

**STATEMENT
OF
MICHAEL H. MICHAUD
ASSISTANT SECRETARY
VETERANS' EMPLOYMENT AND TRAINING SERVICE
U.S. DEPARTMENT OF LABOR**

**BEFORE THE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
April 20, 2016**

Introduction

Good afternoon, Chairman Wenstrup, Ranking Member Takano, and distinguished Members of the Subcommittee. Thank you for the opportunity to participate in today's hearing. As Assistant Secretary for the Veterans' Employment and Training Service (VETS) at the Department of Labor (DOL or Department), I appreciate the opportunity to discuss the Department's performance with and responsibility to veterans' preference in federal government hiring.

It is also my personal privilege to return to this room once more, now as a member of the Executive Branch. I have proud memories of the great work done by the Committee while I was a member – or should I say “in spite of my having been a member.” All kidding aside, the House Veterans Affairs Committee has a sacred duty, so eloquently put by Abraham Lincoln, “to care for him who shall have borne the battle and for his widow, and his orphan.” I am pleased to report that I found the spirit of that commitment alive and well at the Department of Labor upon my arrival there five months ago.

While the employment situation for veterans continues to improve, and last month marked 23 of 24 months with veterans' unemployment being lower than nonveteran unemployment, DOL will not rest as long as any veteran needs assistance finding meaningful civilian employment. A great place for our veterans to find such employment is through continued public service as a Federal employee, as a third of all new Federal hires last year have learned for themselves.

Employment Situation of Veterans - 2015 BLS Report

Every March, DOL's Bureau of Labor Statistics (BLS) releases an in-depth report on the employment situation of veterans. In 2015, 21.2 million men and women were veterans. Veterans are more likely to be men (only 9% are women) and older than nonveterans. In part, this reflects the characteristics of veterans who served during World War II, the Korean War, and the Vietnam era. Veterans who served during these wartime periods accounted for 42% (8.9 million) of the total veteran population in 2015. One-third of veterans (7.0 million) served during the Gulf War-era I (August 1990 to August 2001) or Gulf War-era II (September 2001 forward). Another quarter (5.3 million) served outside the designated wartime periods.

Regardless of their period of service, many veterans with a service-connected disability worked, or are working, in the public sector. In August 2015, 36% of employed veterans with a disability worked in Federal, state, or local government, compared with 20% of veterans with no disability and 13% of nonveterans. Among the employed, 25% of veterans with a disability worked for the Federal government, compared with 7% of veterans with no disability and 2% of nonveterans.

A higher proportion of employed Gulf War-era II veterans worked in the public sector in 2015 than employed nonveterans—26% and 14%, respectively. Among the employed, 14% of Gulf War-era II veterans worked for the Federal government, compared with 2% of nonveterans.

Veterans Preference at the Department of Labor

The Department is committed to following veterans' preference in our hiring. As Secretary Perez has said, we are not just an organization that promotes veterans' employment. We practice what we preach. We have steadily increased the percentage of veterans in the DOL workforce from 20.6% in Fiscal Year (FY) 2013 to 21.4% in FY 2015. In FY 2015, one in three new hires at DOL was a veteran, and one in six of all new hires was a veteran with a rated disability of at least 30%. And the vast majority of the staff at VETS are veterans.

DOL's Veterans Employment Program Office (VEPO) within the Office of Diversity and Inclusion provides leadership and direction for the Department's Veterans Employment Program to ensure DOL attracts, hires, and retains qualified veterans who have served and sacrificed in defense of our country. In addition, the VEPO provides advisory services, outreach, training, career development and promotional opportunities in support of the government-wide veterans hiring initiative, the Department of Labor's mission, our partners, our employees, our customers, and the veteran community.

The increased hiring of veterans within DOL allows the Department to capitalize on their unique and diverse backgrounds, and to benefit from the leadership and technical skills they learned or enhanced while serving on active duty. Our DOL workforce is strengthened through our increased employment of veterans, who understand the critical importance of education and training as the basis for success in accomplishing tasks on a personal as well as on a national level.

DOL REPRESENTATION RATES

At the end of FY 2015, the Department had a total workforce of 15,937, of which 3,419 (21.4%) were veterans.

