# Introduction

The Office of Personnel Management (OPM) administers entitlement to ***veterans' preference*** in employment under title 5, United States Code, and oversees other statutory employment requirements in titles 5 and 38. (Title 38 also governs Veterans' entitlement to ***benefits*** administered by the Department of Veterans Affairs (VA).)

Both title 5 and title 38 use many of the same terms, but in different ways. For example, service during a "war" is used to determine entitlement to Veterans' preference and service credit under title 5. OPM has always interpreted this to mean **a war declared by Congress** . But title 38 defines "period of war" to include many non-declared wars, including Korea, Vietnam, and the Persian Gulf. Such conflicts entitle a veteran to VA **benefits** under title 38, but not necessarily to **preference or service credit** under title 5. Thus it is critically important to use the correct definitions in determining eligibility for specific rights and benefits in employment.

For additional information, including the complete text of the laws and regulations on Veterans' rights, consult the references cited.

# Veterans' Preference in Appointments

## Why Preference is Given

Since the time of the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to Federal jobs. Recognizing their sacrifice, Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for Government employment, and acknowledges the larger obligation owed to disabled veterans.

Veterans' preference in its present form comes from the Veterans' Preference Act of 1944, as amended, and is now codified in various provisions of title 5, United States Code. By law, veterans who are disabled or who served on active duty in the Armed Forces during certain specified time periods or in military campaigns are entitled to preference over others in hiring from competitive lists of eligibles and also in retention during reductions in force.

In addition to receiving preference in **competitive** appointments, veterans may be considered for special **noncompetitive** appointments for which only they are eligible. See Chapter 4.

## When Preference Applies

Preference in hiring applies to permanent and temporary positions in the competitive and excepted services of the executive branch. Preference does not apply to positions in the Senior Executive Service or to executive branch positions for which Senate confirmation is required. The legislative and judicial branches of the Federal Government also are exempt from the Veterans' Preference Act **unless** the positions are in the competitive service (Government Printing Office, for example) or have been made subject to the Act by another law.

Preference applies in hiring from civil service examinations conducted by the Office of Personnel Management (OPM) and agencies under delegated examining authority, for most excepted service jobs including Veterans Recreuitment

Appointments (VRA), and when agencies make temporary, term, and overseas limited appointments. Veterans' preference does not apply to promotion, reassignment, change to lower grade, transfer or reinstatement.

Veterans' preference does not require an agency to use any particular appointment process. Agencies have broad authority under law to hire from any appropriate source of eligibles including special appointing authorities. An agency may consider candidates already in the civil service from an agency-developed merit promotion list or it may reassign a current employee, transfer an employee from another agency, or reinstate a former Federal employee. In addition, agencies are required to give priority to displaced employees before using civil service examinations and similar hiring methods.

***Civil service examination*: 5 U.S.C. 3304-3330, 5 CFR Part 332, OPM Delegation Agreements with individual agencies, OPM Examining Handbook, OPM Delegated Examining Operations Handbook; *Excepted service appointments, including VRA's*: 5 U.S.C. 3320; 5 CFR Part 302; *Temporary and term employment:* 5 CFR Parts 316 and 333; *Overseas limited employment:* 5 CFR Part 301; *Career Transition Program:* 5 CFR Part 330, Subparts F and G.**

## Types of Preference

To receive preference, a veteran must have been discharged or released from active duty in the Armed Forces under honorable conditions (i.e., with an honorable or general discharge). As defined in 5 U.S.C. 2101(2), "Armed Forces" means the Army, Navy, Air Force, Marine Corps and Coast Guard. The veteran must also be eligible under one of the preference categories below (also shown on the Standard Form (SF) 50, *Notification of Personnel Action*).

Military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they are disabled veterans. (This does not apply to Reservists who will not begin drawing military retired pay until age 60.)

For non-disabled users, active duty for training by National Guard or Reserve soldiers does not qualify as "active duty" for preference.

For disabled veterans, active duty includes training service in the Reserves or National Guard, per the Merit Systems Protection Board decision in Hesse v. Department of the Army, 104 M.S.P.R.647(2007).

For purposes of this chapter and 5 U.S.C. 2108, "war" means only those armed conflicts declared by Congress as war and includes World War II, which covers the period from December 7, 1941, to April 28, 1952.

When applying for Federal jobs, eligible veterans should claim preference on their application or resume. Applicants claiming 10-point preference must complete Standard Form (SF) 15, *Application for 10-Point Veteran Preference*, and submit the requested documentation.

The following preference categories and points are based on 5 U.S.C. 2108 and 3309 as modified by a length of service requirement in 38 U.S.C. 5303A(d). (The letters following each category, e.g., "TP," are a shorthand reference used by OPM in competitive examinations.)

## 5-Point Preference (TP)

Five points are added to the **passing** examination score or rating of a veteran who served:

- During a war; **or**
- During the period April 28, 1952 through July 1, 1955; **or**
- For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976; **or**
- During the Gulf War from August 2, 1990, through January 2, 1992; **or**
- For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; **or**
- In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti, qualifies for preference.

A campaign medal holder or Gulf War veteran who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty. The 24-month service requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. 1171 or 1173.

## A word about Gulf War Preference...

The Defense Authorization Act of Fiscal Year 1998 (Public Law 105-85) of November 18, 1997, contains a provision (section 1102 of Title XI) which accords Veterans' preference to ***everyone*** who served on active duty during the period beginning August 2, 1990, and ending January 2, 1992, provided, of course, the veteran is otherwise eligible.

This means that anyone who served on active duty during the Gulf War, regardless or where of for how long, is entitled to preference if otherwise eligible (i.e., have been separated under honorable conditions and served continuously for a minimum of 24 months or the full period for which called or ordered to active duty). This applies not only to candidates seeking employment, but to Federal employees who may be affected by reduction in force, as well.

## Questions and Answers about Gulf War Preference

**Q. Public Law 105-85 of November 18, 1997, contains a provision (section 1102 of Title XI) which accords Veterans' preference to anyone who served on active duty, anywhere in the world, for any length of time between August 2, 1990, and January 2, 1992, provided the person is "otherwise eligible." What does "otherwise eligible" mean, here?**

A. It means the person must have been separated from the service under honorable conditions and have served continuously for a minimum of 24 months or the full period for which called or ordered to active duty. For example, someone who enlisted in the Army and was serving on active duty when the Gulf War broke out on Aug 2, 1990, would have to complete a minimum of 24 months service to be eligible for preference. On the other hand a Reservist who was called to active duty for a month and spent all his time at the Pentagon before being released would also be eligible. What the law did was to add an additional paragraph (C) covering Gulf War veterans to 5 U.S.C. 2108(1) (on

who is eligible for preference). But, significantly, the law made no other changes to existing law. In particular, it did not change paragraph (4) of section 2108 (the Dual Compensation Act of 1973), which severely restricts preference entitlement for retired officers at the rank of Major and above. When the Dual Compensation Act was under consideration, there was extensive debate in Congress as to who should be entitled to preference. Congress basically compromised by giving preference in appointment to most retired military members (except for "high-ranking officers" who were not considered to need it), but severely limiting preference in RIF for all retired military because they had already served one career and should not have preference in the event of layoffs.

So, "otherwise eligible" means that the individual must be eligible under existing law.

**Q. Which provision of the new law contains the 24 month service requirement for regular military service members on active duty as opposed to reservists who are called or ordered to active duty?**

A. The 24 month service requirement provision is found in Section 5303A of title 38, United States Code which defines the minimum active-duty service requirement for those who initially enter active duty after September 7, 1980.

**Q. Can an applicant claim preference based on Gulf War service after January 2, 1992?**

A. The law specifies that only those on active duty during the period beginning August 2, 1990, and ending January 2, 1992, are eligible for preference. Applicants who served on active duty exclusively after these dates would have to be in receipt of a campaign badge or expeditionary medal.

**Q. Are there any plans to extend Veterans' preference to any other groups of individuals who served on active duty during times of conflict that may not have served in specific theaters of operation?**

A. We are not aware of any plans to extend Veterans' preference to any other group of individuals.

**Q. An applicant is claiming preference based on service in Bosnia, but he/she has no DD Form 214 to support his claim. Can we give him/her preference?**

A. A service member whose record appears to show service qualifying for Veterans' preference (for example, there is an indication that the person served in Bosnia in 1996), may be accorded 5 points tentative preference on that basis alone. However, before the person can be appointed, he or she must submit proof of entitlement to preference. That proof may be an amended DD Form 214 showing the award of the Armed Forces Expeditionary Medal (AFEM) for Bosnia in the case of service members who served there and were released prior to enactment of the recent Veterans' preference amendments, or it may be other official documentation showing award of the Armed Forces Expeditionary Medal.

