



Veterans Preference – Information Sheet

<http://www.opm.gov/staffingportal/vetguide.asp>

Types of Preference

To receive preference, a veteran must have been discharged or released from active duty in the Armed Forces under honorable conditions (i.e., with an honorable or general discharge). As defined in 5 U.S.C. 2101(2), "Armed Forces" means the Army, Navy, Air Force, Marine Corps and Coast Guard. The veteran must also be eligible under one of the preference categories below (also shown on the Standard Form (SF) 50, *Notification of Personnel Action*).

Military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they are disabled veterans. (This does not apply to Reservists who will not begin drawing military retired pay until age 60.)

For non-disabled users, active duty for training by National Guard or Reserve soldiers does not qualify as "active duty" for preference.

For disabled veterans, active duty includes training service in the Reserves or National Guard, per the Merit Systems Protection Board decision in *Hesse v. Department of the Army*, 104 M.S.P.R.647(2007).

For purposes of this chapter and 5 U.S.C. 2108, "war" means only those armed conflicts declared by Congress as war and includes World War II, which covers the period from December 7, 1941, to April 28, 1952.

When applying for Federal jobs, eligible veterans should claim preference on their application or resume. Applicants claiming 10-point preference must complete Standard Form (SF) 15, *Application for 10-Point Veteran Preference*, and submit the requested documentation.

The following preference categories and points are based on 5 U.S.C. 2108 and 3309 as modified by a length of service requirement in 38 U.S.C. 5303A(d). (The letters following each category, e.g., "TP," are a shorthand reference used by OPM in competitive examinations.)

5-Point Preference (TP)

Five points are added to the **passing** examination score or rating of a veteran who served:

During a war; **or**

During the period April 28, 1952 through July 1, 1955; **or**

For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976; **or**

During the Gulf War from August 2, 1990, through January 2, 1992; **or**

For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; **or**

In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti, qualifies for preference.

A campaign medal holder or Gulf War veteran who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty. The 24-month service requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. 1171 or 1173.

A word about Gulf War Preference...

The Defense Authorization Act of Fiscal Year 1998 (Public Law 105-85) of November 18, 1997, contains a provision (section 1102 of Title XI) which accords Veterans' preference to **everyone** who served on active duty during the period beginning August 2, 1990, and ending January 2, 1992, provided, of course, the veteran is otherwise eligible.

This means that anyone who served on active duty during the Gulf War, regardless of where or for how long, is entitled to preference if otherwise eligible (i.e., have been separated under honorable conditions and served continuously for a minimum of 24 months or the full period for which called or ordered to active duty). This applies not only to candidates seeking employment, but to Federal employees who may be affected by reduction in force, as well.

Questions and Answers about Gulf War Preference

Q. Public Law 105-85 of November 18, 1997, contains a provision (section 1102 of Title XI) which accords Veterans' preference to anyone who served on active duty, anywhere in the world, for any length of time between August 2, 1990, and January 2, 1992, provided the person is "otherwise eligible." What does "otherwise eligible" mean, here?

A. It means the person must have been separated from the service under honorable conditions and have served continuously for a minimum of 24 months or the full period for which called or ordered to active duty. For example, someone who enlisted in the Army and was serving on active duty when the Gulf War broke out on Aug 2, 1990, would have to complete a minimum of 24 months service to be eligible for preference. On the other hand a Reservist who was called to active duty for a month and spent all his time at the Pentagon before being released would also be eligible. What the law did was to add an additional paragraph (C) covering Gulf War veterans to 5 U.S.C. 2108(1) (on who is eligible for preference). But, significantly, the law made no other changes to existing law. In particular, it did not change paragraph (4) of section 2108 (the Dual Compensation Act of 1973), which severely restricts preference entitlement for retired officers at the rank of Major and above. When the Dual Compensation Act was under consideration, there was extensive debate in Congress as to who should be entitled to preference. Congress basically compromised by giving preference in appointment to most retired military members (except for "high-ranking officers" who were not considered to need it), but severely limiting preference in RIF for all retired military because they had already served one career and should not have preference in the event of layoffs.

So, "otherwise eligible" means that the individual must be eligible under existing law.

Q. Which provision of the new law contains the 24 month service requirement for regular military service members on active duty as opposed to reservists who are called or ordered to active duty?

A. The 24 month service requirement provision is found in Section 5303A of title 38, United States Code which defines the minimum active-duty service requirement for those who initially enter active duty after September 7, 1980.

Q. Can an applicant claim preference based on Gulf War service after January 2, 1992?

A. The law specifies that only those on active duty during the period beginning August 2, 1990, and ending January 2, 1992, are eligible for preference. Applicants who served on active duty exclusively after these dates would have to be in receipt of a campaign badge or expeditionary medal.

