



**STATEMENT OF**

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**FOR THE RECORD**

**BEFORE**

**THE HOUSE ARMED SERVICES COMMITTEE**

**SUBCOMMITTEE ON READINESS**

**REGARDING**

**THE NATIONAL SECURITY PERSONNEL SYSTEM**

**SUBMITTED ON**

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On behalf of the National Federation of Federal Employees (NFFE) and the 100,000 federal employees our union represents throughout the United States and abroad, including 45,000 civilian employees at the Department of Defense (DoD), I thank you for the opportunity to submit this statement on the National Security Personnel System (NSPS).

### **Summary of NFFE's Position on NSPS**

NSPS is a failed plan that has been fundamentally flawed since its inception. NSPS was never intended to be a modern, good government personnel system. It was intended to eliminate federal employee unions and suppress pay for the majority of DoD workers. Even after much of DoD's authority to create a new personnel system was revoked in the FY08 Defense Authorization Bill, DoD has continued to spend billions of dollars implementing this ill-conceived plan. Pay and promotion systems under NSPS are unfair, and it has severely diminished morale within the department. It is apparent that DoD is throwing good money after bad trying to implement a system that should never have been put forward in the first place. NFFE strongly supports full repeal of NSPS for all DoD workers in the Fiscal Year 2010 Defense Authorization Bill.

### **Background on NSPS**

In 2003, under the guise of national security, Congress granted the DoD the authority to establish a new human resources system and to modify certain labor relations provisions under NSPS.

When then-Defense Secretary Donald Rumsfeld appeared before Congress, he stressed the need for flexibilities in order to defend our nation against the new threats of terrorism. Yet, when draft regulations were finally issued on February 14, 2005, the agency put forward a plan that scarcely resembled the one brought to Congress. From the very beginning, Congress was misled about what reforms DoD had in mind for Defense workers.

The law required DoD officials to engage in meaningful discussions with the unions concerning the development of NSPS. Moreover, Congress mandated that NSPS be created jointly with employee representatives through a “meet and confer” process before any changes to existing personnel and labor relations policies could be implemented.

The unions representing the federal civilian workforce made a good-faith effort to address the needs of DoD and revise the personnel system that was in place. However, rather than trying to collaborate with the unions, the agency chose to ignore virtually all of the proposals offered by employee representatives.

DoD insisted that the authority granted to them by Congress allowed them to use national security as a pretense to do whatever the agency wanted. The agency defied the intent of Congress by failing to consider the views of Defense workers. By failing to meaningfully engage employees, DoD built considerable distrust among Department employees and their representatives. That distrust throughout the agency remains very strong today.

When DoD published the final regulations on NSPS in November 1, 2005, despite nearly 58,000 comments from the public and federal workers and a 30-day meet and confer period with the unions, DoD made practically no changes from the originally proposed regulations. The legitimate ideas and concerns of the workers and their unions were completely disregarded. This greatly undermined the credibility of the new personnel system, and it eliminated any reasonable expectation that Defense workers would accept NSPS as a good government reform.

Having no meaningful way to help shape the new personnel system through collaborative effort with DoD, Defense workers and their unions turned to the courts and to Congress. After a drawn-out legal battle that lasted over two years, Congress stepped in and eliminated many of the authorities DoD had been granted in 2003.

The Fiscal Year 2008 Defense Authorization Bill, signed in January of 2008, included language to restore collective bargaining rights and employee appeal rights for Defense

workers under NSPS. It also exempted blue collar workers from NSPS entirely. The language did leave in place DoD's authority to create a pay for performance system. Despite having the authority to implement NSPS on bargaining unit Defense workers, the agency has not moved forward with implementation.

At present date, DoD has moved more than 205,000 non-bargaining unit employees under NSPS. The agency has halted all future conversions to NSPS until the DoD and the Office of Personnel Management (OPM) can conduct a joint review of the program.

We applaud Committee Chairman Ike Skelton and Subcommittee Chairman Solomon P. Ortiz for requesting that DoD halt conversions to NSPS until a review can be completed. We applaud DoD for taking the time to review the personnel system.

### **NFFE's Analysis of NSPS**

Despite NSPS not having been implemented on bargaining unit Defense workers, we still have more than enough information to conclude that NSPS is a disaster that grows larger every day.