**Q. How are we to know that a Reservist was, in fact, a) called to active duty, and b) served the full period for which called? Don't some Reservists just receive a letter telling them they are being placed on active duty?**

A. A Reservist will always have orders placing him (or her) on active duty -- (it is the only way the Reservist can be paid). While the individual may also have a letter saying that he or she is being called up, there will always be orders

backing this up. Similarly, when the Reservist is released from active duty, he or she will always have separation or demobilization orders.

**Q. Several employees have come to the agency personnel office claiming they should have preference under the new law, but they have no proof of service during the specified period. We are getting ready to issue Reduction In Force (RIF) notices. Should we take the employees' word for it or wait until they have proof?**

A. The employees cannot be given Veterans' preference without required documentation. The agency should work with the employee and the appropriate military service record organizations to obtain this documentation as soon as possible to avoid having to "rerun" the Reduction In Force at the last minute.

**Q. If our agency has "frozen" personnel actions and issued Reduction In Force notices but the Reduction In Force effective date has not yet arrived, how can we account for any changes in Veterans' preference status?**

A. Regardless of where you are in the process of carrying out the Reduction In Force, you must correct the Veterans' preference of employees who will now be eligible as a result of the statute. Veterans' preference cannot be "frozen" like qualifications or performance appraisals--it must be corrected right up until the day of the Reduction In Force. If a change in preference results in a different outcome for one or more employees, amended Reduction In Force notices must be issued. If such a change results in a worse offer, the affected employee must be given a full 60/120 day notice period required by regulation. This may require the agency to use a temporary exception to keep one or more employees on the rolls past the Reduction In Force effective date in order to meet this obligation.

**Q. Our agency already completed a Reduction In Force effective November 28, 1997. There is at least one separated employee who would now have Veterans' preference and would not have been separated if we had known about the change in statute. What do we do now?**

A. If an agency finds that an eligible employee reached for Reduction In Force separation or downgrading effective on or after November 18, 1997, was not provided retention preference consistent with P.L. 105-85, The Office of Personnel Management recommends that the agency take appropriate corrective action.

An employee not provided appropriate retention preference may appeal the Reduction In Force action to the Merit Systems Protection Board (MSPB). MSPB normally requires the appeal to be filed within 30 days of the Reduction In Force effective date, but Merit Systems Protection Board may, at its option, accept later appeals filed within 30 days of the employee becoming aware of the change.

If an employee was separated or downgraded by Reduction In Force, the agency should determine whether or not the employee would have been affected differently based on the change in Veterans' preference. If the employee would still be separated or downgraded, the agency should correct the employee's notice. If the employee was separated, the agency should also correct the Reemployment Priority List (RPL) registration (if any) to accurately reflect their Veterans' preference.

If the corrective action results in a surplus of employees in one or more competitive levels, the agency may have to run a new Reduction In Force. However, the agency cannot retroactively adjust the results of the prior Reduction In Force.

**Q. What if an employee would have been registered as a I-A on the agency's Reemployment Priority List due to the new law, but has been listed as a I-B? What is the agency's obligation to make up for any lost consideration as a result?**

A. The employee's registration status on the Reemployment Priority List should be corrected immediately so that the employee will be considered as a I-A for the remainder of their time on the Reemployment Priority List. If the agency finds that a lower standing person was selected over the employee, the agency must notify the employee of the selection and their right to appeal to Merit Systems Protection Board. If the employee files an Reemployment Priority List appeal, Merit Systems Protection Board may order a retroactive remedy which could include extending the employee's time period for consideration under the Reemployment Priority List.

## A word about Man-Day Tours...

We have received several inquiries concerning the status of "man-day tours." Specifically, agency personnel offices have asked, "Are man-day tours considered regular active duty -- and thus qualifying for Veterans' preference -- or are they really active duty for training and thereby not qualifying?"

The questions arose because many Air Force Reservists were placed on these so-called man-day tours -- also known as, active duty in support (ADS) -- for only a few days during the Gulf War and Operation Provide Comfort (in support of the Kurds) during which they would fly a quick mission to the Gulf, get the Southwest Asia Service Medal (SWASM) and come home, then be released. Although they had orders, they received no DD Form 214.

Some agency personnel offices were according these Reservists preference; while other offices were not. Some Reservists were awarded preference, then had it withdrawn on the basis that they were only performing active duty for training.

Based on discussions with the Department of Defense, Office of Reserve Affairs and Air Force Instruction 36-2619 of 7/22/94, which discusses man-day tours, man-day tours are apparently regular active duty tours. Therefore, these man-day tours are qualifying for preference if the individual was awarded the SWASM or served during the period 8/2/90 to 1/2/92.

This service is also referred to as MPA man-days because it is funded out of the military appropriation account (MPA), an active duty account. Man-days support short-term needs of the active force by authorizing no more than 139 days annually to airmen and officers who are typically placed on active duty under 10 U.S.C. 12301(d) (ordered to active duty with the individual's consent). This authority should appear on the orders. Man-day tours are supposed to accommodate a temporary need for personnel with unique skills that cannot be economically met through the active force.

Based on the above, we have determined that Federal agencies should treat man-day tours as regular active duty unless there is some clear indication on the orders that it is active duty for training. Also, please note that the SWASM (or any campaign or expeditionary medal) is awarded only for active service in hostile areas; a Reservist performing active duty for training would not be eligible for one of these medals.

## 10-Point Compensable Disability Preference (CP)

Ten points are added to the **passing** examination score or rating of:

- A veteran who served at any time **and** who has a compensable service-connected disability rating of at least 10 percent but less than 30 percent.

## 10-Point 30 Percent Compensable Disability Preference (CPS)

Ten points are added to the **passing** examination score or rating of a veteran who served at any time and who has a compensable service-connected disability rating of 30 percent or more.

## 10-Point Disability Preference (XP)

Ten points are added to the **passing** examination score or rating of:

- A veteran who served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs but does not qualify as a CP or CPS; **or**
- A veteran who received a Purple Heart.

## 10-Point Derived Preference (XP)

Ten points are added to the **passing** examination score or rating of spouses, widows, widowers, or mothers of veterans as described below. This type of preference is usually referred to as "derived preference" because it is based on service of a veteran who is not able to use the preference.

Both a mother and a spouse (including widow or widower) may be entitled to preference on the basis of the same veteran's service if they both meet the requirements. However, neither may receive preference if the veteran is living **and** is qualified for Federal employment.

### *Spouse*

Ten points are added to the **passing** examination score or rating of the spouse of a disabled veteran who is disqualified for a Federal position along the general lines of his or her usual occupation **because of a service-connected disability** . Such a disqualification may be presumed **when the veteran is unemployed and**

- is rated by appropriate military or Department of Veterans Affairs authorities to be 100 percent disabled and/or unemployable; **or**
- has retired, been separated, or resigned from a civil service position on the basis of a disability that is service-connected in origin; **or**
- has attempted to obtain a civil service position or other position along the lines of his or her usual occupation and has failed to qualify **because of a service-connected disability** .

Preference may be allowed in other circumstances but anything less than the above warrants a more careful analysis.

**NOTE:** Veterans' preference for spouses is different than the preference the Department of Defense is required by law to extend to spouses of active duty members in filling its civilian positions. For more information on that program, contact the Department of Defense.

### *Widow/Widower*

Ten points are added to the passing examination score or rating of the widow or widower of a veteran who was not divorced from the veteran, has not remarried, or the remarriage was annulled, and the veteran either:

- served during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign medal has been authorized; **or**
- died while on active duty that included service described immediately above under conditions that would not have been the basis for other than an honorable or general discharge.

### *Mother of a deceased veteran*

Ten points are added to the **passing** examination score or rating of the mother of a veteran who died under honorable conditions while on active duty during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign medal has been authorized; **and**

- she is or was married to the father of the veteran; **and**
- she lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage); **or**
- she is widowed, divorced, or separated from the veteran's father and has not remarried; **or**
- she remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

### *Mother of a disabled veteran*

Ten points are added to the **passing** examination score or rating of a mother of a living disabled veteran if the veteran was separated with an honorable or general discharge from active duty, including training service in the Reserves or National Guard, performed at any time **and** is permanently and totally disabled from a service-connected injury or illness; and the mother:

- is or was married to the father of the veteran; **and**
- lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage); **or**
- is widowed, divorced, or separated from the veteran's father and has not remarried; **or**
- remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

**Note: Preference is not given to widows or mothers of deceased veterans who qualify for preference under 5 U.S.C. 2108 (1) (B), (C) or (2). Thus, the widow or mother of a deceased disabled veteran who served after 1955, but did not serve in a war, campaign, or expedition, would not be entitled to preference.**

**5 U.S.C. 2108, 3309; 38 U.S.C. 5303A**

## Adjudication of Veterans' Preference Claims

Agencies are responsible for adjudicating all preference claims except claims for preference based on common-law marriage, which should be sent to the Office of Personnel Management (OPM), Office of the General Counsel, 1900 E.St. NW, Washington, DC 20415.

