

Testimony  
Before the United States Senate  
Committee on Homeland Security and Governmental Affairs  
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From Proposed to Final: Evaluating the Regulations for the National  
Security Personnel System

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# **Department of Defense National Security Personnel System Final Regulations: On the Precipice of Implementation**

**Statement of  
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Chairman Collins, Ranking Member Lieberman and Members of the Senate Committee on Homeland Security and Governmental Affairs:

My name is Michael B. Styles and I am the National President of the Federal Managers Association (FMA). On behalf of the nearly 200,000 managers, supervisors, and executives in the Federal Government whose interests are represented by FMA, I would like to thank you for allowing us to express our views regarding the final personnel regulations outlining the National Security Personnel System (NSPS) within the Department of Defense (DOD).

Established in 1913, FMA is the largest and oldest Association of managers and supervisors in the Federal Government. FMA originally organized within the Department of Defense to represent the interests of civil service managers and supervisors, and has since branched out to include some 35 different Federal departments and agencies. We are a non-profit advocacy organization dedicated to promoting excellence in government. As those who will be responsible for the implementation of the Department's proposed personnel system and subjected to its changes, managers and supervisors are pivotal to ensuring its success. I am here today to speak on behalf of those managers with respect to the process of developing the regulations, the proposed changes themselves, and the eventual rollout of the new system. In particular, I would like to thank you for inviting us back to present critical testimony on this issue, and let you know how pleased we are to be here today.

This is a historic step in the history of the civil service. The final regulations released by the largest employer within the federal government signify the largest change in the culture of federal service in nearly thirty years. The Department of Defense's National Security Personnel System will affect roughly 700,000 of its employees, nearly half the 1.8 million members of the Federal civil service. As was used in the initial reasoning for the change in the personnel management system, the critical mission and sheer size of DOD makes the success of the development and implementation of the new personnel system vital. Our Nation is

currently engaged in military operations in Iraq and Afghanistan as well as countless number of clandestine activities fighting the war on terrorists. With an impending Base Realignment and Closure (BRAC) process to reduce Defense infrastructure, the civilian employees of the Pentagon must be reassured of the commitment by the Secretary and Congress to ensuring a positive and successful implementation of the new regulations that take into account manager and employee protections.

This hearing represents the fourth time FMA has presented our views before Congress on the NSPS. We have also submitted public comments during the requisite period of time to the Department on the proposed regulations. The regulations elude to taking into consideration the public comments and in many cases going against them. We appreciate the role of the many hard working personnel at the Pentagon, OPM and OMB who have worked diligently to finalize the 10,000 foot view of the system, and continue to look forward to their oversight and insight as the system is initiated. However, as we said in our initial public comments and testimony previously submitted before this Committee, the regulations remain vague. The devil, as the aphorism goes, is in the details. Without greater detail, it is difficult to comment on likely outcome of the implementation of the final regulations. However, we believe many of our initial concerns remain the same.

As we move towards the implementation phase, we already know that there will be:

- maintenance of current benefits for active duty and retired employees;
- support for travel and subsistence expenses;
- continuation of current leave and work schedules;
- no loss of pay or position for any current employee;
- no changes in current overtime policies and practices; and
- merit principles will be maintained, preventing prohibited personnel practices, adherence to current whistleblower protections and honoring and promoting veterans' preference.

We support the retention of these provisions. We at FMA also recognize that change does not happen overnight. However, we are still optimistic that the new personnel system known as NSPS may help bring together the mission and goals of the Department with the on-the-ground functions of the homeland security workforce.

## **TRAINING AND FUNDING**

Recent congressional action leads us to believe that further reiteration on the point of training and funding needs dominate our concerns. Earlier this year, the House approved an amendment to the Department of Homeland Security Appropriations bill for fiscal year 2006 (H.R. 2360) that cut the requested funding level by the Administration for the design and implementation of the MAX<sup>HR</sup> system nearly in half. The funding was restored in the Senate thanks to the strong leadership of Senator George Voinovich. However, the ultimate number was reduced to a mere \$33 million or \$20 million less than the Administration's \$53 million request. This precedent exemplifies our concerns for the development and implementation of a new system at the Department of Defense.

