STATEMENT

OF

VIETNAM VETERANS OF AMERICA

SUBMITTED BY

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BEFORE THE

SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

REGARDING

FULFILLING THE PROMISE? A REVIEW OF VETERANS' PREFERANCE

MARCH 30, 2006

Chairman Voinovich, Senator Akaka, and distinguished Senators on the Subcommittee, Vietnam Veterans of America (VVA) is grateful to you for holding this hearing, and pleased to have the opportunity to present testimony today. The Veterans Employment Opportunities Acct was enacted in 1998 after a true bi-partisan effort in the Congress and with the support of a broad coalition of virtually all of the veterans' service organizations and military service organizations. Since that time, the issues surrounding implementation and enforcement of the provisions of this law have been steeped in controversy. VVA hope that this Subcommittee will look deeper into the implementation of the act's provisions, and push to put into practice the original intent of our nation's veterans' preference laws.

Veterans Preference is a long-standing part of the fabric of U.S. Law. It was part of the movement toward civil service reform in the early 1800s. I was part of the move toward civil service reforms in the late 19th century as well. Most explicitly, it was part of the set of laws enacted in 1944 that have come collectively to be known as the GI Bill to the public. Most recently, the Veterans Employment Opportunities Act was enacted to reinforce veterans' preference laws, and to ensure that the will of the Congress was carried out in practice.

Veterans' preference is the most basic of veterans' benefits. However, it is not only a reward for service, it is also to acknowledge that while the service member was in the military, they were not building a resume that would translate well into the private sector. The whole concept is - make them whole again. This is especially true for our service disabled.

Lastly, VVA would point out that with the shift about to take place in the composition of the Federal workforce, with many of the Vietnam generation eligible to retire now, and so many new veterans now eligible for veterans' preference, to provide the avenue to recruit veterans, particularly disabled veterans, is just the right time to press hard to recruit these fine young

veterans into the Federal workforce. Our Federal workforce, and the American people, will be the better for bringing these disciplined, drug free, patriotic young people who are mission oriented into further service to country in the civilian sector.

Veterans Preference has two focal points

Initial hiring – to get a civilian job

Retention in RIF

Both now have problems.

In veterans hiring we have two areas of concern: 1) The word "knowingly" has been thrust into law rendering enforcement of veterans' preference laws nearly impossible and spawning numerous workarounds. Knowingly does not apply to other protected classes, just veterans. In eight years, the DOPM has not disciplined a single manager for violation of a person's rights to veterans' preference. 2) The second area of concern is the development of a culture of ignoring veterans' preference with immunity. In Government Executive's Daily Briefing from October 1, 2004 you will find comments from then OPM Director Kay Coles James regarding comments at the Chief Human Capital Officers (CHCOs) Council that met in May 2004. The thrust of those comments is that some CHCOs regarded veterans' preference as an annoyance, and something to circumvent. She indicated that some individuals/agencies engaged in prohibited personnel practices, but would not state her follow up actions.

Whatever happened to the executive branch enforcing the law is our question?

In fairness to the Honorable Kay Cole James, former Director of the Office of Personnel Management (OPM), she did in fact make some efforts to push enforcement of the law and to push hard to ensure that some form of veterans' preference, no matter how weak, was contained in the new personnel systems evolving at the Department of Defense (DoD) and at the

Department of Homeland Security (DHS). Some believe that because of her candor and mild advocacy for veterans' preference she was not re-appointed for the next four years.

On the horizon are further steps toward alternative personnel management systems and category rating systems in areas other than DHS and DoD, as well as implementation of the new systems at these two agencies. It seems that the focus on the former is a return to a patronage based system of management - where the employee pledges allegiance to their supervisor and policy disagreement is not tolerated. In this system, the supervisor is always right and controls

Unfortunately for enforcement or compliance with veterans' preference laws, all of the sticks, and all of the carrots to motivate the agencies and individual managers is limited. Additionally, redress is too limited and too weak. That said, alternative systems that improve processes are welcome - but the high performing organizations may indeed be the ones that have intellectual diversity. Yes there is room for improvement, but why must these alternative systems of the type planned by DHS and DoD script out of veterans' preference.

As for category rating systems, the book is still basically unwritten for this system. In Category Ratings, you must have at least two categories, but the maximum number is not stated. The system seems skewed against veterans, but the data is far too general to determine if it is harmful to veterans. As VVA has said regarding category rankings, if we cannot trust them to make the "one in 3" rule work, would we trust them with a "1 in 300" rule?

VVA wishes to begin by addressing several misconceptions about what exactly veterans preference does and does not do. We firmly believe that the concerns some have are based upon erroneous information, and in some cases a disingenuous interpretation of current law regarding veterans preference. Further, many veterans misunderstand because of poor outreach and education regarding their rights.

