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Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management, the Federal Workforce and the
District of Columbia
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<u>The National Security Personnel System and Performance Management in the Federal</u> Government

# NSPS: Lessons Learned and Opportunities for Moving Forward

Testimony of
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Chairman Akaka, Ranking Member Voinovich and Members of the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia:

My name is Patricia Niehaus and I am here today representing the over 200,000 managers, supervisors and executives in the federal government on behalf of the Federal Managers Association (FMA). Please allow me to take a moment and thank you for the opportunity to present our views before the Subcommittee. As federal managers, we are committed to carrying out the mission of our agencies in the most efficient and cost effective manner while providing necessary services to millions of Americans.

In March of this year, I was elected to serve as the National President of the Federal Managers Association. During my career with FMA, I have held several positions, including Chapter trustee, Chapter Vice President, Chapter President and Zone Vice President. In my professional life, I am the Labor Relations Officer for the Travis Air Force Base (AFB) in California. I have completed 27 years of federal service in the Department of the Air Force, the last 24 of which were in the human resources field. I began my tenure as a GS-04 Secretary and moved up to my present position in the Civilian Personnel Office. During my career, I have spent time in four separate pay systems – the Federal Wage Grade, the General Schedule (GS), the now-defunct General Manager (GM) system, and now the National Security Personnel System (NSPS) – and have worked with managers in three of the four pay systems to provide advice and guidance on personnel management issues. Over the past four years, I have been involved with NSPS as a member of the NSPS Implementation Team for Travis AFB as a trainer, a pay pool facilitator and as an employee rated under this system. Please keep in mind that I am here on my own time and of my own volition representing the views of FMA and do not speak on behalf of the Air Force.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the federal government. FMA was originally organized to represent the interests of civil service managers and supervisors in the Department of Defense (DOD) and has since branched out to include nearly forty different federal departments and agencies. We are a nonprofit, professional, membership-based organization dedicated to advocating excellence in public service and committed to ensuring an efficient and effective federal government. As stakeholders in the successful transition out of the National Security Personnel System, we appreciate the opportunity to appear before you today.

The face of America's workforce is changing. A model once attractive for employing the most talented members of the workforce, the federal civil service now appears unreflective of new job seekers' expectations by today's standards. The current General Schedule pay system and performance review methods are antiquated. We at FMA support any changes that establish increased flexibilities, accountability and performance results. NSPS promised to deliver on these personnel components, but ultimately failed to live up to its billing.

The Department of Defense is the largest employer of federal civilian employees, with nearly 700,000 of the 1.8 million-member workforce under its purview. Approximately 226,000 DOD employees, consisting primarily of managers and supervisors, began fiscal year 2010 under NSPS. Since



that time, nearly 22,000 employees have returned to the General Schedule following the pay-for-performance system's repeal. This hearing marks the eighth time FMA has appeared before Congress to discuss NSPS since the regulations were first proposed.

## **BACKGROUND**

Passage of the Fiscal Year 2004 National Defense Authorization Act (P.L. 108-136) granted the Department of Defense the authority to embark on an historic implementation of a new personnel system positioned to change the face of the federal workforce. Included in the legislation was the 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. Justification for reform was based on the critical and urgent need to create a flexible and dynamic human resources system that would allow Pentagon employees to respond quickly to any threats to our national security and prevent any military actions that would harm the United States. While this justification has come under fire, we agree that our national security needs and protecting America's infrastructure, citizens and interests around the globe require our undivided attention.

Under NSPS, an employee's pay raise, promotion, demotion or dismissal was far more uninhibited than current General Schedule rules permit. We support the premise of holding federal employees accountable for performing their jobs effectively and efficiently and rewarding them accordingly. More specifically, the removal of a pass/fail performance rating system embodied by the General Schedule that does not allow for meaningful distinction of productivity was a step in the right direction.

The final regulations governing NSPS were released in October 2005 and went into effect 30 days later. Initially, 65,000 new employees were set to enter the system in January 2006. At the time, FMA cautioned against such an ambitious roll out to ensure adequate time for training was allotted. As such, civilian employees were first converted to NSPS in April 2006 under Spiral 1.1. Over the last four years, implementation plans slowed considerably, exacerbated by Congress' mandate to exclude Wage Grade employees and the Pentagon's decision not to enroll collective bargaining unit employees.

