

both been great leaders in education and in coming up with innovative ways to use our Tax Code to encourage better teaching. I urge all of my colleagues to join us in support of this modest but important effort.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Ms. COLLINS assumed the Chair.)

Mr. COVERDELL. Madam President, I ask unanimous consent that the order for the quorum be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. COVERDELL. Madam President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

BRAD SMITH'S NOMINATION TO THE FEC

Mr. DASCHLE. Madam President, I want to speak briefly on a matter we will probably have the opportunity to discuss in greater detail at a later time. That has to do with the nomination of Bradley Smith to be a Commissioner on the Federal Election Commission.

The President has made this nomination with the greatest reluctance. He delayed it for many months while fending off hard lobbying on behalf of Mr. Smith by my colleagues on the other side of the aisle.

In the end, the President forwarded this nomination to us, acknowledging the Republican leadership's strongly held view that, under standard practice for FEC appointments, each party is entitled to have the President nominate its choice for a Commission seat allocated by law to that party.

I understand the President's decision. He did what he believes that he, as President, was required to do, notwithstanding his concerns about the suitability of Mr. Smith.

Now we, as Senators, must do what we are required to do by the Constitution—to consider this nomination on the merits.

I have examined the candidacy of Mr. Smith carefully, guided by only one question—indeed the only question that should guide us: Is he qualified, as Commissioner of the FEC, to enforce the laws we have passed to control federal campaign fundraising and spending?

In my view, Mr. Smith's complete disdain for federal election law renders him unqualified for the role of an FEC Commissioner, whose principal job is to administer the Federal Election Campaign Act as enacted by Congress and upheld by the courts.

Madam President, the American people must be able to trust that we, as legislators, mean what we say when we write the laws of the land. They should not fear that we are passing laws professing the noblest motives, while actively working against those laws by whatever means we can find.

Nowhere is there a more critical need for this consistency of purpose than in our consideration, enactment and oversight of laws governing campaign finance.

We are, after all, candidates, and also party leaders, directly affected, in our own campaigns and political activities, by the operation of the Federal Election Campaign Act. Few laws that we pass as elected officials more acutely raise the specter of conflict of interest—that we might structure rules and encourage enforcement policies designed more to serve our own interests than the public interest.

Why would the public not be suspicious, observing our failure session-after-session to enact comprehensive campaign finance reform?

Now our Republican colleagues would like the Senate to confirm Mr. Smith. He comes to them highly recommended by those who would oppose meaningful controls on campaign finance. And he has earned the respect of those in the forefront of the fight against reform.

Why? Because he believes that “the most sensible reform . . . is repeal of the Federal Election Campaign Act.” Because he believes that most of the problems we have faced in controlling political money have been “exacerbated or created by the Federal Election Campaign Act.” Because he believes that the federal election law is “profoundly undemocratic and profoundly at odds with the First Amendment.” And because—and I quote again—“people should be allowed to spend whatever they want.”

This is the man our colleagues on the other side of the aisle would like us to seat on the Federal Election Commission, charged with the enforcement of the very laws he believes are undemocratic and should be repealed.

This is not just asking the fox to guard the chicken coop. It is inviting the fox inside and locking the door behind him.

What would be better calculated to promote and spread public cynicism about our commitment to campaign finance reform—indeed, cynicism about our commitment to responsible enforcement of the law already on the books—than confirmation of this nominee?

In considering this nomination, we are bound by the law we passed that speaks specifically to the qualifications required of an FEC Commissioner. That law states that Commissioners should be “chosen on the basis of their experience, integrity, impartiality and good judgment.”

Certainly a fair, and in my view fatal, objection could be raised to the Smith nomination on the grounds that

he lacks the prerequisite quality of “impartiality.” He would be asked, as a Commissioner, to apply the law evenhandedly, in accord with our intent, without regard to his own opinions about the wisdom of the legislative choice we have made. Yet Mr. Smith has made his academic and journalistic reputation out of questioning that choice.

How will he reconcile that conflict, between his strongly held views and ours, in the often difficult cases the FEC must decide? When the Commission must enforce our contribution and spending limits, what degree of impartiality can be expected of a Commissioner who believes, in his words, that “people should be allowed to spend whatever they want on politics”?

