

NSPS Comments

General: Given the general nature of many of the sections, with actual details pending issuance of implementing regulations, it is difficult to provide detailed comments that address more than the concepts involved. I also doubt that the public comments will have any effect on the direction the administration is determined to take. Despite these limitations and doubts, I feel compelled to offer some comments, as I feel that some of the proposed rules are unfair and/or will have negative impact on the DoD workforce and mission performance.

For context, I am a current DoD employee, currently working in a Human Resources function. Although I am not currently a supervisor, I was a supervisor at both the first and second levels until about four months ago. At its peak, the unit I supervised had 36 employees.

“The Case for Action” states that one of the objectives is to reduce costs. The only area where I see this potential is in the area of payroll costs, by restricting pay increases, to the detriment of DoD and its employees. Even disregarding the initial implementation costs, I feel the long-term costs of administering this system (administering different pay scales for individual pay bands, determining individual locality/market rates for multiple pay bands, pay pool management, increased amount of time that must be devoted to performance management, time spent dealing with more disputes over performance ratings, etc.) will more than offset any savings.

As a former supervisor, I do agree with provisions to make it easier to deal with poor performers. The extensive documentation and process requirements of the current system are disincentives to taking action, and the time it takes is excessive. I also agree with provisions that allow consideration of behavior in setting a performance rating. However, the expectation that a pay for performance system is somehow a panacea that will reduce the number of low performers and significantly raise the overall level of performance in DoD is something of a fallacy. My experience and observations in both the public and private sectors is that any system has its share of low performers, and that management will tolerate a certain threshold of mediocrity because it is easier to do that than deal with the problems, regardless of the system. I have not observed that the private sector, under pay for performance, has a significantly better record in this area. In fact, it has been my experience that the large majority of federal employees are hard working, dedicated individuals, giving their best to their work. Over the years I have received comments from a variety of private sector contractors, consultants, and others we have dealt with, on the quality and dedication of the DoD workers they have been associated with. This experience has been consistent, as I have worked for a number of different federal activities, so it does not appear to be a fluke. I would say that the overall level of DoD workers’ performance is better than that of private industry as a whole.

Subpart C-Pay

While I have no objection to instituting a pay for performance component as part of the DoD pay setting system, I feel the proposed regulation go overboard in pursuit of the holy grail of a totally performance based system. Despite assertions that this is the way private industry sets pay, it has been my experience that many, if not most private companies (especially those

with union contracts), have pay set based on both longevity and performance, and not every job is under a pay for performance system. The NSPS should do the same. I don't believe that the federal system can 100% mirror the private sector. Motivations and the operating environment are too different.

9901.313 compensation comparability/9901.322 setting rate ranges: Given history, budget pressures, and ideology, I am skeptical that performance pay will be adequately funded, or that basic pay rates will keep pace with the cost of living. Although the law and regulations call for the amount allocated for compensation to be not less than the amount that would have been allocated under the old system, the regulations include the qualifiers "To the maximum extent possible..." and "DoD may consider...availability of funds". I fully expect that pay accounts will not be funded, and after FY2008, all bets are off. In the private sector, better performance = more profit and money available for performance pay. This is not true in the public sector. The regulations should include stronger guarantees that pay will be properly funded, and provide for guaranteed percentages of cost of living and seniority increases in addition to a pay for performance component.

Subpart D-Performance Management

Given DoD's current resourcing, supervisors not only have to manage people and the work of their unit, but they are also forced to devote significant time to personally perform operational tasks not associated with managing. They already do not have adequate time available to devote to more effectively managing performance. The expectation that they will be allowed the time, resources, and leeway to fully and effectively discharge the performance management responsibilities assigned to them is unrealistic.

Subpart F-Workforce Shaping

9901.605 Competitive area: The regulation allows too narrow a definition of the competitive area. Despite the prohibition on targeting individuals, and the requirement that areas be set only on the basis of legitimate reasons, it will be too easy to circumvent these restrictions and target individuals, or set areas based on management preferences or other subjective or spurious rationales.

9901.607 Retention standing: Elimination of seniority/longevity as a significant retention factor, to be applied only in the case of a tie, should be reevaluated. Seniority is often a consideration in the private sector, especially under union contracts, hence "last hired, first fired." While it should not necessarily rule supreme, the length of experience of a satisfactorily performing employee should carry greater weight than currently proposed.

Subpart I-Labor-Management Relations

I have never been particularly supportive of federal labor union's methods, and the way bargaining has been conducted, but the proposed regulations constitute an incredibly blatant attempt to impose the administration's ideology on DoD, abrogate collective bargaining rights established in the early twentieth century, and make federal employee unions and attempts to

protect employee rights irrelevant. I am becoming increasingly convinced that the combative stance taken by federal labor representatives in the past is an attempt to compensate for the restrictions on what issues can be bargained in the federal sector. The extent to which employee rights and protections are eliminated overwhelms the ability to make succinct, specific, comments within the time frame and volume allowed. I see the proposed regulations making the situation and adversarial relationship worse, not better.

Despite calls to consult, collaborate, and bargain in good faith in the proposed rules, these sentiments essentially have no meaning, as DoD and its components can in the end ignore or change the terms of labor-management agreements simply by issuing a new regulation, or putting new rules into effect even if no agreement has been reached; with no meaningful objective third party review available. This is shocking and counter to the American system. What's left to bargain is virtually meaningless and the end result is that employees and their representatives have no real power to affect decisions and are completely at the mercy of DoD management, with no checks, balances of power, or recourse. It is a return to the conditions of the nineteenth century that initially gave rise to the labor movement.

Historically, federal employees have accepted restrictions on their rights to bargain over certain issues (including pay) that private sector employees have in exchange for a greater protections in job security, pay equity and predictability, third party review of disputes, etc. The proposed NSPS does away with many of these protections as well as decrease the bargaining rights of federal employees and their representatives. In order to protect employees' rights, if these protections are reduced, the areas subject to bargaining should be expanded, not reduced.

If the administration truly wants federal agencies to look and operate like private industry, federal employees and their representative should have the same collective bargaining rights and tools that unions in the private sector enjoy. These include the right to negotiate over pay scales, personnel policies and procedures, as well as the right to strike.