**5 U.S.C. 3309, 3313 and 5 CFR 332.401, 337.101**

## Crediting Experience of Preference Eligibles

In evaluating experience, an examining office must credit a preference eligible's Armed Forces service as an extension of the work performed immediately prior to the service, or on the basis of the actual duties performed in the service, or as a combination of both, whichever would most benefit the preference eligible.

The examining office must also give all applicants credit for job-related experience, paid and unpaid, including experience in religious, civic, welfare, service and organizational activities.

**5 U.S.C. 3311, 5 CFR 337.101**

## Physical Qualifications

In determining qualifications, agencies must waive a medical standard or physical requirement when there is sufficient evidence that the employee or applicant, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.

**Special provisions apply to the proposed disqualification of a preference eligible with a 30 percent or more compensable disability. See *Disqualification of 30 Percent or more Disabled Veterans* below.**

**5 U.S.C. 3312, 5 CFR Part 339.204**

## Age Qualifications

On July 2, 2008, the Merit Systems Protection Board (Board) issued a final decision in *Robert P. Isabella v. Department of State and Office of Personnel Management*, 2008 M.S.P.B. 146, that affects preference eligibles who apply for federal positions having a maximum entry-age restriction. The Board decided that the agency's failure to waive the maximum entry-age requirements for Mr. Isabella, a preference eligible veteran, violated his rights under the Veteran Employment Opportunities Act of 1998 (VEOA) because there was no demonstration that a maximum entry-age was essential to the performance of the position.

Based on the Board's decision in *Isabella*, qualified preference eligibles may now apply and be considered for vacancies regardless of whether they meet the maximum age requirements identified at 5 U.S.C. 3307. In order to determine whether it must waive a maximum entry-age requirement, an agency must first analyze the affected position to determine whether age is essential to the performance of the position. If the agency decides age is not essential to the position, then it must waive the maximum entry-age requirement for veterans' preference eligible applicants. In instances where the maximum entry-age is waived, the corresponding mandatory retirement age for these individuals will also be higher because it will be reached after 20 years of Law Enforcement Officer (LEO) service for the entitlement to an immediate enhanced annuity.

The same principles set forth above would apply to appointments to other types of positions for which the setting of maximum entry ages are authorized under 5 U.S.C. § 3307. These types of positions are: (1) firefighters, (2) air traffic controllers, (3) United States Park police, (4) nuclear materials couriers, and (5) customs and border patrol officers (subject to the Federal Employees etirement System, 5 U.S.C. § 8401 *et seq.* only).

## Preference in Competitive Examinations

Preference eligibles who are qualified for a position and achieved a passing score have 5 or 10 extra points added to their numerical ratings depending on which of the previously described categories of preference they meet. This means the highest possible rating is 110 (a disabled veteran who earns a score of 100 has 10 extra points added).

Names of eligible applicants are placed on lists, or registers of eligibles, in the order of their ratings. Competitor inventories are established from which selections will be made over a period of time and for case examining in which a register is used to fill a single position or a group of positions and is closed after the needed selection(s) is made.

**For scientific and professional positions in grade General Schedule (GS) - 9 or higher,** names of all qualified applicants are listed on competitor inventories in order of their ratings, augmented by veteran preference, if any.

**For all other positions,** the names of 10-point preference eligibles who have a compensable, service-connected disability of 10 percent or more (CP and CPS) are listed at the top of the register in the order of their ratings ahead of the names of all other eligibles. The names of other 10-point preference eligibles, 5-point preference eligibles, and other applicants are listed in order of their numerical ratings.

A preference eligible is listed ahead of a nonpreference eligible having the same final rating.

**5 U.S.C. 3309, 3313 and 5 CFR 332.401 and 337.101**

## Filling a Position Through the Competitive Examining Process

### Announcing the Vacancy

To fill a vacancy by selection through the competitive examining process, the selecting official requests a list of eligibles from the examining office. The examining office must announce the competitive examining process through USAJOBS. OPM will notify the State employment service where the job is being filled. Subsequently, the examining office determines which applicants are qualified, rates and ranks them based on their qualifications, and issues a certificate of eligibles, which is a list of eligibles with the highest scores from the top of the appropriate register. A certificate of eligibles may be used for permanent, term, or temporary appointment.

### Category Rating

Category rating is an alternative ranking and selection procedure authorized under the Chief Human Capital Officers Act of 2002 (Title XIII of the Homeland Security Act of 2002) and codified at 5 U.S.C. § 3319. Category rating is part of the competitive examining process. Under category rating, applicants who meet basic minimum qualification requirements established for the position and whose job-related competencies or knowledge, skills and abilities

(KSAs) have been assessed are ranked by being placed in one of two or more predefined quality categories instead of being ranked in numeric score order. Preference eligibles are listed ahead of non-preference eligibles within each quality category. Veterans' preference is absolute within each quality category. For more detailed information on Category Rating please visit Chapter 5 of the Delegated Examining Operations Handbook.

### The "Rule of Three" and Veteran pass overs

Selection must be made from the highest three eligibles on the certificate who are available for the job--the "rule of three." However, an agency may not pass over a preference eligible to select a lower ranking nonpreference eligible or nonpreference eligible with the same or lower score.

**Example:** If the top person on a certificate is a 10-point disabled veteran (CP or CPS) and the second and third persons are 5-point preference eligibles, the appointing authority may choose any of the three.

**Example:** If the top person on a certificate is a 10-point disabled veteran (CP or CPS), the second person is not a preference eligible, and the third person is a 5-point preference eligible, the appointing authority may choose either of the preference eligibles. The appointing authority may not pass over the 10-point disabled veteran to select the nonpreference eligible unless an objection has been sustained.

### Category Rating

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## Disqualifications of Preference Eligibles

A preference eligible can be eliminated from consideration only if the examining office sustains the agency's objection to the preference eligible for adequate reason. These reasons, which must be recorded, include medical disqualification under 5 CFR Part 339, suitability disqualification under 5 CFR Part 731, or other reasons considered by the Office of Personnel Management (OPM) or an agency under delegated examining authority to be **disqualifying** .

OPM must approve the sufficiency of an agency reason to **medically disqualify** or pass over a preference eligible on a certificate based on medical reasons to select a nonpreference eligible. **Special provisions apply to the proposed disqualification or pass over for any reason of a preference eligible with a 30 percent or more compensable disability.** ***See Disqualification of 30 Percent or more Disabled Veterans below.***

Agencies have delegated authority for determining suitability in accordance with 5 CFR Part 731.

The preference eligible (or his or her representative) is entitled on request to a copy of the agency's reasons for the proposed pass over and the examining office's response.

An appointing official is not required to consider a person who has three times been passed over with appropriate approval or who has already been considered for three separate appointments from the same or different certificates for the same position. But in each of these considerations, the person must have been within reach under the rule of three and a selection must have been made from that group of three. Further, the preference eligible is entitled to advance notice of discontinuance of certification.

**5 U.S.C. 3317, 3318 and 5 CFR 332.402, 332.404, 332.405, 332.406, and Parts 339 and 731**

## Disqualification of 30 Percent or More Disabled Veterans

The following special provisions apply to disabled veterans with a compensable service-connected disability of 30 percent or more:

- If an agency proposes to pass over a disabled veteran on a certificate to select a person who is not a preference eligible, or to disqualify a disabled veteran based on the physical requirements of the position, it must at the same time notify both the Office of Personnel Management (OPM) and the disabled veteran of the reasons for the determination and of the veteran's right to respond to OPM within 15 days of the date of the notification.
- The agency must provide evidence to OPM that the notice was timely sent to the disabled veteran's last known address.
- OPM must make a determination on the disabled veteran's physical ability to perform the duties of the position, taking into account any additional information provided by the veteran.
- OPM will notify the agency and the disabled veteran of its decision, with which the agency must comply. If OPM agrees that the veteran cannot fulfill the physical requirements of the position, the agency may select another person from the certificate of eligibles. If OPM finds the veteran able to perform the job, the agency may not pass over the veteran.
- OPM is prohibited by law from delegating this function to any agency.

**5 U.S.C. 3312, 3318**

## Preference Eligibles and the Nepotism Provision

A public official may not advocate a relative for appointment, employment, promotion, or advancement, or appoint, employ, promote, or advance a relative, to a position in an agency in which the public official is employed or over which he or she exercises jurisdiction or control.

This restriction does not, however, prohibit the appointment of a preference eligible whose name is within reach for selection on an appropriate certificate of eligibles when an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

**5 U.S.C. 3110(e) and 5 CFR Part 310, Subpart A**

## Filing Late Applications

A veteran may file a late application under the following circumstances by contacting the employing agency. Agencies are responsible for accepting, retaining, and considering their applications as required by law and regulation regardless of whether the agency uses case examining or maintains a continuing register of eligibles.

