



Calhoun: The NPS Institutional Archive
DSpace Repository

Theses and Dissertations

1. Thesis and Dissertation Collection, all items

2004-06

**The National Security Personnel System:
Department of Defense civilian personnel
structures and the U.S. legislative process**

Foss, Sean M.

Monterey, California. Naval Postgraduate School

<https://hdl.handle.net/10945/1587>

This publication is a work of the U.S. Government as defined in Title 17, United States Code, Section 101. Copyright protection is not available for this work in the United States.

Downloaded from NPS Archive: Calhoun



Calhoun is the Naval Postgraduate School's public access digital repository for research materials and institutional publications created by the NPS community. Calhoun is named for Professor of Mathematics Guy K. Calhoun, NPS's first appointed -- and published -- scholarly author.

Dudley Knox Library / Naval Postgraduate School
411 Dyer Road / 1 University Circle
Monterey, California USA 93943

<http://www.nps.edu/library>



**NAVAL
POSTGRADUATE
SCHOOL**

MONTEREY, CALIFORNIA

THESIS

**THE NATIONAL SECURITY PERSONNEL SYSTEM:
DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL
STRUCTURES AND THE U.S. LEGISLATIVE PROCESS**

by

Sean M. Foss

June 2004

Thesis Advisor: Richard B. Doyle
Second Reader: Phil J. Candreva

Approved for public release; distribution is unlimited.

THIS PAGE INTENTIONALLY LEFT BLANK

| | | | | |
|---|---|--|--|--|
| REPORT DOCUMENTATION PAGE | | | Form Approved OMB No. 0704-0188 | |
| Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503. | | | | |
| 1. AGENCY USE ONLY (Leave blank) | | 2. REPORT DATE June 2004 | 3. REPORT TYPE AND DATES COVERED Master's Thesis | |
| 4. TITLE AND SUBTITLE: The National Security Personnel System: Department of Defense Civilian Personnel Structures and the U.S. Legislative Process | | | 5. FUNDING NUMBERS | |
| 6. AUTHOR(S) Sean M. Foss | | | | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000 | | | 8. PERFORMING ORGANIZATION REPORT NUMBER | |
| 9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A | | | 10. SPONSORING/MONITORING AGENCY REPORT NUMBER | |
| 11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. | | | | |
| 12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited. | | | 12b. DISTRIBUTION CODE | |
| 13. ABSTRACT (maximum 200 words) In April 2003, the Bush Administration submitted the Defense Transformation for the 21 st Century Act to 108 th U.S. Congress for review and enactment. This act proposed broad changes for the Department of Defense to successfully meet new challenges and new threats for the 21 st century. This paper will examine the proposals and requested authorities relating to modernizing civilian personnel structures found in the proposed National Security Personnel System. Specifically, this paper will examine the political process used to change Department of Defense policy by examining the legislative outcome of the National Security Personnel System. In November 2003, the legislative treatment of the Bush Administration's proposal was finalized by the passage of the National Defense Authorization Act for Fiscal Year 2004. | | | | |
| 14. SUBJECT TERMS National Security Personnel System, U.S. Legislative Process, Civilian Personnel Reform | | | 15. NUMBER OF PAGES 113 | |
| | | | 16. PRICE CODE | |
| 17. SECURITY CLASSIFICATION OF REPORT Unclassified | 18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified | 19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified | 20. LIMITATION OF ABSTRACT UL | |

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)
Prescribed by ANSI Std. Z39-18

THIS PAGE INTENTIONALLY LEFT BLANK

Approved for public release; distribution is unlimited

**THE NATIONAL SECURITY PERSONNEL SYSTEM: DEPARTMENT OF
DEFENSE CIVILIAN PERSONNEL STRUCTURES AND THE U.S.
LEGISLATIVE PROCESS**