The two key components to the successful implementation of NSPS and any other major personnel system reforms across the Federal government will be the proper development and funding for training of managers and employees, as well as overall funding of the new system. As any Federal employee knows, the first item to get cut when budgets are tightened is training. Ms. Chairman, you have been stalwart in your efforts to highlight the importance of training across government. It is crucial that this not happen in the implementation of NSPS. Training of managers and employees on their rights, responsibilities and expectations through a collaborative and transparent process will help to allay concerns and create an environment focused on the mission at hand.

Managers have been given additional authorities under the final regulations in the areas of performance review and "pay-for-performance". We must keep in

mind that managers will also be reviewed on their performance, and hopefully compensated accordingly. A manager or supervisor cannot effectively assign duties to an employee, track, review and rate performance, and then designate compensation for that employee without proper training. As a corollary, if there is not a proper training system in place and budgets that allow for adequate training, the system is doomed to failure from the start. The better we equip managers to supervise their workforce, the more likely we are to ensure the accountability of the new system – and the stronger the likelihood that managers will be able to carry out their non-supervisory responsibilities in support of the Department's critical mission.

For employees, they will now be subject in a much more direct way to their manager's objective determination of their performance. Employees would be justified in having concerns about their manager's perception of their work product in any performance review if they felt that the manager was not adequately trained to be objective and accurate in their review and assessment. Conversely, if employees have not been properly trained on their rights, responsibilities and expectations under the new human resources requirements, they are more apt to misunderstand the appraisal process. This contradiction does not create the environment of performance based pay and results oriented productivity. Rather, it creates an environment of mistrust and conflict in opposition to the intended efforts of the proposed regulations.

Our message is this: as managers and supervisors, we cannot do this alone. Collaboration between manager and employee must be encouraged in order to debunk myths and create the performance and results oriented culture that is so desired by the final regulations. Training is the first step in opening the door to such a deliberate and massive change in the way the government manages its human capital assets. We need the support of the Department's leadership, from the Secretary on down, in stressing that training across the board is a top priority. We also need the consistent oversight and input of Congress to ensure that both

employees and managers are receiving the proper levels of training in order to do their jobs most effectively.

The Secretary and Congress must also play a role in proposing and appropriating budgets that reflect these priorities. The Department of Defense has estimated that the cost for the implementation of the new human resources management system and the internal labor relations board will be approximately \$158 million with no more than \$100 million spent in a given twelve month period. However, there is no clear indication of how this money will be spent, what portion will be reserved for training, and out of what budget those funds will come. As we mentioned earlier, the initial budget request for the implementation of the DHS MAX<sup>HR</sup> system that included training for managers and employees has now been slated for underfunding two years in a row by Congress. This precedent, as we prepare for even larger budget deficits that the President hopes to cut into by holding discretionary spending below the level of inflation, presents a major hurdle to the overall success of and any future personnel reform efforts at other departments and agencies.

Agencies must also be prepared to invest in their employees by offering skill training throughout their career. This prudent commitment, however, will also necessitate significant technological upgrades. The Office of Personnel Management (OPM) has already developed pilot Individual Learning Account (ILA) programs. An ILA is a specified amount of resources such as dollars, hours, learning technology tools, or a combination of the three, that is established for an individual employee to use for his/her learning and development. The ILA is an excellent tool that agencies can utilize to enhance the skills and career development of their employees.

We would also like to inform Congress of our own efforts to promote managerial development. FMA recently joined with Management Concepts to offer *The Federal Managers Practicum* — a targeted certificate program for Federal managers. As the official development program for FMA, *The Federal Managers*

*Practicum* helps FMA members develop critical skills to meet new workplace demands and enhance their managerial capabilities.

FMA has long recognized the need to prepare career-minded Federal employees to manage the demands of the 21<sup>st</sup> century workplace through its establishment of The Federal Management Institute, FMA's educational arm, which sponsors valuable professional development seminars and workshops. *The Federal Managers Practicum* is a unique, integrated development program that links professional training and higher education – specifically created for the Federal career professional. Developed and taught by management experts, this comprehensive practicum integrates core program management skills including planning, analysis, budgeting, communication, evaluation, and leadership with functional skills and knowledge – providing a balance between theory and practice. We at FMA believe that the practicum will pave the way for the creation of much-needed development programs for Federal employees.

