

105TH CONGRESS
2^D SESSION

S. 1021

AN ACT

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Employment
5 Opportunities Act of 1998”.

1 **SEC. 2. ACCESS FOR VETERANS.**

2 Section 3304 of title 5, United States Code, is
3 amended by adding at the end the following:

4 “(f)(1) Preference eligibles or veterans who have been
5 separated from the armed forces under honorable condi-
6 tions after 3 years or more of active service may not be
7 denied the opportunity to compete for vacant positions for
8 which the agency making the announcement will accept
9 applications from individuals outside its own workforce
10 under merit promotion procedures.

11 “(2) This subsection shall not be construed to confer
12 an entitlement to veterans’ preference that is not other-
13 wise required by law.

14 “(3) The area of consideration for all merit pro-
15 motion announcements which include consideration of in-
16 dividuals of the Federal workforce shall indicate that pref-
17 erence eligibles and veterans who have been separated
18 from the armed forces under honorable conditions after
19 3 years or more of active service are eligible to apply. The
20 announcements shall be publicized in accordance with sec-
21 tion 3327.

22 “(4) The Office of Personnel and Management shall
23 establish an appointing authority to appoint such pref-
24 erence eligibles and veterans.”.

1 **SEC. 3. IMPROVED REDRESS FOR PREFERENCE ELIGIBLES.**

2 (a) IN GENERAL.—Subchapter I of chapter 33 of title
3 5, United States Code, is amended by adding at the end
4 the following:

5 **“§ 3330a. Preference eligibles; administrative redress**

6 “(a)(1) A preference eligible who alleges that an
7 agency has violated such individual’s rights under any
8 statute or regulation relating to veterans’ preference may
9 file a complaint with the Secretary of Labor.

10 “(2)(A) A complaint under this subsection must be
11 filed within 60 days after the date of the alleged violation.

12 “(B) Such complaint shall be in writing, be in such
13 form as the Secretary may prescribe, specify the agency
14 against which the complaint is filed, and contain a sum-
15 mary of the allegations that form the basis for the com-
16 plaint.

17 “(3) The Secretary shall, upon request, provide tech-
18 nical assistance to a potential complainant with respect
19 to a complaint under this subsection.

20 “(b)(1) The Secretary of Labor shall investigate each
21 complaint under subsection (a).

22 “(2) In carrying out any investigation under this sub-
23 section, the Secretary’s duly authorized representatives
24 shall, at all reasonable times, have reasonable access to,
25 for purposes of examination, and the right to copy and

1 receive, any documents of any person or agency that the
2 Secretary considers relevant to the investigation.

3 “(3) In carrying out any investigation under this sub-
4 section, the Secretary may require by subpoena the at-
5 tendance and testimony of witnesses and the production
6 of documents relating to any matter under investigation.
7 In case of disobedience of the subpoena or contumacy and
8 on request of the Secretary, the Attorney General may
9 apply to any district court of the United States in whose
10 jurisdiction such disobedience or contumacy occurs for an
11 order enforcing the subpoena.

12 “(4) Upon application, the district courts of the
13 United States shall have jurisdiction to issue writs com-
14 manding any person or agency to comply with the sub-
15 poena of the Secretary or to comply with any order of the
16 Secretary made pursuant to a lawful investigation under
17 this subsection and the district courts shall have jurisdic-
18 tion to punish failure to obey a subpoena or other lawful
19 order of the Secretary as a contempt of court.

20 “(c)(1)(A) If the Secretary of Labor determines as
21 a result of an investigation under subsection (b) that the
22 action alleged in a complaint under subsection (a) oc-
23 curred, the Secretary shall attempt to resolve the com-
24 plaint by making reasonable efforts to ensure that the
25 agency specified in the complaint complies with applicable

1 provisions of statute or regulation relating to veterans'
2 preference.

3 “(B) The Secretary of Labor shall make determina-
4 tions referred to in subparagraph (A) based on a prepon-
5 derance of the evidence.