In FY 2015, DOL employed a greater percentage of disabled veterans than in FY 2014. Specifically, in FY 2015, DOL's workforce included 1,605 (10.0%) veterans with disabilities compared to 1,503 (9.4%) in FY 2014.

In FY 2015, DOL employed a greater percentage of veterans with a rated disability of at least 30% than in FY 2014. In FY 2015, the DOL workforce included 1,109 (7.0%) of these veterans compared to FY 2014, when the DOL workforce included 1,017 (6.4%).

DOL HIRING RATES

Of DOL's FY 2015 veteran hires (440), 236 (53.6%) were veterans with disabilities. The number of disabled veteran hires increased nearly 32% compared to FY 2014, when 179 of our veteran hires were veterans with disabilities. Significantly, 165 (37.5%) of our FY 2015 veteran hires were veterans with a rated disability of at least 30%. This represented an 18.7% increase over the previous year, when 139 of our veteran hires were veterans with a rated disability of at least 30%.

Veterans' Employment Initiative

In November 2009, President Obama issued Executive Order 13518, which created the Veterans Employment Initiative to enhance recruitment of and promote employment opportunities for veterans within the Executive Branch, consistent with merit system principles and veterans' preferences prescribed by law. Executive Order 13518 also established the Council on Veterans Employment (Council). We are proud that the Secretary of Labor co-chairs that Council with the Secretary of the Department of Veterans Affairs (VA). The Director of the Office of Personnel Management (OPM) serves as vice-chair of the Council.

The Council is still working to complete its FY 2015 report, but has published data for FY 2014 when "33.2 percent of Executive Branch new hires were veterans, surpassing the FY 2013 rate of 31 percent... a 9.2 percentage point increase over the FY 2009 baseline of 24.0 percent. Veterans currently represent 30.8 percent of the Federal workforce, as compared to 25.8 percent in FY 2009."

Secretary Perez is committed to fairly executing veterans' preference not only at DOL, but also across the Federal government. Under his co-leadership with VA and OPM, in 2014, the Council published its *Strategic Plan for Government-wide Veterans Recruitment and Employment*. The plan covers FY 2014 to FY 2017 and emphasizes the hiring and retention of veterans.

The Role of VETS in Veterans' Preference in Federal Hiring

Under the Veterans' Employment Opportunities Act (VEOA), 5 U.S.C. §§ 3330a-3330c, VETS is responsible for investigating claims alleging a Federal agency's failure to apply veterans' preference in hiring or during a reduction-in-force, as well as claims from veterans alleging a lack of access to a Federal agency's covered employment opportunities. While VETS has investigative responsibilities, it is important to note that OPM is responsible for interpreting and administering the statutes and regulations governing veterans' preference in Federal hiring and during reductions- in-force.

Under 5 U.S.C. §§ 2108 and 3304(f), as added by the VEOA, preference-eligible spouses and those persons with "derived" preference (e.g., spouses of disabled veterans), as well as veterans who have been separated from the Armed Forces under honorable conditions after three years or

more of active military service, are allowed to apply for certain Federal merit promotion opportunities for which an agency accepts applications from individuals outside its own workforce. Under 5 U.S.C. § 3330a, VEOA also provides that preference-eligibles who allege their rights have been violated under any statute or regulation relating to Veterans' Preference may file a claim with VETS.

When a complaint is filed, VETS field staff investigate if rights have been violated by a Federal agency during either a hiring process or a reduction-in-force. Upon reaching a determination, VETS notifies the agency of the determination and advises on actions to be taken to comply with the VEOA.

If the agency complies, the case is closed as either settled or granted, based on agreement between the parties. The resolution depends on the violation that occurred and may include payment of back wages and benefits.

If the agency fails to comply, VETS advises the claimant of VETS' inability to resolve the issue and closes the investigation case file. In those circumstances, the claimant is notified of his or her right to appeal the case to the United States Merit Systems Protection Board (MSPB) against the federal agency determined to have violated his or her VEOA rights. Finally, if the MSPB issues a decision adverse to the claimant, the claimant may further appeal to the Court of Appeals for the Federal Circuit.