Agency budgets should allow for the appropriate funding of the ILA, as an example. However, history has shown that training dollars have been a low priority for many agency budgets. In fact, in the rare event that training funds are available, they are quickly usurped to pay for other agency “priorities.” Toward this end, we at FMA support including a separate line item on training in agency budgets to allow Congress to better identify the allocation of training funds each year. Additionally, FMA supports the creation of a position to implement and oversee the proper usage of the appropriated training dollars.

Neither the Office of Management and Budget (OMB) nor OPM collects information on agency training budgets and activities. This has only served to further diminish the minimal and almost cursory attention on training matters. Many agencies do not even have dedicated employee “training” budgets. Training funds are often dispersed through other accounts. It is no surprise that budget cuts inevitably target training funds, which is why FMA continues to advocate for the establishment of a training officer position within each Federal agency. This

would allow for better management and recognition of training needs and resources, in addition to placing increased emphasis on critical training concerns.

The Federal government must, once and for all, take the issue of continuous learning seriously. FMA advocated for the existing Chief Human Capital Officers Council, which was finally brought about as part of the Homeland Security Act of 2002. While we applaud the Council's creation of two needed subcommittees to examine performance management as well as leadership development and succession planning, we would urge the Council to add another subcommittee to evaluate training programs across government. Without proper training, and funding for training, we cannot hope to effectuate expansive human resources changes and fully achieve them at the Department of Defense or elsewhere in the federal government.

## **DEVELOPMENT AND IMPLEMENTATION PROCESS**

The development process for the Department of Homeland Security final personnel regulations took two years and a considerable amount of outreach and input from management and employees. We are seeing an expedited larger scale development and implementation for the NSPS than we did with DHS. Whereas DHS will only have 110,000 employees subject to its new system, DOD will be looking at nearly seven times that many employees coming under NSPS and the timeframe for implementation is only slightly longer. DOD plans to begin implementation of the new system with Spiral 1.1 in January of 2006 with slightly less than 100,000 employees. By the end of 2006 and Spiral 1, the Department proposes to include more than 300,000 employees. We want to strongly recommend a more deliberate and reflective process move forward. It is with great patience in addressing both the positive and critical feedback that the success of the new system will be boosted.

As we look at the process for the development of the NSPS, we were initially discouraged by the lack of outreach that the DOD was conducting to management and employee groups as well as OPM. However, we were similarly encouraged



once OPM was brought more directly into the fold, and the Executive Program Office (EPO) was created for the development and implementation phases. We firmly believe that the DHS human resources system benefited greatly from the involvement of all parties, and continue to believe that NSPS will also benefit in the attempting to debunk myths and create a culture of change. Since then, the NSPS staff has availed themselves to our membership for further inquiry and discussion.

In addition, our national leadership was invited on several occasions to meet with both DOD and OPM officials during the development phase of the NSPS proposed regulations and included in the briefing overview upon the release of the final regulations. In our discussions, we have expressed concerns with the training and budgeting needed to ensure success with the new system as well as the need for continued inclusion of management and employee groups in the implementation process. It is this point that we cannot stress enough.

In the following years, we believe that management and employee groups should be represented at the table of discussion about changes and assessment of the success of the programs. Allowing our voice at the table helps OPM and DOD understand the perspective of managers in the field and allows us a chance to go back to our membership and explain the reasoning behind decisions being made. While consensus may not always be reached, the act of inclusion into the process ensures greater transparency and accountability from both sides involved. Our members on the ground both will be subjected to and responsible for bringing these ideas into real working systems. Without their continued feedback on both successes and bumps in the road, there is little confidence that problems will be properly addressed.

## **PAY FOR PERFORMANCE**

There has been much discussion about the creation of a pay-for-performance system at both DOD and DHS. We believe that a deliberate process that takes into account both an internal and independent review mechanism for

the implementation of a pay-for-performance system is crucial to its success at DOD and elsewhere in the federal government.

The replacement of the standard General Schedule pay system with a proposed pay banding system creates a devastating problem should insufficient funds be appropriated by Congress. Once again, we refer back to the approval of an underfunded amount for the DHS system this year. As it stands, the regulations will have employees competing with one another for the same pool of money, all of which is based on their performance review. If this pool of money is inadequate, the performance of some deserving federal employees will go unrecognized, causing the new system to fail in meeting its objective, in addition to creating dissension in the workplace. In short, the integrity of “pay-for-performance” will be severely hindered if ALL high performers are not rewarded accordingly. We believe that DOD should continue to allocate at least the annual average pay raise that is authorized and appropriated by Congress for General Schedule employees to DOD employees who are “fully successful” (or the equivalent rating), in addition to other rewards based on “outstanding” performance (or equivalent rating).

