



United States Government Accountability Office
Washington, DC 20548

June 14, 2005

The Honorable Jon C. Porter
Chairman
Subcommittee on the Federal Workforce
and Agency Organization
Committee on Government Reform
House of Representatives

Subject: *Questions for the Record Related to the Department of Defense's National Security Personnel System*

On April 12, 2005, I testified before your Subcommittee at a hearing on “NSPS: The New Department of Defense Civilian Personnel System—Reaching Readiness.”¹ This letter responds to your request that I provide answers to questions for the record. The questions, along with my responses, follow.

Regulations versus “Implementing Issuances”

In your testimony, you noted the lack of detail in the proposed regulations. The proposed regulations for the NSPS allow DOD to address the specific details of the system through “implementing issuances.”

1. Which specific subjects of the NSPS regulations should be included in the final regulations?

In our recent testimonies on the proposed NSPS regulations, we noted several issues that DOD will need to define in more detail than is currently provided. For example, the proposed NSPS regulations permit an internal DOD review of initial decisions issued by Merit Systems Protection Board (MSPB) adjudicating officials. However, the proposed regulations do not offer additional details on the department’s internal review process, such as how the review will be conducted and who will conduct them. As we noted in our testimonies, an internal agency review process this important should be addressed in the regulations rather than in an implementing directive to ensure adequate transparency and employee confidence in the process.

¹ GAO, *Human Capital: Preliminary Observations on Proposed Department of Defense National Security Personnel System Regulations*, [GAO-05-517T](#) (Washington, D.C.: Apr. 12, 2005).

Importantly, the DOD regulations do not provide that appropriate systems (e.g., modern performance appraisal systems that are linked to the agencies' strategic plan and desired outcomes) and key safeguards to help assure consistency and prevent abuse must be in place before certain flexibilities (e.g., additional pay for performance) are finalized. In this regard, although DOD's proposed regulations provide some safeguards to ensure fairness and guard against abuse, additional safeguards should be developed and details offered on how DOD would (1) promote consistency and provide general oversight of the performance management system to help ensure it is administered in a fair, credible, and transparent manner, and (2) incorporate predecisional internal safeguards that are implemented to help achieve consistency and equity, and ensure nondiscrimination and nonpoliticization of the performance management process.

2. Which aspects are appropriate for “implementing issuances”?

Going forward, DOD must ensure that it has the appropriate systems and safeguards to make effective use of its new authorities. However, as discussed above, many of the details of DOD's system have not been addressed in the proposed regulations. These details do matter. They should be addressed in the final regulations and then further defined in implementing issuances.

Deputy Secretary of Defense for Management

In your testimony you recommend that DOD appoint a Deputy Secretary of Defense for Management to guide the transition to the NSPS. In their oral testimony, Mr. Abell and Mr. Nesterczuk indicated that it would not be helpful to have a divided leadership structure for the transition to the NSPS and that an additional layer of leadership would be a hindrance.

1. What is your response to Mr. Abell's and Mr. Nesterczuk's concerns?

As we noted in our statement, as DOD embarks on large-scale business transformation efforts, like NSPS, we believe that the complexity and long-term nature of these efforts require the development of an executive position capable of providing strong and sustained business transformation and change management leadership across the department that can span a number of years and various administrations.² In recent testimony on business transformation at DOD, we further noted that a Chief Management Official (CMO) is essential for providing sustained leadership needed to achieve lasting transformation of DOD's many business systems.³ Given the systemic nature of the business transformation challenges that DOD faces, we believe that it is prudent and appropriate for Congress to enact legislation to provide for a CMO at DOD. Importantly, our proposed CMO position does not represent a new layer; rather, it represents a division of responsibilities of

² [GAO-05-517T](#).

³ GAO, *Defense Management: Key Elements Needed to Successfully Transform DOD Business Operations*, [GAO-05-629T](#) (Washington, D.C.: Apr. 28, 2005).

the current Deputy position. Just as the CMO would need to focus full-time on business transformation, we believe that the day-to-day management functions are so demanding that it is difficult for the related officials to maintain the oversight, focus, and momentum needed to implement and sustain needed reforms of DOD's overall business operations. This is particularly evident, given the demands that the Iraq and Afghanistan postwar reconstruction activities and the continuing war on terrorism have placed on current leaders. Likewise, the breadth and complexity of the problems and their overall level within the department preclude the under secretaries, such as the DOD Comptroller, from asserting the necessary authority over selected players and business areas while continuing to fulfill their other responsibilities.

2. How significant is the risk that the transition to NSPS could fail if DOD does not appoint a Deputy Secretary of Defense for Management?