Q. Are there any plans to extend Veterans' preference to any other groups of individuals who served on active duty during times of conflict that may not have served in specific theaters of operation?

A. We are not aware of any plans to extend Veterans' preference to any other group of individuals.

Q. An applicant is claiming preference based on service in Bosnia, but he/she has no DD Form 214 to support his claim. Can we give him/her preference?

A. A service member whose record appears to show service qualifying for Veterans' preference (for example, there is an indication that the person served in Bosnia in 1996), may be accorded 5 points tentative preference on that basis alone. However, before the person can be appointed, he or she must submit proof of entitlement to preference. That proof may be an amended DD Form 214 showing the award of the Armed Forces Expeditionary Medal (AFEM) for Bosnia in the case of service members who served there and were released prior to enactment of the recent Veterans' preference amendments, or it may be other official documentation showing award of the Armed Forces Expeditionary Medal.

Q. How are we to know that a Reservist was, in fact, a) called to active duty, and b) served the full period for which called? Don't some Reservists just receive a letter telling them they are being placed on active duty?

A. A Reservist will always have orders placing him (or her) on active duty -- (it is the only way the Reservist can be paid). While the individual may also have a letter saying that he or she is being called up, there will always be orders backing this up. Similarly, when the Reservist is released from active duty, he or she will always have separation or demobilization orders.

Q. Several employees have come to the agency personnel office claiming they should have preference under the new law, but they have no proof of service during the specified period. We are getting ready to issue Reduction In Force (RIF) notices. Should we take the employees' word for it or wait until they have proof?

A. The employees cannot be given Veterans' preference without required documentation. The agency should work with the employee and the appropriate military service record organizations to obtain this documentation as soon as possible to avoid having to "rerun" the Reduction In Force at the last minute.

Q. If our agency has "frozen" personnel actions and issued Reduction In Force notices but the Reduction In Force effective date has not yet arrived, how can we account for any changes in Veterans' preference status?

A. Regardless of where you are in the process of carrying out the Reduction In Force, you must correct the Veterans' preference of employees who will now be eligible as a result of the statute. Veterans' preference cannot be "frozen" like qualifications or performance appraisals--it must be corrected right up until the day of the Reduction In Force. If a change in preference results in a different outcome for one or more employees, amended Reduction In Force notices must be issued. If such a change results in a worse offer, the affected employee must be given a full 60/120 day notice period required by regulation. This may require the agency to use a temporary exception to keep one or more employees on the rolls past the Reduction In Force effective date in order to meet this obligation.

Q. Our agency already completed a Reduction In Force effective November 28, 1997. There is at least one separated employee who would now have Veterans' preference and would not have been separated if we had known about the change in statute. What do we do now?

A. If an agency finds that an eligible employee reached for Reduction In Force separation or downgrading effective on or after November 18, 1997, was not provided retention preference consistent with P.L. 105-85, The Office of Personnel Management recommends that the agency take appropriate corrective action.

An employee not provided appropriate retention preference may appeal the Reduction In Force action to the Merit Systems Protection Board (MSPB). MSPB normally requires the appeal to be filed within 30 days of the Reduction In Force effective date, but Merit Systems Protection Board may, at its option, accept later appeals filed within 30 days of the employee becoming aware of the change.

If an employee was separated or downgraded by Reduction In Force, the agency should determine whether or not the employee would have been affected differently based on the change in Veterans' preference. If the employee would still be separated or downgraded, the agency should correct the employee's notice. If the employee was separated, the agency should also correct the Reemployment Priority List (RPL) registration (if any) to accurately reflect their Veterans' preference.

If the corrective action results in a surplus of employees in one or more competitive levels, the agency may have to run a new Reduction In Force. However, the agency cannot retroactively adjust the results of the prior Reduction In Force.

Q. What if an employee would have been registered as a I-A on the agency's Reemployment Priority List due to the new law, but has been listed as a I-B? What is the agency's obligation to make up for any lost consideration as a result?

A. The employee's registration status on the Reemployment Priority List should be corrected immediately so that the employee will be considered as a I-A for the remainder of their time on the Reemployment Priority List. If the agency finds that a lower standing person was selected over the employee, the agency must notify the employee of the selection and their right to appeal to Merit Systems Protection Board. If the employee files an Reemployment Priority List appeal, Merit Systems Protection Board may order a retroactive remedy which could include extending the employee's time period for consideration under the Reemployment Priority List.

A word about Man-Day Tours...

We have received several inquiries concerning the status of "man-day tours." Specifically, agency personnel offices have asked, "Are man-day tours considered regular active duty -- and thus qualifying for Veterans' preference -- or are they really active duty for training and thereby not qualifying?"