There are some key points to bear in mind:

- Veterans' preference does not guarantee any individual veteran the right to any particular job, nor the right to absolute retention in a federal reduction-in-force (RIF). The VEOA did not change this premise -- veterans must still compete for positions.
- Veterans' preference is NOT an affirmative action program -- there are no goals, no timetables, and no quotas for agencies to meet in hiring veterans. Veterans' preference is an individually earned right, not a program designed to do outreach and provide opportunities to a broad class of individuals. A high rate of veterans employed in any federal agency does not negate the individual's right to veterans' preference.
- Veterans' preference applies to all veterans' preference eligibles equally, irrespective of the gender race or national origin of the eligible. And the numbers of these groups continue to grow in the active-duty military. Veterans look like America, in all of our splendid diversity. As the number and percentage of persons of color and of women in the Armed services continues to increase, the future looks very different than the past in terms of the demographics of the veteran population. The goals of veterans' preference and affirmative action for women and minorities are not mutually exclusive, but rather absolutely compatible.
- The current VEOA law was supposed to provide eligible veterans effective redress in the event that his/her rights are violated. Unfortunately, there is no effective means of actually and effectively appealing an agency hire or RIF decision. The only case of which we are aware where a disabled veteran has prevailed before the Merit System Protection Board, the Office of Personnel Management has appealed AGAINST the veteran! Consequently, there are only scant records, in any form, of formal appeals from

veterans who believe their preference rights have been violated. Low appeal filings, therefore, are not a valid indicator that rights being upheld. In other words, the Veterans Employment & Training Service of the Department of Labor (VETS) is not adequately investigating cases and helping veterans prepare complaints. Reportedly the VETS staff often call the agency in question and asks whether the alleged perpetrator whether or not they violated veterans' preference of a certain individual, and then takes the agency's word for their innocence.

VVA strongly supported enactment of the Veterans Employment Opportunities Act eight years ago. We commend Senators Chuck Hagel and Max Cleland for introducing this successful legislation in the Senate some eight years ago, just as we strongly commend you today for seeking to ensure proper enforcement/compliance with existing law, and possible further legislation to ensure compliance.. At the time we strongly believed this legislation would correct serious shortcomings in veterans' preference law, by creating an appeal and enforcement mechanism to bring our nation's 60 year old Veterans Preference laws up to date with the current federal employment realities.

Analysis by the General Accounting Office (GAO), as well as cases that cross the desks of VSO employment advocates, clearly demonstrate that it is now time for further legislative action to make Veterans' preference laws effective seems clearly evident to us. Currently veterans' preference appears to be circumvented at an alarming rate -- far more than mere anecdotal occurrences. VVA believes that the new "banding" may well only compound the situation of poor compliance and virtually no redress. Why, one might ask, would anyone in the federal government wish to violate veterans' preference? Theories vary, but the seemingly

obvious reasons are threefold: a) a severe lack of understanding of the contributions and readjustment needs of veterans, as well as the objective of veterans preference; b) a misconception that veterans preference laws conflict with affirmative action programs for women and minorities, and that these groups' employment opportunities are damaged by veterans preference; c) an effort to ease future personnel actions related to the ongoing federal downsizing through RIFs; and d) a lack of understanding of the tremendous asset that these young people have been, and can continue to be, to the Nation.

The original veterans preference laws were designed to provide veterans with an even playing field in competing for jobs against civilians who did not take time away from the job market in service to their country. Veterans, it was recognized, not only sacrificed safety and health while in the military, but also fell behind their non-veteran counterparts in career development. Veterans' preference was never intended to put veterans in jobs for which they are not qualified. Rather, the law aims to give recognition to veterans for their prior "federal" service in the military, and provide a compensative advantage in cases where competition for a federal position runs equal between a veteran and a non-veteran.

Advocates can point to numerous incidents in which veterans were denied jobs for which they were rightfully qualified or inappropriately lost their jobs through Reduction-In-Force (RIF) or the new version of "designer RIFs," which is known as "involuntary repositioning rules." And under current law, these veterans have minimal recourse within a system which has proven very unresponsive. And therefore, very little data is available through the Department of Labor's (DOL) Veterans Employment and Training Service (VETS) or the Merit Systems Protection Board (MSPB).

In an era of decentralized hiring, these hiring decisions are often made very creatively. We have all heard "designer RIFs" discussed, in which particular employees are targeted for single competitive levels, then dismissed within a RIF. Some agencies employ what we would refer to as "designer hires," in which the job description and vacancy announcement are crafted in such a way that a pre-selected candidate is uniquely qualified for the position.

The provisions of VEOA cannot prevent "designer hires" in federal agencies and it cannot guarantee that veterans will get these jobs or be able to compete effectively against applicants who meet the tailored criteria. But it will allow veterans to get a foot in the door of the application office, and hopefully may make hiring managers more cognizant of adhering to veterans preference and to unique qualifications many veterans can bring to the civilian workplace.

Section 3 pf VEOA, dealing with Special Protections for Preference Eligibles in Reductions in Force, would prohibit agencies from placing preference eligible veterans in a single-position competitive level, thereby restricting "designer RIFs." The objective was fairly self-explanatory. VVA believes this is a critical provision of the law. However, now agencies have come up with a new wrinkle to do the same thing, only they call it the "involuntary repositioning rules." VVA supports amending this provision to prohibit all designer RIFs, and the newest ugly game known as "involuntary repositioning rules."