I am concerned, too, about the requirement of judgment. For Mr. Smith has insisted for years that the Federal campaign finance laws are an offense against the First Amendment of the Constitution, undemocratic and in need of repeal. The Supreme Court has held in clear terms to the contrary.

Perhaps Mr. Smith imagined that the Court's jurisprudence had changed. If so, he is seriously mistaken, as made plain by the Court's decision only weeks ago in the Shrink Missouri PAC decision effectively to affirm *Buckley v. Valeo*.

A commissioner who neither understands nor acknowledges the constitutional law of the land is poorly equipped to balance real First Amendment guarantees against real Congressional authority to limit campaign spending in the public interest. This is particularly true where he questions our laws, not merely on constitutional grounds, but on the sweeping claim that they are undemocratic.

Mr. Smith is an energetic advocate for his views. We can respect his wish to express those views, and some indeed may agree with them. But this nomination places at issue whether he is the proper choice to act not as warrior in his own cause, but as agent of the public, as a faithful, impartial administrator of the law.

I must conclude that he is not the right choice, not even close, and so I will oppose that nomination, and I will vote against confirmation.

I yield the floor.

ADVANCE NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to Section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), an advance notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice relates to regulations under the Veterans Employment Opportunities Act of 1998, which affords to covered employees of the legislative branch the rights and protections of selected provisions of veterans' preference law.

Section 304(b) requires this notice to be printed in the CONGRESSIONAL

RECORD; therefore, I ask unanimous consent that the notice be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1998: EXTENSION OF RIGHTS AND PROTECTIONS RELATING TO VETERANS' PREFERENCE UNDER TITLE 5, UNITED STATES CODE, TO COVERED EMPLOYEES OF THE LEGISLATIVE BRANCH—ADVANCE NOTICE OF PROPOSED RULEMAKING

SUMMARY

The Board of Directors of the Office of Compliance ("Board") invites comments from employing offices, covered employees, and other interested persons on matters arising from the issuance of regulations under section 4(c)(4) of the Veterans Employment Opportunities Act of 1998 ("VEO"), Pub.L. 105-339, 112 Stat. 3186, codified at 2 USC §1316a.

The provisions of section 4(c) will become effective on the effective date of the Board regulations authorized under section 4(c)(4), VEO §4(c)(6). Section 4(c)(4) of the VEO directs the Board to issue regulations to implement section 4. Section 304 of the Congressional Accountability Act of 1995 ("CAA"), Pub. L. 104-1, 109 Stat. 3, prescribes the procedure applicable to the issuance of substantive regulations by the Board. Upon initial review, the Board has concerns that a plain reading of VEO may yield regulations that are the same as the regulations of the executive branch yet provide veterans' preference rights and protections to no currently "covered employee" of the legislative branch. If that is the case, questions arise over the nature and scope of the Board's authority to modify the regulations in order to achieve a more effective implementation of veterans' preference rights and protections to "covered employees."

The Board issues this Advance Notice of Proposed Rulemaking ("ANPR") to solicit comments from interested individuals and groups in order to encourage and obtain participation and information in the development of regulations.

Dates: Interested parties may submit comments within 30 days after the date of publication of this Advance Notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, DC 20540-1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile machine to (202) 426-1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM-201, Law Library of Congress, James Madison Memorial Building, Washington, DC, Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m. For further information contact: Executive Director, Office of Compliance at (202) 724-9250. This notice is also available in the following formats: large print, Braille, audiotape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Rick Edwards, Director, Central Operations Department, Office of the Senate Sergeant at Arms, (202) 224-2705.

BACKGROUND

The Veterans Employment Opportunity Act of 1998¹ "strengthen[s] and broadens"²

the rights and remedies available to military veterans who are entitled, under the Veterans' Preference Act of 1944³ (and its amendments), to preferred consideration in appointment to the federal civil service of the executive branch and in retention during reductions in force ("RIFs"). In addition, and most relevant to this ANPR, VEO affords to "covered employees" of the legislative branch (as defined by section 101 of the CAA (2 USC §1301)) the rights and protections of selected provisions of veterans' preference law, VEO §4(c)(2). The selected statutory sections made applicable to such legislative branch employees by VEO may be summarized as follows.