Applications from 10-point preference eligibles must be accepted, as described below, for future vacancies that may arise after a case examining register or continuing register is closed. Agencies must accept applications from other individuals who are eligible to file on a delayed basis only as long as a case examining register exists.

- A **10-point preference eligible** may file a job application with an agency at any time. If the applicant is qualified for positions filled from a register, the agency must add the candidate to the register, even if the register is closed to other applicants. If the applicant is qualified for positions filled through case examining, the agency will ensure that the applicant is referred on a certificate as soon as possible. If there is no immediate opening, the agency must retain the application in a special file for referral on certificates for future vacancies for up to three years. The Office of Personnel Management's *Delegated Examining Operations Handbook* provides detailed instructions.
- A **preference eligible** is entitled to be reentered on each register (or its successor) where previously listed if he or she applies within 90 days after resignation without delinquency or misconduct from a career or career-conditional appointment.
- A **preference eligible** is entitled to be entered on an appropriate existing register if he or she applies within 90 days after furlough or separation without delinquency or misconduct from a career or career-conditional appointment or if found eligible to apply **after successfully appealing a furlough or discharge** from career or career-conditional appointment.
- A person who lost eligibility for appointment from a register because of active duty in the Armed Forces is entitled to be restored to the register (or its successor) and receive priority consideration when certain conditions are met. See 5 CFR 332.322 for more details.
- A person who was unable to file for an open competitive examination or appear for a test because of **service in the Armed Forces or hospitalization** continuing for up to 1 year following discharge may file after the closing date if the register of eligibles still exists.
- A **Federal employee** who was unable to file for an open competitive examination or appear for a test because of active Reserve duty continuing beyond 15 days may file after the closing date of an existing register.

**5 U.S.C. 3305, 3314, 3315, and 5 CFR 332.311, 332.312, 332.321, 332.322**

## Excepted Service Employment

The Veterans' Preference Act requires an appointing authority in the executive branch to select from among qualified applicants for appointment to excepted service vacancies in the same manner and under the same conditions required for the competitive service by 5 U.S.C. 3308-3318. Appointments made with the advice and consent of the Senate are exempt.

### Excepted Service Procedures for Pass Over of 30 Percent or More Disabled Veterans

In light of the decision of the United States Court of Appeals for the Federal Circuit in Gingery v. Department of Defense, an agency that wishes to pass over any preference eligible with a compensable, service-connected disability of 30 percent or more who has applied for a position in the excepted service subject to the appointment procedures in 5 CFR Part 302 must send its request to OPM for adjudication. (Part 302 procedures apply only to excepted service positions covered under title 5, United States Code, which have been excepted from the competitive service by the President or by OPM.)

This does not apply to hiring for positions (e.g., attorneys) exempt from part 302 procedures pursuant to 5 CFR 302.101(c). The Gingery panel did not overrule Patterson v. Department of Interior, which sustained section 302.101(c), and OPM's adoption of the standard that agencies filling positions that are exempt from Part 302 requirements need only follow the principle of veterans' preference as far a administratively feasible, i.e., consider veteran status as a positive factor when reviewing applications.

Office of Personnel Management regulations governing the application of Veterans' preference in excepted appointments are in 5 CFR Part 302.

**5 U.S.C. 3320 and 5 CFR Part 302**

## Administration and Enforcement of Veterans' Preference

Office of Personnel Management (OPM) is charged with prescribing and enforcing regulations for the administration of Veterans' preference in the competitive service in executive agencies. OPM is charged with prescribing regulations for the administration of Veterans' preference in the excepted service in executive agencies. Agencies themselves are generally responsible for enforcement.

**5 U.S.C. 1302**

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# Veterans' Preference in Reduction in Force

Veterans have advantages over nonveterans in a reduction in force (RIF). Also, special provisions apply in determining whether retired military members receive preference in RIF and whether their military service is counted. This chapter deals with RIF in the competitive service; some, but not all, of the provisions apply in the excepted service.

## Eligibility for Veterans' Preference in RIF

Determinations of Veterans' preference eligibility are made in accordance with the information under **Preference in Appointments** in Chapter 2, except that a **retired member** of a uniformed service must meet an additional condition to be considered a preference eligible for RIF purposes. This condition differs depending on the rank at which the individual retired from the uniformed service. Uniformed service as defined in 5 United States Code (U.S.C.) 2101 means the Armed Forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

**Retirees below the rank of major (or equivalent)** get preference if:

- Retirement from the uniformed service is based on disability that either resulted from injury or disease received in the line of duty as a direct result of armed conflict, or was caused by an instrumentality of war and was incurred in the line of duty during a period of war as defined in section 101(11) of title 38, U. S. C. "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress; **or**
- The employee's retired pay from a uniformed service is not based on 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training; **or**
- The employee has been continuously employed in a position covered by the 5 U.S.C. chapter 35 since November 30, 1964, without a break in service of more than 30 days.

**Retirees at or above the rank of major (or equivalent)** get preference if they are disabled veterans as defined in 5 U.S.C. 2108(2) (includes XP, CP, and CPS) and also meet one of the criteria above for a person retired below the rank of major.

A preference eligible who at age 60 becomes eligible as a reservist for retired pay under 10 U.S.C. chapter 1223 (previously chapter 67) and who retires at or above the rank of major (or equivalent) is considered a preference eligible for RIF purposes at age 60 only if he or she is a disabled veteran as defined in 5 U.S.C. 2108(2) (includes categories XP, CP, and CPS). Receipt of retired pay under chapter 1223 meets the requirement that retired pay not be based on 20 or more years of full-time active service. Eligibility for retired reservist pay occurs at age 60; up to that time a reservist is not considered a retired member of a uniformed service and, if otherwise eligible, is a preference eligible for reduction in force purposes.

**5 U.S.C. 3501, 3502; 5 CFR 351.501**

## RIF Retention Standing

Employees are ranked on retention registers for competitive levels (groups of similar jobs) based on four factors: tenure, Veterans' preference, length of service, and performance.

First they are placed in Tenure Group I, II, or III, depending on their type of appointment. Within each group, they are placed in a subgroup based on their veteran status:

- Subgroup AD includes each preference eligible who has a compensable service-connected disability of 30 percent or more.
- Subgroup A includes all other preference eligibles not in Subgroup AD, including employees with derived preference (see Chapter 2).
- Subgroup B includes all employees not eligible for Veterans' preference.

Within each subgroup, employees are ranked in descending order by the length of their creditable Federal civilian and military service, augmented by additional service according to the level of their performance ratings.

When a position in a competitive level is abolished, the employee affected (released from the competitive level) is the one who stands the lowest on the retention register. Because veterans are listed ahead of nonveterans within each tenure group, they are the last to be affected by a RIF action.

Employees are not subject to a reduction in force while they are serving in the uniformed services. After return from active duty, they are protected from RIF action. If they served for more than 180 days, they may not be separated by RIF for 1 year after their return. If they served for more than 30 but less than 181 days, they may not be separated by RIF for 6 months.

**5 U.S.C. 3502; 5 CFR 351.404(a), 351.606(a), and Subpart E**

## Assignment Rights (Bump and Retreat)

When an employee in Tenure Group I or II with a minimally successful performance rating is released from a competitive level within the competitive area where the RIF takes place, he or she is entitled under certain circumstances to displace another employee with lower retention standing. The superior standing of preference eligibles gives then an advantage in being retained over other employees. These displacement actions apply to the competitive service although an agency may, at its discretion, adopt similar provisions for its excepted employees.

### Bumping

An employee may bump in the same competitive area to a position **no more than three grades (or grade intervals)** lower than the position from which the employee is released that is held by an employee in a lower group or subgroup.

### Retreating

An employee may retreat in the same competitive area to a position held by another employee with lower retention standing in the same tenure group and subgroup that is essentially identical to one **previously held** by the retreating employee and is **no more than three grades (or grade intervals) lower** than the position from which the employee is released.

A preference eligible with a **compensable service-connected disability of 30 percent or more** may retreat to a position **up to five grades (or grade intervals) lower.**

An employee with an unacceptable performance rating has no right to bump or retreat.

An employee with a performance rating of minimally successful may retreat only to positions held by an employee with the same or lower rating.

## Qualifications

In reviewing the qualifications of a preference eligible to determine assignment rights in a RIF, the agency must waive requirements as described under *Physical Qualifications* in Chapter 2. If the veteran involved has a 30 percent or more compensable disability, special procedures apply as described under *Disqualification of 30 Percent or more Disabled Veterans* in Chapter 2. OPM must approve the sufficiency of the agency's reasons to medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a RIF.