Sean M. Foss
Lieutenant, United States Navy
B.S., U.S. Naval Academy, 1997

Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF SCIENCE IN LEADERSHIP AND HUMAN RESOURCE
DEVELOPMENT**

from the

**NAVAL POSTGRADUATE SCHOOL
June 2004**

Author:

Sean M. Foss

Approved by:

Dr. Richard B. Doyle
Thesis Advisor

Phil J. Candreva, CDR USN
Second Reader

Douglas A. Brook, PhD
Dean, Graduate School of Business
and Public Policy

THIS PAGE INTENTIONALLY LEFT BLANK

ABSTRACT

In April 2003, the Bush Administration submitted the Defense Transformation for the 21st Century Act to 108th U.S. Congress for review and enactment. This act proposed broad changes for the Department of Defense to successfully meet new challenges and new threats for the 21st century. This paper will examine the proposals and requested authorities relating to modernizing civilian personnel structures found in the proposed National Security Personnel System. Specifically, this paper will examine the political process used to change Department of Defense policy by examining the legislative outcome of the Defense Transformation for the 21st Century Act. In November 2003, the legislative treatment of the Bush Administration's proposal was finalized by the passage of the National Defense Authorization Act for Fiscal Year 2004.

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | INTRODUCTION | 1 |
| A. | BACKGROUND | 1 |
| B. | OBJECTIVES | 3 |
| C. | RESEARCH QUESTIONS | 3 |
| D. | SCOPE OF THESIS | 4 |
| E. | METHODOLOGY | 5 |
| F. | ORGANIZATION OF STUDY | 5 |
| II. | THE NATIONAL SECURITY PERSONNEL SYSTEM | 7 |
| A. | INTRODUCTION | 7 |
| B. | THE EVOLUTION OF THE NSPS PROPOSAL | 7 |
| 1. | Department of Defense 2001 Quadrennial Defense Review | 8 |
| 2. | Department of Defense Human Resource Strategic Plan | 8 |
| 3. | Best Practices Initiative | 9 |
| C. | THE NATIONAL SECURITY PERSONNEL SYSTEM | 10 |
| 1. | Creation of NSPS | 11 |
| 2. | Personnel Policy Issues | 13 |
| a. | <i>Contracting for Personal Services</i> | 13 |
| b. | <i>Highly Qualified Experts</i> | 14 |
| c. | <i>Employment of Older Americans</i> | 14 |
| d. | <i>Separation and Retirement Incentives Program</i> | 15 |
| 3. | Resolution of Personnel Issues | 15 |
| a. | <i>Collaboration with Employee Representatives</i> | 16 |
| b. | <i>National Level Bargaining</i> | 16 |
| c. | <i>Appellate Procedures</i> | 17 |
| 4. | NSPS Impact on Existing Demonstration Projects | 17 |
| D. | SUMMARY | 18 |
| III. | THE U.S. LEGISLATIVE PROCESS | 21 |
| A. | INTRODUCTION | 21 |
| B. | LEGISLATIVE CONSTITUTIONAL POWERS | 21 |
| C. | PRESIDENTIAL INFLUENCE OVER LEGISLATION | 23 |
| 1. | Executive Constitutional Powers | 23 |
| 2. | Presidential Influence | 24 |
| D. | CONGRESSIONAL POWERS | 25 |
| 1. | Defense Budget Process Overview | 25 |
| 2. | The Committee System | 26 |
| 3. | Political Influences | 28 |

