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March 24, 2006

The Honorable Susan M. Collins
Chairman
The Honorable Joseph I. Lieberman
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

Subject: *Post-Hearing Questions for the Record Related to the Department of
Defense's National Security Personnel System (NSPS)*

On November 17, 2005, I testified before your Committee at a hearing entitled: "From Proposed to Final: Evaluating the Regulations for the National Security Personnel System".¹ This letter responds to your requests for my response to questions for the record.

Questions from Senator John Warner

1. The civilian mariners have a long tradition of supporting our military forces—operating at the call of a combatant commander on Navy vessels—carrying combat equipment and supplies to fighting forces during World War II, Korea, Vietnam and our current military operations. They also have a unique legal status as excepted employees—whose compensation is tied to prevailing wage rates for commercial crews.

To what extent did the Department examine the appropriateness of the NSPS authorities governing labor relations for certain unique segments of the workforce, such as the civilian mariners?

In supplementary information to the final regulations, DOD and OPM responded to comments suggesting that certain groups of employees, including teachers, public safety employees, civilian mariners, be excluded from the labor relations system. In evaluating the merits of excluding these groups of employees from the labor relations system, DOD and OPM noted that the Department considered the employees' unique characteristics but could find no compelling argument that this particular group should not be covered by the new system.

¹GAO, Human Capital: *Observations on Final Regulations for DOD's National Security Personnel System*, [GAO-06-227T](#) (Washington, D.C.: Nov. 17, 2005).

Is legislation needed to permit the Secretary to exempt any DOD unit from the labor relations provisions if the Secretary thought it necessary to do so?

We understand that DOD's interpretation of section 9902(m)(8) of Title 5 is that legislation would be needed to allow the Secretary of Defense to exempt any unit from the labor relations system. If this is DOD's position, then clarifying legislation would be necessary.

2. The GAO, as part of its ongoing review of the Department's implementation efforts, has emphasized the importance of employee buy-in to the new system, and also of evaluating its success throughout implementation.

What are the specific mechanisms that will be in place for continuous employee involvement, and for evaluation of the NSPS system?

As we noted in our statement, DOD faces a significant challenge in involving—and continuing to involve—its employees, employee representatives, and other stakeholders in implementing NSPS. DOD's final regulations, while providing for continuing collaboration with employee representatives, do not identify a process for the continuing involvement of employees and other key stakeholders in implementation of NSPS. DOD's final NSPS regulations on the collaboration process, among other things, would permit the Secretary of Defense to determine (1) the number of employee representatives allowed to engage in the collaboration process, and (2) the extent to which employee representatives are given an opportunity to discuss their views with and submit written comments to DOD officials. In addition, DOD's final regulations indicate that nothing in the continuing collaboration process will affect the right of the Secretary of Defense to determine the content of implementing guidance and to make this guidance effective at any time. DOD's final regulations will give designated employee representatives an opportunity to be briefed and to comment on the design and results of the new system's implementation. However, the active, visible, and continuous involvement of top key players, including the Secretary and Deputy Secretary of Defense, the military services' secretaries, and presidents of the employee labor unions will be a major factor in determining whether such efforts will be meaningful, successful, and credible.

Our prior statement and work also indicate that evaluating the effect of NSPS will be an ongoing challenge for DOD. As we noted in our statement, DOD's final regulations indicate that DOD will evaluate the regulations and their implementation. In our July 2005 report on DOD's efforts to design NSPS, we recommended that DOD develop procedures for evaluating NSPS that contain results-oriented performance measures and reporting requirements.² We also recommended that these evaluation procedures could be broadly modeled on the evaluation requirements of the OPM demonstration projects. If the department follows through with this effort, we believe that it will be responsive to our recommendation.

²GAO, *Human Capital: DOD's National Security Personnel System Faces Implementation Challenges*, [GAO-05-730](#) (Washington, D.C.: July 14, 2005).

How will the Department know whether or not the new system is “getting it right”?

Our answer to question 2 above regarding evaluating the effect of NSPS applies to this question.

3. The level of employee and employee representative participation will help determine the success of this personnel system for DOD, and ultimately, possible extensions throughout the federal government. GAO Comptroller General Walker underscored the need for DOD to continue to involve employees, including employee representatives, throughout the implementation process. The “implementing issuance” process, which remains under the sole authorization of the Secretary of Defense and other principal partners, will provide the ultimate framework and details for important aspects of implementing NSPS. While final regulations specify that employee representatives will have the opportunity to participate in this process, could you elaborate on some of the ways you will seek to request and include suggestions from employees and their representatives in the implementing issuances?