**5 U.S.C. 3502, 3504; 5 CFR Part 351, Subpart G, and Part 339**

## Appeal of RIF Actions

An employee who has been furloughed, separated, or demoted by RIF action has the right to appeal the action to the Merit Systems Protection Board except when a negotiated procedure must be used. Assignment to a position at the employee's same grade or representative rate is not appealable. Appeals must be filed during the period beginning on the day after the effective date of the RIF action and ending 30 days after the effective date. Time limits for filing a grievance under a negotiated procedure are contained in the negotiated agreement.

**5 CFR 351.901, Part 1201**

## Reemployment Priority for Separated Employees

After a RIF, separated competitive service employees in tenure groups I and II are listed on the agency's Reemployment Priority List. The agency generally may not hire from most outside sources when qualified employees

are on the List. In hiring from the List, preference eligibles receive preference over other employees. Excepted service employees separated by RIF receive similar priority in excepted employment.

**5 U.S.C. 3315; 5 CFR Part 330, Subpart B, and Part 302**

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# Miscellaneous Provisions Pertaining to Veterans

## Jobs Restricted to Preference Eligibles

Appointment through competitive examination and "outside the register" procedures for positions of guards, elevator operators, messengers, and custodians are restricted to preference eligibles when they are available.

**5 U.S.C. 3310; 5 CFR Part 330, Subpart D**

## Reinstatement

Preference eligibles, including those with derived preference, who served under career or career-conditional appointment for any period of time have lifetime reinstatement eligibility to any competitive service position for which qualified. They have this eligibility regardless of whether their Armed Forces service occurred before or after career or career-conditional appointment. Competition under the agency's merit promotion plan is required if the position is at a higher grade level or has more promotion potential than a position previously held.

**5 U.S.C. 3316; 5 CFR Part 315, Subpart D**

## 180-Day Restriction on Department Of Defense (DOD) Employment of Military Retirees

A retired member of the Armed Forces may not be appointed to a civilian position in DOD (including a nonappropriated fund position) within 180 days after retirement unless:

- **the Secretary concerned authorizes the appointment; or**
- the position is authorized special pay under 5 U.S.C. 5305; **or**
- a state of national emergency exists.

Although the Office of Personnel Management (OPM) approval is required by law, OPM has delegated the authority to DOD to make these determinations.

**5 U.S.C. 3326; no regulation**

## Reduction in Military Retired Pay (Repealed)

On October 5, 1999, President Clinton signed the National Defense Authorization Act for Fiscal Year 2000 (P.L.106-65). Section 651 of this law repeals section 5532 of title 5, United States Code. This action ends the reductions in retired or retainer pay previously required of retired members of a uniformed service who are employed in a civilian office or position of the U.S. Government. This repeal is effective retroactively to October 1, 1999.

The repeal ends two former reductions in military retired pay that applied to some Federal employees:

- the pay cap that limited the combined total of Federal civilian basic salary plus military retired pay to $110,700 (Executive Level V) for all Federal employees who are retirees of a uniformed service; and
- the partial reduction in retired pay required of retired officers of a regular component of a uniformed service.

As a consequence of the repeal, prior exceptions and waivers to these reductions approved by OPM, or by agencies under delegated authority, are no longer needed effective October 1, 1999.

The uniformed services finance centers are responsible for making all adjustments in military retired or retainer pay for current Federal employees.

## Affirmative Action for Certain Veterans Under Title 38

Section 4214 of title 38, U.S.C., was enacted as part of the Veterans Readjustment Appointment Act of 1974. This act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans Readjustment Appointment (VRA), now known as Veterans Recruitment Appointments.

The law also requires a separate affirmative action program for disabled veterans as defined in 38 U.S.C. 4214. The program is part of agency efforts to hire, place, and advance persons with disabilities under the Rehabilitation Act of 1973 [29 U.S.C. 791(b)]. Title 38 does not provide any preference for veterans; preference is provided only under title 5, U.S.C. Rather, section 4214 calls upon agencies to:

- provide placement consideration under special noncompetitive hiring authorities for VRA eligibles and 30 percent or more disabled veterans; **and**
- ensure that all veterans are considered for employment and advancement under merit system rules; **and**
- establish an affirmative action plan for the hiring, placement, and advancement of disabled veterans.

**38 U.S.C. 4214; 5 CFR Part 720, Subpart C**

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# Service Credit

## Service Credit for Leave Rate Accrual and Retirement

### Not Retired from Uniformed Service

For non-retired members, full credit for uniformed service (including active duty and active duty for training) performed under honorable conditions is given for leave accrual purposes, and for retirement purposes provided a deposit, as required by law, is made to the retirement fund. Uniformed service as defined in 5 U.S.C. 2101 means the Armed Forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

Veterans first employed in a position covered by the Civil Service Retirement System (CSRS) on or after October 1, 1982, or in a position covered by the Federal Employee Retirement System (FERS) on or after January 1, 1984, must make **a deposit to the retirement fund** of 7 percent (for CSRS) or 3 percent (for FERS) of basic military pay to obtain retirement credit.

Veterans employed in civil service positions before October 1, 1982, have the option of either making a deposit to cover their military service or having their civil service annuity recomputed to delete post-1956 military service if they are eligible for social security at age 62.

If civilian service is interrupted by uniformed service, special rules apply (see Chapter 7, Restoration After Uniformed Service).

### Retired from Uniformed Service

Credit for uniformed service is substantially limited for retired members. In enacting the Dual Compensation Act in 1964, Congress adopted a compromise between the view that retired members should receive preference and full credit for their service and the view that there should be no advantage for retired members.

### For leave accrual, retirees receive credit only for:

- actual service during a war declared by Congress (includes World War II covering the period December 7, 1941, to April 28, 1952) or while participating in a campaign or expedition for which a campaign badge is authorized; **or**
- all active duty when retirement was based on a disability received as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined in 38 U.S.C. 101(11). "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

### For retirement:

An employee must waive military retired pay to receive any credit for military service unless the retired pay is awarded based on a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by 38 U.S.C. 301, or awarded under 10 U.S.C. chapter 1223 (previously chapter 67).

**5 U.S.C. 6303, 8332 and 8411(c); and the CSRS and FERS Handbook**

## Creditable Service for RIF -- Not Retired from Uniformed Service

Total time in active service in the Armed Forces, including active duty and active duty for training as defined in 37 U.S.C. 101, is credited for reduction in force purposes for those who are not retired members, regardless of the type of discharge.

If civilian service is interrupted by uniformed service, special rules apply (see Chapter 5 on "Restoration After Uniformed Service").

## Creditable Service for RIF--Retired from Uniformed Service

Credit for uniformed service is substantially limited for retired members. In enacting the Dual Compensation Act in 1964, Congress adopted a compromise between the view that retired members should receive preference and full credit for their service and the view that there should be no advantage for retired members. Thus, retirees receive credit only as follows:

- A uniformed services retiree who is a preference eligible for RIF purposes receives service credit for all active duty. Other retirees receive service credit only for active duty during a war as defined in Chapter 2, or service in a campaign or expedition for which a campaign badge has been authorized. See *Eligibility for VeteransPreference in RIF* in this chapter to determine if a retiree is a preference eligible for RIF purposes.

**5 U.S.C. 3501, 3502; 5 CFR 351.501(d), 351.503**

### Creditable Service for Severance Pay

In computing the amount of severance pay a separated employee receives, credit is given only for military service performed by an employee who returns to civilian service by exercising a restoration right under law, executive order, or regulation. Military service performed prior to an individual's Federal civilian service is not creditable for severance pay purposes.

**5 U.S.C. 5595; 5 CFR 550.708**

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# Special Appointing Authorities for Veterans

### Veterans Recruitment Appointment (VRA) Authority

The VRA is a special authority by which agencies can, if they wish, appoint eligible veterans without competition to positions at any grade level through General Schedule (GS) 11 or equivalent. (The promotion potential of the position is not a factor.) VRA appointees are hired under excepted appointments to positions that are otherwise in the competitive service. There is no limitation to the number of VRA appointments an individual may receive, provided the individual is otherwise eligible.

If the agency has more than one VRA candidate for the same job and one (or more) is a preference eligible, the agency must apply the Veterans' preference procedures prescribed in 5 CFR Part 302 in making VRA appointments. A veteran who is eligible for a VRA appointment is not automatically eligible for Veterans' preference.

After two years of satisfactory service, the agency must convert the veteran to career or career-conditional appointment, as appropriate.

#### Eligibility Criteria:

The Jobs for Veterans Act, Public Law 107-288, amended title 38 U.S.C. 4214 by making a major change in the eligibility criteria for obtaining a Veterans Recruitment Appointment (VRA). Those who are eligible:

- Disabled veterans; or
- Veterans who served on active duty in the Armed Forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or
- Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces Service Medal was awarded; or
- Recently separated veterans.

Veterans claiming eligibility on the basis of service in a campaign or expedition for which a medal was awarded must be in receipt of the campaign badge or medal.