A definitional section prescribes the categories of military veterans who are entitled to preference ("preference eligible"). 5 USC §2108. Generally, a veteran must be disabled or have served on active duty in the Armed Forces during certain specified time periods or in specified military campaigns to be entitled to preference. In addition, certain family members (mainly spouses, widow[er]s, and mothers) of preference eligible veterans are entitled to the same rights and protections.

In the appointment process, a preference eligible individual who is tested or otherwise numerically evaluated for a position in the competitive service is entitled to have either 5 or 10 points added to his/her score, depending on his or her military service, or disabling condition. 5 USC §3309. Where experience is a qualifying element for the job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civic activities. 5 USC §3311. Where physical requirements (age, height, weight) are a qualifying element, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 USC §3312. For certain positions in the competitive service (guards, elevator operators, messengers, custodians), only preference eligible individuals can be considered for hiring, unless no one else is available. 5 USC §3310.

Finally, in prescribing retention rights during RIFs, the sections in subchapter I of chapter 35 of Title 5, USC, with a slightly modified definition of "preference eligible," require that employing agencies give "due effect" to the following factors: (a) employment tenure (i.e., type of appointment); (b) veterans' preference; (c) length of service; and, (d) performance ratings. 5 USC §§3501, 3502. Such considerations also apply where RIFs occur in connection with a transfer of agency functions from one agency to another. 5 USC §3503. In addition, where physical requirements (age, height, weight) are a qualifying element for retention, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 USC §3504.

Section 4(c)(4)(A) of the VEO authorizes the Board of Directors of the Office of Compliance established under the CAA to issue regulations to implement section 4(c) of the VEO pursuant to the rulemaking procedures of section 304 of the CAA, 2 USC §1384. Pursuant to that authority, the Board invites comments before promulgating proposed rules under section 4 of the VEO.

Section 4(c)(4)(B) of the VEO specifies that these regulations "shall be the same as substantive regulations (applicable with respect to the executive branch) promulgated to implement . . . [the referenced statutory provisions] . . . except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the

rights and protections under this section." Section 4(c)(4)(C) further states that the "regulations issued under subparagraph (A) shall be consistent with section 225 of the Congressional Accountability Act of 1995 (2 USC §1361)."

INTERPRETATIVE ISSUES

The Board has identified and reviewed the regulations issued by the Office of Personnel Management (OPM) to implement the relevant provisions of the veterans' preference laws. These regulations are integrated into the body of personnel regulations in Title 5 of the Code of Federal Regulations (CFR) issued by OPM under its authority to oversee and regulate civilian employment in the executive branch. See 5 USC §§1103, 1104, 1301, 1302. The Board's review has raised a number of interpretative issues concerning the identity of legislative branch employees affected by the statute and regulations; potential legal and factual bases, if any, for modification of the regulations; and the scope of the Board's statutory authority to promulgate certain of the regulations in place in the executive branch. Before discussing those issues, the Board summarizes below the pertinent executive branch regulations which implement the statutory sections of veterans' preference law made applicable to covered legislative branch employees by VEO.

5 CFR Part 211 implements the definitional section, 5 USC §2108, declaring the requirements that a military veteran or his family member must meet to be considered "preference eligible."

5 CFR §332.401 and §337.101 implement 5 USC §3309 which, in the appointment process, requires that a preference eligible individual who is tested or otherwise numerically evaluated for a position in the competitive service is entitled to have either 5 or 10 points added to his/her score.

5 CFR §337.101 also implements 5 USC §3311, which provides that, where experience is a qualifying element for the job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civic activities.

Subpart D of Part 330, 5 CFR, implements 5 USC §3310, which restricts to preference eligible individuals the positions of guards, elevator operators, messengers, and custodians in the competitive service.

5 CFR §339.204 and §339.306 implement 5 USC §3312, which provides that, where physical requirements (age, height, weight) are a qualifying element for an examination or appointment in the competitive service, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances.

Finally, Part 351 of 5 CFR implements those provisions of subchapter I of chapter 35 of 5 USC, which prescribe retention rights during RIFs, including those instances where an agency function is transferred to another agency.