By including employees and their representatives in the planning process, organizations can improve related policies and processes, increase their acceptance within the workforce and minimize any potential adverse morale implications. For NSPS to be a successful transformation, it must involve DOD employees and their representatives from the beginning of the process in order to obtain their input and acceptance, and hopefully their ownership of the changes that are occurring within the department. Employee involvement strengthens the transformation process by including frontline perspective and experiences. Further employee involvement helps to create the opportunity to establish new networks and break down existing organizational silos, increase employees’ understanding and acceptance of organizational goals and objectives, gain ownership for new policies and procedures, and reduce related implementation risks.

Our prior work also indicates that involving employees and other stakeholders helps to improve overall confidence and belief in the fairness of the system, enhance their understanding of how the system works, and increase their understanding and ownership of organizational goals and objectives. Organizations have found that the inclusion of employees and their representatives needs to be meaningful, not just pro forma. At GAO, to obtain direct feedback from employees, we created the elected Employee Advisory Council (EAC) to serve as an advisory body to the Comptroller General and other senior executives on a range of management and employee issues. Comprising employees who represent a cross-section of the agency, the EAC’s participation is an important source of front-end input and feedback on our human capital and other major management initiatives. Specifically, EAC members convey the views and concerns of the groups they represent, while remaining sensitive to the collective best interest of all GAO employees; propose solutions to concerns raised by employees; provide input to and comment on GAO policies, procedures, plans, and practices; and help to communicate management’s issues and concerns to employees while also relaying employees’ comments and concerns to management.

We have found that organizations undergoing a transformation should establish a communications strategy that creates shared expectations and seeks to genuinely involve stakeholders in the process. As we have noted in our prior testimonies on DOD's human resources management system, it will face multiple implementation challenges that include establishing overall communications strategies and involving employees in implementing the new systems. We believe that one of the most relevant implementation steps is for DOD to enhance two-way communication between employees, employee representatives, and management, including enhancing communication between top political appointees and labor leaders. To enhance communications, there needs to be visible and ongoing involvement of a number of top-level DOD leaders, including the Secretary and Deputy Secretary of Defense, and the military services' secretaries. Frequent and timely communication cultivates a strong relationship with management and helps gain employee ownership for a transformation like NSPS. But communication is not about just "pushing the message out" or seeking information without any meaningful response. It should facilitate a two-way honest exchange with and allow feedback from employees, employee representatives, customers, and stakeholders. Once employee feedback is received, it is important to acknowledge, consider, and use it to make any appropriate changes to the implementation of the transformation.

4. As Chairman of the Senate Armed Services Committee and as a veteran of World War II and the Korean War, I have a profound respect and gratitude for our nation's veterans. During my 27 years in the Senate, I have supported efforts to provide veterans with employment opportunities in the federal government. Concerns have been expressed that the final regulations modify the current rules governing workforce reshaping, and consequently could negatively impact DOD's veteran employees. What assurance can you provide my colleagues and I that the changes will not have a detrimental impact on veterans?

While GAO cannot provide any assurance that the final NSPS regulations will not have a detrimental impact on veterans, we note that the regulations continue to give veterans' preference the same priority in the event of a reduction-in-force (RIF) as under current regulations.

5. During my service as Secretary of the Navy—during which I was privileged to have some 650,000 civilian employees working side by side with the uniformed Navy, — I valued very highly the sense of *teamwork* between the civilian and uniformed members of the United States Navy. *Teamwork* is an intrinsic military value, in my judgment, and essential to mission accomplishment. Some have been concerned that NSPS could undermine that sense of teamwork by increasing the competition between individuals for recognition of their performance. How can we safeguard this essential element of national service—teamwork—as we move forward in changing the personnel systems of the Department of Defense?

Senior executives need to lead the way to transform their agencies' cultures to be more results-oriented, customer focused, and collaborative in nature. Performance

management systems can help manage and direct this process. As public sector organizations shift their focus of accountability from outputs to results, they have recognized that the activities needed to achieve those results often transcend specific organizational boundaries. Consequently, organizations that focus on collaboration, interaction, and teamwork across organizational boundaries are increasingly critical to achieve results. High performing organizations use their performance management systems to strengthen accountability for results, specifically by placing greater emphasis on competencies and other factors that promote teamwork and collaboration to achieve desired organizational results.