In addition to meeting the criteria above, eligible veterans must have been separated under honorable conditions (i.e., the individual must have received either an honorable or general discharge).

**Note:** Under the eligibility criteria, not all 5-point preference eligible veterans may be eligible for a VRA appointment. For example, a veteran who served during the Vietnam era (i.e., for more than 180 consecutive days, after January 31, 1955, and before October 15, 1976) but did not receive a service-connected disability or an Armed Forces Service medal or campaign or expeditionary medal would be entitled to 5 pt. veterans' preference. This veteran, however, would not be eligible for a VRA appointment under the above criteria.

As another example, a veteran who served during the Gulf War from August 2, 1990, through January 2, 1992, would be eligible for veterans' preference solely on the basis of that service. However, service during that time period, in and of itself, does not confer VRA eligibility on the veteran unless one of the above VRA eligibility criteria is met.

Lastly, if an agency has 2 or more VRA candidates and 1 or more is a preference eligible, the agency must apply Veterans' preference. For example, one applicant is VRA eligible on the basis of receiving an Armed Forces Service Medal (this medal does not confer veterans' preference eligibility). The second applicant is VRA eligible on the basis of being a disabled veteran (which does confer veterans' preference eligibility). In this example, both individuals are VRA eligible but only one of them is eligible for Veterans' preference. As a result, agencies must apply the procedures of 5 CFR 302 when considering VRA candidates for appointment.

## Making Appointments

Ordinarily, an agency may simply appoint any VRA eligible who meets the basic qualifications requirements for the position to be filled without having to announce the job or rate and rank applicants. However, as noted, Veterans' preference applies in making appointments under the VRA authority. This means that if an agency has 2 or more VRA candidates and 1 or more is a preference eligible, the agency must apply Veterans' preference. Furthermore, an agency must consider all VRA candidates on file who are qualified for the position and could reasonably expect to be considered for the opportunity; it cannot place VRA candidates in separate groups or consider them as separate sources in order to avoid applying preference or to reach a favored candidate.

## Terms and Conditions of Employment

A VRA appointee may be promoted, demoted, reassigned, or transferred in the same way as a career employee. As with other competitive service employees, the time in grade requirement applies to the promotion of VRAs. If a VRA-eligible employee is qualified for a higher grade, an agency may, at its discretion, give the employee a new VRA appointment at a higher grade up through GS-11 (or equivalent) without regard to time-in-grade.

Agencies must establish a training or education program for any VRA appointee who has less than 15 years of education. This program should meet the needs of both the agency and the employee.

## Appeal Rights

During their first year of employment, VRA appointees have the same limited appeal rights as competitive service probationers, but otherwise they have the appeal rights of excepted service employees. This means that VRA employees who are preference eligibles have adverse action protections after one year (see Chapter 7). VRA's who are not preference eligibles do not get this protection until they have completed 2 years of current continuous employment in the same or similar position.

### Nonpermanent Appointment Based on VRA Eligibility

Agencies may make a noncompetitive temporary or term appointment based on an individual's eligibility for VRA appointment. The temporary or term appointment must be at the grades authorized for VRA appointment but is not a VRA appointment itself and does not lead to conversion to career-conditional.

**38 U.S.C. 4214; Pub. L. 107-288; 5 CFR Part 307; 5 CFR 752.401 (c)(3)**

## 30 Percent or More Disabled Veterans

An agency may give a noncompetitive temporary appointment of more than 60 days or a term appointment to any veteran:

- retired from active military service with a disability rating of 30 percent or more; **or**
- rated by the Department of Veterans Affairs (VA) since 1991 or later to include disability determinations from a branch of the Armed Forces at any time, as having a compensable service-connected disability of 30 percent or more.

There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement.

The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

**5 U.S.C. 3112; 5 CFR 316.302, 316.402 and 315.707**

## Disabled Veterans Enrolled in a VA Training Program

Disabled veterans eligible for training under the VA vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program, the veteran is **not a Federal employee** for most purposes but is a beneficiary of the VA.

Training is tailored to the individual's needs and goals, so there is no set length. If the training is intended to prepare the individual for **eventual appointment** in the agency rather than just provide work experience, the agency must ensure that the training will enable the veteran to meet the qualification requirements for the position.

Upon successful completion, the host agency and VA give the veteran a Certificate of Training showing the occupational series and grade level of the position for which trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

**38 U.S.C. chapter 31; 5 CFR 3.1 and 315.604**

# Veterans Employment Opportunities Act of 1998 (VEOA)

The Veterans Employment Opportunities Act (VEOA) of 1998 as amended by Section 511 of the Veterans Millennium Health Care Act (Pub. Law 106-117) of November 30, 1999, provides that agencies must allow preference eligibles or eligible veterans to apply for positions announced under merit promotion procedures when the agency is recruiting from outside its own workforce. ("Agency," in this context, means the parent agency, i.e., Treasury, not the Internal Revenue Service and the Department of Defense, not Department of the Army.) A VEOA eligible who competes under merit promotion procedures and is selected will be given a career or career conditional appointment. Veterans' preference is not a factor in these appointments.

## Eligibility Requirements

To be eligible for a VEOA appointment, an applicant must:

- Be a preference eligible OR veteran separated from the armed forces after 3 or more years of continuous active service performed under honorable conditions. Veterans who were released shortly before completing a 3-year tour are considered to be eligible. ("Active service" defined in title 37, United States Code, means active duty in the uniformed services and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the military department concerned).

## Terms and Conditions of Employment

Veterans who were appointed before the 1999 amendments to the VEOA were given Schedule B appointments in the excepted service. Those veterans who actually competed under merit promotion procedures will be converted to career conditional appointments retroactive to the date of their original VEOA appointments. Those who did not compete and were appointed noncompetitively will remain under Schedule B until they do compete. While under Schedule B, these employees may be promoted, demoted, or reassigned at their agency's discretion and may compete for jobs (whether in their own or other agencies) under the terms and conditions of the VEOA authority -- i.e., they may apply when the agency has issued a merit promotion announcement open to candidates outside the agency. If selected, they, too, will be given career conditional appointments.

All employees appointed under the VEOA are subject to a probationary period and to the requirements of their agency's merit promotion plan.

Agencies should use ZBA-Pub. L. 106-117, Sec 511 as the legal authority for any new appointments under the VEOA. This new authority code is effective December 1, 1999, and may be used with nature of action codes 100, 101, 500, and 501.

## Appeal Rights

Employees who are appointed in the competitive service have the appeal rights of competitive service employees. Those under Schedule B have the appeal rights of excepted service employees.

## A Word About VEOA

The VEOA gives preference eligibles or veterans access and opportunity to apply for positions for which the agency is accepting applications beyond its own workforce under merit promotion procedures. Access and opportunity are not an entitlement to the position and it is not a guarantee for selection.

Agencies announcing a position outside their workforces have three options for posting their vacancy announcements. Agencies can:

- **Post a merit promotion "internal" vacancy announcement.** When posting a merit promotion announcement, the agency must include information concerning consideration under the VEOA. This option meets the intent of the law that allows preference eligibles or veterans to compete with "status" candidates for these vacancies announced under merit promotion procedures.

  VEOA eligibles are rated and ranked with other merit promotion candidates under the same assessment criteria such as a crediting plan; however, veterans' preference is not applied. The appointing official may select any candidate from those who are among the best qualified. If selected, the VEOA eligible is given a career or career-conditional appointment, as appropriate.

- **Post a Delegated Examining Unit (DEU) "external" vacancy announcement for "all sources."** By posting the announcement as "all sources," that the VEOA eligible is treated in the same manner as any other applicant. If the VEOA eligible is qualified and within reach for referral, he or she is referred on the DEU list of eligibles.

  With an "all sources" announcement, most agencies consider applicants under a variety of other appointing authorities, such as, merit promotion, Veterans' Recruitment Appointment (VRA) or Schedule A of the excepted service. If the agency chooses to consider VEOA eligibles with the merit promotion candidates, the agency must include specific application instructions for the VEOA eligible in the vacancy announcement that are consistent with the agency's policies and procedures for accepting and processing applications.

- **Post two separate vacancy announcements - DEU and merit promotion.** The VEOA eligible may apply for both announcements since the agency posted the vacancy announcements separately. The VEOA eligible is given two opportunities to be considered for one position and must be referred and considered on both lists, if eligible under the applicable procedures. The agency cannot remove the VEOA eligible from either list to make a selection. This means the agency may not deny consideration under one referral, e.g., DEU, because the VEOA eligible is being considered under a different referral, e.g., merit promotion.

## Questions and Answers

**Q. Do the amendments made by Pub. L. 106-117 mean that agencies may no longer use authority code YKB/SchB 213.3202(n) to appoint eligible veterans under the Veterans Employment Opportunities Act of 1998 (VEOA)?**

A. As of the date of enactment of the new amendments (November 30, 1999), agencies should not make any new appointments under the Schedule B authority. However, we are allowing a 1-month grace period to cover any appointments under the Schedule B authority that may already have been in progress.