If VETS determines that a VEOA violation has taken place, or there is evidence of a violation, a copy of the complete case file, including the complaint information and supporting documentation, is forwarded to the United States Office of Special Counsel (OSC), after the case is closed, as a potential prohibited personnel practice (PPP) case for review under a Memorandum of Understanding between OSC and VETS. OSC's role is to ascertain whether a PPP has taken place pursuant to 5 U.S.C. § 2302(b)(11), which provides that a Federal employee who has authority over personnel decisions may not:

- (a) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
- (b) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement.

OSC's review of the VEOA complaint does not affect VETS' investigation. OSC's review for PPPs is a separate matter, and OSC's review occurs after VETS' investigation and attempt to settle a case. Further, OSC's review has no impact on the claimant's right to appeal to the MSPB or to the Federal Circuit Court. Instead, OSC reviews cases to determine if PPPs took place that warrant disciplinary action against the agency or its responsible personnel.

VETS maintains an interactive Veterans' Preference Advisor that provides information and advice in an electronic format on the roles and responsibilities of both employers and employees regarding Veterans' Preference issues. In particular, the Advisor helps veterans determine the types of preferences and benefits to which they are entitled, and if they determine they may have been denied their Veterans' Preference rights, the Advisor explains the process for filing a

complaint, and provides an electronic capability to file a complaint form. The Advisor can be found on the Department's "elaws" website at <http://www.dol.gov/elaws/vetspref.htm>. VETS also provides its investigators with a "Veterans' Preference Operations Manual," which, among other things, provides uniform guidance for processing complaints brought by preference-eligible veterans who allege a denial of their rights under the provisions of the VEOA.

Tables 1 and 2 below display the total number of Veterans' Preference cases investigated by VETS and associated outcomes, during FY 2015. Of the 606 complaints received in FY 2015, and the 34 cases carried over from FY 2014, VETS closed 590 cases. On average, cases were resolved in 23 days.

Of the 590 Veterans' Preference cases closed in FY 2015, 32 (5.4%) were found to have merit. Investigations were completed in 491 (83.2%) of the 590 cases. The remaining 99 cases were closed administratively, withdrawn by the claimant, or the claimant elected to proceed to the MSPB before the investigation concluded within the time frame allowed by statute.¹

Table 1. FY 2015 Veterans' Preference Cases²

Category or Subcategory	Number or Percentage of Cases
Total Cases	640
Cases Carried Forward from FY 2014	34
Cases Opened During FY 2015	606
FY 2015 Opened Cases - Issue Hiring	589
FY 2015 Opened Cases - Issue Reduction in Force	17
Total Cases Closed During FY 2015	590
Percent of FY 2015 Cases Closed within 60 days	97.5%
Percent of FY 2015 Cases Closed within 90 days	98.3%
Average Number of Days Case Was Open	23

Table 2. FY 2015 Veterans' Preference Case Outcomes

Category or Subcategory	Number of Cases
Total Cases Closed	590
Cases Closed Due to "Merit Finding"	32
Hiring	32
Reduction in Force	0
Cases Closed Due to "No Merit Finding"	371
Hiring	359
Reduction in Force	12
Cases Closed Due to "Not Eligible"	57

¹ In these cases, the claimant may request that VETS cease investigative action after 60 days and appeal to MSPB directly on the 61st day after VETS' receipt of the claim.

² As reported in the Veterans' Preference Information Management System (Run Date October 30, 2015).

Cases Closed Due to "Untimely Filed"	31
Cases Closed Due to "Merit Determination Not Made"	99
Administratively Closed	31
Claim Withdrawn	50
Merit Undetermined	7
Duplicate	11
Total Cases Converted to USERRA Claims	0
Total Cases Still Pending	50

Conclusion

The Department looks forward to working with the Subcommittee to ensure that Veterans' Preference in Federal government hiring remains strong. Veterans are some of our strongest and most capable employees in the public workforce and we are committed to making sure that they have a place at DOL and their preference rights are not violated. Mr. Chairman, Ranking Member, and distinguished Members of the Subcommittee, this concludes my written statement. Thank you for the opportunity to be a part of this hearing. I welcome your questions.