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Program Executive Office  
National Security Personnel System  
Attn: Bradley B. Bunn  
1400 Key Boulevard, Suite B-200  
Arlington, VA 22209-5144

Dear Mr. Bunn:

Enclosed please find my comments concerning the Federal Register announcement of 14 February 2005, concerning the 5 CFR Chapter XCIX and Part 9901 National Security Personnel System; Proposed Rule (RIN 3206-AK76/0790-AH82)

Sincerely,



Michael J. Grenko

Enclosure (7 pages)

**Comments regarding: Part II Department of Defense, Office of Personnel Management, 5 CFR Chapter XCIX and Part 9901, National Security Personnel System; Proposed Rule, 14 February 2005 (RIN 3206-AK76/0790-AH82)**

**BACKGROUND COMMENTS:** The proposed new U. S. Department of Defense (DoD) National Security Personnel System (NSPS) is a combination of previously-tried ideas and new ideas. The proposal presumes that an employee appraisal system can be created that will assist supervisors in differentially-assessing individual performance. I have never seen a fully successful appraisal system that differentiates civil service employee performance in the many years of my civil service employment. I believe that every possible permutation of employee appraisal has been tried during my tenure.

I believe that the proposed DoD NSPS will likely reduce the effectiveness of the DoD Civil Service and greatly undermine the morale of the ordinary DoD worker. The overall performance of the DoD will likely be undermined and degraded. All of this will occur due to the changes to employee pay brought about by the new system.

I am entering my 38<sup>th</sup> year of federal government employment, with eight years as an Air Force Officer and 29 years as an Air Force and Federal Aviation Administration civilian. I have observed differences in personnel and pay policies between federal agencies. I have observed many changes in annual performance rating systems and employee pay over my Air Force years. I have been a supervisor for most of my career.

**GENERAL COMMENTS ON SUBPART C - PAY AND PAY ADMINISTRATION, AND SUBPART D - PERFORMANCE MANAGEMENT**

Of greatest concern is the proposed system for rating annual performance, and the relationship of the annual performance rating to pay. There are some civil service jobs which require repetitive tasks and uniform performance times, for which annual performance is relatively easy for a supervisor to observe and rate. However, there are many more jobs, where the primary output is professional services provided to others, where the supervisor exercises a great deal of personal judgment in determining an annual performance rating for the employee. It does not matter if a single supervisor accomplishes the annual rating, or if the annual rating is assigned by a board of supervisors, a high degree of subjectivity is necessary to evaluate most jobs.

It is very difficult in civil service to distinguish among the great majority of excellent employees. Only the few employees that are involved in spectacular accomplishments (many times involvement in these events is entirely a matter of luck because they are the "hot" issues of the moment) stand out among civil servants. The majority of hard-working, excellent employees do not stand out in this manner.

I believe that there are a lot of very good people that deserve recognition or pay enhancement. The existing system allows me, as a supervisor, to appropriately recognize excellent employees that I supervise. The very few employees who do not deserve special recognition or significant pay enhancement do not receive it.

The flip side is that we have a few people that seem to always need improvement, or require behavior modification to keep performance up to expectations. These are the few that rate at the lower levels in an appraisal cycle. In my long experience, this type of civil servant and accompanying performance is the exception to the rule, the one who drags down the image of his/her fellow civil servants, the one that is pointed out when someone wants to make a point out of “just how bad those government workers are.”

The pay system specified in Subpart C presumes that a performance management system is in place that will distinguish employees in terms of individual performance, such that a pay-for-performance system can be implemented. The performance management system that exists today features annual appraisals that are rated either pass or fail, and as such is totally inadequate to distinguish individual employees for submittal for pay for performance. A completely new system must be designed, tested and implemented before any pay for performance system can be attempted.

Both subparts C and D are being simultaneously implemented in the proposed rule. The pay and pay administration system described in Subpart C cannot be implemented until at least a year of successful performance is demonstrated under Subpart D, the new performance management system.