**Q. If VEOA-eligible veterans should no longer be appointed under the above Schedule B authority, how are they appointed?**

A. The law provides that preference eligibles or eligible veterans who compete under agency Merit Promotion procedures open to candidates outside the agency ("agency" in this context means the parent agency such as Treasury, not IRS), and who are selected from among the best qualified, shall receive a career or career conditional appointment, as appropriate. Agencies should use the authority ZBA-Pub.L. 106-117, Sec 511 for these appointments.

**Q. What happens to veterans who were appointed under Schedule B?**

A. Agencies should first determine whether their Schedule B appointees actually competed under Merit Promotion procedures or were selected noncompetitively as a separate source of eligibles.

Those veterans who competed under agency Merit Promotion procedures are to be converted to career conditional (or career) retroactive to the date of their original appointments. These individuals will have been serving probation as of the original date of their appointments and this must be made clear to the employees.

Those veterans who did not compete under an agency Merit Promotion announcement and were given a Schedule B appointment noncompetitively, remain under Schedule B until such time as they can be appointed based on competition – either under Merit Promotion procedures open to candidates outside the agency or through an open competitive announcement. Because an employee may remain under the Schedule B authority until such time as he or she is selected competitively, we are leaving the authority in place indefinitely. This means that an employee may choose to remain under Schedule B indefinitely; he or she may not be required to compete for a career conditional position.

**Q. Did the new amendments change the eligibility criteria for appointment under the VEOA?**

A. Yes. Prior to these amendments, a veteran had to be either a preference eligible or have at least 3 years of continuous active duty military service in order to qualify for appointment under the VEOA. The new amendments provide that OPM is authorized to regulate the circumstances under which individuals who were released from active duty "shortly before completing 3 years of active duty" may be appointed. In our interim regulations implementing this provision, we are proposing to use the term "substantially completed an initial 3-year term." Agencies will then decide, in individual cases, whether a candidate has met this standard. In general, most individuals completing an initial 3-year military tour are typically released a few days early. These individuals, if otherwise qualified, should be considered eligible.

**Q. Does Veterans' preference apply to appointments under the VEOA?**

A. No. Veterans preference does not apply to merit promotion actions.

**Q. Are eligible veterans permitted to apply for vacancies that are open to CTAP candidates only?**

A. No. Since CTAP is limited to internal agency candidates, VEOA eligibles may not apply.

**Q. Are eligible veterans permitted to apply for vacancies that are open to ICTAP candidates only?**

A. Yes. Since ICTAP is open to candidates outside the agency, the law requires that VEOA eligibles be allowed to apply.

**Q. Do VEOA appointees serve a probationary period?**

A. Yes. Since they are appointed in the competitive service, they are subject to a probationary period. Please note, however, that for those employees converted from the Schedule B authority, prior service counts towards completion of probation provided it is in the same agency, same line of work, and without a break in service. Where applicable, agencies must inform individuals that their original appointment under the VEOA authority marked the beginning of a probationary period.

**Q. Can VEOA candidates be considered for temporary and term positions?**

A. No. Because VEOA mandates that eligible veterans be given career or career conditional appointments, temporary or term appointments cannot be offered.

**Q. Can a current career/career conditional employee who lacks time-in-grade apply as a VEOA candidate under an agency merit promotion announcement?**

A. No. Such an employee remains subject to time-in-grade restrictions. The VEOA is not a noncompetitive-entry authority like the VRA where an employee could be given a new appointment at a higher grade.

**Q. Can a current career/career conditional employee who meets time-in-grade and eligibility requirements apply as a VEOA candidate under an agency merit promotion announcement and, if selected, be given a new career/career conditional appointment using the VEOA appointing authority?**

A. Yes. Currently, a career/career conditional employee who meets time-in-grade and eligibility requirements would be able to apply directly to a merit promotion announcement without the need to use the VEOA authority. However, under the plain language of the VEOA, the law would allow current career/career conditional Federal employees who are preference eligibles or veterans meeting the eligibility criteria of the vacancy announcement to apply to those positions advertised under an agency's merit promotion procedures when seeking candidates from outside its own workforce. The term preference eligibles is defined in title 5, United States Code section 2108.

**Q. Can a current career/career conditional employee who meets time-in-grade and eligibility requirements apply as a VEOA candidate under an agency merit promotion announcement when he or she is outside the stated area of consideration?**

A. Yes. A career/career conditional employee who meets time-in-grade and eligibility requirements would be able to apply using VEOA to a merit promotion announcement when outside the stated area of consideration.

**Q. Can a preference eligible or eligible veteran who is outside the agency merit promotion announcement's area of consideration apply as a VEOA candidate?**

A. Yes. A preference eligible or eligible veteran would be able to apply using VEOA to a merit promotion announcement even though he or she is outside the vacancy announcement's area of consideration.

**Q. We understand that VEOA eligibles are expected to compete with agency merit promotion eligibles under the agency's merit promotion plan. But, is the agency expected to create a different crediting plan for considering VEOA candidates?**

A. No. VEOA candidates are considered along with agency candidates, and under the same crediting plan.

**Q. To be eligible for an appointment under the VEOA authority, a veteran must be "separated" from the service. Does this mean that he or she cannot apply and be considered until actually separated?**

A. No. Whether or not to consider someone who is still in the military is entirely at the discretion of the employing agency. By law, a person on military duty cannot be appointed to a civilian position (unless on terminal leave), but he or she can certainly be considered should the agency wish to do so. The determining factor, here, should be whether the person will be available when the agency needs to have the job filled.

**5 U.S.C. 3304, 3330; 5 CFR 213.3202 (n) and 335.106**

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# Restoration after Uniformed Service

## Basic Entitlement

Any Federal employee, permanent or temporary, in an executive agency other than an intelligence agency, but including the U.S. Postal Service, Postal Rate Commission, and nonappropriated fund activity, who performs duty with a uniformed service (including active duty, active duty for training, or inactive duty training), whether voluntary or involuntary, is entitled to be restored to the position he or she would have attained had the employee not entered the uniformed service, provided the employee:

- gave the agency advance notice of departure except where prevented by military circumstances; **and**
- was released from uniformed service under honorable conditions; **and**
- served no more than a cumulative total of 5 years (exceptions are allowed for training and involuntary active duty extensions, and to complete an initial service obligation of more than 5 years); **and**
- applies for restoration within the appropriate time limits.

Employees in the intelligence agencies have substantially the same rights, but are covered under agency regulations rather than the Office of Personnel Management's (OPM) and have different appeal rights.

While on duty with the uniformed services, the agency carries the employee on leave without pay unless the employee requests separation. A separation under these circumstances does not affect restoration rights.

Uniformed service as defined in 38 United States Code (U.S.C.) 4303(16) means the Armed Forces; the Army and Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

**Title 38 U.S.C. chapter 43; 5 CFR Part 353**

## Advising Employees / Resolving Employment Conflicts

Agencies must tell employees who enter the service about their entitlements, obligations, benefits, and appeal rights.

Employees in a Reserve component have an obligation both to the military and to their civilian employers. Because of military downsizing, the Reserves are being used increasingly to complement the active duty component on operational missions that go beyond week-end drills and summer training. As a result, some conflict may be unavoidable and good-faith efforts by the employee and the agency are needed to resolve any differences.

Agencies may not question the timing, frequency, duration, and nature of the uniformed service, but employees are obligated to try to minimize the agency's burden. For example, Department of Defense (DOD) directives provide that it is DOD policy for Reserve component members to give their employer as much advance written notice as practicable of any pending military duty.

When there is a conflict between the Reserve duty and the legitimate needs of the agency, the agency may contact appropriate military authorities (typically, the unit commander) to express concern or to determine if the military service could be rescheduled or performed by another member. If military authorities determine that the service is necessary, the agency is required to permit the employee to go.

## Time Limits

Employees who served in the uniformed services:

- **Less than 31 days** (or who leave to take a fitness exam for service) must report back to work at the beginning of the next regularly scheduled work day following their completion of service and the expiration of 8 hours after a time for safe transportation back to the employee's residence.
- **More than 30 but less than 181** days must apply for reemployment no later than 14 days after completion of service.
- **More than 180 days** have 90 days after completion of service to apply for restoration.

Employees who fail to meet these time limits are subject to disciplinary action.

**Agencies must reemploy as soon as practicable, but no later than 30 days after receiving the application. Agencies have the right to ask for documentation showing the length and character of the employee's service and the timeliness of the application.**

## Positions to Which Restored

**Employees who served less than 91 days** must be placed in the position for which qualified that they would have attained had their employment not been interrupted. If not qualified for such position after reasonable efforts by the agency to qualify the person, the employee is entitled to be placed in the position he or she left.