There is an increased emphasis in the proposed regulations on basing general pay for employees on the local job market. This is certainly a step in the right direction of closing the pay gap between federal civilian employees and their private sector counterparts. However, we believe that these provisions should be expanded on to establish multiple locality market supplements to prospective pay adjustments, and require clear compelling criteria for the establishment of additional locality market supplements. Furthermore, the supplements should contain implementing issuances that require a balance of human resources interoperability with mission requirements.

The performance appraisal process is key to this new personnel system. The review determines the employee’s pay raise, promotion, demotion or dismissal in a far more uninhibited way than is currently established in the General Schedule. We support the premise of holding federal employees accountable for performing

their jobs effectively and efficiently. More specifically, the removal of a pass/fail performance rating system is a step in the right direction.

We are concerned, however, that within any review system there must be a uniform approach that takes into account the clear goals and expectations of an employee and a system that accurately measures the performance of that employee, with as little subjectivity on the manager's part as possible. As such, it is essential that within the review process, the methodology for assessment is unmistakable and objective in order to reduce the negative effects of an overly critical or overly lenient manager. The most important component in ensuring a uniform and accepted approach is proper training, and funding thereof, that will generate performance reviews reflective of employee performance. We would like to submit the following necessary elements for executing a pay-for-performance system that has a chance to succeed:

- adequate funding of "performance funds" for managers to appropriately reward employees based on performance;
- development of a performance rating system that reflects the mission of the agency, the overall goals of the agency, and the individual goals of the employee, while removing as much bias from the review process as possible;
- a transparent process that holds both the employee being reviewed and the manager making the decision accountable for performance as well as pay linked to that performance;
- a well-conceived training program that is funded properly and reviewed by an independent body (we recommend the Government Accountability Office as an auditor) which clearly lays out the expectations and guidelines for both managers and employees regarding the performance appraisal process.

We believe that *transparency* leads to *transportability*, as intra-Department job transfers could be complicated by the lack of a consistent and uniform methodology for performance reviews. While we need training and training

dollars, we should allocate those funds towards a program that takes into account all agencies within DOD. If we are to empower managers with the responsibility and accountability of making challenging performance-based decisions, we must arm them with the tools to do so successfully. Without proper funding of “performance funds” and training, we will be back where we started – with a fiscally restricted HR system that handcuffs managers and encourages them to distribute limited dollars in an equitable fashion.

## **COLLECTIVE BARGAINING AND LABOR RELATIONS**

FMA supports an open and fair labor-relations process that protects the rights of employees and creates a work environment that allows employees and managers to do their jobs without fear of retaliation or abuse.

Under the new system, various components of the collective bargaining process are no longer subject to the same rules. There is also a move away from the Federal Labor Relations Authority (FLRA) as an independent negotiating body to an internal labor relations board made up of members appointed by the Department’s Secretary. This immediately calls into question the integrity, objectivity and accountability of such an important entity. Impartiality is key to this process, and it is derived from independence in the adjudication process. The workforce must feel assured that such decisions are made free of bias and politics.

The appointments for the new National Security Labor Relations Board (NSLRB) are made solely by the Secretary, with nominations and input allowed by employee organizations. Submitting nominations from employee groups to the Secretary on whom we believe to be qualified candidates for this internal board must not be taken as perfunctory. They should be given serious consideration by the Department and where appropriate appointed to the board.

The new system has relegated the authority for determining collective bargaining rights to the Secretary. Towards this end, the recognition of management organizations such as FMA is a fundamental part of maintaining a collaborative and congenial work environment. Of the provisions in Title 5 that

have been waived under the new National Security Personnel System, the modification of collective bargaining rights that gives the Secretary sole discretion on when to recognize the unions places into question such recognition of the Federal Managers Association by DOD.