The mission-critical nature and sheer size of the Pentagon made the success of the new personnel system's development and implementation vital. Initially, we at FMA were optimistic NSPS would help bring together the mission and goals of the Department with the on-the-ground functions of the homeland security workforce. However, the promise NSPS held never came to fruition, and following pressure from stakeholders, Congress repealed NSPS in the FY10 National Defense Authorization Act (P.L.111-84).

# **MY PERSONAL EXPERIENCE WITH NSPS**

As a current civil servant at Travis Air Force Base, I have been rated under NSPS and have advised supervisors, Higher Level Reviewers and Pay Pool Managers for three complete pay cycles. I was also a member of the NSPS implementation team at Travis AFB and a trainer for labor relations and



performance management under the system. I appreciate the opportunity to provide you with a synopsis of my experience under NSPS.

In the role of a rated employee, I experienced the gamut of obstacles that can arise when a pay pool is not strongly guided by the Pay Pool Manager. In the rating cycle ending September 2007, my supervisor served as the advisor for our Pay Pool Panel. She was able to clarify NSPS requirements as questions arose, but the Pay Pool Panel was dominated by one military panel member who strongly and vocally believed that all civilian employees were overpaid. Nevertheless, there were few requests for reconsideration, whereby an employee asks for a second review of his or her evaluation. Employees and supervisors alike were quite frustrated by the lack of transparency during this process. The following year, the Pay Pool Panel was again subjugated by the same individual, and the Pay Pool Manager delegated his duties to his deputy who also lacked leadership skills. Last year, the Pay Pool Panel featured only one military member while the other members delegated their duties to their civilian deputies, including the Pay Pool Manager. I was fortunate that my ratings were not negatively impacted to the extent of others based on the bias and inattention displayed by the Pay Pool Panel members.

As an NSPS trainer, I understand the system's requirements, and it was disappointing to watch as implementation failed to follow design. I think one of the primary reasons for its demise was the lack of engagement among senior military leadership and the cumbersome computer rating program provided by DOD. In my experience, many military members do not agree that they owe their civilians the same leadership that they provide their military subordinates. Transitioning from a pass/fail appraisal system where a supervisor's evaluation responsibilities involve checking boxes, providing only nine bullets to justify awards and offering only nine numerical ratings, to a full-blown performance management system where a supervisor has to write objectives and rate employees based on those objectives, was seen as too time consuming by most. In every class I taught, there were several vocal military supervisors who claimed they did not have time for this type of program. There was no mechanism to truly hold them accountable for their participation and the manner in which they discharged their duties, severely impeding the program's success.

In my role as an advisor to supervisors and Pay Pool Panels, I also witnessed the lack of commitment on the part of many of these participants. My installation consisted of five pay pools, and during the three rating cycles I sat in on each Panel at least once. The incongruence of the commitment by the individual Pay Pool Managers was astounding. In instances where the Pay Pool Manager demanded participation by the Panel members, the process ran much smoother and employees were provided more thorough consideration during the process. In the panels where the Pay Pool Manager delegated his duties to another or did not demand participation by his Panel members, the reviews were significantly more superficial and the biases demonstrated by the Panel members appeared to strongly impact the ratings.

As we move from NSPS, the civilian workforce at Travis AFB will transition back to the General Schedule. I am one of the employees whose pay will be negatively impacted by this move. I believe, and my supervisors agree, that I was properly rewarded for my work under NSPS. As such, I am currently paid between steps 6 and 7 of the next higher grade of the General Schedule from the grade at which I transitioned into NSPS. I will be eligible to retire in 2013 and if all else remains the same, I will be on pay retention and penalized by only receiving fifty percent of the general pay increase for the



rest of my career. This will also have a negative impact on my retirement annuity by reducing the salary I earn during my high-3 years.

# NSPS PROVISIONS IN THE FY10 NDAA

#### Repeal of NSPS

The FY10 National Defense Authorization Act (NDAA), which repealed NSPS, stated that all employees must transition out of the system by January 1, 2012, and provided DOD six months to report to Congress on its plans for conversion. Specifically, the legislation mandated that all NSPS employees and positions must be transitioned out of NSPS and back to the statutory pay systems and all other aspects of the personnel systems that last applied to the employees or positions (as the case may be) before NSPS, or to the systems that would have applied if NSPS had never been established, whichever is applicable. The law expressly avowed that no employee would suffer a decrease in pay upon transition, and we thank Congress for including this provision.