Failure to have such a position will serve to increase the related risk. However, the CMO position will be critical to the success of DOD's overall business transformation effort. Specifically, given DOD's size and mission, it is one of the largest and most complex organizations in the world to manage effectively. While DOD maintains military forces with unparalleled capabilities, it continues to confront pervasive, decades-old management problems related to its business operations, which include outdated organizational structures, systems, and processes that support these forces. These management weaknesses cut across all of DOD's major business areas, such as human capital management, including the department's NSPS initiative; the personnel security clearance program; support infrastructure management; business systems modernization; financial management; weapon systems acquisition; contract management; and selected supply chain management issues. All of these areas are on GAO's high-risk list of major government programs and operations that either need urgent attention and transformation to ensure that the U.S. government functions in the most economical, efficient, and effective manner possible, or that are at high risk because of their greater vulnerability to fraud, waste, abuse, and mismanagement. This year, DOD's overall approach to business transformation was added because of our concerns over DOD's lack of adequate management responsibility and accountability, along with the absence of a strategic, departmentwide, and integrated business transformation plan.

As noted in our recent testimony on DOD's business transformation efforts, over 30 years ago, the Secretary of Defense asked Congress to establish an additional Deputy Secretary of Defense for many of the same reasons we are proposing that a CMO is needed.⁴ In a letter to Congress, the then Secretary of Defense stated that the most efficient management of DOD resources could not be achieved with just the Secretary and Deputy Secretary, and that DOD deficiencies were in large measure due to insufficient senior management attention to the department's affairs.

⁴ GAO-05-629T.

3. What specific authorities should the Secretary grant to the Deputy Secretary of Defense for Management so that the new position can exercise effective leadership over the business transformation process?

As noted in recent testimony on business transformation at the department, the CMO would have overall responsibility and accountability for DOD's overall business transformation and change management effort, while other DOD officials would still be responsible for managing their daily business operations.⁵ The position would divide and institutionalize the current functions of the Deputy Secretary of Defense into a Deputy Secretary who, as the alter ego of the Secretary, would focus on policy-related issues such as military transformation, and a Deputy Secretary of Defense for Management (the CMO), who would be responsible and accountable for the overall business transformation effort and would serve full-time as the strategic integrator of DOD's business transformation efforts. For example, the CMO would be responsible and accountable for developing and implementing a strategic and integrated plan for DOD's overall business transformation efforts.

4. How can DOD ensure that the position of Deputy Secretary of Defense for Management does not become just another unnecessary layer of bureaucracy?

As discussed above, the CMO would be responsible and accountable for planning, integrating, and executing the overall business transformation effort. Therefore, the CMO would not assume the responsibilities of the undersecretaries of defense, the service secretaries, or other DOD officials for the day-to-day management of business activities. Therefore, in our view, creating a CMO would not be adding another hierarchical layer to oversee the day-to-day management of the department. Importantly, the proposed CMO position would represent a division of the current Deputy Secretary's responsibilities rather than a new layer or level.

Alignment of Performance and Organizational Goals

1. What specific procedures would you suggest to ensure that individual performance expectations align with DOD's mission and strategic goals?

As stated in our recent testimony on federal agencies' use of human capital flexibilities, we have advocated that the federal government needs to fundamentally rethink its approach to performance management, better linking individual, unit, and organizational performance and reward individuals according to their skills, knowledge, performance and contributions.⁶ Shifting the orientation of individual performance expectations and accountability systems from an adherence to process and the completion of activities to a greater focus on contributions to results will require a cultural transformation in most federal agencies, including DOD. One way

⁵ GAO-05-629T.

⁶ GAO, *Human Capital: Agencies Need Leadership and the Supporting Infrastructure to Take Advantage of New Flexibilities*, GAO-05-616T (Washington, D.C.: Apr. 21, 2005).

to embed a results-orientation is to align individual employee performance expectations with agency goals so that individuals understand the connection between their daily activities and their organization's overall success. High-performing organizations have recognized that a key element of a fully successful performance management system is to create a "line of sight" that shows how individual responsibilities can contribute to organizational goals. A first step to this end is to align the performance expectations, appraisals, and pay of top leadership with organizational goals and results achieved, and then cascade those expectations down to lower organizational levels. As we noted in our testimony, we believe that DOD should require the use of core competencies to communicate to employees what is expected of them on the job. Core competencies can help reinforce employee behaviors and actions that support the department's mission, goals, and values, and can provide a consistent message to employees about how they are expected to achieve results.