6 “(2) If the efforts of the Secretary under subsection
7 (b) with respect to a complaint under subsection (a) do
8 not result in the resolution of the complaint, the Secretary
9 shall notify the person who submitted the complaint, in
10 writing, of the results of the Secretary’s investigation
11 under subsection (b).

12 “(d)(1) If the Secretary of Labor is unable to resolve
13 a complaint under subsection (a) within 60 days after the
14 date on which it is filed, the complainant may elect to ap-
15 peal the alleged violation to the Merit Systems Protection
16 Board in accordance with such procedures as the Merit
17 Systems Protection Board shall prescribe, except that in
18 no event may any such appeal be brought—

19 “(A) before the 61st day after the date on
20 which the complaint is filed; or

21 “(B) later than 15 days after the date on which
22 the complainant receives written notification from
23 the Secretary under subsection (c)(2).

24 “(2) An appeal under this subsection may not be
25 brought unless—

1 “(A) the complainant first provides written no-
2 tification to the Secretary of such complainant’s in-
3 tention to bring such appeal; and

4 “(B) appropriate evidence of compliance with
5 subparagraph (A) is included (in such form and
6 manner as the Merit Systems Protection Board may
7 prescribe) with the notice of appeal under this sub-
8 section.

9 “(3) Upon receiving notification under paragraph
10 (2)(A), the Secretary shall not continue to investigate or
11 further attempt to resolve the complaint to which the noti-
12 fication relates.

13 “(e)(1) This section shall not be construed to prohibit
14 a preference eligible from appealing directly to the Merit
15 Systems Protection Board from any action which is ap-
16 pealable to the Board under any other law, rule, or regula-
17 tion, in lieu of administrative redress under this section.

18 “(2) A preference eligible may not pursue redress for
19 an alleged violation described in subsection (a) under this
20 section at the same time the preference eligible pursues
21 redress for such violation under any other law, rule, or
22 regulation.

23 **“§ 3330b. Preference eligibles; judicial redress**

24 “(a) In lieu of continuing the administrative redress
25 procedure provided under section 3330a(d), a preference

1 eligible may elect, in accordance with this section, to ter-
2minate those administrative proceedings and file an action
3 with the appropriate United States district court not later
4 than 60 days after the date of the election.

5 “(b) An election under this section may not be
6 made—

7 “(1) before the 121st day after the date on
8 which the appeal is filed with the Merit Systems
9 Protection Board under section 3330a(d); or

10 “(2) after the Merit Systems Protection Board
11 has issued a judicially reviewable decision on the
12 merits of the appeal.

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

19 **“§ 3330c. Preference eligibles; remedy**

20 “(a) If the Merit Systems Protection Board (in a pro-
21 ceeding under section 3330a) or a court (in a proceeding
22 under section 3330b) determines that an agency has vio-
23 lated a right described in section 3330a, the Board or
24 court (as the case may be) shall order the agency to com-
25 ply with such provisions and award compensation for any

1 loss of wages or benefits suffered by the individual by rea-
 2 son of the violation involved. If the Board or court deter-
 3 mines that such violation was willful, it shall award an
 4 amount equal to backpay as liquidated damages.

5 “(b) A preference eligible who prevails in an action
 6 under section 3330a or 3330b shall be awarded reasonable
 7 attorney fees, expert witness fees, and other litigation ex-
 8 penses.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 at the beginning of chapter 33 of title 5, United States
 11 Code, is amended by adding after the item relating to sec-
 12 tion 3330 the following:

“3330a. Preference eligibles; administrative redress.
 “3330b. Preference eligibles; judicial redress.
 “3330c. Preference eligibles; remedy.”.

13 **SEC. 4. EXTENSION OF VETERANS’ PREFERENCE.**

14 (a) AMENDMENT TO TITLE 5, UNITED STATES
 15 CODE.—Paragraph (3) of section 2108 of title 5, United
 16 States Code, is amended by striking “the Federal Bureau
 17 of Investigation and Drug Enforcement Administration
 18 Senior Executive Service, or the General Accounting Of-
 19 fice;” and inserting “or the Federal Bureau of Investiga-
 20 tion and Drug Enforcement Administration Senior Execu-
 21 tive Service;”.