Enactment of the FY10 NDAA signified the end of the controversial NSPS pay-for-performance system, but it marked only the beginning of a long, tenuous process of determining how to manage the 226,000 federal employees who served under the system. As Department of Defense officials move forward with the transition out of NSPS, the Federal Managers Association remains vigilant and stands by its commitment to ensure no civil servants are negatively impacted in an unjust manner during this process.

When news of the NSPS repeal was first announced, most of our DOD members expressed enthusiasm. They found the system cumbersome, time-consuming, lacking in adequate training, and inconsistently applied. The majority of them repeatedly called for FMA to support a repeal of NSPS and believed that while the General Schedule was flawed, it was the devil they knew rather than the devil they did not. However, once the NSPS Transition Office (NSPSTO) released its report to Congress at the six month mark, employees were informed that if their pay exceeded step 10 of their corresponding GS grade level, they would be placed under retained pay. It was at this time that DOD employees inundated FMA with calls urging our Association to call for a stop to this unfair practice, which has become our biggest concern surrounding the transition.

To date, nearly 22,000 employees have transitioned out of NSPS. It is our understanding that 16 percent, or just shy of 3,500 employees, are currently placed under pay retention. We will discuss the impact of this policy later in our testimony.

#### Performance Management at DOD

The FY10 NDAA also afforded DOD the authority to create a "fair, credible and transparent performance appraisal system for employees," independent of both NSPS and the General Schedule, linking employee bonuses and other performance-based actions to appraisals. Such a system would seek to establish ongoing feedback and dialogue among managers and employees and include development plans to offer employees more assistance in the areas of training, mentoring and counseling. The Secretary of Defense was also provided the authority to establish a DOD "Workforce Incentive Fund"



consisting of incentive payments based on performance to attract and retain employees. The law specifies that employees should be involved in the design and implementation of such a system. The Secretary must submit the proposal for the personnel management system to Congress no later than the end of October of this year, with no plan taking effect until 90 days after that.

Much of this language is very similar to the language used in creating NSPS. The FY04 NDAA specified that NSPS must be fair, credible and transparent; the implementation must involve employee concerns; and, that managers and supervisors must receive training and retraining on the new system. This is all eerily familiar. What this should teach us is that implementation trumps design as the biggest factor in a system's ultimate success or failure. In order for any new system to succeed at DOD, we must learn from the implementation mistakes made under NSPS.

FMA's primary concern when NSPS was rolled out was the lack of concrete business rules that allow for a transparent and fair deployment of pay-for-performance. We heard several reports that the Pay Pool Panels and Sub-Pay Pool Panels were out of touch with the objectives and job functions of the employees they were rating. If the Panels were designed to be the ultimate authority on the final evaluation attributed to each employee and are able to adjust a supervisor's prescribed rating, they must have full working knowledge of the employees' jobs they are asked to rate.

Along the same lines, as they were aware of the amount of money in the pool, the Panels had a direct stake in the final ratings of employees. As such, reports surfaced revealing great pressure exerted by the Panels to lower ratings, especially in the cases of poorly written self-assessments, again, despite claims from DOD leadership that this should not or did not occur. The Panels were too focused on the impact they had on the share value. The sole purpose of the Pay Pool Panel should be to ensure fairness, transparency and consistency exist in the system. We encourage DOD to comprehensively review the functions of the panels prior to revealing any new performance management plans.

One of the biggest problems experienced during the execution of NSPS in this regard was the perceived bell curve distribution of raises. Managers and supervisors reported extreme pressure from higher-ups to maintain a specified distribution of funds or performance ratings within each pay pool. FMA warned of the severe danger of ratings being deflated or inflated to accommodate a small section of the population. We urged DOD to ensure employees received the ratings their performance dictated and were not harmed by a capricious ceiling. For any personnel system to be fair and effective, evaluative ratings and performance awards must be based on merit, not quotas and arbitrary caps. Forced distribution does nothing but contradict a pay-for-performance system, and a system employing such rules will never get off the ground.

Additionally, business rules contained in the FY04 NDAA required a supervisor to provide a feedback session before completing the NSPS appraisal, but we observed this usually did not take place. This constituted a key part of the NSPS process, but was often not afforded the attention it deserved. Job objectives should be discussed with employees to ensure they match with mission objectives, supervisors' objectives and to recognize where good work has been conducted and how improvements can be made. We find it alarming these conversations often did not take place.