First, the statutory rights and protections that are applicable under VEO envision that veterans' preference is to be accorded in appointments to the "competitive service." This presents an interpretative issue for the Board in proposing regulations that "are the same" as those in the executive branch because there is a substantial question whether any covered employee, as defined by VEO §4(c)(1), encumbers a position in the "competitive service." The "competitive service," as the term is used in the relevant statutes, is not a generic term descriptive of any personnel system in which applicants vie for appointment. Rather, the competitive service is an integral, specifically defined component of the federal civil service system, in which, for over a century, appointment to employment (mainly in the executive

¹Footnotes at end of article.

branch) has been determined through competitive examinations.

In the competitive service, Congress has prescribed that the "selection and advancement shall be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition." 5 USC §2301(b)(1). Toward this end, Congress gave the President the authority to prescribe rules "which shall provide, as nearly as conditions of good administration warrant, for . . . open, competitive examinations for testing applicants for appointment in the competitive service . . ." 5 USC §3304(a)(1) (emphasis supplied). In addition, OPM has been granted authority, "subject to rules prescribed by the President under this title for the administration of the competitive service, [to] prescribe rules for, control, supervise, and preserve the records of, examinations for the competitive service." 5 USC §1302(a).

In this setting, the "competitive service" has a specific meaning. Congress has enacted a three-fold definition: First, the competitive service consists of "all civil service positions in the executive branch," with exceptions for (a) positions specifically excepted from the competitive service by statute (known as the excepted service⁴); (b) positions requiring Senate confirmation, and (c) positions in the Senior Executive Service.⁵ 5 USC §2102(a)(1) (A)-(C) (emphasis added). Second, the competitive service includes "civil positions not in the executive branch which are specifically included in the competitive service by statute." 5 USC §2102(a)(2). Third, the competitive service encompasses those "positions in the government of the District of Columbia which are specifically included in the competitive service by statute." 5 USC §2102(a)(3).

Arguably, the Board should take these statutory definitions into account in promulgating regulations. Under VEO, the regulations issued by the Board must be consistent with section 225 of the CAA (2 USC §1361), which in part requires as a rule of construction that, except where inconsistent with definitions and exemptions provided in the CAA, the definitions and exemptions in the laws made applicable by the CAA shall also apply. Applying this rule of construction to the foregoing definitions arguably yields the following conclusions. The first definition may not be relevant because legislative branch employees are not part of the executive branch. Similarly, the third definition may not be relevant because it pertains to employees of the government of the District of Columbia. In contrast, the second definition is arguably relevant because it includes "civil positions not in the executive branch," within which category falls the legislative branch (and the judicial branch). However, upon an initial review of those legislative offices in which "covered employees" as defined by VEO can be employed,⁶ it may be that no "covered employee" in the legislative branch satisfies the qualification in the second definition that the job position be "specifically included in the competitive service by statute." Accordingly, insofar as the statute authorizes the Board to propose substantive regulations that are the same as the regulations of the executive branch, the Board could end up proposing regulations that apply to no one.

On the other hand, VEO mirrors the rule-making provisions of the CAA in directing the Board upon good cause shown to modify executive branch regulations if it would be more "effective for the implementation of rights and protections" made applicable to covered employees.⁷ Under this approach, the statute may authorize proposing modifications of the executive branch regulations to take account of the void in competitive serv-

ice positions for covered employees. In other words, if the regulations are essentially ineffective because in practice they afford rights and protections to no one, should the Board authorize modifications that make them effective by applying the rights and protections of veterans' preference laws to some arguably analogous employees? If so, as a factual and legal matter, what modifications to the regulations does the statute authorize?

Second. While the applicable statutory appointment provisions (5 USC §§3309-3312) are directed with particularity to the competitive service, the applicable statutory retention provisions (5 USC chapter 35, subchapter I) with one exception are not. Section 3501(b) states that subchapter I "applies to each employee in or under an Executive agency," without singling out the competitive service for specific coverage. Only §3504, which provides for waiver of physical requirements (including age, height, weight) for job retention purposes, is directed specifically to competitive service positions. Nonetheless, OPM has written major portions of the implementing regulations (found principally in 5 CFR Part 351) in terms of the competitive service and the excepted service. See, e.g., 5 CFR §351.501 (order of retention for competitive service), §351.502 (order of retention for excepted service). Were the Board simply to propose regulations that are the same as the executive branch's without modifications, there may not be any covered employees in the legislative branch who are in the competitive service or the excepted service, as defined by statute and regulation. Therefore, once again the issue of whether the statute authorizes a modification of these regulations arises.