| | | |
|-----|---|----|
| E. | NSPS LEGISLATIVE TRACK DURING THE 108 TH CONGRESSIONAL SESSION | 29 |
| 1. | Submittal of NSPS | 30 |
| 2. | House Armed Services Committee | 30 |
| 3. | House of Representatives Government Reform Committee | 32 |
| 4. | Senate Armed Services Committee | 33 |
| 5. | Senate Governmental Affairs Committee | 34 |
| F. | SUMMARY | 34 |
| IV. | KEY ISSUES DURING COMMITTEE CONSIDERATION | 37 |
| A. | TIMING OF PROPOSAL | 37 |
| B. | REQUEST FOR BROAD AUTHORITY | 40 |
| 1. | " Sole, Exclusive, and Unreviewable Discretion " | 40 |
| 2. | Approval of Authority, Not the System | 42 |
| C. | CHANGES TO EXISTING PERSONNEL POLICY | 44 |
| 1. | Recruitment of Talent | 45 |
| 2. | Rehiring Expertise | 46 |
| 3. | Shaping the Workforce | 48 |
| D. | INCLUSION OF EMPLOYEE REPRESENTATION | 49 |
| 1. | Outside Collaboration | 49 |
| 2. | National Bargaining | 51 |
| E. | SUMMARY | 53 |
| V. | CONGRESSIONAL OUTCOMES | 55 |
| A. | INTRODUCTION | 55 |
| B. | H.R. 1836 | 56 |
| 1. | Creation of NSPS | 56 |
| 2. | Personnel Policy | 58 |
| 3. | Union Issues | 59 |
| 4. | Impact on Existing Demonstration Projects ... | 61 |
| C. | S. 1166 | 62 |
| 1. | Creation of NSPS | 62 |
| 2. | Personnel Policy | 64 |
| 3. | Union Issues | 65 |
| 4. | Impact on Existing Demonstration Projects ... | 67 |
| D. | NSPS GOES TO CONFERENCE | 67 |
| 1. | House Action | 68 |
| 2. | Senate Action | 68 |
| 3. | Conference Committee | 69 |
| E. | THE ENDGAME: H.R. 1588 AND NSPS | 69 |
| 1. | Creation of NSPS | 70 |
| 2. | Personnel Policy | 72 |
| 3. | Union Policy | 73 |
| 4. | Impact on Existing Demonstration Projects ... | 75 |
| F. | SUMMARY | 76 |

| | | |
|-----|--|----|
| VI. | SUMMARY AND CONCLUSIONS | 79 |
| A. | SUMMARY | 79 |
| B. | CONCLUSIONS | 80 |
| 1. | The Bush Administration's NSPS Proposal | 80 |
| 2. | The Response of the 108 th Congress to NSPS.... | 82 |
| 3. | The Final Outcome: NSPS and H.R. 1588 | 85 |
| C. | RECOMMENDATIONS FOR FUTURE STUDIES | 86 |
| | LIST OF REFERENCES | 91 |
| | INITIAL DISTRIBUTION LIST | 97 |

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF FIGURES

| | |
|--|----|
| Figure 1. Civilian Human Resources Strategic Plan (From Ref. 7) | 9 |
| Figure 2. Legislative Process [From Ref. 25, p. 7-5] .. | 28 |

THIS PAGE INTENTIONALLY LEFT BLANK

ACKNOWLEDGMENTS

I would like to thank my thesis advisor, Dr. Richard Doyle, and my Second Reader, CDR Phil Candreva, for their guidance, tutelage, and unwavering courage during the completion of this thesis. Their expertise and patience are greatly appreciated.

Most of all, I would like to thank my wife, Amalie, whose patience, understanding, and unlimited compassion made this project possible. I dedicate this thesis to her.

THIS PAGE INTENTIONALLY LEFT BLANK

I. INTRODUCTION

A. BACKGROUND

The Department of Defense (DoD) is charged with the critical task of providing and maintaining a superior military force. Currently employing over 2 million military and civilian personnel [Ref. 1], the Department of Defense must ensure that the managerial infrastructures of all personnel systems are efficient, coordinated, and flexible to achieve administrative and legislative goals, as well as the capability to employ the full might of the Armed Forces in times of war. Specifically, the Department of Defense must optimize personnel management structures for its 700,000 plus civilian employees [Ref 2.]. The Bush Administration believed that a new direction and a new policy, for managing Department of Defense civilian personnel, were needed to meet the challenges of the 21st century. In 2003 those directions and policy became part of a comprehensive proposal to transform civilian personnel management structures and processes.

