

SUSAN M. COLLINS, MAINE, CHAIRMAN

TED STEVENS, ALASKA
GEORGE V. VOINOVICH, OHIO
NORM COLEMAN, MINNESOTA
ARLEN SPECTER, PENNSYLVANIA
ROBERT F. BENNETT, UTAH
PETER G. FITZGERALD, ILLINOIS
JOHN E. SUNUNU, NEW HAMPSHIRE
RICHARD C. SHELBY, ALABAMA

JOSEPH I. LIEBERMAN, CONNECTICUT
CARL LEVIN, MICHIGAN
DANIEL K. AKAKA, HAWAII
RICHARD J. DURBIN, ILLINOIS
THOMAS R. CARPER, DELAWARE
MARK DAYTON, MINNESOTA
FRANK LAUTENBERG, NEW JERSEY
MARK PRYOR, ARKANSAS

MICHAEL D. BOPP, STAFF DIRECTOR AND CHIEF COUNSEL
JOYCE A. RECHTSCHAFFEN, MINORITY STAFF DIRECTOR AND COUNSEL

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

May 6, 2003

The Honorable Donald H. Rumsfeld
Secretary
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Rumsfeld:

We commend you for your leadership of the nation's military in the ongoing global war on terrorism. With the support of our unified force of military and civilian employees, the United States and coalition allies achieved a swift and decisive victory in *Operation Iraqi Freedom*.

On April 10, the Department of Defense forwarded to Congress the *Defense Transformation for the 21st Century Act*, which, among other proposed statutory modifications, would amend title 5, United States Code, by adding a National Security Personnel System (NSPS). We are writing to express our concern with some of these requested changes.

The Subcommittee on Oversight of Government Management is now in its fifth year of examining and developing solutions to the federal government's strategic human capital management challenges. We are cognizant of the pressing need for reform of the nation's civil service system, a great deal of which is based on antiquated statutes designed for a vastly different federal workforce. Recognizing that the profile of federal employees has changed dramatically since the 1950s – and the responsibilities of the federal government have also shifted considerably since September 11, 2001, Congress last year enacted the first major governmentwide personnel reforms since the *Civil Service Reform Act of 1978*. These revisions included the creation of Chief Human Capital Officers, the authorization of category ranking hiring systems, and the extension of voluntary early retirement and voluntary separation incentive payment authorities designed to reshape the federal workforce to meet their missions.

We are pleased that the Department has taken the initiative to draft its own proposal for continuing this personnel transformation for its workforce. This is a process that the Department began last spring, although it proved difficult for Congress to advance any legislative remedies due to the arrival of the proposal just prior to the Senate Armed Services Committee markup of the Fiscal Year 2003 Defense Authorization Act. Although there is slightly more time this year to consider the Department's personnel proposal as a part of the Fiscal Year 2004 Defense Authorization bill, we believe the request needs to be changed in several areas.

As you know, Comptroller General David M. Walker recently testified on the proposed NSPS before the House Civil Service Subcommittee. Mr. Walker raised a number of concerns with specific provisions of the Department's proposal. We share these concerns, which include the following:

The proposal would allow the Secretary and the Director of the Office of Personnel Management to jointly prescribe regulations to establish the NSPS. However, unlike the legislation creating the Department of Homeland Security, the proposal would allow the Secretary to waive the requirement for joint issuance of regulations if, in his judgment, the waiver is "essential to the national security," which is not defined in the legislation. Therefore, the act would provide the Secretary with significant independent authority to develop a separate and largely autonomous human capital system for the Department.

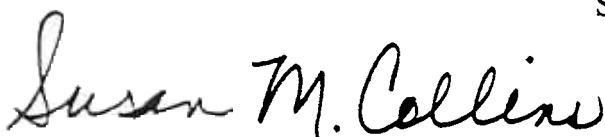
The Department, as well as any other executive branch agency that seeks to implement a performance-based pay program, before implementing such a program should first have to demonstrate that it has a performance management system capable of supporting performance-based pay and related personnel decisions. Similarly, NSPS does not include a certification provision, as is required for other agencies, before the Department could increase the current total allowable annual compensation limit for senior executives up to that of the Vice-President.

The legislation includes provisions designed to give the Department flexibility to help attract critical talent. Appropriate numerical or percentage limitations on the use of these authorities and basic safeguards to ensure they are used appropriately should be included.

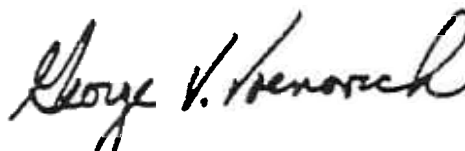
The proposed NSPS would allow the Secretary, after consultation with the Merit Systems Protection Board, to prescribe regulations providing fair treatment in any appeals brought by Department employees relating to their employment. It is critical that any due process changes resulting in a new dispute resolution process are fair and equitable.

We look forward to working with you to address these concerns as this legislation advances in the coming weeks. If you should have any questions, please contact us or have your staff contact Ms. Ann Fisher, Professional Staff Member for the Committee, at (202) 224-4751 or Mr. Michael Dovilla, Professional Staff Member for the Subcommittee, at (202) 224-3682. Thank you for your prompt attention to this matter.

Sincerely,



Susan M. Collins
Chairman
Committee on Governmental Affairs



George V. Voinovich
Chairman
Senate Subcommittee on Oversight of
Government Management, the Federal
Workforce and the District of Columbia

cc The Honorable Kay Coles James, Director, Office of Personnel Management