Third. A survey of the regulations indicates that some of the rules promulgated by OPM⁸ derive not from the statutory sections concerning veteran's preference that have been made applicable to the legislative branch through VEO but from OPM's overarching statutory authority to regulate and supervise civilian employment policies and practices in the executive branch pursuant to 5 USC §§1302-04. This latter supervisory authority arguably has not been bestowed upon the Board with respect to personnel management in the legislative branch. Therefore, a question is presented whether the Board's authority over veterans' preference is coextensive with OPM's authority to regulate personnel management in the executive branch. The Board must identify what parts of the veterans' preference regulations are an exercise of OPM's supervisory authority that arguably has not been bestowed upon the Board with respect to personnel management in the legislative branch, or determine that the statute authorizes the Board to exercise authority coextensive with OPM's authority to promulgate regulations governing the statutory sections made applicable through VEO.

Fourth. There is some indication that the Senate Committee on Veterans' Affairs was aware of the problem of applying the rights and protections of veterans' preference, including the regulations, to the legislative branch. The Senate Committee Report that accompanied the VEO bill included the following comment: "The Committee notes that the requirement that veterans' preference principles be extended to the legislative and judicial branches does not mandate the creation of civil service-type evaluation or scoring systems by these hiring entities. It does require, however, that they create systems that are consistent with the underlying principles of veterans' preference laws."⁹ But in enacting the legislation Congress took no further steps to codify this precatory statement nor did it (or the Committee) provide any explanation of the in-

tent of this highly general comment.¹⁰ Therefore, the question is presented whether the statute requires the creation of "systems that are consistent with the underlying principles of veterans' preference laws"? If so, how is this to be effectuated? If not, what effect if any does this Committee comment have?

Fifth. By virtue of the selectivity with which Congress made veterans' preference laws applicable, there are regulations relating to veterans' preferences in Title 5 CFR that are not being considered because they are linked to statutory provisions not made applicable by VEO. Examples include regulations in Part 302 pertaining to the excepted service,¹¹ which were promulgated to implement 5 USC §3320; those regulations in Part 332 that implement 5 USC §3314 and §3315, which afford rights to preference eligible individuals who either have resigned or have been separated or furloughed without delinquency or misconduct; and those regulations in Subpart D of Part 315 that implement 5 USC §3316, which addresses the reinstatement rights of preference eligible individuals. The task of promulgating regulations that are the "same" as those of the executive branch will entail in part identifying and excluding those whose statutory underpinning has not been made applicable by VEO to the legislative branch.

REQUEST FOR COMMENT

In order to promulgate regulations that properly fulfill the directions and intent of these statutory provisions, especially in light of the foregoing analysis, the Board needs comprehensive information and comment on a variety of topics. The Board has determined that, before publishing proposed regulations for notice and comment, it will provide all interested parties and persons with this opportunity to submit comments, with supporting data, authorities and argument, as to the content of and bases for any proposed regulations. The Board wishes to emphasize, as it did in the development of the regulations issued to implement sections 202, 203, 204, 205, and 220 of the CAA, that commentators who propose a modification of the regulations promulgated by OPM for the executive branch, based upon an assertion of "good cause," should provide specific and detailed information and the rationale necessary to meet the statutory requirements for good cause to depart from the executive branch's regulations. It is not enough for commentators simply to propose a revision to the executive branch's regulations or to request guidance on an issue; rather, if commentators desire a change in the executive branch's regulations, they must explain the legal and factual basis for the suggested change. The Board must have these explanations and information if it is to be able to evaluate proposed regulations and make proposed regulatory changes. Failure to provide such information and authorities will greatly impede, if not prevent, adoption of proposals suggested by commentators.

So that it may make more fully informed decisions regarding the promulgation and issuance of regulations, in addition to inviting and encouraging comments on all relevant matters, the Board specifically requests comments on the following issues:

(1) What positions, if any, of the legislative branch encumbered by "covered employees" (as defined by §4(c)(1) of VEO) fall within the meaning of the "competitive service" as the latter term is used in 5 USC §§3309-3312?