Many employees also felt uncomfortable in the assessment of their own work as required under NSPS. Inadequate training in this area contributed to employees' lack of confidence in the delivery of their own evaluation, as they were unsure of how best to properly convey the value of the work they perform each day. For many employees, this marked their first experience providing such information, and a self-evaluation that failed to reveal their full worth to the agency had the potential to negatively impact their paychecks significantly. It was our experience that the Pay Pool Panels relied heavily on written assessments, despite the fact that these assessments were not required by law. More attention must be paid to properly train employees how to write self assessments during the development of any future system in order to ensure employees receive the rating their efforts merit.

Despite the implementation problems experienced with NSPS, we believe the current General Schedule pay system and performance review methods are antiquated and in need of reform. However, certain fundamental principles of merit remain crucial to preserving the integrity and accountability of any new employment system. Demonstration projects and pilot programs in various agencies around the country over the past few decades have demonstrated that implementing human resource management structures can help improve the productivity and missions of agencies.

In April, the NSPSTO organized a conference in Cleveland – the Future Search Conference – with Pentagon officials, union representatives and other stakeholders to discuss the new flexibilities afforded to DOD in the FY10 NDAA. Albeit last minute, FMA was invited to participate and arranged for two members to attend the event. Although we felt more management participation would have made the conference more effective, we were anxious to move away from NSPS and discuss with our peers how DOD could proceed with a new personnel system. Nine union representatives were invited to attend the event, but vehemently opposed the conference's late notice, design and leadership. They questioned why the NSPSTO would be leading a conference to discuss personnel issues department-wide and expressed their displeasure that they were not included in the design phase of the conference but rather informed only after it was planned. Subsequently, the Transition Office cancelled the conference. We at FMA were disappointed the event was canceled just shortly before it was set to take place, but we were informed that rescheduling of the conference would take place in the near future. To date, it has not. FMA looks forward to the opportunity to express our insight on needed changes at the Future Search Conference, but at this point we remain skeptical it will be rescheduled.

If any future personnel system is to succeed, it must adhere to certain basic principles. First, the key to moving forward is collectively understanding no viable change in the federal government's human resource management will take place without the full buy-in of agency leadership, managers and employees. In undertaking a new endeavor, feedback from and collaboration among managers and employees significantly increases morale. Open and honest communication between management and union leaders will ultimately lead to fewer grievances and contract disputes. When all the stakeholders are involved in the formation of new programs or policies, the likelihood of acceptance by the workforce increases substantially.

Secondly, we believe that the highest performing employees should be rewarded with the highest rates of pay; those employees who fall below the curve in terms of overall performance should not be rewarded at the same level. A strong link between performance and pay provides employees with the



confidence that their efforts will be appropriately recognized and rewarded. Where is the incentive in performing better than your colleague when little is done to differentiate additional efforts?

The current GS pay system promotes a workforce based on longevity rather than performance. We at FMA believe it is time for a change based on feedback from our members indicating the lack of distinguishing performance among employees serves as a de-motivator. We recommend a tiered system to rank employees which removes the "human factor" to the greatest extend possible to rate employees. However, employees under NSPS were too concerned with their number rating rather than the verbal feedback from their managers, and more education must be completed so that a "3" stops being viewed as a bad thing. We must also take appropriate steps to ensure cronyism and favoritism are removed from the process to the greatest extent possible.

Additionally, a shift in the culture of any organization cannot come without an interactive, ongoing training process that brings together the managers responsible for implementing the personnel system and the employees they supervise. If implemented properly, NSPS displayed great potential at the onset to retain and recruit a highly talented workforce.

As Congress and the Administration debate how to proceed with development of a new pay system at DOD, we suggest the following be included in any system:

- maintenance of current benefits for active duty and retired employees;
- no loss of pay or position for any current employee;
- merit principles preventing prohibited personnel practices as well as an adherence to current whistleblower protections and honoring and promoting veterans' preference;
- an appeals process for disciplined or terminated employees;
- 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; and,
- a well-conceived, ongoing and mandatory training program that includes skills training and 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.

