

TESTIMONY OF

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BEFORE THE

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

UNITED STATES SENATE

MARCH 30, 2006

Mr. Chairman and Members of the Subcommittee:

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

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

Agency Responsibilities

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

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

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

VETS' Investigative Procedures

If VETS investigates a Veterans' Preference complaint and finds the case to have merit, we will make every effort to work with the agency to resolve it. If resolution cannot be achieved within 60 days, the claimant may elect to appeal the original Federal agency's action to the MSPB.

A veteran also has the right to appeal the original Federal agency's action to the MSPB within 15 days after the claimant is notified of VETS' merit determination. If the MSPB has not issued a judicially reviewable decision within 120 days, the claimant may file a claim in the appropriate U. S. District Court and the MSPB will cease all activity on the claim. If the MSPB or the District Court find in favor of the claimant, they may order the agency to comply with the applicable provisions of law and award compensation for any loss of wages or benefits.

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

Recent Veterans' Preference Investigative Data

The table below shows Veterans' Preference investigative actions by VETS for Fiscal Years 2004, 2005, and through January for Fiscal Year 2006.

	FY 2004	FY 2005	FY 2006 (thru Jan.)
Carried in from previous years	31	45	66
Cases opened	351	527	143
Cases closed	337	506	170
Average Days Open	35	24	33
Merit	26	15	5
No merit	215	380	131
Merit determination not made (Admin. Closure/Withdrawn/Not Eligible)	96	111	34

Veterans' Preference Investigative Trends

From the table above, it might appear that we are seeing an increase in the number of Veterans' Preference cases. However, in FY 2005, 156 cases were filed by one individual. So, if those cases are removed from the totals, we are actually seeing only a gradual increase in the number of cases (about 20) for FY 2005. For FY 2006, we are expecting a 10% increase in cases based on totals thus far.

As evident from the table above, most complaints filed with the department are determined to have no merit. We believe there are three reasons for this:

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

Outreach and Education Efforts

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

In 1997, the Department launched its Employment Laws Assistance for Workers and Small Businesses (elaws) program. This program consists of interactive e-tools or "Advisors" that provide easy-to-understand information about many of the Federal employment laws administered by DOL. The Advisor simulates the interaction a person might have with an employment law expert. It asks questions and provides answers

based on the responses given. Over 5,000 organizations currently link to the elaws home page from their Web sites.

As part of the elaws program, VETS has developed a Veterans' Preference elaws Advisor (<http://www.dol.gov/elaws/vetspref.htm>). The Veterans' Preference Advisor was the first online elaws Advisor developed by DOL. This Advisor is consistently among the top five most popular elaws Advisors, just behind Advisors for the Fair Labor Standards Act and the Family and Medical Leave Act, even though Veterans' Preference applies to a much smaller number of employees. In FY 2005, the Veterans' Preference Advisor had an average of over 12,000 visitors a month. The Advisor has been consistently updated to reflect regulatory changes, as well as advances in technology.

Complaints may now be filed electronically

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

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

Disabled Veterans Hiring Initiative (DVHI)

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

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

At DOL, Secretary of Labor Elaine Chao has encouraged Agency Heads to use special hiring authorities for veterans. In FY 2004, veterans comprised 14.1% of new hires in DOL. Moreover, the Department has continued to improve its representation of disabled veterans (4.9%) and 30% or more disabled veterans (2.4%).

Partnership with OPM

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

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

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

Mr. Chairman, that concludes my statement and I would be happy to respond to any questions.