(2) In the absence of any such "competitive service" positions in the legislative branch, what, if any, positions held by "covered employees" are subject to a merit-based system of appointment (which may include examinations, testing, evaluation, scoring and such

other elements that are common to the "competitive service" of the executive branch)?

(3) Does VEO authorize the Board to extend the rights and protections of veterans' preference for purposes of appointment to those positions identified in (2) above notwithstanding they are not technically "competitive service" positions?

(4) In order to provide for effective implementation of veterans' preference rights, could the Board, under the "good cause" provision of §4(c)(4)(B) of VEO, modify the most relevant substantive regulations of the executive branch pertaining to veterans' preference in the appointment of "covered employees" so as to make them applicable to the legislative branch without reference to the "competitive service"?

(5) How would the rights and protections of subchapter I of chapter 35, Title 5 USC (pertaining to retention during RIFs), be applied to "covered employees" (as defined by §4(c)(1) of VEO)?

(6) Does VEO authorize the Board to extend the rights and protections of veterans' preference for purposes of retention during reductions in force to "covered employees" holding positions that are not technically within the "competitive service" or the "excepted service"?

(7) In order to provide for effective implementation of veterans' preference rights, could the Board, under the "good cause" provision of §4(c)(4)(B) of VEO, modify the most relevant substantive regulations of the executive branch pertaining to veterans' preference in the retention of "covered employees" during reductions in force so as to make them applicable to the legislative branch without reference to the "competitive service" or the "excepted service"?

(8) In view of the fact that VEO does not explicitly grant the Board the authority exercised by OPM under 5 USC §1103, §1104, §1301 and §1302 to execute, administer, and enforce the federal civil service system, does the Board have the authority to propose regulations that would vest the Board with responsibilities similar to OPM's over employment practices involving covered employees in the legislative branch?

(9) Is the Board empowered by the statute to give effect to the comment in the legislative history that employing offices of the legislative branch should "create systems that are consistent with the underlying principles of veterans' preference laws," as discussed by the Senate Report accompanying the bill enacted as VEO (Sen. Rept. 105-340, 105th Cong., 2d Sess., at 17 (Sept. 21, 1998)? If so, how should such effect be given?

(10) Under VEO, what steps, if any, must employing offices of the legislative branch take to "create systems that are consistent with the underlying principles of veterans' preference laws," as discussed by the Senate Report accompanying the bill enacted as VEO (Sen. Rept. 105-340 (105th Cong., 2d Sess. Sept. 21, 1998), at 17)?

(11) With respect to positions restricted to preference eligible individuals under 5 USC §3310, namely guards, elevator operators, messengers, and custodians, the Board seeks information and comment on the following issues and questions:

(a) The identity, in the legislative branch, of guard, elevator operator, messenger, and custodian positions within the meaning of these terms under 5 USC §3310.

(b) The identity of covered employing offices responsible for personnel decisions affecting employees who fill positions of guard, elevator operator, messenger, and custodian within the meaning of 5 USC §3310 and the implementing regulations.

(c) Would police officers and other employees of the United State Capitol Police be

considered "guards" under the application of the rights and protections of this section to covered employees under VEO?

(d) Whether the current methods of hiring include an entrance examination within the meaning of 5 CFR §330.401 and, if not, whether the affected employing offices believe that the statute mandates the creation of such an examination and/or allows such an examination to be required of the employing offices?

(e) What changes, if any, in the regulations are required to effectuate the rights and protections of 5 USC §3310 as applied by VEO?

(12) Which executive branch regulations, if any, should not be adopted because they are promulgated to implement inapplicable statutory provisions of veterans' preference law or are otherwise inapplicable to the legislative branch?

(13) What modification, if any, of the executive branch regulations would make them more effective for the implementation of the rights and protections made applicable under VEO as provided by VEO §4(c)(4)(B)?

Signed at Washington, D.C. on this 16th day of February, 2000.

GLENN D. NAGER,
Chair of the Board,
Office of Compliance.

FOOTNOTES

¹ Pub. L. 105-339 (Oct. 31, 1998).