2. How could employees participate in this process?

Based on our review of other agency efforts, we have found that involving employees in planning and sharing performance information can help employees understand what the organization is trying to accomplish and how it is progressing in that direction.⁷ Involving employees in the planning process helps to develop agency goals and objectives that incorporate insights about operations from a front-line perspective, as well as increases employees' understanding and acceptance of organizational goals and objectives. Involving front-line employees in the goal-setting process also helps create a clear "line of sight" throughout the organization so that everyone understands what the organization is trying to achieve and the goals it seeks to reach.

As discussed above, we have encouraged DOD to establish a documented set of core competencies to help provide reasonable consistency and clearly communicate to employees what is expected of them. High-performing organizations use validated core competencies as a key part of evaluating individual contributions to organizational results. If performance expectations are based on core competencies, then employees can be involved in the validation of the competencies to ensure that they are both appropriate and accepted.

Employee Involvement

You have expressed concerns that the NSPS does not identify a process for continuing involvement of employees in the design and implementation of the NSPS. The proposed regulations for the DHS human resources system contained provisions for a Performance Review Board (PRB). The final regulations for the DHS human resource system provide a place for employees to participate in pay decisions through the establishment of a

⁷ GAO, *Human Capital: Practices That Empowered and Involved Employees*, [GAO-01-1070](#) (Washington, D.C.: Sept. 14, 2001).

Compensation Committee rather than a PRB. The proposed regulations for NSPS do not include specific provisions establishing either a Compensation Committee or a Performance Review Board.

1. Would you recommend the creation of a Compensation Committee or a Performance Review Board for NSPS?

We believe DOD should define, in more detail than is currently provided, how it plans to (1) promote consistency and provide general oversight of the performance management system to help ensure that it is administered in a fair, credible, and transparent manner, and (2) incorporate predecisional internal safeguards that are implemented to help achieve consistency and equity, and ensure nondiscrimination and nonpoliticization of the performance management process. The creation of a Performance Review Board or Compensation Committee could promote consistency and provide general oversight of the performance management system. However, the key will be to create a board or committee that is independent of line management and review such matters as the establishment and implementation of the performance appraisal system and later, performance rating decisions, pay determinations, and promotion actions before they are finalized to ensure they are merit based.

2. Would such institutions for internal review of decisions improve the fairness, credibility, and transparency of the NSPS?

Yes, these kinds of institutional oversight mechanisms would improve the fairness, credibility, and transparency of NSPS. However, DOD also needs to assure reasonable transparency and provide appropriate accountability mechanisms in connection with the results of the performance management process. This can include publishing overall results of performance management and pay decisions while protecting individual confidentiality and reporting periodically on internal assessments and employee survey results relating to the performance management system.

Core Competencies

One concern you have with the new DHS performance management system is that it does not require core competencies to be in writing. Similarly, the proposed regulations on NSPS do not provide that core competencies be in writing.

1. Assuming that you also think the NSPS regulations should require that core competencies be issued in writing, do you see the value for not having any expectations in writing?

To help enhance credibility and fairness and avoid problems, some sort of written documentation of performance expectations is appropriate. Core competencies and their performance standards that are documented in writing help to ensure the

transparency, consistency, and clarity in communicating performance expectations to the employee.

Pay and Performance

The proposed regulations for NSPS provide for the establishment of control points within a pay band to limit increases in basic pay. However, in the final regulations for DHS, control points were eliminated because DHS and OPM believed that control points are at odds with pay-for-performance. In your written testimony, you indicate that control points can be useful.

1. Are control points a necessary part of the NSPS pay-for-performance rules?

As noted in our recent testimonies on DOD's proposed regulations, the use of control points to manage employees' progression through the bands can help to ensure that their performance coincides with their salaries and that only the highest performers move into the upper range of the pay band, thereby controlling salary costs.⁸

2. If so, how do you respond to OPM's concern?

Because movement through the pay band is based on performance, employees who are above average performers should progress through the pay band more quickly than under the General Schedule. Establishing control points within each band is one method of preventing below average employees from eventually migrating to the top of the pay band, and thus increasing salary costs.

Labor-Management Relations

Labor-management disputes will be handled by an internal National Security Labor Relations Board (NSLRB) whose three members will be appointed by the Secretary of Defense. Some have voiced concerns over the independence of the Board, fearing that the members will act from a political position rather than from a neutral one.

1. Would the appointment of members of the NSLRB for a fixed term improve the independence of the Board?

The proposed NSPS regulations would establish the NSLRB that would consist of members appointed to fixed terms of 3 years. Increasing the initial term for Board members beyond 3 years could potentially bolster the actual or perceived independence of the Board, but such an action must be weighed against the willingness of prospective members to commit to long-term service on the Board and the need for Board member accountability. Nevertheless, the proposed NSPS

⁸ GAO, *Human Capital: Preliminary Observations on Proposed DOD National Security Personnel System Regulations*, [GAO-05-432T](#) (Washington, D.C.: Mar. 15, 2005).

regulations provide for other means to foster independence and impartiality of the Board, including staggered term appointments for members and some limited conditions for removal of a member. For example, appointments of the initial Board members will be for terms of 1, 2, and 3 years. The Secretary of Defense may extend the term of any member beyond 3 years when necessary to provide for an orderly transition and/or appoint the member for up to two additional 1-year terms.