There are no details about the new performance management system described in Subpart D, as the details are to be specified in “implementing issuances,” as specified in Section 9901.405(a): “DoD will issue implementing issuances that establish a performance management system for DoD employees, subject to the requirements set forth in this subpart.” The conversion of the civil service pay system to the new proposed pay system should lag successful implementation of a new performance management system by one year or until it is successfully put in place.

In reviewing the proposed Department of Homeland Security (DHS) proposed new personnel system (which is very similar to the DoD proposal), Mr. Ronald Sanders, associate director for Strategic Human Resources Policy at the Office of Personnel Management, said: “No longer will employees who merely meet time-in-grade receive virtually automatic pay increases, as they do today. Instead, individual pay raises will be determined by an employee’s annual performance rating.” These statements seem to be at the center of the reasons for the proposed new pay system.

Mr. Sanders discusses the existing pay system to make it sound like a give-away to employees. Such is not the case. There are nine pay raises available to a General Schedule (GS)-program civil servant within a single pay grade under the existing civil service system. No employee may receive any of these raises without performance being certified by the supervisor to be at “an acceptable level of performance.” If performance is not certified by the supervisor, the pay raise is not issued to the employee.

The existing system requires that a successful employee stay in his/her job a total of 18 years to receive all nine pay raises in a single pay grade, an average of one pay raise per

every two years (first three at one year, second three at two years, last three at three years). A period of 18 years comprises the greater part of an employee's career. The average gain in pay over 18 years for such an employee, based upon a percentage of the starting step one salary, is 1.66% per year (for a GS-09 employee, based upon the 2005 salary table, the 1.66% equates to \$726 per year!). This is a very small overall increase in pay over a long 18 years of dedicated federal service.

Under the newly-proposed NSPS system, the modest raises in pay will disappear forever. They will be replaced by "0" for the middle-of-the-crowd, dedicated, hard-working civil servant that is not normally involved in spectacular or unusually noticeable achievements. For these employees, especially those who knew the old system and counted on those little pay raises, morale will likely drop as the NSPS is implemented.

Removal of the small progression in pay over a career timeframe may result in a disincentive for personnel to stay in the civil service for any length of time. Elimination of the existing GS-pay system with its promise of small pay raises over a career may further destabilize overall civil service by increasing the turnover of government employees who leave for other employment.

I have been working at the top step of my civil service pay grade for many years. Several people currently working for me are also working at the top step of their grades. We have not benefited from a 1.66% annual increase for many, many years. Any statement that all federal employees receive automatic raises is totally untrue for those of us who have worked in civil service for a long time. Over my entire career, the effective amount of my annual longevity raises is therefore an insignificant fraction of one per cent. This is the case for many of the senior civil servants employed by the United States.

Both the annual Cost of Living Allowance (COLA) and the Locality Pay Adjustment systems appear to be threatened by the proposed NSPS system. A cost of living adjustment is designed to do one thing, and only one thing, adjust everyone's pay to the same degree to allow some sort of salary parity with the increased cost of living our everyday lives. I believe that the COLA system should never be altered as apparent in the proposed NSPS, otherwise employees will lose cost of living protection to other employees, which would not be fair.

The nation-wide locality pay system is already well established. Substantial locality percentages already exist among the carefully defined locality regions of America. This system should also not be changed. Locality region designations and pay percentages under the OPM should be the same, regardless of the individual federal agency involved. Locality pay should be preserved as is.

Under the existing system, it is difficult to discipline and eventually remove a poor performer or an employee who disrupts the work place. Over my career, I have been very successful in taking and completing necessary disciplinary actions, when required. The process is arduous, but not impossible. However, any change that streamlines the

disciplinary and removal process for management and at the same time remains totally fair for affected employees would be welcomed.

