Statement of

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Personnel and Readiness

Before the
Subcommittee on the Federal Workforce and Agency Organization

Committee on Government Reform
U. S. House of Representatives

On
National Security Personnel System
Proposed Regulations

April 12, 2005

Mr. Chairman and members of the committee. Thank you for the opportunity to appear before you to discuss the proposed design of the National Security Personnel System. Mr. George Nesterczuk, Senior Advisor on Defense Issues to the Director of the Office of Personnel Management (OPM) and my partner in chairing the NSPS Overarching Integrated Product Team joins me today. We are pleased to appear before you to discuss the recently published proposed regulations for the National Security Personnel System, or NSPS. We wish to formally thank Congress for granting the Department the authority to establish, in partnership with OPM, a new civilian human resources management system to support our critical national security mission. We take this task seriously and recognize the responsibility we have to balance our vital national security mission with protecting the interests of our people.

We also want to thank you as well as Committee Chairman Tom Davis for your ongoing support of civilian personnel issues and your desire to not only find ways to enhance the way we manage human resources within the government, but also to ensure we protect the fundamental merit principles of the Federal civil service.

The Collaborative Process

In November 2003, Congress granted the Department of Defense (DoD) the authority to establish a new human resources management system, appeals system, and labor relations system. The existing systems were designed for a different time. The

world has changed, jobs have changed, missions have changed – and our HR systems need to change as well to support this new environment. NSPS allows DoD to establish a more flexible civilian personnel management system that is consistent with its overall human capital management strategy. NSPS will make the Department a more competitive and progressive employer at a time when the country's national security demands a highly responsive civilian workforce. The NSPS is a transformation lever to enhance the Department's ability to execute its national security mission. It's a key pillar in the Department's transformation – a new way to manage its civilian workforce. NSPS is essential to the Department's efforts to create an environment in which the total force, uniformed personnel and civilians, functions and operates as one cohesive unit.

NSPS has tremendous potential to greatly enhance the way DoD manages its civilian workforce, but it is also critical that DoD takes care of its most critical asset – its people. The proposed NSPS design follows a set of guiding principles that have acted as the guideposts in the process. "Mission First" has been the emphasis, but there is also an absolute need to respect the individual and to protect workers' rights that are guaranteed by law, including veterans in the civil service. The new system will generate respect and trust; it is based on the principles of merit and fairness embodied in the statutory merit system principles, and it will comply with all other applicable provisions of the law.

In addition to the opportunities that NSPS offers, it presents great challenges. Shortly after enactment of the NSPS statute, we initiated contact with union leaders to solicit their input. During this time, many stakeholders, including members of this

Committee, voiced concerns about our plans and process. In response, the Department engaged in a broad, comprehensive review of our design and implementation strategy. In January and February 2004, we met for the purpose of exchanging ideas and interests on a new labor relations system for DoD. In April 2004, senior DoD leadership approved the collaborative process that the Department is using to design and implement NSPS. This process was crafted over a period of about three weeks by a group of 25 to 30 senior leaders representing various elements within DoD, OPM, and the Office of Management and Budget. Using a bold, innovative approach, the senior leaders used the Defense Acquisition Management model as a way to establish the requirements for the design and implementation of NSPS. These senior leaders recommended Guiding Principles and Key Performance Parameters (KPPs), which defined the minimum requirements for NSPS. They also recommended establishing a Senior Executive and Program Executive Office (PEO), modeled after the Department's acquisition process. Subsequently, the Honorable Gordon England, was appointed by the Secretary of Defense as the NSPS Senior Executive, in addition to his duties as Secretary of the Navy, to design, develop, establish, and implement NSPS. As the NSPS Senior Executive, Secretary England chartered the NSPS PEO as the central DoD program office to conduct the design, planning and development, deployment, assessment, and full implementation of NSPS. Secretary England designated Mrs. Mary Lacey as the NSPS Program Executive Officer to provide direction to and oversight of the PEO, a joint program office staffed with representatives from across the Department, including Component program managers who are dual-hatted under their parent Component.

At OPM, the Director designated my colleague, Mr. George Nesterczuk, the Senior Advisor on Department issues to the Director of OPM, to lead OPM activities in the joint development of the NSPS. The Director received frequent and regular briefings on the progress of NSPS and on the status of key policy options across the spectrum of authorities granted in the NSPS statute. Subsequently, in periodic reviews, the Director exercised policy options, thereby providing guidance to the OPM team.