Any new system, whether at DOD or applied government-wide, cannot be viewed as NSPS 2.0 or NSPS-lite. Perception is reality, and if employees believe they are being fed another NSPS, the system will be doomed from the start. Full buy-in from all stakeholders, particularly managers who are tasked with implementing new changes, is the first step in gaining the support of employees. The second is to listen and act when feedback is given, one area where NSPS embarrasingly failed. In the end, it is imperative that any system stand by the principles of transportability, objectivity and transparency. We must take a cautious and deliberate path as we move forward.



#### **Training for Managers and Supervisors**

In 2004, the President signed into law the Federal Workforce Flexibility Act (P.L. 108-411), which added §4121 of Title 5 U.S.C. requiring agencies to create basic training programs for federal managers and supervisors. Hailed at the time by many in the federal community as a major step forward in ensuring agencies afford their managers the training necessary to effectively supervise their employees, the law, however, failed to establish funding mechanisms and accountability measures to ensure training takes place. The law also failed to provide specific guidance on the type of training managers and supervisors should undertake, while omitting when and how often this training should take place. The result is that current regulations give agencies the latitude to cut training from their budgets when funding is tight, and as you are aware, funding is always tight.

In order to provide federal managers and supervisors with training on the full array of subjects necessary to effectively monitor and manage their employees, we at FMA urge Members of Congress to support the Federal Supervisor Training Act (S. 674), introduced by Senator Akaka. This legislation, which FMA helped craft as part of the Government Managers Coalition, requires agencies to provide managers and supervisors with interactive, instructor-based training within one year of promotion to a supervisory position. Training would cover three primary management topics: basic supervisory training; mentorship training; and, training focused on prohibited personnel practices including collective bargaining and anti-discrimination rights. After receiving initial managerial training, supervisors would engage in training updates once every three years.

The FY10 NDAA included training language pulled directly from S. 674, applying the provisions to DOD managers and supervisors. As Acting Deputy Under Secretary of Defense Marilee Fitzgerald discussed in her testimony before this Subcommittee in April, the Department of Defense conducted an analysis of current and future workforce requirements and identified a critical need for enhanced supervisory training to develop "diverse civilian leaders who effectively manage people in a joint environment, ensure continuity of leadership, and sustain a learning environment that drive continuous improvement across the enterprise." Fitzgerald detailed DOD's belief that managers and supervisors on the front lines "can have a stronger impact on employee performance and productivity than anyone else in the management chain." We thank Congress for extending these crucial regulations to DOD managers and supervisors and we encourage you to capitalize on this momentum and approve the Federal Supervisor Training Act to codify regulations currently in place to provide supervisors across the federal government with managerial training covering the full gamut of supervisory responsibilities.

#### UNINTENDED CONSEQUENCE OF REPEAL – PAY RETENTION

Last year, FMA appeared before both the House Armed Services Committee and the Defense Review Board to detail our experiences regarding the NSPS transition. One key point FMA repeatedly emphasized over the last year was that many employees excelled under NSPS and as such, their pay

Written Testimony of Marilee Fitzgerald, Acting Deputy Under Secretary of Defense, Department of Defense, "Developing Federal Employees and Supervisors: Mentoring, Internships, and Training in the Federal Government," April 29, 2010.



exceeded that of their GS counterparts. In this sense, NSPS worked as it was designed – high achievers were finally rewarded for how well they performed, not solely by a raise determined by Congress with no correlation to job execution. However, as a repeal of NSPS seemed imminent, FMA continued to stress that the pay of these high performers should be taken into consideration if a transition were to take place. We cautioned that transitioning these folks would be complicated and laid out several suggestions in order to prevent loss of pay which would subsequently demoralize employees. Despite our repeated calls to take these employees into consideration, we are nonetheless faced with a situation where thousands of DOD employees will be negatively impacted. This unfortunately comes as no surprise.

In December of last year, we started hearing rumblings of a possible move towards pay retention for employees who exceeded step 10 of their corresponding GS grade. Under GS pay retention rules, these high performers will receive only half of the annual pay raise until the GS system "catches up" with them. We were also told that this would affect roughly 4,000 employees. At the time, pay retention seemed to be a relatively small problem. In February, the NSPSTO officially released information on the transition, specifically stating that those who exceed step 10 will be placed on pay retention. The irony in this is that if you were an under-performer, returning to the General Schedule will actually lead to an increase in pay. Employees who fall beneath step 1 pay-wise will automatically move up to step 1, and those who are between two steps will be promoted to the higher step, with an increase in pay.