Reading through the draft proposal, it is very apparent that the details are not included. Significant implementing directives will of necessity be developed to spell out all of the specifics of the various proposals. It is those implementing directives that will cause either the success or failure of the NSPS proposal. It is those implementing directives that we will either agree with or disagree with. It is difficult to give either a “thumbs up” or a “thumbs down” on the NSPS proposal without also having the implementing directives for review.

One of the underlying reasons for the proposed pay system change is cost control and cost cutting. It appears that the new system will most likely result in the majority of DoD civil servants earning less for the same work over the long haul, as compared to the existing pay system.

It is all of the civil service working together, day-to-day that makes our federal government function properly. It is not sound business practice to launch economic disincentives upon ourselves. An under-funded pay for performance system would be a strong disincentive for performance.

## **SPECIFIC COMMENTS:**

### **Subpart C - Pay and Pay Administration**

#### **1. Overview of pay system**

9901.311 Major features

9901.312 Maximum rates

9901.313 National security compensation comparability

Per section 9901.313(a): “To the maximum extent practicable, for fiscal years 2004 through 2008, the overall amount allocated for compensation of the DoD civilian employees who are included in the NSPS may not be less than the amount that would have been allocated for compensation of such employees for such fiscal years if they had not been converted to the NSPS...” We are currently in the middle of FY 05. The 2004-2008 range of years stated in this paragraph must be revised. No one has been converted to the NSPS as of the current date. This entire section, especially in 9901.313(b) appears to provide justification for reducing the amount of funding provided for civil servant salaries. Just exactly what is meant by “...flexibility to accommodate changes in the function of the organization and other changed circumstances that might impact pay levels?”

This language could be utilized to justify nearly anything, and an across-the-board pay decrease lies within the realm of possibilities. What is meant by “changes in function” and “other changed circumstances” as relates to federal pay? This type of language could

be used to shoe-horn unacceptable pay changes into the system. For example, the federal pay comparability act (not the exact title) was passed many years ago. Every year since it was enacted, our federal government has refused to fund pay requirements by citing “escape” language in the act. Escape language is cited endlessly, year after year to avoid payment under the law. Not each and every budget year is a crisis. This is the type of scenario that could occur under the NSPS, given the generalized language mentioned above that is subject to interpretation. This proposed new language must be totally deleted from the proposed NSPS.

## 2. Setting and Adjusting Rate Ranges

- 9901.321 Structure

- 9901.322 Setting and adjusting rate ranges

- 9901.323 Eligibility for pay increase associated with a rate range adjustment

This section and the discussion of rate range adjustment is the only part of the proposed NSPS that appears to be an altered COLA. It is clearly stated that different percentages will be given to different employees, which defeats the purpose of a COLA. Each civil servant is entitled to and should receive the same COLA percentage as authorized each year in law.

Without the annual COLA, the buying power of my salary would have greatly diminished over the last ten years. Our representatives in the Congress have ensured that federal civil servants received an annual COLA. This is the only pay raise that I and several of my workers received in recent years, and we are sincerely thankful for that. The equal percentage for all COLA allocation should not be changed by the new NSPS.

## 3. Local Market Supplements

- 9901.331 General

- 9901.332 Local Market Supplements

- 9901.333 Setting and adjusting local market supplements

- 9901.334 Eligibility for pay increase associated with a supplement adjustment

Per Section 9901.332(b): “DoD may, in accordance with 5 U.S.C. 553, issue regulations that establish and adjust different local market areas within CONUS or establish and adjust new local market areas outside CONUS.” The OPM already has in place a law that establishes locality pay for the entire United States. We have been living with that law and the locality pay area designations for many years. The law has been under funded over the years. However, a small amount of the annual COLA pay adjustment has been processed according to locality pay, so many civil servants benefit from the existing locality pay system. The across the board system is fair to all civil servants. The consequences of the NSPS proposal may be different locality zones and locality pay rates between DoD and other agencies, producing different rates of pay for civil servants working and living in the same community. Such a scenario would not make sense for anyone. I recommend that the local market supplement provision be dropped from the proposed NSPS, in favor of retaining the existing OPM locality pay system.