An integrated executive management team composed of senior DoD and OPM leaders provides overall policy and strategic advice to the PEO and serves as staff to the Senior Executive. The PEO meets with and consults with this team, the Overarching Integrated Product Team (OIPT), which I co-chair with Mr. Nesterczuk, eight to ten times a month. The Senior Executive convenes meetings with the PEO and OIPT at least twice a month to monitor and direct the process.

Following the April 2004 decision to revise our design and implementation process, we initiated a series of additional meetings with the union leaders. Beginning in the spring of 2004 and continuing over the course of several months, the PEO sponsored a series of meetings with union leadership to discuss design elements of NSPS. Officials from DoD and OPM met throughout the summer and fall with union officials representing many of the DoD civilians who are bargaining unit employees. These sessions provided the opportunity to discuss the design elements, options, and proposals under consideration for NSPS and solicit union feedback. A number of these meetings

were facilitated by the Federal Mediation and Conciliation Service in order to ensure open and robust communication.

Since April 2004, DoD and OPM have conducted 10 meetings with officials of the unions that represent DoD employees, including the nine largest unions that currently have national consultation rights. These union officials represent 1,500 separate bargaining units covering about 445,000 employees. These meetings involved as many as 80 union leaders from the national and local level at any one time, and addressed a variety of topics, including: the reasons change is needed and the Department's interests; the results of Department-wide focus group sessions held with a broad cross-section of DoD employees; the proposed NSPS implementation schedule; employee communications; and proposed design options in the areas of labor relations and collective bargaining, adverse actions and appeals, and pay and performance management.

In keeping with DoD's commitment to provide employees and managers an opportunity to participate in the development of NSPS, the PEO sponsored a number of Focus Group sessions and town hall meetings at various sites across DoD. Focus Group sessions began in mid-July 2004, and continued for approximately three weeks. A total of 106 focus groups were held throughout DoD, including at several overseas locations. Bargaining unit employees and union leaders were invited to participate. Focus group participants were asked what they thought worked well in the current human resources systems and what they thought should be changed. Over 10,000 comments, ideas and

suggestions were received during the Focus Groups sessions and were summarized and provided to NSPS Working Groups for use in developing options for the labor relations, appeals, adverse actions, and human resources design elements of NSPS.

In addition, town hall meetings were held in DoD facilities around the world during the summer and fall of 2004. These meetings provided an opportunity to communicate with the workforce, provide the status of the design and development of NSPS, respond to questions, and listen to their thoughts and ideas. The NSPS Senior Executive, Secretary Gordon England, conducted the first town hall meeting at the Pentagon on July 7, 2004.

In July 2004, the PEO established working groups to begin the NSPS design process. Over 120 employees representing the Military Departments and other DoD activities and OPM began the process of identifying and developing options and alternatives for consideration in the design of NSPS. The Working Group members included representatives from the DoD human resources community, DoD military and civilian line managers, representatives from OPM, the legal community, and subject matter experts in equal employment opportunity, information technology, and financial management.

The working groups were functionally aligned to cover the six program areas: 1) compensation (classification and pay banding); 2) performance management; 3) hiring, assignment, pay setting, and workforce shaping; 4) employee engagement; 5) adverse

actions and appeals; and 6) labor relations. Each group was co-chaired by an OPM and DoD subject matter expert. Working Groups were provided with available information and input from the focus groups and town hall sessions, union consultation meetings, data review and analysis from alternative personnel systems and laboratory and acquisition demonstration projects, the NSPS statute, the Guiding Principles and Key Performance Parameters. Additionally, subject matter experts briefed the Working Groups on a variety of topics, such as pay-for-performance systems, alternative personnel systems, pay pool management, and market sensitive compensation systems.

In addition to reaching out to DoD employees and labor organizations, DoD and OPM met with other groups who were thought to be interested in the design of a new HR system for DoD. DoD and OPM invited selected stakeholders to participate in briefings held at OPM in August and September 2004. Stakeholder groups included the National Academy of Public Administration (NAPA), Coalition for Effective Change, Partnership for Public Service, veterans' service organizations, Federal Managers Association, and other non-union employee advocacy groups.

Before and after these stakeholder briefings, DoD and OPM responded to dozens of requests for special briefings. DoD and OPM also met with the Government Accountability Office, Office of Management and Budget, and Department of Homeland Security to keep them up to date on the team's activities.

We have worked hard to obtain the input of our employees and their representatives, managers and supervisors, and other stakeholders. We believe we have developed a human resources system that will create a work environment for our people that will encourage excellence and innovation and reward our people accordingly. It will provide our leaders and supervisors with flexibilities to better manage our people, while at the same time it will expand opportunities for our employees. It will mandate greater communication between managers and employees so that each and every employee will know what is expected.