2. Other than allowing labor organization participation in the appointment of Board members, how could the independence of the Board be enhanced?

The Board can strengthen its independence and impartiality through a commitment to transparency, reporting, and periodic evaluation, which can be critical processes in ongoing human capital reform efforts.⁹ Through regular and public reporting on its activities and the results of its adjudications, the Board could demonstrate to DOD's employees, labor organizations, and others that it is carrying out its duties in a fair and impartial manner. This reporting would likewise aid in promoting and facilitating formal oversight and evaluations of the Board's activities as well as DOD's overall human resources management system.

DOD could further enhance the independence and impartiality of the Board through strengthening the appointment and removal processes of Board members. This could include (1) a nomination panel that reflects input from appropriate parties and a reasonable degree of balance among differing views and interests in the composition of the Board to ensure credibility, (2) stringent standards for removal, and (3) appropriate notification to key stakeholders in the event that a Board member is removed.

3. What value does the internal NSLRB bring to DOD?

In evaluating the merits of creating a separate NSLRB, DOD and OPM noted that they put a high premium on the opportunity to establish a NSLRB whose members would have a deep understanding of and an appreciation for the unique challenges the department faces in carrying out its national security mission. As we noted in our testimonies on the proposed NSPS regulations, the NSLRB would largely replace the Federal Labor Relations Authority. However, until the NSLRB has been established and has functioned as an internal DOD labor relations board, we cannot determine what value the proposed Board might bring to DOD.

4. Will the NSLRB streamline the process or just add another layer of unneeded bureaucracy?

⁹ GAO and the National Commission on the Public Service Implementation Initiative, *Highlights of a Forum: Human Capital: Principles, Criteria, and Processes for Governmentwide Federal Human Capital Reform*, [GAO-05-69SP](#) (Washington, D.C.: Dec. 1, 2004).

Until the NSLRB has been established and it has developed its processes and procedures, we cannot comment on whether the NSLRB would streamline the process or not.

Adverse Actions and Appeals

The appeals process that the proposed regulations would establish is rather complex. For example, after an MSPB administrative judge issues an initial MSPB decision in an adverse action appeal, DOD may reconsider the administrative judge’s decision and modify or reverse the initial MSPB decision. § 9901.807(k)(8)(iii)(A). Similarly, “[w]here the Department determines that the initial [MSPB] decision has a direct and substantial adverse impact on the Department’s national security mission, or is based on an erroneous interpretation of law, Governmentwide rule or regulation, or [the NSPS regulations], [DOD may] issue a final DOD decision modifying or reversing that initial decision.” § 9901.807(k)(8)(iii)(B). Further, DOD may decide that the initial decision of an MSPB administrative judge should serve as a precedential decision. § 9901.807(k)(8)(iii)(C).

- 1. Are the provisions of the proposed regulations that allow DOD to review initial MSPB decisions consistent with an independent external appeals process?**

Although the proposed NSPS regulations describe when DOD may review an initial MSPB decision, the regulations do not provide any detail as to how, who, or what basis DOD will process these reviews. Until DOD provides further information, we are unable to make any observations about the independence of this review process.

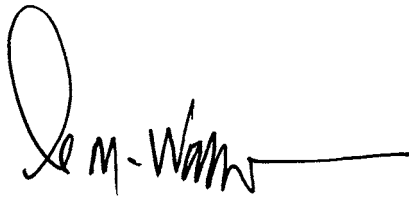
The proposed NSPS regulations do provide employees and OPM with the ability to appeal a final DOD decision issued under § 9901.807(k)(8)(iii) to the full MSPB. Further, an employee or the Secretary of Defense may seek judicial review of a final order or decision of the MSPB.

- 2. Do you see any pitfalls with this proposed appeals process?**

Our answer to question 1 above also applies to this question.

For additional information on our work on human capital issues at DOD, please contact me on 512-5500 or Derek B. Stewart, Director, Defense Capabilities and

Management on 512-5559 or stewartd@gao.gov, or Eileen Larence, Director, Strategic Issues on governmentwide human capital issues at 512-6510 or larencee@gao.gov.

A handwritten signature in black ink, appearing to read "D. M. Walker", with a long horizontal line extending to the right.

David M. Walker
Comptroller General
of the United States

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