At the present date, we can demonstrate the following:

- NSPS will not truly reward high performance with pay incentives as advertised
- NSPS is not a fair, credible, and transparent personnel system
- NSPS will depress pay for rank-and-file Defense workers
- NSPS is not well-liked among those already under the personnel system
- Multiple personnel systems within the same agency is wasteful and inefficient
- Getting NSPS right, if that is possible, will cost billions of dollars to accomplish
- NSPS becomes harder to unravel with every passing day

Given what we already know about NSPS, the best possible course of action at this point is full repeal.

## **NSPS is Not “Pay For Performance”**

NSPS has consistently been advertised as a way to link Defense workers’ pay with their performance. Unfortunately, NSPS is not designed to reward individual employees for good performance. In fact, there are numerous obstacles in place to keep this from happening.

A pay for performance system should compensate employees based on how they are rated, primarily from their immediate supervisor. However, under NSPS the ratings of supervisors can, and often are, overturned. The final decision on ratings and payouts is made by the “pay pool panel,” which includes managers that may know very little about an employee’s performance. An employee’s pay becomes more a function of how much influence his manager has with the pay pool, and not his actual performance. This decision making is even further removed in bigger pay pools that have “sub-pay pools” and even “sub-sub-pay pools.”

The pay pool panel makes decisions on payouts that are often entirely out of an employee’s control, like whether their position is deemed critical by the local installation, where an employee’s office is located, or how well a manager links an employee’s objectives with agency goals. The consideration of these factors tells employees that their performance, at least in terms of how they will be rated, is not entirely within their control.

Pay pools consider recruitment and retention at a facility in determining payouts. While these factors may be relevant to agency staffing, they have nothing to do with the performance of agency employees. It seems inappropriate for high performing employees at installations not experiencing recruitment problems to have a lower ceiling for merit-based payouts simply because of local labor market conditions. This is a departure from the principle of pay for *performance*. The local labor market is entirely out of an employee’s control and has nothing to do with his/her performance. This practice has the potential to have a disparate impact on rural communities, where unemployment tends to be the highest. We are very concerned that these factors could be used to justify smaller payouts for Defense workers in these rural communities.

There is serious concern that the pay-for-performance system under NSPS will be undermined by a forced distribution of employee ratings. NSPS guidance has already been disseminated to rating officials that indicated a majority of employees should be rated at the “three” level. Agency managers have also indicated that they feel pressure to maintain a specified distribution of funds despite agency claims that a forced ratings curve is not in effect. A forced distribution of ratings and payouts greatly undermines the NSPS pay system.

The agency is also using “control points” to keep employees from moving up through their pay band. A control point is an artificial point on a pay band where management determines an employee at a certain position cannot exceed. Workers will have the illusion of the potential for higher pay, but the control point will keep them from attaining it. This is the epitome of “chasing a carrot.” This idea insults the intelligence Defense workers and will prove to be a tremendous drain on employee morale.

### **NSPS is Not Fair, Credible or Transparent**

It is widely accepted that for NSPS to be successful, it must be fair, credible and transparent to Department employees. But NSPS currently fails to meet any of these standards.

NSPS allows for “reassignments,” which allow managers to give employees new positions, more money, and advancement opportunity without using a competitive process or even giving notice to other employees about the opportunities. Reassignments would open the door for discrimination and favoritism throughout the agency. This feature is extremely unfair to Department employees who deserve the right to compete for positions when they are qualified to perform them.

There is concern that NSPS has been discriminatory to some segments of the Defense workforce. Data that was released in August of 2008 suggested NSPS discriminated against people of color. While this data was just a snapshot and did not indicate a trend, the data itself is very concerning. Defense workers’ unions have been concerned that NSPS would not be administered fairly, and this evidence, to some degree, confirmed our suspicion. One

encounters a Pandora's Box of problems when highly subjective elements are added to the pay system. The agency tried to make light of the numbers, but it is very important to keep a close eye on this huge potential problem. Discriminatory practices that are left unchecked will damage the credibility of the entire system.

While pay is supposed to be based on one's performance, this is greatly undermined by the fact that supervisors are not allowed to disclose their recommendations for a given employee to the pay pool. Instead, managers are forced to conceal their recommendations for several months until the pay pool has made its final payout decisions, often overriding the managers' recommendations. Managers are then instructed to go back and edit the recommendations they made, so that they reflect the pay pool's decision. Only at that point is the information disclosed to employees. It would be difficult to design a pay system less transparent than that. Department employees justifiably have little faith in this system, and morale is suffering as a result.