6. In preparation for a hearing of the Armed Services Committee which I chaired in April, 2005, I asked my good friend John Gage to whittle down the scores of issues that he identified with the draft regulations to a few flashpoint issues—a handful of things that had the highest priority from his perspective. He did that, and in his testimony to the SASC on April 14, 2005, identified six “flashpoints” of concern:

- 1. The scope of bargaining**
- 2. Composition of the National Security Relations Board**
- 3. The standard for mitigation of adverse actions by the Merit Systems Protection Board**
- 4. The requirement for written standards for employee performance**
- 5. A general lowering of pay for the DOD civilian workforce; and**
- 6. Procedures for identifying who will be affected by a Reduction in Force.**

It is my understanding that the final regulations reflect progress on some of these issues. How far has the Department come in addressing these issues to ensure the success of NSPS?

Importantly, DOD should move expeditiously to resolve the appeals issue, since it will be critical to the effective, credible, and fair implementation of any major classification, compensation and performance management, and reduction-in-force changes. John Gage is in the best position to judge if his concerns are being addressed. However, as you noted, the final regulations reflect progress on some of the issues John Gage identified as flashpoints. However, 10 federal labor unions filed suit last fall challenging the final NSPS regulations on several grounds. On February 27, 2006, the U.S. District Court for the District of Columbia found that DOD was authorized to establish a labor relations system that differed from the federal labor relations system under Chapter 71 of title 5 of the U.S. Code, and that DOD satisfied their statutory obligation to collaborate with the unions.³ The court, however, ruled that the final NSPS regulations do not ensure that employees can bargain collectively. The court also ruled that the proposed internal labor relations board at DOD is not an "independent third party" as required by the NSPS authorizing legislation and that the proposed employee appeals process does not provide fair treatment to DOD employees. The court permanently enjoined DoD from implementing the parts of the final NSPS regulations addressing adverse actions, appeals, and labor relations. At

³*American Federation of Government Employees, AFL-CIO, et. al. v. Rumsfeld et al*, No. 05-2183, 2006 U.S. Dist. LEXIS 7068 (D.D.C. Feb. 27, 2006).

this point, DOD and OPM officials are continuing to work with the Department of Justice to determine their next steps relative to the court's decision. As such, while DOD can implement the performance management, compensation and classification, staffing, and workforce shaping portions of the regulation, the regulations on the scope of bargaining, composition of the National Security Labor Relations Board, and the standard for mitigation of adverse actions by the Merit Systems Protection Board may not move forward.

In response to public comments to its proposed regulations and feedback obtained during the meet and confer process with employee representatives, DOD modified the proposed regulations, so that the final regulations state that the basic performance expectations should be provided to employees in writing.

Similar to the proposed regulations, DOD's final regulations could not reduce employees' basic rates of pay when converting to pay bands. However, employees' compensation may increase at a rate higher or lower than under the current compensation system because under NSPS compensation is designed to be (1) market-based, with consideration of local market conditions to set pay rates, and (2) more performance-oriented.

Similar to the proposed regulations, the final NSPS regulations allow DOD to reduce, realign, and reorganize the department's workforce through revised reduction-in-force (RIF) procedures. In a change from the proposed regulations, employees serving in an initial probationary period have a lower retention standing than career employees (i.e., permanent will be listed first, followed by employees serving an initial probationary period, and then followed by employees on temporary appointments). In another change, the final regulations reflect the use of more than one year's performance ratings in placing employees on the retention list.

Questions from Senator Joseph Lieberman

Downward pressure on pay levels.

John Gage in his written testimony expresses concern that the NSPS system will create downward pressure on DOD civilian pay. Are there mechanisms that you could suggest to assure that pay levels are adequate for employee recruitment and retention and to truly reward good performance?

We have observed that a competitive, market-based compensation system can help organizations attract and retain a quality workforce. To begin to develop such a system, organizations assess the skills and knowledge they need; compare compensation against other public, private, or nonprofit entities competing for the same talent in a given locality; and classify positions along levels of responsibility. While one size does not fit all, organizations generally structure their competitive compensation systems to separate base salary—which all employees receive—from other special incentives, such as merit increases, performance awards, or bonuses, which are provided based on performance and contributions to organizational results. DOD needs to conduct annual, high-level compensation reviews to determine the competitiveness of the pay ranges, and periodic (every 3 to 5 years) much more comprehensive compensation studies while at the same point in time, monitoring

employee recruiting, retention statistics as well as employee feedback during the interim in order to try to help assure the competitiveness of the system.