22 (b) AMENDMENTS TO TITLE 3, UNITED STATES
 23 CODE.—

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

4 **“§ 115. Veterans’ preference**

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

9 “(b) Subsection (a) shall not apply to any appoint-
10 ment to a position the rate of basic pay for which is at
11 least equal to the minimum rate established for positions
12 in the Senior Executive Service under section 5382 of title
13 5 and the duties of which are comparable to those de-
14 scribed in section 3132(a)(2) of such title or to any other
15 position if, with respect to such position, the President
16 makes certification—

17 “(1) that such position is—

18 “(A) a confidential or policy-making posi-
19 tion; or

20 “(B) a position for which political affili-
21 ation or political philosophy is otherwise an im-
22 portant qualification; and

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

1 Each individual appointed to a position described in the
2 preceding sentence as to which the expectation described
3 in paragraph (2) applies shall be notified as to such expecta-
4 tion, in writing, at the time of appointment to such posi-
5 tion.”.

6 (2) CLERICAL AMENDMENT.—The table of sec-
7 tions at the beginning of chapter 2 of title 3, United
8 States Code, is amended by adding at the end the
9 following:

“115. Veterans’ preference.”.

10 (c) LEGISLATIVE BRANCH APPOINTMENTS.—

11 (1) DEFINITIONS.—For the purposes of this
12 subsection, the terms “covered employee” and
13 “Board” shall each have the meaning given such
14 term by section 101 of the Congressional Account-
15 ability Act of 1995 (2 U.S.C. 1301).

16 (2) RIGHTS AND PROTECTIONS.—The rights
17 and protections established under section 2108, sec-
18 tions 3309 through 3312, and subchapter I of chap-
19 ter 35, of title 5, United States Code, shall apply to
20 covered employees.

21 (3) REMEDIES.—

22 (A) IN GENERAL.—The remedy for a viola-
23 tion of paragraph (2) shall be such remedy as
24 would be appropriate if awarded under applica-
25 ble provisions of title 5, United States Code, in

1 the case of a violation of the relevant cor-
2 responding provision (referred to in paragraph
3 (2)) of such title.

4 (B) PROCEDURE.—The procedure for con-
5 sideration of alleged violations of paragraph (2)
6 shall be the same as apply under section 401 of
7 the Congressional Accountability Act of 1995
8 (and the provisions of law referred to therein)
9 in the case of an alleged violation of part A of
10 title II of such Act.

11 (4) REGULATIONS TO IMPLEMENT SUB-
12 SECTION.—

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

17 (B) AGENCY REGULATIONS.—The regula-
18 tions issued under subparagraph (A) shall be
19 the same as the most relevant substantive regu-
20 lations (applicable with respect to the executive
21 branch) promulgated to implement the statu-
22 tory provisions referred to in paragraph (2) ex-
23 cept insofar as the Board may determine, for
24 good cause shown and stated together with the
25 regulation, that a modification of such regula-

1 tions would be more effective for the implemen-
2 tation of the rights and protections under this
3 subsection.

4 (C) COORDINATION.—The regulations
5 issued under subparagraph (A) shall be consist-
6 ent with section 225 of the Congressional Ac-
7 countability Act of 1995 (2 U.S.C. 1361).

8 (5) APPLICABILITY.—Notwithstanding any
9 other provision of this subsection, the term “covered
10 employee” shall not, for purposes of this subsection,
11 include an employee—

12 (A) whose appointment is made by the
13 President with the advice and consent of the
14 Senate;

15 (B) whose appointment is made by a Mem-
16 ber of Congress or by a committee or sub-
17 committee of either House of Congress; or

18 (C) who is appointed to a position, the du-
19 ties of which are equivalent to those of a Senior
20 Executive Service position (within the meaning
21 of section 3132(a)(2) of title 5, United States
22 Code).