The Department of Defense experienced two major transformations in recent history: The National Security Act of 1947 and the Goldwater-Nichols Act of 1986. The National Security Act of 1947 coordinated and unified command for the Army, Navy, and Air Force under the creation of the Department of Defense, and established the Central Intelligence Agency (CIA) and the National Security Council (NSC) [Ref. 3]. This act had a profound influence on the organizational structure of the U.S. Armed Forces in the post-World War II environment and the initial stages of the Cold War. The Goldwater-Nichols Act of 1986 defined

authority and command from the President to the Secretary of Defense to the commanders of the combatant commands, and centralized operational authority through the Chairman of the Joint Chiefs [Ref. 4]. This act stressed the importance of joint operational warfare in the Cold War environment.

In the post-9/11 world, the Department of Defense continues to re-organize, centralizing authority and personnel to maximize resources and readiness to meet the new threats of terrorism against U.S. interests at home and abroad. In April 2003, the Defense Department, upon approval from the Bush Administration, submitted to the U.S. Congress the Defense Transformation for the 21st Century Act [Ref. 5]. One objective of the Defense Transformation for the 21st Century Act was to reorganize and streamline civilian personnel management under a new system called the National Security Personnel System (NSPS). By modernizing outdated civilian personnel structures, the Department of Defense believed that it would be better able to execute and succeed in the global war on terror and other conflicts of the future, as described by the words of Secretary of Defense Donald Rumsfeld:

We learned on Sept. 11, 2001, that our nation is vulnerable to enemies who hide in the caves and shadows and strike in unexpected ways. That is why we must transform our armed forces. Our forces need to be flexible, light and agile, so they can respond quickly and deal with surprise. The same is true of the men and women who support them in the Department of Defense. They also need flexibility, so that they can move money, shift people, design and deploy weapons more rapidly and respond to the continuing changes in our security environment [Ref. 6].

The Defense Department requested the authority and flexibility to overhaul the current personnel management systems developed during the Cold War. This request was addressed by the 108th U.S. Congress.

B. OBJECTIVES

This thesis will focus on the congressional treatment of the civilian personnel management proposals of the Defense Transformation for the 21st Century Act, also referred to as the National Security Personnel System (NSPS). The primary objective of this thesis is to examine the legislative process and the proposals that emerged during the 108th U.S. Congress in response to the Bush Administration's NSPS proposal. This thesis will begin with an overview of the pertinent sections of the Defense Transformation for the 21st Century Act and the civilian management structures it was designed to change. Following that, an overview of the legislative process will be provided and used to examine in detail the evolution of the proposal during the 108th Congress. For purposes of brevity, the Defense Transformation for the 21st Century Act will be referred to as the Defense Transformation Act.

C. RESEARCH QUESTIONS

The primary research question addressed in this thesis is: How did the 108th Congress respond to the National Security Personnel System as proposed in the Defense Transformation Act?

Subsidiary questions addressed include:

What policies did the Bush Administration propose to change in the National Security Personnel System?

What is the legislative process used to establish defense personnel policy?

What policies and changes related to the National Security Personnel System were addressed by the authorizing and governmental reform committees of the House and Senate during the 108th Congress, and what interest groups played a role in shaping the final legislation?

What was the final outcome of the proposed National Security Personnel System in 2003? What factors explain the changes made to the Bush Administration's proposal?

D. SCOPE OF THESIS

This thesis will (1) describe the National Security Personnel System and its impact on current DoD civilian management; (2) describe the legislative process and committees relevant to the consideration of this proposal; (3) track the treatment of the proposed legislation through various committees and conferences during the 108th Congress; and (4) analyze the legislative outcome of the proposed act as it appears in the National Defense Authorization Act for Fiscal Year 2004.