Details of the Proposed Regulations

The Secretary of Defense and the Director of OPM jointly issued the proposed regulations and they were published in the Federal Register on February 14, 2005. This initiated a 30-day comment period and provided another opportunity for input on the design of the system. The public comment period closed on March 16, 2005 and we are currently reviewing the thousands of comments we received from individual employees, interested citizens, professional organizations, employee unions, members of Congress, and advocacy groups. Most of the comments are thoughtful, genuine, and raise legitimate concerns. We will give consideration to these public comments as we move forward in revising and finalizing the NSPS regulations.

The Federal Register Notice also served as the formal written proposal of the system for review and comment by our employee unions, as required by the NSPS

statute. We encouraged them to participate in the public comment period as well. We received comments from the United DoD Workers Coalition as well as 12 national labor organizations representing DoD employees. DoD and OPM have analyzed these recommendations and have given them serious consideration and are about to begin discussions with the unions about these recommendations. In recognition of the union's special status as our employee representatives, the NSPS statute provides for a "meet and confer" process with them for a minimum of 30 days. As required by the statute, we formally notified Congress on March 28, 2005 that we will begin the meet and confer process with employee representatives on April 18, 2005. We look forward to continuing our dialogue with our unions and, with the help of the Federal Mediation and Conciliation Service (FMCS), we hope to find common ground. Upon completion of the meet and confer process, we will report the results and outcomes to Congress.

We will not put into effect any portion of the proposed new systems until after we complete the meet and confer process, provide the 30-day Congressional notification of the Department's intent to implement these systems, and publish the final regulations in the Federal Register.

Before I go in to what the proposed design is, I would like to emphasize what will not change. As you know, the system will not change merit system principles that form the foundation for the federal civil service. Rules against prohibited personnel practices won't change. Protections for whistleblowers won't change nor will anti-discrimination laws. Veterans' preference is preserved under NSPS. Employee benefits – health and

life insurance, retirement, leave – NSPS does not affect the laws covering these programs. Employees facing adverse actions will still be entitled to due process. And, employees will continue to have the same, if not more, opportunities for training.

The new system will provide for:

- A simplified pay banding structure, allowing flexibility in assigning work and a move toward market sensitive pay
- A performance management system that requires supervisors to set clear expectations (linked to DoD's strategic plan) and employees to be accountable
- Pay increases based on performance, rather than longevity
- Streamlined and more responsive hiring processes
- More efficient, faster procedures for addressing disciplinary and performance problems, while protecting employee due process rights
- A labor relations system that recognizes our national security mission and the need to act swiftly to execute that mission, while preserving collective bargaining rights of employees as provided for in the NSPS statute.

The proposals for performance management are designed to foster high levels of performance and to ensure excellent performance is recognized, rewarded, and reinforced. The system is designed to make meaningful distinctions in levels of performance and to hold employees accountable at all levels. We will ensure employees

are under the performance management system for an adequate period of time before making any performance-based adjustments to pay.

The proposed system will replace the current General Schedule structure. The proposed system offers a stronger correlation between performance and pay and greater consideration of local market conditions in setting pay rates. Our proposal contains three major shifts from the current General Schedule pay structure: first, emphasizing performance over tenure, we have proposed open pay ranges eliminating the "step increases" in the current system, which are tied to longevity; second, we are proposing that pay be adjusted by job type in each market, not across all job types in each market; and third, we are proposing to create performance pay pools where employees will receive increases based on their performance. We are fully cognizant that this is one of the biggest challenges that lie ahead and that there is detailed work that must be done before we can implement the new system.

Our proposed appeals system focuses on simplifying a complex, legalistic and often too slow process that can disrupt operations. At the same time, it will ensure our employees receive fair treatment and that they are afforded the full protections of due process.

The proposed regulations were developed in consultation with staff of the Merit Systems Protection Board, with extensive discussions relative to appellate options and alternatives. MSPB officials were particularly constructive and many of their numerous suggestions are reflected in our proposed appellate procedures, including the retention of MSPB administrative judges (AJs) as the initial adjudicators of employee appeals of

adverse actions. Although the NSPS law allowed DoD to establish an internal appeals process, we concluded the potential advantages of creating a new infrastructure – greater efficiency of decision-making and deference to agency mission and operations, among them – could be achieved if MSPB administrative judges were retained but with procedural modifications. The modifications we propose will streamline the process without sacrificing employee protections.