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

1 (d) JUDICIAL BRANCH APPOINTMENTS.—

2 (1) IN GENERAL.—Subject to paragraphs (2)
3 and (3), the Judicial Conference of the United
4 States shall prescribe procedures to provide for—

5 (A) veterans' preference in the consider-
6 ation of applicants for employment, and in the
7 conduct of any reductions in force, within the
8 judicial branch; and

9 (B) redress for alleged violations of any
10 rights provided for under subparagraph (A).

11 (2) PROCEDURES.—Under the procedures, a
12 preference eligible (as defined by section 2108 of
13 title 5, United States Code) shall be afforded pref-
14 erences in a manner and to the extent consistent
15 with preferences afforded to preference eligibles in
16 the executive branch.

17 (3) EXCLUSIONS.—Nothing in the procedures
18 shall apply with respect to an applicant or em-
19 ployee—

20 (A) whose appointment is made by the
21 President with the advice and consent of the
22 Senate;

23 (B) whose appointment is as a judicial offi-
24 cer;

1 (C) whose appointment is required by stat-
2 ute to be made by or with the approval of a
3 court or judicial officer; or

4 (D) whose appointment is to a position,
5 the duties of which are equivalent to those of a
6 Senior Executive Service position (within the
7 meaning of section 3132(a)(2) of title 5, United
8 States Code).

9 (4) DEFINITIONS.—For purposes of this sub-
10 section, the term “judicial officer” means a justice,
11 judge, or magistrate judge listed in subparagraph
12 (A), (B), (F), or (G) of section 376(a)(1) of title 28,
13 United States Code.

14 (5) SUBMISSION TO CONGRESS; EFFECTIVE
15 DATE.—

16 (A) SUBMISSION TO CONGRESS.—Not later
17 than 12 months after the date of enactment of
18 this Act, the Judicial Conference of the United
19 States shall submit a copy of the procedures
20 prescribed under this subsection to the Commit-
21 tee on Government Reform and Oversight and
22 the Committee on the Judiciary of the House of
23 Representatives and the Committee on Govern-
24 mental Affairs and the Committee on the Judi-
25 ciary of the Senate.

1 (B) EFFECTIVE DATE.—The procedures
 2 prescribed under this subsection shall take ef-
 3 fect 13 months after the date of enactment of
 4 this Act.

5 **SEC. 5. VETERANS' PREFERENCE REQUIRED FOR REDUC-**
 6 **TIONS IN FORCE IN THE FEDERAL AVIATION**
 7 **ADMINISTRATION.**

8 Section 347(b) of the Department of Transportation
 9 and Related Agencies Appropriations Act, 1996 (109 Stat.
 10 460) is amended—

11 (1) by striking “and” at the end of paragraph
 12 (6);

13 (2) by striking the period at the end of para-
 14 graph (7) and inserting “; and”; and

15 (3) by adding at the end the following:

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

18 **SEC. 6. FAILURE TO COMPLY WITH VETERANS' PREF-**
 19 **ERENCE REQUIREMENTS TO BE TREATED AS**
 20 **A PROHIBITED PERSONNEL PRACTICE FOR**
 21 **CERTAIN PURPOSES.**

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

24 (1) by striking “or” at the end of paragraph
 25 (10);

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

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

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

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

13 (b) DEFINITION; LIMITATION.—Section 2302 of title
14 5, United States Code, is amended by adding at the end
15 the following:

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

19 “(A) Sections 2108, 3305(b), 3309, 3310,
20 3311, 3312, 3313, 3314, 3315, 3316, 3317(b),
21 3318, 3320, 3351, 3352, 3363, 3501, 3502(b),
22 3504, and 4303(e) and (with respect to a preference
23 eligible referred to in section 7511(a)(1)(B)) sub-
24 chapter II of chapter 75 and section 7701.

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

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

3 “(D) Section 301(e) of the Foreign Service Act
4 of 1980.

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

7 “(F) Section 1005(a) of title 39.