To date, only ten percent of NSPS employees have returned to the General Schedule, and already nearly 3,500 of them (16 percent) have been placed on pay retention. This problem is far larger than DOD led us to believe initially. If this formula holds true for the 176,000 employees who are set to transition before the end of the fiscal year, we can expect roughly 28,000 employees to fall under retained pay status. If this holds true for all 226,000 employees under NSPS, that number jumps to over 36,000 employees. We are disappointed in NSPSTO's inability to provide concrete numbers on how many people will be affected by the transition. FMA has been able to obtain this information from locations where we have chapters, and our research indicates that an average of twenty percent of NSPS employees will be subject to pay retention. At Travis AFB, I anticipate over twenty percent of employees will face this pay cap. There is little reason why DOD is unable to share tangible numbers with stakeholders. We believe communication in this area has been severely lacking, despite DOD's commitment to "proactive communication."

In a report to Congress dated April 23, 2010, DOD laid out its plans for converting NSPS employees, 75 percent of whom will return to the GS system by the end of September.<sup>2</sup> In this document, DOD details the strides it is taking to reclassify all NSPS employees regardless of pay status. DOD concedes that this requires a significant amount of effort, but counters that many NSPS employees are covered by position descriptions carried over from the GS classifications. Many employees, FMA members and non-members alike, have told us their current NSPS workloads far exceed their job descriptions; the pay they received over the years reflects this as well. This puts the onus on senior DOD leadership to properly reclassify these individuals prior to their slated transition dates. We remain concerned that the expediency with which DOD is returning NSPS employees to the General Schedule will impede leadership from taking the time to adequately classify individuals. The elimination of the

<sup>&</sup>lt;sup>2</sup> Report to Congress: Termination of the National Security Personnel System. April 23, 2010.



time-in-grade rules marked a positive step forward in preventing this, but DOD must also be held accountable for carrying out the reclassifications in a thorough manner.

The Department stated in the same report that it expects employees will be concerned about pay and that it intends to study this issue after classifications are finalized. We caution that by waiting until the classifications are over, employees will, at the very least, be subject to pay retention for one year. We also worry that this problem will be ignored once the transition is complete. DOD is informing employees of their classifications just prior to transition, and we believe this situation lends itself to a significant number of appeals regarding one's placement in the GS system. We would be interested to hear from DOD how many individuals have appealed their classifications, and how many more are expected.

It is unfortunate that DOD is unable to provide more information on the number of people affected by pay retention, as we believe the numbers will have a direct impact on any possible solutions. If we are in fact faced with a situation where tens of thousands of employees are placed on retained pay, we believe you will be dealing with a disgruntled and demoralized workforce which has now been jerked in and out of different pay systems over the last three years. Many of these dedicated employees have crunched the numbers and determined that the General Schedule will not catch up with them by the time they retire over the next decade. Additionally, pay retention does not only affect the current pay received by these employees but could also negatively impact their high-3 average salary, which is used to calculate retirement benefits. These individuals, myself included, feel they are being punished for performing above average work under a difficult and cumbersome system in which they did not ask to participate. We believe and will continue to stress that no employee should lose current, future or retirement pay as a result of a pay cap when converting back to the General Schedule.

Language included in the House version of the FY11 NDAA (H.R. 5136) requests that DOD report to Congress by November 15, 2010, on the agency's plans for a nation-wide pay adjustment, set to take place in January 2011, including information on employees under pay retention. This action is a step forward, but lends little time for congressional action before the January 2011 pay cycle.

#### **Suggestions for Preventing Pay Retention**

We at FMA believe there are many avenues the Pentagon and Congress could pursue to mitigate the effects of retained pay. While pay retention may be inevitable in certain situations, the following suggestions could be utilized in conjunction with one another to lessen the impact.

First and foremost, Department of Defense should explore implementing a provision in Title 5 which would allow DOD to circumvent pay retention rules under certain circumstances. An Office of Personnel Management guidance on the issue states:

The duties and responsibilities of a position may change over time. For the most part these changes result from reorganizations, new or revised organizational responsibilities or missions, and changes in technology. Sometimes, however, the unique capabilities, experience, or knowledge a particular employee brings to the job can also have an effect on the work performed and therefore on the classification of the position.