### **NSPS Will Not Fairly Compensate Rank and File Defense Workers**

In January of 2009, DoD released figures on performance-based payouts for employees working under NSPS. The total average salary increase for NSPS employees was 6.41 percent, plus a one-time bonus of 1.94 percent. Together, the average increase was 8.35 percent. That dwarfed the 3.9 percent average increase that employees under the GS system received. Even workers in the Washington area, who received the highest locality pay adjustment of all this year, only received a 4.78 percent increase, far less than the nation-wide average for NSPS employees.

What is most concerning about these figures is that the majority of Defense workers who received the high increases this year are managers, because they are the ones who have already moved under NSPS. The vast majority of rank-and-file employees remain unconverted. These payout numbers essentially say that, when given the chance, managers are going to give themselves the lion's share of incentive payout money.

If DoD had a surplus of incentive pay to reward high performers, they should have used the existing merit pay authorities under the GS system, like bonuses and other incentives, to reward high performing rank-and-file employees as well. But the agency didn't choose to do that. Instead, managers gave themselves huge increases by federal government standards, and they rewarded the rank-and-file workers with nothing extra.

What is disturbing to think about is what would have happened with respect to pay increases this year if bargaining unit Defense workers were already under NSPS. If the majority of DoD employees were not in the GS system, where their annual pay adjustments were protected from pay pool decisions, there is a good chance that hefty pay increases for agency managers would have been funded with dollars that rank-and-file workers brought into the pay pool. After all, with no new source of money for Department employees, if managers are going to get paid more, the money has to come from somewhere. The only possible source is from the discretionary portion of rank-and-file Defense workers' pay. If managers chose not to give rank-and-file Defense workers any extra performance pay when there was plenty of money to go around, there is no reason to think they would be any more generous with those same employees when there is not as much incentive money to distribute. NSPS will be used to reward managers more generously at the expense of rank-and-file Defense workers.

Managers in DoD have given themselves raises so big in their limited time under NSPS, that many managers are now being paid at a level that corresponds to a grade or even two grades above their job description. Workers who would be GS 13s in the GS pay system are frequently earning the pay at the rate of GS 14s, and some are earning as much as GS 15s.

The disparity in how Defense workers have been paid under NSPS is outrageous. If the managers are getting these huge annual increases, there is not going to be much left for everyone else. We believe the rank-and-file Defense workers will see their pay stagnated considerably under NSPS, and we cannot let that happen.

## **NSPS is Not Well-Liked by Those Currently Under the System**

A report on NSPS was issued by OPM in December of 2008. This report was publicly touted by the previous administration as demonstrating the success of NSPS. However, the increases in support for NSPS that were cited in the report failed to account for the fact that support was falling among employees who had been in the program the longest, those in Spiral 1.1.

For example, the survey indicated that that the percentage of employees under NSPS who believe their appraisals are a fair reflection of their performance had fallen just one percent in the last year, but that included a large percentage of DoD workers who were new to NSPS. When spiral 1.1 workers were looked at in isolation, the percentage who thought their appraisal was a fair reflection of performance had fallen by 12 percent.

Similarly, the percentage of Spiral 1.1 survey respondents who indicated that their current performance management system motivates them to perform well fell 5 percent from the previous year.

The bottom line is that despite the best efforts of the agency to portray an optimistic future for NSPS, the Department's own surveys demonstrate that those who spend more time under NSPS tend to lose confidence in the system and are less motivated by it. Translation: NSPS is not working.

## **Three Personnel Systems at DoD is Wasteful and Problematic**

DoD currently has three pay systems under which Department employees are enrolled – NSPS, GS and Wage Grade pay systems. Having multiple pay systems like this is wasteful of Department resources because managers are forced to operate within multiple systems at once. This causes a duplication of efforts that costs tax-payers untold sums in lost efficiency.

Having multiple systems is also unfair to Defense workers because two employees who perform the same job can be treated very differently under the two systems. NSPS and the

GS system are often at odds with each other. Having employees under the two systems simultaneously creates logistical problems that are difficult to resolve. The problem is particularly bad for morale when there are sizable disparities in pay for workers under the different pay systems.