Title 5 CFR 251/252 grants non-union employee groups the formal recognition of the Department by ensuring a regular dialogue between agency leadership and management organizations. Specifically, these provisions stipulate that:

- such organizations can provide information, views, and services which will contribute to improved agency operations, personnel management, and employee effectiveness;
- as part of agency management, supervisors and managers should be included in the decision-making process and notified of executive-level decisions on a timely basis;
- each agency must establish and maintain a system for intra-management communication and consultation with its supervisors and managers;
- agencies must establish consultative relationships with associations whose membership is primarily composed of Federal supervisory and/or managerial personnel, provided that such associations are not affiliated with any labor organization and that they have sufficient agency membership to assure a worthwhile dialogue with executive management; and
- an agency may provide support services to an organization when the agency determines that such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations.

In summary, Title 5 CFR 251/252 allows FMA, as an example, to come to the table with DOD leadership and discuss issues that affect managers, supervisors, and executives. While this process is not binding arbitration, the ability for managers and supervisors to have a voice in the policy development within the

Department is crucial to its long-term vitality. Such consultation should be supported by all agencies and departments, thus we strongly urge the inclusion of CFR 251/252 into the final regulations in order to maintain the strong tradition of a collaborative work environment that values the input of federal managers.

In fact, we strongly encourage the Department to make good on its call for “continuing collaboration” with management and employee groups during the implementation process by inserting language mirroring 5 CFR 251/252 in its regulations. Currently “continuing collaboration” is not more narrowly defined in the regulations, rather a blanket statement that the Department intends to do so. We would ask that the Secretary and DOD leadership set up regular meetings (monthly or bi-monthly), depending on the status of the implementation, in order to ensure this important dialogue that has been so critical to the design process continues.

## **ADVERSE ACTIONS AND APPEALS**

As managers, we take comfort in knowing that there is an independent appeals process for employees to dispute adverse actions. The Merit System Protection Board (MSPB) was established twenty-five years ago to allow Federal employees to appeal adverse agency actions to a third-party, independent review board. Since its inception, the MSPB has maintained a reputation of efficiency and fairness. MSPB decisions uphold agency disciplinary actions 75 to 80 percent of the time, which is evidence of the Board’s broad support of agency adverse action decisions. In performance cases, the percentage is even higher in support of agency management. Decisions are also typically reached in 90 days or fewer. We are pleased to see that the Merit Systems Protection Board, an independent third party review board, will remain as the primary appeals decision maker. Furthermore, the expedited process requirement would hopefully improve employee and management morale in allowing decisions to be rendered more swiftly.

We are concerned, however, that the Secretary retains ultimate decision making authority on the appeals process. In many ways this creates a system of little accountability and integrity as the need for a third party intermediary to have authority over appeals is critical to the integrity of the system. Moreover, the current model has been successful because it is a uniform system for the entire federal government. Establishing appeals processes that leave ultimate authority with each individual the Secretary might create unnecessary confusion for the federal workforce, which will lengthen, instead of streamline, the process while potentially making the system more prone to abuse. While we recognize the desire to streamline the appeals process, we believe that the reduced time requirements are a step in the right direction, but MSPB must be given the full authority to make binding independent decisions otherwise the system runs the risk of creating a lack of trust, which will likely serve to lengthen and complicate the process.

In fact, in 1995, Congress took away Federal Aviation Administration (FAA) employees' MSPB appeals rights as part of a personnel reform effort that freed the FAA from most government-wide personnel rules. The FAA subsequently replaced the MSPB appeals process with an internal system – as is being proposed in the House version of the Defense Authorization bill – called the “Guarantee Fair Treatment” program consisting of a three-person review panel. Critics complained that the Guaranteed Fair Treatment program did not give employees access to an independent administrative review body. After numerous incidents and reports of abuse, Congress in 2000 reinstated full MSPB appeal rights to FAA employees as part of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21).

Based on its track record of fairness and credibility within the Federal community, we support incorporating the Merit Systems Protection Board in the appeals process. Given the MSPB's strong reputation for swiftness and fairness in the eyes of agency management and employees – as well as the FAA's failed

experiment with utilizing and internal appeals process – we at FMA believe that not doing so would create more problems than it solves.

The mission of the Department of Defense demands high performance and the utmost integrity from its employees. As the adage goes, one bad apple can spoil the rest. DOD does not have that luxury. So, it is understandable that certain egregious offenses should never be tolerated, and therefore result in immediate and decisive action.