Among those changes is a proposal to allow the Department to review initial decisions of the Administrative Judges to ensure that MSPB interprets NSPS and these regulations in a way that recognizes the critical mission of the Department and to ensure that MSPB gives proper deference to such interpretation. After review, the Department may affirm the decision, remand the case to the AJ for further adjudication, modify or reverse the decision, but only based on stringent criteria. Final Department decisions may be appealed to the MSPB, which retains limited review authority established in the NSPS statute. Ultimately, an employee or the Secretary may seek judicial review if still not satisfied with the appeal decision.

To balance some of the proposed changes, the Department will establish a single burden of proof standard for itself. Currently, the evidentiary standards for performance and conduct actions differ, with performance-based actions requiring a lower standard of proof. That will no longer be the case – the Department's decision will be subject to a single standard – the preponderance of the evidence – for all adverse actions, whether based on conduct or performance. Our proposed regulations also make it more difficult

for AJs to substitute their judgment in mitigating penalties; however, the Department will ensure that managers consider a variety of important factors in each situation before determining an appropriate penalty.

Throughout the development process, we have been cognizant of the need to provide protections guaranteed by law to our employees. We were also concerned with a basic tenet of the civil service – preserving merit system principles – treating employees fairly and equitably and protecting them from arbitrary actions, coercion for partisan political purposes and personal favoritism, and protecting them against reprisal. The proposed appeals system will continue to provide our employees with these all-important protections.

Our proposed labor relations construct balances our operational needs while providing for collective bargaining and encouraging consultation with employee representatives. In the face of a committed and unpredictable enemy, the Department must have the authority to move quickly to confront threats to national security. We propose that the Department not be required to bargain over the exercise of rights impacting operations and mission accomplishment. Our proposal provides for consultation with employee representatives both before and after implementation when circumstances permit. We have proposed to retain bargaining obligations concerning the exercise of the remaining management rights. DoD plans to make the new labor relations provisions effective across the entire Department after the issuance of final regulations, and notification to Congress as required by law.

The Department proposes to create a National Security Labor Relations Board (NSLRB) composed of at least three members appointed to fixed terms. In evaluating the merits of a separate NSLRB that would largely replace the Federal Labor Relations Authority, with its Government-wide responsibilities, DoD and OPM put a high premium on the opportunity to establish an independent body whose members would have a deep understanding of and appreciation for the unique challenges the Department faces in carrying out its national security mission. The NSLRB will issue decisions on unfair labor practices (ULPs), to include scope of bargaining, duty to bargain in good faith, and information requests; certain arbitration exceptions; negotiation impasses; and questions regarding national consultation rights. FLRA will continue to determine appropriate bargaining units and supervise and conduct union elections as well as review NSLRB decisions using appellate standards. FLRA decisions will be reviewable by various Federal Circuit Courts of Appeals as occurs today.

Implementation – a Phased Approach

Although DoD will implement the labor relations system DoD-wide, we intend to implement the human resources system in phases, or spirals, to start as early as July 2005. In the first spiral, up to 300,000 General Schedule (GS and GM), Acquisition Demonstration Project, and certain alternative personnel system employees will be brought into the system through incremental deployments over 18 months, with the first increment covering 60,000 employees. After an assessment cycle and the certification of

the performance management system required by the NSPS statute are completed, the second spiral will be deployed. Spiral two, consisting of Federal Wage System employees, overseas employees, and all other eligible employees, will be phased in over a three-year period, with full implementation to occur by 2007/2008.

Training is one of the most critical elements for a smooth and successful transition to NSPS. The Department is fully committed to a comprehensive training program for our managers, supervisors and employees. We will make sure all employees get the training needed to understand the system, how it works, and how it will affect them. The Department has a robust training infrastructure in place to train and educate its personnel and we will leverage that infrastructure as we implement NSPS specific training. We have a dual training strategy to provide functional training on all elements of the NSPS system, as well as behavioral training, with the focus on the skills, attitudes and behaviors necessary to successfully adapt to NSPS. Some of the Component behavior-based training has already begun. Other courses are in development and will be available to train all affected employees in advance of NSPS implementation.

Summary

We recognize NSPS involve significant changes. They are necessary for the Department to carry out its mission and to create a 21st century system that is flexible and contemporary while protecting fundamental employee rights. We have developed these proposals with extensive input from our employees and their representatives. We look

forward to reviewing and analyzing the comments on the proposed regulations and to the meet and confer process with our employee representatives. We remain committed to the collaborative approach we have taken in the development of NSPS and we will continue to encourage a dialogue as we proceed through the writing and development of the implementing issuances.

I appreciate the opportunity to testify and welcome your questions and observations.