We have reported that direct costs associated with salaries were one of the major cost drivers of implementing pay for performance systems, based on the data provided us by selected Office of Personnel Management demonstration projects. We found that some of the demonstration projects intended to manage costs by providing a mix of one-time awards and permanent pay increases. Rewarding an employee's performance with an award instead of an equivalent increase to base pay can help contain salary costs in the long run because the agency only has to pay the amount of the award one time, rather than annually.

Safeguards to help ensure fairness and guard against abuse.

Mr. Walker, in your testimony you expressed concern about whether the regulations contain adequate safeguards to help ensure fairness and guard against abuse. This seems particularly relevant with respect to the process for assessing performance.

Could you elaborate on what kinds of safeguards you believe should be considered in this context?

As we noted in our statement, although DOD's proposed regulations provide for some safeguards to ensure fairness and guard against abuse, additional safeguards should be developed. We have developed an initial list of possible safeguards to help ensure that pay-for-performance systems in the government are fair, effective, and credible. The safeguards include, among other things, the following.

- Assure that certain predecisional internal safeguards exist to help achieve the consistency, equity, nondiscrimination, and nonpoliticization of the performance management process (e.g. independent reasonableness reviews by Human Capital Offices and/or Offices of Opportunity and Inclusiveness or their equivalent in connection with the establishment and implementation of a performance appraisal system, as well as reviews of performance rating decisions, pay determinations, and promotion actions before they are finalized to ensure that they are merit-based; internal grievance processes to address employee complaints; and pay panels whose membership is predominantly made up of career officials who would consider the results of the performance appraisal process and other information in connection with final pay decisions).
- Assure that there are reasonable transparency and appropriate accountability mechanisms in connection with the results of the performance management process. This includes reporting periodically on internal assessments and employee survey results relating to the performance management system and publishing overall results of performance management and individual pay decisions while protecting individual confidentiality.
- Assure that the agency's performance management systems (1) link to the agency's strategic plan, related goals, and desired outcomes and (2) result in

meaningful distinctions in individual employee performance. This should include consideration of critical competencies and achievement of concrete results.

- Involve employees, their representatives, and other stakeholders in the design of the system, including having employees directly involved in validating any related competencies, as appropriate.
- Assure that there is an independent and credible employee appeals mechanism.

Do you know of federal agencies where such mechanisms have proven effective to guard against unfairness and abuse in a pay-for-performance system?

The list of safeguards mentioned earlier are based on our own experience at GAO as well as our extensive body of work looking at the performance management practices used by leading public and private sector organizations in the United States. For example, to help provide transparency on how employees' performance compares to the rest of an organization, we previously reported that that Naval Sea Systems Command Warfare Center's Newport division publishes the results of its annual performance cycle. Newport aggregates the data so that no individual employee's rating or payout can be determined to protect confidentiality. Employees can compare their performance rating category against others in the same unit, other units, and the entire division.

IBM built in several accountability mechanisms to help achieve consistency and equity in pay decisions across employee groups and teams. To help ensure there is no discrimination in pay decisions, IBM conducts a base pay equity analysis to review the pay of women or minority employees if their proposed pay is one standard deviation or more away from the mean of the majority of employees and looks for an explanation for these pay differences, such as poor performance, a recent promotion into the pay band, or an extended leave of absence. In addition, IBM built in second-level reviews of pay decisions before employees receive any pay increases to ensure consistency in the compensation process. The first-line managers discuss their proposed pay decisions with managers at the next level—the up-line managers—to ensure the performance assessments and justifications are consistent across groups. Up-line managers can also shift pay allocations across groups if necessary in order to ensure employees who perform similarly are compensated the same regardless of their first-line managers. As a final check, the senior managers sign off on the pay decisions for each employee.

Questions from Senator Daniel Akaka

1. As you know, I was joined by Senators Collins, Lieberman, and Voinovich in asking GAO to review the costs associated with the design, implementation, and training related to the National Security Personnel System (NSPS) so I am very pleased that our request has been elevated to a GAO initiative. Your evaluation will assist us greatly with our oversight of NSPS. What methodologies, mileposts, and timeframes have been established for the review?

As we have noted in our most recent testimony, DOD is challenged to provide adequate resources to implement its new personnel system, especially during a time when some of the department's resources are being directed towards the Global War on Terrorism. By April 2006, we plan to begin an evaluation of the costs associated with the design and implementation of NSPS, and provide Congress with relevant information by September 2006.

2. You have repeatedly testified that safeguards are needed to ensure fairness and guard against abuse in any pay-for-performance system. From your meetings with the Department of Defense (DOD) and the Office of Personnel Management (OPM), do you know why similar safeguards have not been included in the NSPS final regulations?