### **MANDATORY REMOVAL OFFENSES**

The Mandatory Removal Offenses (MRO) authority that has been given to the Secretary is a good way to aid in creating a culture that adheres to the sensitive nature of the work being done by the Department, and reminds employees that they must be on top of their game at all times. Certain acts such as leaking classified materials, deliberately sabotaging machinery, abetting an enemy, or committing serious fraud certainly warrant the removal of an employee. These along with a few other offenses could be justified in the creation of a MRO list.

We are nevertheless concerned that Pandora's Box could be opened, and caution restraint on the part of the Secretary in establishing specific MRO's. As was seen within the "10 Deadly Sins" at the Internal Revenue Service, overwhelming fear of violating an MRO slowed the actions of employees and impeded their work. This could be a serious detriment to an agency that needs as much creativity in battling 21<sup>st</sup> century terrorists who will use any means in any context to attack our homeland. Managers and employees working in DOD are fully aware of the sensitivity of their position and mission, so we urge the Department to exercise this authority with great care for potential side-effects.

### **PAY BANDING, COMPENSATION AND JOB CLASSIFICATION**



Pay banding is not a new concept to the private and public sector industries. It is currently underway in a number of demonstration projects throughout the Department of Defense and a few government agencies, notably in the Federal Aviation Administration as well as in the Internal Revenue Service – where FMA has a large number of members. The job classification and pay system was developed in the late 1980s, and has seen varying levels of success across private industry and in the public sector.

Under the final NSPS regulations, applicable employees will no longer be governed by the traditional General Schedule (GS) pay system, which is made up of 15 levels and within level steps. The GS system is based on the premise that an employee who commits themselves to public service will be rewarded for longevity of service and tenure in the system through regular pay raises and promotions as long as the employee is “fully performing” the duties assigned. Under the pay banding system within pay for performance, the employee will be lumped into a broad job cluster based that combine like job functions, and then placed in one of three pay bands: Entry Level, Full Performance, and Supervisory (with the potential for more senior-level management bands).

While the exact determination of the pay range for each pay band has yet to be determined, it is our understanding that the GS salary structure will act as the baseline for moving an employee into the new band as well as act as a guide for determining the low and high ends of each band. Furthermore, we also have received assurances that current employees will not see any reduction in their current pay, and in fact qualified employees could receive higher salaries from this transition. We at FMA believe that this is a sound move on the part of DOD and OPM. The GS system is familiar to federal managers and employees, and moving into a new pay banding system in and of itself creates some consternation. Using the GS system as the foundation will allay concerns that pay rates will be significantly reduced.

Pay bands also offer a number of benefits to the employee and manager that should be examined. The General Schedule places its emphasis on longevity, and the new system will place more emphasis on job performance than duration of employment. Pay bands provide the opportunity to have accelerated salary progression for top performers. As in the IRS pay-band system, managers are eligible for a performance bonus each year. Those managers with “Outstanding” summary ratings will receive a mandatory performance bonus. Managers with “Exceeded” summary ratings are eligible for performance bonuses.

In the area of job classification, determinations are made which place positions in different pay categories where the distinctions that led to the classification are small. Pay-banding provides the opportunity to place greater weight on performance and personal contributions.

Pay bands can also be designed to provide a longer look at performance beyond a one-year snapshot. Many occupations have tasks that take considerable lengths of time. Pay bands can be designed to recognize performance beyond one year. Arbitrary grade classifications in the GS system inhibit non-competitive reassignments. Broader bands allow non-competitive reassignments. This enhances management flexibility and developmental opportunities.

Of course, there remain challenges with any proposed pay-band system for that matter. First, simply combining GS levels 12 and 13 into one band, the system will help with recruitment of new talent. However, without changing the top level of pay, a shift to market-based pay and pay banding will continue to maintain a ceiling unable to be broken in federal employment, thus preventing the intended results of being able to compete with the private sector. Further, pay-for-performance systems are only as good as the appraisal systems they use. Since performance is the determining factor in pay-band movement, if there is no confidence in the appraisal system, there will be no confidence in the pay system.

Moreover, pay-for-performance systems can be problematic where there is an aging workforce. Experienced employees tend to converge towards the top of

the pay band. This provides them little room for growth. This is particularly true for those employees whose GS grade is the highest grade in the new band.

(Example: Grade 13 employee placed in an 11-13 band. S/he will be towards the top and now will need the higher grades to continue to move ahead. Previously s/he only needed time in grade and a “fully successful” rating to progress).

