (C); and

(c) a preference eligible covered employee is entitled to credit for:

(1) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service rendered as an employee described in 5 U.S.C. §2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in 5 U.S.C. §2105(c).

SEC. 1.114. WAIVER OF PHYSICAL REQUIREMENTS IN REDUCTIONS IN FORCE.

(a) If an employing office determines, on the basis of evidence before it, that a covered employee is preference eligible, the employing office shall waive, in determining the covered employee's retention status in a reduction in force:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the employee, the preference eligible covered employee is physically able to perform efficiently the duties of the position.

(b) If an employing office determines that a covered employee who is a preference eligible as a disabled veteran as described in 5 U.S.C. §2108(3)(c) and has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible covered employee of the reasons for the determination and of the right to respond and to submit additional information to the employing office within 15 days of the date of the notification. Should the preference eligible covered employee make a timely response, the highest ranking individual or group of individuals with authority to make employment decisions on behalf of the employing office, shall render a final determination of the physical ability of the preference eligible covered employee to perform the duties of the covered position, taking into account the evidence before it, including the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible covered employee.

(c) Nothing in this section shall relieve an employing office of any obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SEC. 1.115. TRANSFER OF FUNCTIONS.

(a) When a function is transferred from one employing office to another employing office, each covered employee in the affected position classifications or job classifications in the function that is to be transferred shall be transferred to the receiving employing office for employment in a covered position for which he/she is qualified before the receiving employing office may make an appointment from another source to that position.

(b) When one employing office is replaced by another employing office, each covered employee in the affected position classifications or job classifications in the employing office to be replaced shall be transferred to the replacing employing office for employment in a covered position for which he/she is qualified before the replacing employing office may make an appointment from another source to that position.

SUBPART E—ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS.

Sec.

1.116. Adoption of veterans' preference policy.
1.117. Preservation of records made or kept.
1.118. Dissemination of veterans' preference policies to applicants for covered positions.
1.119. Information regarding veterans' preference determinations in appointments.
1.120. Dissemination of veterans' preference policies to covered employees.
1.121. Written notice prior to a reduction in force.

SEC. 1.116. ADOPTION OF VETERANS' PREFERENCE POLICY.

No later than 120 calendar days following Congressional approval of this regulation, each employing office that employs one or more covered employees or that seeks applicants for a covered position shall adopt its written policy specifying how it has integrated the veterans' preference requirements of the Veterans Employment Opportunities Act of 1998 and these regulations into its employment and retention processes. Upon timely request and the demonstration of good cause, the Executive Director, in his/her discretion, may grant such an employing office additional time for preparing its policy. Each such employing office will make its policies available to applicants for appointment to a covered position and to covered employees in accordance with these regulations. The act of adopting a veterans' preference policy shall not relieve any employing office of any other responsibility or requirement of the Veterans Employment Opportunity Act of 1998 or these regulations. An employing office may amend or replace its veterans' preference policies as it deems necessary or appropriate, so long as the resulting policies are consistent with the VEOA and these regulations.

SEC. 1.117. PRESERVATION OF RECORDS MADE OR KEPT.

An employing office that employs one or more covered employees or that seeks applicants for a covered position shall maintain any records relating to the application of its veterans' preference policy to applicants for covered positions and to workforce adjustment decisions affecting covered employees for a period of at least one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or covered employee is notified of the personnel action. Where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office shall preserve all personnel records relevant to the claim until final disposition of the claim. The term ''personnel records relevant to the claim'', for example, would include records relating to the veterans' preference determination regarding the person bringing the claim and records relating to any veterans' preference determinations regarding other applicants for the covered position the person sought, or records relating to the veterans' preference determinations regarding other covered employees in the person's position or job classification. The date of final disposition of the charge or the action means the latest of the date of expiration of the statutory period within which the aggrieved person may file a complaint with the Office or in a U.S. District Court or, where an action is brought against an employing office by the aggrieved person, the date on which such litigation is terminated.

SEC. 1.118. DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO APPLICANTS FOR COVERED POSITIONS.

(a) An employing office shall state in any announcements and advertisements it makes concerning vacancies in covered positions that the staffing action is governed by the VEOA.

(b) An employing office shall invite applicants for a covered position to identify themselves as veterans' preference eligible applicants, provided that in doing so:

(1) the employing office shall state clearly on any written application or questionnaire used for this purpose or make clear orally, if a written application or questionnaire is not used, that the requested information is intended for use solely in connection with the employing office's obligations and efforts to provide veterans' preference to preference eligible applicants in accordance with the VEOA; and

(2) the employing office shall state clearly that disabled veteran status is requested on a voluntary basis, that it will be kept confidential in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3), that refusal to provide it will not subject the individual to any adverse treatment except the possibility of an adverse determination regarding the individual's status as a preference eligible applicant as a disabled veteran under the VEOA, and that any information obtained in accordance with this section concerning the medical condition or history of an individual will be collected, maintained and used only in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

(3) the employing office shall state clearly that applicants may request information

about the employing office's veterans' preference policies as they relate to appointments to covered positions, and shall describe the employing office's procedures for making such requests.

(c) Upon written request by an applicant for a covered position, an employing office shall provide the following information in writing:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition in a manner designed to be understood by applicants, along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions, including any procedures the employing office shall use to identify preference eligible employees;

(3) the employing office may provide other information to applicants regarding its veterans' preference policies and practices, but is not required to do so by these regulations.