In our most recent testimony on the final NSPS regulations, we noted several issues that DOD will need to define in more detail than is currently provided. We believe that the details of DOD's system do matter and that they should have been addressed in the final regulations and then further defined in implementing issuances. Importantly, DOD has plans to issue a number of issuances that will contain detailed policies and procedures for the new system. These issuances will be of critical importance and their content will include important details that can serve to either enhance or reduce the likelihood of a successful implementation. Hopefully, these issuances will be responsive to our recommendations with regard to the need for additional safeguards. In any event, these critically important details must be defined in conjunction with applicable key stakeholders and certain steps should be taken before any new authorities are implemented.

3. Mr. Walker, you support revising reduction-in-force (RIF) procedures to emphasize employee performance over tenure. However, union representatives state that the change in RIF procedures will adversely impact veterans by allowing DOD to design a RIF that will affect only veterans. Would you comment on this, and do you have any suggestions as to how this situation can be avoided?

Our answer to Senator Warner's question 4 above also applies to this question.

4. DOD has clearly stated that NSPS must be perceived as fair by employees. However, based on public comment and congressional testimony from employee representatives, it appears that employees believe NSPS is neither fair nor perceived as fair. What would you do to make the NSPS appeals system both fair and perceived as fair by employees?

There is no question that DOD's proposed and final regulations relating to the adverse actions and appeals process has not been without controversy. As you know, 10 federal labor unions filed suit alleging that, among other things, DOD's adverse actions and appeals process is unlawful. In ruling on the labor unions' suit, a federal judge found that DOD's appeals process does not provide fair treatment to DOD

employees, and permanently enjoined DOD from moving forward with implementing the final regulations relating to the adverse actions and appeals process.⁴

As Comptroller General, I have worked with others to make the Government Accountability Office a model federal agency by transforming its organization and operations to address the challenges and opportunities of the 21st century. In other presidentially appointed posts, including public trustee for Social Security and Medicare, I have seen the federal government falter in its attempts at major public policy reforms in those areas. The process one employs to advance major initiatives is critical. Based on my experience, three key process related elements maximize the chances for success: principles, players, and proposals.

With regard to principles, before leaders can achieve major internal or external changes, they need to make a clear and compelling case that the status quo is unacceptable and unsustainable. But that's not enough. Leaders also must provide a set of clear, comprehensive and compelling principles to frame the debate and help others understand the overall direction and objectives.

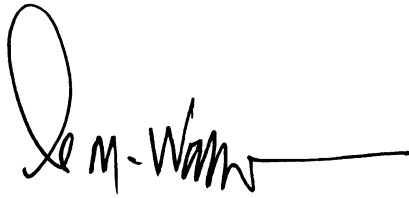
With regard to players, any major reform effort requires the direct and sustained involvement of an organization's chief executive officer. But the CEO also must recruit champions from various stakeholder groups. For internal reforms, this includes managers, employees and employee organizations. For legislative reforms, it includes businesses, unions, citizen groups, think tanks, the media and members of both major political parties. Champions should be capable, credible, committed and effective communicators. These individuals also should be part of a broad-based "big tent" approach to both crafting and selling reform proposals.

With regard to proposals, a detailed plan should be developed and presented or endorsed for action. The proposal should be consistent with the articulated principles, supported by applicable champions and informed by the "big tent" process. There is always risk in presenting a specific plan, especially in politically charged environments. But realistic leaders recognize that any major reform proposal is likely to be revised before it is enacted. Revisions could include desirable improvements or necessary compromises, but as the old saying goes, "Don't let the perfect be the enemy of the good."

These three steps to reform do not have to be addressed in a particular or guarantee success, but failure to effectively address one or more would likely ensure defeat.

⁴*American Federation of Government Employees, AFL-CIO, et. al. v. Rumsfeld et al*, No. 05-2183, 2006 U.S. Dist. LEXIS 7068 (D.D.C. Feb. 27, 2006).

For additional information on our work on human capital issues at DOD, please contact me on 512-5500 or Derek B. Stewart, Director, Defense Capabilities and Management on 512-5559 or stewartd@gao.gov, or J. Christopher Mihm, Managing Director, Strategic Issues on governmentwide human capital issues at 512-6806 or mihmj@gao.gov.

A handwritten signature in black ink, appearing to read "D. M. Walker", followed by a horizontal line.

David M. Walker
Comptroller General
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