While it is the position which is classified, the relationship of the employee to the position can be recognized when the performance of the incumbent broadens the nature or scope and effect of the work being performed... Such changes affect the difficulty of work or the responsibility and authority given the employee and can be recognized in the position classification decision.

Job changes resulting from the individual impact of an employee should be recorded to distinguish the position from descriptions of other positions.

When significant changes in work occur for any of the kinds of reasons mentioned above, the classification of the position (title, series, and grade) should be reviewed and revised as needed. When a position which has been affected by the impact of an individual is vacated, it should normally revert to its original classification.<sup>3</sup>

We strongly encourage DOD to employ this option in situations where NSPS salaries far exceed the GS grade where the position is classified and in situations where the employee is nearing retirement. Along the same lines, ongoing consideration should also be given to awarding promotions based on the impact of the individual on the position. This type of promotion would apply only to the individual promoted. When the position is vacated by that individual, the position reverts back to the original grade for recruitment purposes. This tool is already built into the GS system.

Additionally, we must point out again it is imperative that ongoing attention be paid to the reevaluation of job classifications. If a significant portion of employees affected by the pay cap hold relatively similar positions, the Pentagon should consider modifying their classification to more accurately align job descriptions with the duties performed on a routine basis. An accurate calculation of the number of employees facing a cap on pay and the positions they hold is necessary to address this issue and should be pursued while the transition process continues.

While it may be too late to pursue this option for next year, consideration should be given to moving employees whose pay exceeds their corresponding GS positions into a system similar to the General Manager (GM) personnel classification which replaced the Performance Management Recognition System when it was terminated in 1993. Under such a system, employees' rates of basic pay would not have to be set at a fixed step rate for their GS grade, allowing salary flexibility. Implementing a system along these lines would ensure employees receive full annual pay raises and future performance recognition entitlements based on exceptional efforts in job performance and agency improvement. Employees would remain under this system until one of the following actions occurs: the employee is promoted to a grade that his/her current salary falls into; the employee is downgraded for cause; or, the employee leaves federal service for any reason, such as retirement. Pertaining to those who would be adversely affected due to the classification issue, employees in the GM system would be considered non-exempt for pay and overtime entitlement under the Fair Labor Standards Act. This may be an option in the future if pay retention ends up presenting a bigger problem than anticipated.

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<sup>&</sup>lt;sup>3</sup> http://www.opm.gov/fedclass/gsintro.pdf



Another idea FMA is exploring is enactment of a pay retention phase-in. Under our working proposal, the employee facing retained pay would receive fifty percent of the GS raise in 2011, sixty percent in 2012, and so forth. Such a proposal would establish an end date on pay retention of five years. At that time, the employee would receive the full GS raise, regardless of whether he or she was still on retained pay. This option would allow employees to properly plan for the coming years, as well as their retirement date and the proposal's impact on their high-3.

An additional proposal we are researching is the option of providing retained pay employees the full raise equal to that of their corresponding GS classification. For example, let us say an employee's position is classified as a GS-12 (base salary rates ranging between \$60,274 and \$78,355), but exceeds the pay of a GS-12 step 10. With a proposed pay raise of 1.4 percent for 2011, this employee would receive 1.4 percent of the base salary rate, adjusted for length of service, within these ranges. In such a situation, the employee would obtain the raise they otherwise would have received had NSPS never been implemented.

These are just a few examples of how we at FMA believe the negative impact of pay retention can be lessened, though we do not wish to convey that these are the only ways. With additional input from DOD leadership, Congress and stakeholders, we believe we can come up with viable, acceptable changes to ensure employees receive the pay to which they are entitled in the coming years.

## **CONCLUSION**

Many FMA members were pleased with Congress' decision to end the National Security Personnel System. It is not our intent to delay or halt rollback of the controversial system. However, more attention must be paid on the impact the transition has on the employees who keep DOD functioning. We appreciate the attention the Subcommittee is placing on this issue and we hope this hearing will be the jumping off point for further discussions on pay retention.

Additionally, we welcome discussions regarding performance management and it is our hope the NSPSTO will move forward in rescheduling the Future Search Conference. We believe there is great potential to learn from NSPS and move forward with an alternative personnel system.

Thank you again for the opportunity to express our views here today and I am happy to answer any questions you may have.