Finally, pay-band performance requirements can discourage non-banded employees from applying for banded positions. If the employee is converted in the upper range of a band s/he may not have confidence s/he can achieve the higher ratings requirements.

Compounding the critical mission of DOD and its new personnel system are myriad problems associated with the recruitment and retention of federal employees. One piece in particular is the significant pay gap between the public and private sectors. According to a survey of college graduates, Federal and non-Federal employees conducted by the Partnership for Public Service<sup>1</sup>, the Federal government is not considered an employer of choice for the majority of graduating college seniors. In the survey, nearly 90 percent said that offering salaries more competitive with those paid by the private sector would be an “effective” way to improve Federal recruitment. Eighty-one percent of college graduates said higher pay would be “very effective” in getting people to seek Federal employment. When Federal employees were asked to rank the effectiveness of 20 proposals for attracting talented people to government, the second-most popular choice was offering more competitive salaries (92 percent). The public sector simply has not been able to compete with private companies to secure the talents of top-notch workers because of cash-strapped agency budgets and an unwillingness to address pay comparability issues.

The Federal Employee Pay Comparability Act of 1990 attempted to address the inequities in pay between the private and public sector employment. Fifteen years later, we still face considerable disparity. Closing the pay gap between

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<sup>1</sup> Survey conducted by Hart-Teeter for the Partnership for Public Service and the Council for Excellence in Government, Oct. 23, 2001, p. 1-3.

public and private-sector salaries is critical if we are to successfully recruit and retain the “best and brightest.” In this regard, we are pleased to see a shift in the determination of “locality” pay from strictly geographical to occupational. Locality pay adjustments based on regions across the country did not take into account the technical skills needed for a given occupation. The new regulations allow for a look nationwide at a given occupation within the labor market that more accurately ties the rate of pay to job function, which could overcome geographic impediments in the past in closing the gap between public- and private-sector salaries.

## **GOVERNMENT-WIDE STANDARDS**

The passage of the National Defense Authorization Act of 2004 (P.L. 108-136) marked the second step in what is quickly becoming the largest civil service reform effort since the Civil Service Reform Act of 1978. Included in the legislation was an authorization for major changes to the pay, hiring and staffing, labor relations, collective bargaining, adverse actions, appeals process, reductions-in-force, and performance review systems governed by Title 5 of the U.S. Code. The justification was made based on the critical and urgent need to have a flexible and dynamic human resources system that would allow the Pentagon employees to respond quickly to any threats to our national security and prevent any military actions that would harm America. While this justification has come under fire, we agree that the needs of national security and protecting America’s infrastructure, citizens and interests around the globe may require greater latitude within the personnel systems of appropriate Federal agencies. But striking the right balance is what we collectively should be aiming to accomplish with respect to the implementation of the new NSPS human resources transformation at the Department of Defense and the new MAX<sup>HR</sup> system at the Department of Homeland Security.

The White House has recently announced that it will be pushing forward an initiative to adopt similar civil service reform efforts across the Federal

government and allow each agency to create its own personnel reforms that reflect the mission and needs of the agency. It is clear that the with so many changes in the Federal government over the past few decades – significantly reduced workforce size, changes to retirement systems, higher attrition rates, and increased external factors such as terrorism and the issue of trust in government and its relationship to recruitment and retention – a modernization movement in personnel systems is justifiable. While we support the general effort to modernize and transform the civil service to reflect the current needs and resources of each agency, hastiness and the absence of an overarching government-wide framework for these reforms could create a Balkanization of the Federal government that diminishes the uniqueness of the Civil Service.

The NSPS and MAX<sup>HR</sup> are still in their infancy. Outside of a few demonstration projects that sample much smaller workforce numbers, there is no significant track record of the effectiveness and success of such large-scale reforms. It makes little sense to create massive personnel changes across the Federal government without first seeing the successes, and failures, of the new systems at DOD and DHS.

There has also been a commitment on the part of the Office of Personnel Management, DOD, and DHS to hold close the Merit System Principles, and we cannot stress adherence to these timely standards enough. However, we also believe that there needs to be even further guiding principles that maintain a system of integrity, transparency and accountability for managers and supervisors. The Office of Personnel Management should take the current systems being implemented at DOD and create a set of public principles that can guide future agencies in their efforts to develop new systems.