#### 4. Performance-Based Pay

9901.341 General

9901.342 Performance payouts

9901.343 Pay reduction based on unacceptable performance and/or conduct

9901.344 Other performance payments

9901.345 Treatment of developmental position

Per Section 9901.342(a): “The NSPS pay system will use a pay pool concept to manage, control, and distribute performance-based pay increases and bonuses. The performance payout is a function of the amount of money in the performance pay pool and the number of shares assigned to individual employees.” These are significant elements for the proposed new pay system. Performance pay will be limited by the amount of money assigned to the performance pay pool. The only indication of a “guarantee” of money assigned to the pay pool is the assurance in 9901.313(a) that the performance pay pool will be at least the amount available under the present system for 2004-2008. 2004 is already in the past. The lack of a minimum dollar guideline for DoD to fund the performance pay pool is the most significant deficiency in the proposal for performance-based pay. This is a very important difference between the “old” system that features very small increases across an 18-year career (assuming a single GS-grade) and the NSPS proposal. Specific criteria for annually funding of DoD performance pay pools must be inserted into the NSPS proposal.

Per Sections 9901.342(b)(1) and (c)(1): “DoD will issue implementing issuances for the establishment and management of pay pools...and regarding the assignment of a number or range of shares for each rating of record level...” The new “issuances” will contain the critical details of the NSPS proposal. It is difficult to understand the critical nature of the NSPS proposal for pay without first having the “issuances” to review. This same comment applies to all the subsections of Section 9901.342. A side comment is that there is a need to speak in clear English terms. In simple language, what does “issue implementing issuances” really mean?

Per Section 9901.342(d)(3) and (4): “DoD may provide for the establishment of control points within a band that limit increases in the rate of basic pay. DoD may require that certain criteria be met for increases above a control point.” “...an increase in basic pay may not cause the employee’s rate of basic pay to exceed the maximum rate or applicable control point of the employee’s band rate range. Implementing issuances will provide guidance for determining the payout amount and the appropriate distribution between basic pay and bonus.” This sounds like a form of “double-speak” in these sections. The program earlier introduces broad pay bands for determining employee salary. Introduced in these sections is capability of establishing “control points” within pay bands, which is a tool to limit pay advance within pay bands. This concept of “control points” is a controlling factor for “pay bands.” Pay bands should be defined as having control points within them. Alternatively, the concept of “control points” should be deleted from the NSPS proposal.

#### 5. Pay Administration

9901.351 Setting an employee's starting pay  
9901.352 Setting pay upon reassignment  
9901.353 Setting pay upon promotion  
9901.354 Setting pay upon reduction in band  
9901.355 Pay retention  
9901.356 Miscellaneous

Per Section 9901.352(a): "Subject to paragraph (b) of this section (adverse action procedures) DoD may set pay anywhere within the assigned pay band when an employee is reassigned, either voluntarily or involuntarily, to a position in a comparable pay band." This provision appears to contain an authorization to DoD to set pay higher or lower for an employee. This section requires more specific clarifying language. The ability to drop employee pay during a management reassignment must be explained and justified.

Per Section 9901.53: "Subject to DoD implementing issuances, DoD may set pay anywhere within the assigned pay band when an employee is promoted to a position in a higher pay band." A promotion should never result in a pay decrease. This section requires more specific clarifying language, and the possibility of a pay decrease as a result of a promotion should be eliminated from the list of possibilities.

#### Subpart D - Performance Management

None of the relevant details of a new performance management system are contained in the Subpart. All the details are yet to be specified in subsequent published DoD directives. It is inappropriate to proceed with promulgation of the proposed new performance management system without first knowing important details of the components of the system, especially with respect to the format and form of any new employee annual appraisal system. The "devil is in the details," and many of them must be available for review before the new system is approved for implementation.

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