² Sen. Rept. 105-340, 105 Cong., 2d Sess. at 19 (Sept. 21, 1998).

³ Act of June 27, 1944, ch. 287, 58 Stat. 387, amended and codified in various provisions of Title 5, USC.

⁴ Generally, these are positions that are excepted by law, by executive order, or by the action of OPM placing a position or group of positions in what are known as excepted service Schedules A, B, or C. For example, certain entire agencies such as the Postal Service, the Federal Bureau of Investigation, and the Central Intelligence Agency are excepted by law. In other cases, certain jobs or classes of jobs in an agency are excepted by OPM, 5 CFR Part 213. This includes attorneys, chaplains, student trainees, and others.

⁵ These generally are high-level, managerial positions in the executive department whose appointment does not require Senate confirmation. See 5 USC §3123 (a)(2), which defines the term "Senior Executive Service position."

⁶ The definition of "covered employee" under section VEO §4(c)(1) has the same meaning as the term under section 101 of the CAA, 2 USC §1302, which includes any employee of the House of Representatives, the Senate, the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, or the Office of Technology Assessment. Under VEO §4(c)(5), the following employees are excluded from the term "covered employee": (A) presidential appointees confirmed by the Senate, (B) employees appointed by a Member of Congress or by a committee or subcommittee of either House of Congress, and (C) employees holding positions the duties of which are equivalent to those in Senior Executive Service.

⁷ Compare VEO §4(c)(3)(B) with CAA §§202(d)(2), 203(c)(2), 204(c)(2), 205(c)(2), 206(c)(2), 210(e)(2), 215(d)(2), 220(d)(2)(A).

⁸ See, e.g., 5 CFR §351.205 ("The Office of Personnel Management may establish further guidance and instructions for planning, preparation, conduct and review of reductions in force through the Federal Personnel Manual System. OPM may examine an agency's preparations for reduction in force at any stage.")

⁹ Sen. Rept. 105-340, 105 Cong., 2d Sess. at 17 (Sept. 21, 1998).

¹⁰ Compare Administrative Office of the United States Courts Personnel Act of 1990, Pub. L. 101-474, 104 Stat. 1097, §3. Individuals in this office of the judicial branch are afforded the right to veterans' preference "in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch." §3(a)(11). However, the Congress also empowered the Director the Administrative Office to establish by regulation a personnel management system that parallels many of the features of the executive branch's personnel system regulated by OPM. VEO contains no comparable provisions giving similar powers to the Board or any other legislative branch entity.

¹¹ For a description of the "excepted service," see note 4 *infra*.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Madam President, at the close of business Friday, February 25, 2000, the Federal debt stood at \$5,748,251,779,017.69 (Five trillion, seven hundred forty-eight billion, two hundred fifty-one million, seven hundred seventy-nine thousand, seventeen dollars and sixty-nine cents).

One year ago, February 25, 1999, the Federal debt stood at \$5,620,928,000,000 (Five trillion, six hundred twenty billion, nine hundred twenty-eight million).

Fifteen years ago, February 25, 1985, the Federal debt stood at \$1,695,295,000,000 (One trillion, six hundred ninety-five billion, two hundred ninety-five million).

Twenty-five years ago, February 25, 1975, the Federal debt stood at \$496,984,000,000 (Four hundred ninety-six billion, nine hundred eighty-four million) which reflects a debt increase of more than \$5 trillion—\$5,251,267,779,017.69 (Five trillion, two hundred fifty-one billion, two hundred sixty-seven million, seven hundred seventy-nine thousand, seventeen dollars and sixty-nine cents) during the past 25 years.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-7714. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Indirect Food Additives: Adhesives and Components of Coatings and Paper and Paperboard Compounds" (Docket No. 92F-0111), received February 24, 2000; to the Committee on Health, Education, Labor, and Pensions.

EC-7715. A communication from the Board Members, Railroad Retirement Board, transmitting the justification of budget estimates for fiscal year 2001; to the Committee on Health, Education, Labor, and Pensions.

EC-7716. A communication from the President, James Madison Memorial Fellowship Foundation, transmitting the annual report for fiscal year 1999; to the Committee on Health, Education, Labor, and Pensions.