The White House has proposed draft legislation to take the reforms underway at DOD and DHS government wide with a measure entitled the Working for America Act. I testified before the House Subcommittee on the Federal Workforce last month to discuss our similar concerns. It is clear that with so many changes in the federal government over the past few decades – significantly reduced

workforce size, changes to retirement systems, higher attrition rates, and increased external factors such as terrorism and the issue of trust in government and its relationship to recruitment and retention – a modernization movement in personnel systems is justified. While we support the general effort to modernize and transform the civil service to reflect the current needs and resources of each agency, hastiness and the absence of an overarching government-wide framework for these reforms could create a Balkanization of the federal government that diminishes the unique Civil Service.

MAX<sup>HR</sup> and the NSPS are still in their infancy. And the final regulations remain too vague offering little confidence in their implementation. Outside of a few demonstration projects that sample much smaller workforce numbers, there is no significant track record of the effectiveness and success of such large-scale reforms. It makes little sense to create massive personnel changes across the Federal government without first seeing the successes, and failures, of the new systems at DHS and DOD.

There has also been a commitment on the part of the Office of Personnel Management, DHS and DOD to hold close the Merit System Principles, and we cannot stress adherence to these timely standards enough. However, we also believe that there needs to be even further guiding principles that maintain a system of integrity, transparency and accountability for managers and supervisors. The Office of Personnel Management should take the current systems being implemented at DHS and create a set of public principles that can guide future agencies in their efforts to develop new systems.

## **CONCLUSION**

The final regulations on the new personnel system being issued by the Department of Defense and the Office of Personnel Management are the first in what is expected to be a broader effort to transform the Civil Service as we know

it. We hoped that within these precedent-setting regulations lay the understanding that managers and employees can work together in creating an efficient and effective Federal workforce that meets the missions of each agency. Unfortunately, they remain vague. We at FMA maintain hope that in the implementing issuances, our suggestions will be taken into account. After all, it is our responsibility – and that of all the stakeholders – to do what we can in eliminating the seeds that will reap setbacks or disasters.

A shift in the culture of any organization cannot come without an integral training process that brings together the managers responsible for implementing the new personnel system and the employees they supervise. The leadership of DOD must work in tandem with Congress, managers and employees in creating a training program that is properly funded and leaves little question in the minds of those it affects of their rights, responsibilities and expectations.

A total overhaul of the GS pay system to reflect a more modern approach to performance-based pay must be funded properly in order for it to succeed. As we have explained, the lack of proper funding for “pay for performance” will work contrary to its intended results. The mission of the agency is too critical to America to create a system that is hamstrung from the start.

Furthermore, employee morale is also crucial to the successful implementation of NSPS. Ensuring that employees feel their rights are protected and safeguards are in place to prevent abuse or adverse actions derives in part from independent and effective collective bargaining, labor relations, and appeals processes. The Secretary and the NSLRB should do all in their power to create an open and fair working environment. At the same time, DOD must continue to engage in the important consultative relationship with management organizations such as FMA.

There are additional challenges that face a new pay-banding system. We are hopeful that the Department, in conjunction with OPM, is looking to the current GS system as a baseline for the job clusters and pay bands. This will go a

long way towards easing some concerns for current managers and employees that their pay will be unfairly compromised.

We at FMA cannot stress enough the need to take a cautious and deliberate path for implementing the final regulations. It appears that DOD and OPM are committed to implementing the new regulations with minimal emphasis placed on a slow and reflective process. We caution this approach. We recommend continued collaboration with management and employee groups as well as independent review and auditing by the Government Accountability Office, with the oversight of Congress. Through these checks and balances, we are hopeful that a set of guiding principles will emerge to assist other agencies in their expected personnel reform efforts.

We at FMA are cautiously optimistic that the new personnel system will be as dynamic, flexible and responsive to modern threats as it needs to be. While we remain concerned with some areas at the dawn of the system's rollout, the willingness of the Office of Personnel Management and the Department of Defense to reach out to employee organizations such as FMA is a positive indicator of collaboration and transparency. We look forward to continuing to work closely with Department and Agency officials.

Thank you again, Ms. Chairman, for the opportunity to testify before your subcommittee and for your time and attention to this important matter. Should you need any additional feedback or questions, we would be glad to offer our assistance.