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

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

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

22 (c) REPEALS.—

23 (1) SECTION 1599c OF TITLE 10, UNITED
24 STATES CODE.—

1 (A) REPEAL.—Section 1599c of title 10,
2 United States Code, is repealed.

3 (B) CLERICAL AMENDMENT.—The table of
4 sections at the beginning of chapter 81 of such
5 title is amended by striking out the item relat-
6 ing to section 1599c.

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

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

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

19 **SEC. 7. EXPANSION AND IMPROVEMENT OF VETERANS’ EM-**
20 **PLOYMENT EMPHASIS UNDER FEDERAL CON-**
21 **TRACTS.**

22 (a) COVERED VETERANS.—Section 4212 of title 38,
23 United States Code, is amended—

24 (1) in subsection (a)—

1 (A) by striking out “\$10,000” and insert-
2 ing in lieu thereof “\$25,000”; and

3 (B) by striking out “special disabled veter-
4 ans and veterans of the Vietnam era” and in-
5 serting in lieu thereof “special disabled veter-
6 ans, veterans of the Vietnam era, and any other
7 veterans who served on active duty during a
8 war or in a campaign or expedition for which
9 a campaign badge has been authorized”;

10 (2) in subsection (b), by striking out “special
11 disabled veteran or veteran of the Vietnam era” and
12 inserting in lieu thereof “veteran covered by the first
13 sentence of subsection (a)”;

14 (3) in subsection (d)(1), by striking out “veter-
15 ans of the Vietnam era or special disabled veterans”
16 both places it appears and inserting in lieu thereof
17 “special disabled veterans, veterans of the Vietnam
18 era, or other veterans who served on active duty dur-
19 ing a war or in a campaign or expedition for which
20 a campaign badge has been authorized”.

21 (b) PROHIBITION ON CONTRACTING WITH ENTITIES
22 NOT MEETING REPORTING REQUIREMENTS.—(1) Sub-
23 chapter III of chapter 13 of title 31, United States Code,
24 is amended by adding at the end the following:

1 **“§ 1354. Limitation on use of appropriated funds for**
2 **contracts with entities not meeting veter-**
3 **ans’ employment reporting requirements**

4 “(a)(1) Subject to paragraph (2), no agency may obli-
5 gate or expend funds appropriated for the agency for a
6 fiscal year to enter into a contract described in section
7 4212(a) of title 38 with a contractor from which a report
8 was required under section 4212(d) of that title with re-
9 spect to the preceding fiscal year if such contractor did
10 not submit such report.

11 “(2) Paragraph (1) shall cease to apply with respect
12 to a contractor otherwise covered by that paragraph on
13 the date on which the contractor submits the report re-
14 quired by such section 4212(d) for the fiscal year con-
15 cerned.

16 “(b) The Secretary of Labor shall make available in
17 a database a list of the contractors that have complied
18 with the provisions of such section 4212(d).”.

19 (2) The table of sections at the beginning of chapter
20 13 of such title is amended by adding at the end the fol-
21 lowing:

“1354. Limitation on use of appropriated funds for contracts with entities not
meeting veterans’ employment reporting requirements.”.

1 **SEC. 8. REQUIREMENT FOR ADDITIONAL INFORMATION IN**
2 **ANNUAL REPORTS FROM FEDERAL CONTRAC-**
3 **TORS ON VETERANS EMPLOYMENT.**

4 Section 4212(d)(1) of title 38, United States Code,
5 as amended by section 7(a)(3) of this Act, is further
6 amended—

7 (1) by striking out “and” at the end of sub-
8 paragraph (A);

9 (2) by striking out the period at the end of sub-
10 paragraph (B) and inserting in lieu thereof “; and”;
11 and

12 (3) by adding at the end the following:

13 “(C) the maximum number and the minimum
14 number of employees of such contractor during the
15 period covered by the report.”.

Passed the Senate October 5 (legislative day, Octo-
ber 2), 1998.

Attest:

Secretary.

105TH CONGRESS
2^D SESSION

S. 1021

AN ACT

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