**Employees who served more than 90 days** have essentially the same rights as described above except that the agency has the option of placing the employee in a position for which qualified of like seniority, status, and pay.

**Employees with service-connected disabilities** who are not qualified for the above must be reemployed in a position that most closely approximates the position they would have been entitled to, consistent with the circumstances in each case.

**Employees who were under time-limited appointments** finish the unexpired portion of their appointments upon their return.

## Service Credit

Upon restoration, employees are generally treated as though they had never left. This means that time spent in the uniformed services counts for seniority, within-grade increases, completion of probation, career tenure, retirement, and leave rate accrual. (Employees do not earn sick or annual leave while off the rolls or in a nonpay status.)

To receive civil service retirement credit for military service, a deposit to the retirement fund is usually required to cover the period of military service. Only active, honorable military service is creditable for retirement purposes. If the employee is under the Civil Service Retirement System (CSRS), a deposit of 7 percent of military basic pay (plus interest under certain conditions) is required. The deposit is 3 percent if the employee is under the Federal Employees Retirement System (FERS). However, these amounts may be different if:

- the employee's creditable civilian service was interrupted by military duty; **and**
- reemployment occurred pursuant to 38 U.S.C. chapter 43 on or after August 1, 1990.

In such a situation, the contribution is either the above-prescribed amount or the amount of civilian retirement deductions which would have been withheld had the individual not entered uniformed service if this amount is less than the normal deposit for military service.

**National Guard Service** - Special rules apply to crediting National Guard service.

Prior to the enactment of Public Law 103-353 in October 1994, National Guard service was creditable military service for civil service retirement only when the National Guard was activated in the service of the United States.

The 1994 law made full-time National Guard service (as defined by 10 U.S.C. 101(d)) which interrupted creditable Federal civilian employment under CSRS or FERS and was followed by restoration under chapter 43 of title 38, U.S.C., on or after August 1, 1990, creditable as military service.

## OPM Placement

If the employing agency is unable to reemploy an individual returning from duty with a uniformed service, OPM will order placement in another agency when:

- OPM determines that it is impossible or unreasonable for an agency in the executive branch (other than an intelligence agency) to reemploy the person; **or**
- an intelligence agency or an agency in the legislative or judicial branch notifies OPM that it is impossible or unreasonable to reemploy the person, and the person applies to OPM for placement assistance; **or**
- a noncareer National Guard technician who is not eligible for continued membership in the Guard for reasons beyond his or her control applies to OPM for placement assistance.

## Employee Protections

Employees are not subject to a **reduction in force** while they are serving in the uniformed services. If they served for more than 180 days, they may not be separated, except for cause, for 1 year after their return. If they served for more than 30 but less than 181 days, they may not be separated, **except for cause** , for 6 months. (Reduction in force is not considered "for cause" under OPM's regulations.)

The law expressly prohibits any kind of discrimination or act of reprisal against an applicant or employee because of his or her application, membership or service in the uniformed services.

## Paid Military Leave

Each fiscal year, employees under permanent appointment are entitled to 15 days (120 hours) of military leave, with pay, to perform active duty, active duty training, or inactive duty training as a member of a Reserve component or National Guard. Reservists may use military leave to cover drill periods or to perform funeral honors duty since both are considered inactive duty training for the purposes of military leave. Part-time employees and employees on uncommon tours of duty are entitled to military leave pro-rated according to the number of hours in the regularly scheduled tour of duty, e.g., an employee who works 20 hours a week earns 7 days (56 hours) of military leave.

Employees may carry over 15 (120 hours) days of unused military leave into a new fiscal year. Therefore, potentially they may have a total of 30 (240 hours) days to use in any one fiscal year. This means that Reservists whose military duty spans two fiscal years may use up to 45 days of military leave at one time.

Military leave should be credited to a full-time employee on the basis of an 8-hour workday. The minimum charge to leave is 1 hour. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay. Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) are charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves or and National Guard are not charged military leave for weekends and holidays that occur within the period of military service.

Upon request, an employee performing duty with the uniformed services is entitled to use either accrued annual leave or military leave for such service.

**5 U.S.C. 6323; Comptroller General opinions: B-227222 (11/05/78), B-211249 (09/20/83), and B-241272 (02/15/91)**

## Life and Health Insurance

The life insurance of an employee who takes leave without pay to enter the uniformed services continues for up to 12 months. If the employee separates, life insurance continues for up to 12 months, or 90 days after uniformed service ends, whichever is sooner. There is no cost to the employee for this extension of coverage.

Employees who enter the uniformed services may elect to have their **health insurance coverage** continue for up to 12 months, and the employee continues to pay his or her share of the premium. Employees who remain in the uniformed services beyond 12 months may continue their health insurance for an additional 6 months by paying 102 percent of the premium, i.e., the employee's share, the Government's share, and a 2 percent administrative fee.

**5 CFR Parts 870.501 and 890.303, 304, 305, 502**

## Thrift Savings

Employees who perform uniformed service may make up any contributions to the thrift savings plan they missed because of such service.

**5 CFR Part 1620**

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# Special Redress And Appeals

The redress and appeal rights available to veterans under law depend upon the nature of the action being appealed. These actions fall into the following categories:

## Adverse Actions

Preference eligibles have protections against adverse actions, including demotion, suspension for more than 14 days, furlough for 30 days or less, and removal. These protections include advance notice, a reasonable time to respond, representation by an attorney or other person, a final written decision, and an appeal right to the Merit Systems Protection Board.

The law provides adverse action rights to preference eligibles of any rank who are:

- under career or career-conditional appointment and not serving probation.
- under competitive service appointments other than a temporary appointment not to exceed 1 year or less and who have completed 1 year of continuous service.
- under excepted appointment in an executive agency, the U.S. Postal Service or the Postal Rate Commission and who have completed 1 year of current continuous service in the same or similar positions. Because the law also exempts certain categories of excepted employees, it is always necessary to check the law in specific cases.

**5 U.S.C. 2108 (4) chapters 43 and 75; 5 CFR Parts 432 and 752**

## Reduction in Force

Employees who believe that an agency has not complied with the law or with the Office of Personnel Management's (OPM) regulations governing reduction in force may appeal to the Merit Systems Protection Board as discussed in Chapter 3.

**5 CFR 351.901**

## Restoration after Uniformed Service

Applicants or employees who believe that an agency has not complied with the law or with OPM regulations governing the restoration rights of employees who perform duty with the uniformed services may file a complaint with the Department of Labor's local Veterans Employment and Training Service office or appeal directly to the Merit Systems Protection Board.

**38 U.S.C. chapter 43**

## Other Actions

The Veterans Employment Opportunities Act of 1998 allows **preference eligibles** to complain to the Department of Labor's Veteran's Employment and Training Service (VETS) when the person believes an agency has violated his or her rights under any statute or regulation relating to Veterans' preference.

Under a separate Memorandum of Understanding (MOU) between OPM and Department of Labor, **eligible veterans** seeking employment who believe that an agency has not properly accorded them their Veterans' preference, failed to list jobs with State employment service offices as required by law, or failed to provide special placement consideration noted above, may file a complaint with the local Department of Labor VETS representative (located at State employment service offices). To be eligible to file a complaint under the MOU a veteran must:

> have served on active duty for more than 180 days and have other than a dishonorable discharge;
> have a service-connected disability; or
> if a member of a Reserve component, have been ordered to active duty under sections 12301 (a), (d), or (g) of title 10, United States Code, or served on active duty during a period of war, or received a campaign badge or expeditionary medal (e.g., the Southwest Asia Service Medal).

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) prohibits discrimination in employment, retention, promotion, or any benefit of employment in the basis of a person's service in the uniformed services. Complaints under this law should also be filed with the local Department of Labor VETS representative (located at State employment service offices).

Since a willful violation of a provision of law or regulation pertaining to Veterans' preference is a Prohibited Personnel Practice, a **preference eligible** who believes his or her Veterans' preference rights have been violated may file a complaint with the local Department of Labor VETS representative, as noted above.

A **disabled veteran** who believes he or she has been discriminated against in employment because of his or her disability may file a handicapped discrimination complaint with the offending agency under regulations administered by the Equal Employment Opportunity Commission.

Finally, since OPM is committed to ensuring that agencies carry out their responsibilities to veterans, **any veteran** with a legitimate complaint may also contact any OPM Service Center.

Because there is considerable overlap in where and on what basis a complaint may be filed, a veteran should carefully consider his or her options before filing. Generally speaking, complaints on the same issue may not be filed with more than one party.

**Pub. L. 105-339; Title 38 U.S.C. 4103(c)(13) and (14); Interagency Advisory Group memo of 1/18/94 from OPM to Directors of Personnel, subject: Special Employment Complaint Procedure for Veterans under 38 U.S.C. 4103.**