### **NSPS Will Cost Billions of Dollars to Fully Implement**

The true cost of NSPS has never been disclosed publicly. After discussing openly the exorbitant cost associated with adopting a new personnel system at the Department of Homeland Security (DHS), roughly \$10,000 per FTE by some estimates, the previous administration learned that the true cost of NSPS was best left undisclosed.

In November of 2005, at the request of Congress for a cost estimate, DoD threw out a ridiculously low estimate of the NSPS tab - \$158 million. A Government Accountability Office (GAO) report released in July of 2007 found that DoD's estimate was completely unsubstantiated, as the unions had contended. Not included in DoD's estimate were many of the direct costs associated with implementing the personnel system, such as the full salary costs of all the civilian and military that directly support NSPS activities department wide. The estimate also excluded indirect costs of implementing NSPS, such as general administrative services, general research and technical support, rent, and other operating expenses. The report also concluded that improper tracking of NSPS costs up until that point would make it impossible to ever determine the true cost of NSPS.

For the Department, that was determined to conceal the true cost of the program, this was mission accomplished. Given the vacuum of data required to determine a true cost of the program, one can only estimate how much the American people have been forced to spend on this ill-conceived reform. However, any realistic estimate would run well into the billions of dollars.

It should be noted that DoD is, in the best of scenarios, several years away from implementing NSPS fully. In our estimation, NSPS will cost the American people billions of dollars more if the personnel system is not repealed.

### **Fixing the NSPS Error Grows More Difficult With Each Passing Day**

If Congress is going to decide to scrap NSPS, it is best to make that decision immediately. With each passing day, the problem of transferring workers back into the GS pay system from NSPS becomes more difficult. With each passing day, our country is throwing good money after bad trying to implement a personnel system that should never have been adopted in the first place.

As previously noted, workers under NSPS have enjoyed extremely generous pay increases, and are now making substantially more money than they would be under the GS pay system. Because of this, converting employees back into the GS is going to be a challenge, but a very manageable one. In fact, there is already detailed guidance on the method by which NSPS workers could be converted to GS. However, if these workers are left under NSPS for another year or two before being converted back to the GS system, it could become infinitely more difficult and costly to make the change.

### **Conclusion**

Even though collective bargaining and employee appeals have been restored under NSPS for bargaining unit workers, the personnel system is still being used as a way to eliminate Defense employees' voice in the workplace. The agency has done everything in their power to craft NSPS language that will free them of the responsibility of dealing with employee unions. Without question, NSPS will be used by agency managers to reward friends and punish enemies, and with greater authorities under NSPS, they will have more leverage than ever to do so. In many ways, NSPS is a throw-back to the "spoils system" which was wisely abandoned long ago. We see no good reason to turn back the clock and relive those forgotten lessons.

NSPS is failed personnel system that is on its last breath. The plan does none of the things that it originally set out to do, like link pay with actual performance or reduce hiring times. Because of the early decisions that were made to keep employees and their employee representatives out of the planning on NSPS, the system has very little credibility with Department employees. Despite the best efforts of the agency to gain approval for the new pay system, including giving enormous raises to those already under NSPS, the personnel system is still suffering from declining confidence among participants. In addition, pay and promotion systems under NSPS are unfair, and it has severely diminished morale within the department.

Clearly, NSPS will not work in its current form, so the question becomes whether to scrap NSPS altogether or to find a way to adjust it to make it work.

There are four main reasons why the former option makes the most sense for NSPS. First, Department employees already have considerable mistrust about NSPS. They have already concluded that NSPS is a bad personnel reform and they don't want it. Any window dressing you put on it is not going to change the minds of employees that have already had six years to form their unfavorable opinion of the controversial personnel plan. Second, given two wars and a wave of federal retirees, this is a crucial time for DoD to have a stable personnel system it can rely on. DoD has been in a semi-permanent state of transition for several years, and employees at all levels of the agency will welcome the end of this tumultuous period. Third, every day we delay the repeal of NSPS, we dig our hole deeper, making the adjustment back to the GS system more expensive and complicated. Fourth and finally, our country simply does not have the money right now to spend billions of dollars more on a personnel system that will likely never be fully implemented and will never work as advertised.

We should cut our losses on this debacle once and for all. NFFE strongly supports the full repeal of NSPS for all DoD workers in the Fiscal Year 2010 Defense Authorization Bill.