Section 4 of VEOA created the Improved Redress for Veterans. This is a key provision of this law that is not working well. The lines of who is responsible for what – OPM, VETS, or the Office of the Special Counsel –is murky and unclear, even to them. Currently veterans have no effective means of appealing an adverse hiring or RIF decision, even if they know that they can turn to VETS or how to find VETS or the other elements in this process. And because of

this, agencies seem to use any method at their disposal to circumvent are violated. If an agency is adhering to the letter and intent of existing veterans preference law, there should be no burden; in fact, to claim administrative burden would seem to indicate trative burden.

Section 8 of VEOA makes "Failure to Comply with Veterans' Preference Requirements a Prohibited Personnel Practice." This is very important because, in combination with the redress, this provision creates the second key element of an improved enforcement of veterans' preference. The word "knowingly" must be eliminated from this provision of law, and a stronger mandate on OPM for enforcement of action against managers and other hiring authorities that allow violation of veterans' preference.

One perspective VVA continues be frustrated with is the misleading use of statistics showing total numbers of veterans employed by the federal government to indicate that the veterans preference laws are working well. First, not all veterans are eligible for veterans preference, and therefore using these gross numbers is a misrepresentation of the facts; we understand the Committee staff has access to numbers of "preference eligible" veterans among the personnel of each agency, but we have not yet seen these figures and therefore naturally assume the true "veterans preference" statistics to be somewhat less impressive. Secondly, a point we raised earlier, if veterans preference is working well within the federal personnel system, implementation of the enforcement mechanisms in this legislation should not be burdensome.

These aggregate statistics of total veterans within the federal workforce also fail to detail numbers of veterans preference eligibles hired in any given time frame, as well as the numbers of veterans preference eligibles who applied for federal employment but were not hired. The demographics of the veterans' population among federal employees are also unclear. Are the

large majority of veterans employed by the federal government older veterans, about to reach retirement age? A review of recent statistics from the Department of Labor will show larger numbers of young, recently separated OIF/OEF veterans among the unemployed. Thus, we would venture to guess that statistics of veterans within the federal workforce broken down by age group and by grade would not show as impressive a record of hiring veterans, particularly disabled veterans and younger veterans.

VVA further argues that looking at gross numbers of veterans in the federal workforce is irrelevant because veterans' preference is an individually earned benefit, not an affirmative action goal. Anecdotal evidence of veterans' preference violations, however, is very relevant in this debate. Whether it is only one veteran's rights that are violated, or if it is some 100,000 veterans whose preference rights are violated -- this is an indication that the law is not being upheld. Whether the evidence is episodic or systemic, a violation of the law is still a violation of the law. There is not space nor time to describe in detail some of the cases that we have tried to In fact, when one looks prospectively at the veteran population of the future, the intent of veterans preference and affirmative action goals are not mutually exclusive. VVA would be pleased to work with your staff on some of these specific cases.

We all have a responsibility to ensure that our nation's total U.S. military personnel will have the opportunity to serve in the civilian sector. Further, VVA believes that we all have an obligation to see that the law of the land is enforced, and that each eligible veteran is accorded his or her full rights to veterans' preference in hiring and retention. America is at war. Our newest veterans, many still under fire, deserve veterans' preference in hiring and retention that happens in fact, and that provides equal justice under the law. VVA appreciates this opportunity to present views. I would be very pleased to respond to any questions you may have.

VIETNAM VETERANS OF AMERICA

Funding Statement

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The national organization Vietnam Veterans of America (VVA) is a non-profit veterans membership organization registered as a 501(c)(19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

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Richard F. “Rick” Weidman serves as Director of Government Relations on the National Staff of Vietnam Veterans of America. As such, he is the primary spokesperson for VVA in Washington. He served as a 1-A-O Army Medical Corpsman during the Vietnam war, including service with Company C, 23rd Med, AMERICAL Division, located in I Corps of Vietnam in 1969.

Mr. Weidman was part of the staff of VVA from 1979 to 1987, serving variously as Membership Service Director, Agency Liaison, and Director of Government Relations. He left VVA to serve in the Administration of Governor Mario M. Cuomo (NY) as statewide director of veterans employment & training (State Veterans Programs Administrator) for the New York State Department of Labor.

He has served as Consultant on Legislative Affairs to the National Coalition for Homeless Veterans (NCHV), and served at various times on the VA Readadjustment Advisory Committee, the Secretary of Labor’s Advisory Committee on Veterans Employment & Training, the President’s Committee on Employment of Persons with Disabilities - Subcommittee on Disabled Veterans, Advisory Committee on veterans’ entrepreneurship at the Small Business Administration, and numerous other advocacy posts in veteran affairs. Mr. Weidman was an instructor and administrator at Johnson State College (Vermont) in the 1970s, where he was also active in community and veterans affairs. He attended Colgate University (B.A., (1967), and did graduate study at the University of Vermont.

He is married and has four children.