(d) Employing offices are also expected to answer questions from applicants for covered positions that are relevant and non-confidential concerning the employing office's veterans' preference policies and practices.

SEC. 1.119. INFORMATION REGARDING VETERANS' PREFERENCE DETERMINATIONS IN APPOINTMENTS.

Upon written request by an applicant for a covered position, the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's appointment decision regarding that applicant. Such explanation shall include at a minimum:

(a) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions; and

(b) a statement as to whether the applicant is preference eligible and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not preference eligible.

SEC. 1.120. DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO COVERED EMPLOYEES.

(a) If an employing office that employs one or more covered employees provides any written guidance to such employees concerning employee rights generally or reductions in force more specifically, such as in a written employee policy, manual or handbook, such guidance must include information concerning veterans' preference under the VEOA, as set forth in subsection (b) of this regulation.

(b) Written guidances described in subsection (a) above shall include, at a minimum:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to reductions in force, including the procedures the employing office shall take to identify preference eligible employees.

(3) the employing office may provide other information in its guidances regarding its veterans' preference policies and practices, but is not required to do so by these regulations.

(c) Employing offices are also expected to answer questions from covered employees that are relevant and non-confidential concerning the employing office's veterans' preference policies and practices.

SEC. 1.121. WRITTEN NOTICE PRIOR TO A REDUCTION IN FORCE.

(a) Except as provided under subsection (c), a covered employee may not be released due to a reduction in force, unless the covered employee and the covered employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (b), at least 60 days before the covered employee is so released.

(b) Any notice under paragraph (a) shall include—

(1) the personnel action to be taken with respect to the covered employee involved;

(2) the effective date of the action;

(3) a description of the procedures applicable in identifying employees for release;

(4) the covered employee's competitive area;

(5) the covered employee's eligibility for veterans' preference in retention and how that preference eligibility was determined;

(6) the retention status and preference eligibility of the other employees in the affected position classifications or job classifications within the covered employee's competitive area, by providing:

(A) a list of all covered employee(s) in the covered employee's position classification or job classification and competitive area who will be retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible, and

(B) a list of all covered employee(s) in the covered employee's position classification or job classification and competitive area who will not be retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible.

(7) a description of any appeal or other rights which may be available.

(c) The director of the employing office may, in writing, shorten the period of advance notice required under subsection (a), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(d) No notice period may be shortened to less than 30 days under this subsection.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4759. Mr. WICKER submitted an amendment intended to be proposed to amendment SA 4753 proposed by Mr. REID (for himself and Mr. MCCONNELL) to the bill H.R. 4853, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes; which was ordered to lie on the table.

SA 4760. Mrs. GILLIBRAND (for Mr. AKAKA (for himself, Ms. COLLINS, Mr. GRASSLEY, Mr. LIEBERMAN, and Mr. VOINOVICH)) proposed an amendment to the bill S. 372, to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

SA 4761. Ms. LANDRIEU (for herself, Mr. VITTER, and Mr. WICKER) submitted an amendment intended to be proposed to amendment SA 4753 proposed by Mr. REID (for himself and Mr. MCCONNELL) to the bill H.R. 4853, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes; which was ordered to lie on the table.

SA 4762. Ms. LANDRIEU (for herself, Mr. VITTER, and Mr. WICKER) submitted an amendment intended to be proposed to amendment SA 4753 proposed by Mr. REID (for himself and Mr. MCCONNELL) to the bill H.R. 4853, supra; which was ordered to lie on the table.

SA 4763. Mr. BROWN of Ohio (for himself and Ms. STABENOW) submitted an amendment intended to be proposed to amendment SA 4753 proposed by Mr. REID (for himself and Mr. MCCONNELL) to the bill H.R. 4853, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4759. Mr. WICKER submitted an amendment intended to be proposed to amendment SA 4753 proposed by Mr. REID (for himself and Mr. MCCONNELL) to the bill H.R. 4853, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE __—OIL RECOVERY ZONE

SEC. ___1. SHORT TITLE.

This title may be cited as the ''Oil Recovery Zone Act''.

SEC. ___2. RECOVERY ZONE; GULF OIL SPILL.

For purposes of this title—

(1) RECOVERY ZONE.—The term ''Recovery Zone'' means the following counties and parishes under the unified Coast Guard command that responded to the Gulf oil spill:

(A) The counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, and Wakulla in the State of Florida.

(B) The counties of Mobile and Baldwin in the State of Alabama.

(C) The counties of Hancock, Harrison, and Jackson in the State of Mississippi.

(D) The parishes of Orleans, St. Tammany, St. Bernard, Plaquemines, Jefferson, Lafourche, Terrebonne, St. Mary, Iberia, Vermilion, and Cameron in the State of Louisiana.

(2) GULF OIL SPILL.—The term ''Gulf oil spill'' means the discharge of oil by reason of the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon.

SEC. ___3. NON-RECOGNITION OF INCOME FROM INSURANCE PROCEEDS WHICH ARE REINVESTED IN THE RECOVERY ZONE.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, amounts received from any qualified Gulf oil spill payment shall be recognized only to the extent that the amount realized exceeds the qualified investments made by the taxpayer with respect to such qualified Gulf oil spill payment.

(b) QUALIFIED GULF OIL SPILL PAYMENT.—For purposes of this section, the term ''qualified Gulf oil spill payment'' means—

(1) any proceeds or payments from insurance received in connection with the Gulf oil spill, or

(2) any payment for damages attributable to the Gulf oil spill under section 1002 of the