The questions arose because many Air Force Reservists were placed on these so-called man-day tours -- also known as, active duty in support (ADS) -- for only a few days during the Gulf War and Operation Provide Comfort (in support of the Kurds) during which they would fly a quick mission to the Gulf, get the Southwest Asia Service Medal (SWASM) and come home, then be released. Although they had orders, they received no DD Form 214.

Some agency personnel offices were according these Reservists preference; while other offices were not. Some Reservists were awarded preference, then had it withdrawn on the basis that they were only performing active duty for training.

Based on discussions with the Department of Defense, Office of Reserve Affairs and Air Force Instruction 36-2619 of 7/22/94, which discusses man-day tours, man-day tours are apparently regular active duty tours. Therefore, these man-day tours are qualifying for preference if the individual was awarded the SWASM or served during the period 8/2/90 to 1/2/92.

This service is also referred to as MPA man-days because it is funded out of the military appropriation account (MPA), an active duty account. Man-days support short-term needs of the active force by authorizing no more than 139 days annually to airmen and officers who are typically placed on active duty under 10 U.S.C. 12301(d) (ordered to active duty with the individual's consent). This authority should appear on the orders. Man-day tours are supposed to accommodate a temporary need for personnel with unique skills that cannot be economically met through the active force.

Based on the above, we have determined that Federal agencies should treat man-day tours as regular active duty unless there is some clear indication on the orders that it is active duty for training. Also, please note that the SWASM (or any campaign or expeditionary medal) is awarded only for active service in hostile areas; a Reservist performing active duty for training would not be eligible for one of these medals.

10-Point Compensable Disability Preference (CP)

Ten points are added to the **passing** examination score or rating of:

A veteran who served at any time **and** who has a compensable service-connected disability rating of at least 10 percent but less than 30 percent.

10-Point 30 Percent Compensable Disability Preference (CPS)

Ten points are added to the **passing** examination score or rating of a veteran who served at any time and who has a compensable service-connected disability rating of 30 percent or more.

10-Point Disability Preference (XP)

Ten points are added to the **passing** examination score or rating of:

A veteran who served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs but does not qualify as a CP or CPS; **or**
A veteran who received a Purple Heart.

10-Point Derived Preference (XP)

Ten points are added to the **passing** examination score or rating of spouses, widows, widowers, or mothers of veterans as described below. This type of preference is usually referred to as "derived preference" because it is based on service of a veteran who is not able to use the preference.

Both a mother and a spouse (including widow or widower) may be entitled to preference on the basis of the same veteran's service if they both meet the requirements. However, neither may receive preference if the veteran is living **and** is qualified for Federal employment.

Spouse

Ten points are added to the **passing** examination score or rating of the spouse of a disabled veteran who is disqualified for a Federal position along the general lines of his or her usual occupation **because of a service-connected disability**. Such a disqualification may be presumed **when the veteran is unemployed and**

is rated by appropriate military or Department of Veterans Affairs authorities to be 100 percent disabled and/or unemployable; **or**
has retired, been separated, or resigned from a civil service position on the basis of a disability that is service-connected in origin; **or**

has attempted to obtain a civil service position or other position along the lines of his or her usual occupation and has failed to qualify **because of a service-connected disability**.

Preference may be allowed in other circumstances but anything less than the above warrants a more careful analysis.

NOTE: Veterans' preference for spouses is different than the preference the Department of Defense is required by law to extend to spouses of active duty members in filling its civilian positions. For more information on that program, contact the Department of Defense.

Widow/Widower

Ten points are added to the passing examination score or rating of the widow or widower of a veteran who was not divorced from the veteran, has not remarried, or the remarriage was annulled, and the veteran either:

served during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign medal has been authorized; **or**
died while on active duty that included service described immediately above under conditions that would not have been the basis for other than an honorable or general discharge.

Mother of a deceased veteran

Ten points are added to the **passing** examination score or rating of the mother of a veteran who died under honorable conditions while on active duty during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign medal has been authorized; **and**

she is or was married to the father of the veteran; **and**
she lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage); **or**
she is widowed, divorced, or separated from the veteran's father and has not remarried; **or**
she remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

Mother of a disabled veteran

Ten points are added to the **passing** examination score or rating of a mother of a living disabled veteran if the veteran was separated with an honorable or general discharge from active duty, including training service in the Reserves or National Guard, performed at any time **and** is permanently and totally disabled from a service-connected injury or illness; and the mother:

is or was married to the father of the veteran; **and**
lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage); **or**
is widowed, divorced, or separated from the veteran's father and has not remarried; **or**
remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

Note: Preference is not given to widows or mothers of deceased veterans who qualify for preference under 5 U.S.C. 2108 (1) (B), (C) or (2). Thus, the widow or mother of a deceased disabled veteran who served after 1955, but did not serve in a war, campaign, or expedition, would not be entitled to preference. 5 U.S.C. 2108, 3309; 38 U.S.C. 5303A