

Gary L. Dissette  
PO Box 26  
Bettendorf, IA 52722-0001

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Subject: Response to NSPS Proposed Rule, 5 CFR, XCIX and Part 9901, VOL. 70, No. 29, February 14, 2005.

I respectfully ask your consideration of my concerns as an auditor with experience at various commands and levels in CONUS as well as overseas working with our soldiers (in Afghanistan, Kuwait, Uzbekistan, Kosovo, Germany and Italy).

I believe in continuous improvement supported by facts. I don't see that in the NSPS proposal. I've listed my concerns and each of my issues in the following format:

- ISSUE#/REFERENCE
- DISCUSSION
- SUGGESTION

My three core concerns and suggestions in summary are:

1. Increased Responsiveness and Return on Investment (ROI). GAO review NSPS analysis, financial and operational, on how the NSPS will support the workforce and meet the claims addressed by NSPS (noted in my issue discussion section).
2. Salaries. GAO evaluates and provides to the DOD and the DOD workforce, after DOD develops it, the performance payout methodology and support for NSPS claims of higher ROI and the same pay for employees. DOD should also address critical support issues to DOD employees in combat areas such as life insurance support.
3. Labor Relations. GAO reviews NSPS ramifications on the employee rights. Legislative branch of the government approves changes to the CFR proposed by the NSPS proposal.

Sincerely,



Gary L. Dissette  
Accountant (Evaluator)  
Phone: (309) 782-6997  
[Gary.L.Dissette@us.army.mil](mailto:Gary.L.Dissette@us.army.mil)

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**1. INCREASED RESPONSIVENESS AND ROI/Pages 7552 and 7574.**

The Proposal states the importance of transforming the way we think, train, exercise and fight. It also stresses that DOD civilians are to complement and support the military around the world and be integrated and be a flexible, responsive part of the team. Finally, it states that the NSPS will result in a more qualified and proficient workforce, greater return on investment and productivity while preserving the basic employee rights.

**DISCUSSION.** This proposal doesn't acknowledge that the civilian workforce supports DOD combat operations around the world in a flexible and responsive manner. The NSPS system proposal claims it will meet this flexible, responsive challenge to DOD's mission. The proposal also claims it will result in a more qualified and proficient workforce, greater return on investment and productivity while preserving the basic employee rights. But DOD doesn't share the NSPS analysis, financial or operational, on how NSPS will achieve these claimed results. The NSPS proposal, as written and presented, leads me to conclude that either DOD has not planned and supported this change adequately or there are other motives behind the NSPS implementation that DOD is not being candid about with the DOD workforce.

**SUGGESTION 1:** DOD should request an independent body, such as GAO, review the DOD NSPS analysis, financial and operational, on how the NSPS will support the workforce to improve the integration, flexibility and responsiveness of the civilian workforce to meet the DOD mission. This review of DOD's analysis should also evaluate DOD's support and NSPS proposal claims that NSPS implementation will result in a more qualified and proficient workforce, greater return on investment and productivity while preserving the basic employee rights. This would include a review of the proposed budget changes that DOD expects to initiate as a result of this new NSPS.

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**2. SALARIES/Pages 7553, 7559 (Subpart C), 7561, and 7581-7584 (9901.313, 9901.331, 9901.342 and 9901.361).** The NSPS proposal states that salaries are to be based on labor market conditions, employees pay will remain the same in aggregate for the pay that is available, a common rate range will apply in all locations, and local market supplements will be established. It also states that performance “payout methodology” is not developed for overtime, compensatory time, premium pay and a host of other pay processes. NSPS proposal claims that employees will be converted based on their official position of record and placed in the appropriate pay band without loss of pay. Finally, the proposal claims that these payout methodologies will be developed and provided in “implementing issuances” and that supervisors have the right to change an employees previous rating prior to payout.

**DISCUSSION.** For years salaries for auditors, accountants and engineers have lagged behind private industry for comparable levels of responsibility – especially in the Washington, DC area. How DOD will do to match private industry effectively is not explained adequately in this proposal – or how they will find the extra funding to do this if it costs more than they anticipate. As I stressed in issue item one, DOD again claims greater ROI and productivity but states DOD has not developed the methodology for the payout of these core cost elements for the pay system. This statement contradicts the NSPS claim to result in higher ROI.

How can a system that has not defined the pay processes that are critical elements of NSPS claim to raise ROI? How will NSPS address the claim to transfer personnel into pay bands without loss of pay and the statement in the proposal that pay will not change for employees in aggregate? These two statements appear to contradict each other. How will employees be protected when managers have the right to change previous performance evaluations prior to performance pay adjustments? The NSPS also ignores critical issues about life insurance provided to military soldiers working in combat operations and comparable benefits to DOD employees supporting them.

**SUGGESTION 2.** DOD develop the performance payout methodology and provide the workforce a summary of their analysis, financial and operational, on how the NSPS will actually result in increased ROI while still paying the employees the same pay. This analysis should also support the NSPS proposal claim that NSPS implementation will result in the same pay. An independent organization, like GAO, should evaluate this proposal and DOD employees should be provided GAO’s results before this is carried forward further by DOD. DOD should address in the NSPS proposal critical support issues to DOD employees in combat areas such as life insurance support and controls over performance evaluations linked to performance pay.

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**3. LABOR RELATIONS**, Pages 7554, 7565, 7566, 7567, 7569, and 7570. The NSPS proposal states the NSPS is an attempt to return to a simplified approach prior to the Civil Service Reform Act and chapter 43 of the 5 USC. The NSPS states that provisions of title 5 will be waived or modified by DOD and OPM. The provisions involving labor relations are broad and extensive. Specifically, Subsection (k) of section 9902 states DOD is not limited by 5 CFR and that the DOD labor relations system supersedes all collective bargaining agreements. NSPS proposes that DOD will establish its own board that has authority to modify or reverse MSPB decisions that have direct and substantial impact on Department's national security mission. The standard of proof will change to a more stringent standard. Personnel employees (HR) will also be excluded from union involvement and representation.

**DISCUSSION.** DOD does not identify how they will address meeting the 5 CFR personnel pay and other rights and requirements in specific terms. Vague statements are used throughout the proposal that future "DOD Issuances" will define and specify critical process and elements of the personnel system. The proposal states, as mentioned in item issue two, that DOD has not developed the performance payout methodology. DOD has defined that it will shorten the appeals process for employees to prepare their appeals and will increase the standards of proof. The NSPS states all DOD level issuances will supersede any agreed upon collective bargaining. This provides ultimate power to the DOD and strips away union representation and negotiation. While it is known that DOD has a vital role in national defense it should not have such power over employees. The past has shown DOD abuse of power in the name of national defense.

As an auditor I have concerns about proposals that promise to improve operations, increase flexibility and responsiveness, increase ROI, while also planning to revamp entire pay systems and processes without any defined processes established before they move forward. These NSPS processes should be well defined and demonstrate how they will result in their many claims using clear examples to give the workforce an accurate understanding of the effects of these changes. While this part of the process is better defined than any other the effects on employee rights undermines its intent to save money by speeding processes. The legal ramifications on employee rights in this NSPS proposal contradict the claim that it will preserve basic employee rights. The writers of the NSPS proposal must see "basic employee rights" as very minimal rights indeed.

**SUGGESTION 3.** DOD should coordinate with an independent body, such as GAO, for a review of the ramifications on the employee rights. This review should include defining the changes in rights and effects on DOD employee rights. These changes should go through the Legislative branch of the government for approval of changes to the CFR. This seems logical since the CFR is based on law and any changes in the CFR will eventually affect other government employees as other agencies adopt the changes established by their NSPS.