The proposed National Security Personnel System defined new authorities, combined with modern human resource management policies and structures. It is important to note that this thesis will not provide original analysis of the relative merits of NSPS and its subcomponents. This proposal offered many changes to existing civilian management structures. It would be impossible, within the scope of this thesis, to offer recommendations on the respective merits of NSPS. Instead,

any discussion of the relative merits of the proposal is a reflection of the deliberation and debate during the legislative process.

E. METHODOLOGY

This thesis systematically examined the factors that influenced the journey of NSPS through the legislative process during the first session of the 108th Congress. The methodology used to conduct this thesis involved collecting data through extensive research of current civilian personnel management structures and the proposals of NSPS. Sources included reports from the Department of Defense, the Office of Personnel Management, the General Accounting Office, U.S. Code, Congressional Research Service, and scholarly journals. The thesis then detailed the legislative process and systematically tracked NSPS through the appropriate congressional committees and subcommittees of the House and the Senate. Congressional hearings, bills, and reports were examined to determine congressional actions on NSPS. The "endgame" of the legislative process was found in the conference agreement. An interview with a congressional staffer was also conducted to provide first-hand insight into the legislative process.

F. ORGANIZATION OF STUDY

The following provides the chapter organization of this thesis. Chapter II will discuss the provisions in the NSPS proposal and their impact on current civilian personnel management. Chapter III will overview the U.S. legislative process and analyze the subsequent track of NSPS through this process. Following that, Chapter IV will

address the controversial issues affecting NSPS as revealed by debate within the committee system. Chapter V will provide insight into the responses of the authorizing and governmental reform committees and will analyze the final legislative treatment of NSPS, as found in the National Defense Authorization Act for FY2004. Chapter VI will provide conclusions on the legislative treatment of NSPS and offer recommendations for future research and study.

II. THE NATIONAL SECURITY PERSONNEL SYSTEM

A. INTRODUCTION

In April 2003, the Department of Defense submitted a legislative proposal, the Defense Transformation Act, to the 108th U.S. Congress. Broad in scope, this proposal would streamline and modernize numerous aspects of the U.S. military, including military and civilian personnel structures, technology and equipment acquisition, and DoD administration policy. The National Security Personnel System (NSPS) was designed to reform existing governmental rules and regulations regarding the management of DoD civilian employees found in U.S. Code, Title V. This chapter focuses on the evolution of DoD human resource management, the major proposals of the National Security Personnel System, and their potential impact on current Department of Defense civilian employee management.

B. THE EVOLUTION OF THE NSPS PROPOSAL

The evolution and development of the NSPS proposal was triggered by outdated DoD civilian management practices. The DoD Civilian Human Resource Strategic Plan reflected this concern, stating that "There is a human resource dilemma in the Department of Defense" [Ref. 7, p. 1]. Today's enemies are more stealthy, more agile, and use the newest technologies to move within the U.S. and the global community. The DoD believed it was mired in Cold War management structures, developed during a time when the enemy was more clearly defined and the timeline of war was more forgiving. This allowed more time for the U.S. military machine to amass forces and prepare for eventual

conflict. As the communist grip loosened in Europe and Russia, a new threat was emerging in the Middle East. This new threat struck at the heart of this nation, strengthening the argument for DoD transformation.

The building blocks for the National Security Personnel System proposed in 2003 can be found in the 2001 Quadrennial Defense Review, the Department of Defense Human Resource Strategic Plan, and the Best Practice Initiatives.

1. Department of Defense 2001 Quadrennial Defense Review

On September 30, 2001 the Department of Defense issued the 2001 Quadrennial Defense Review Report. This report described the changing threats that faced the United States and the need for the U.S. military to "adopt a capabilities approach", requiring "a transformation of U.S. forces, capabilities, and institutions to extend America's asymmetric advantages well into the future" [Ref. 8, p. IV]. This call for transformation encompassed the civilian management structures: "Accomplishing this management imperative will require strong leadership and innovative thinking about how to attract, motivate, and compensate the workforce ... Toward this end, the DoD will develop a strategic human resources plan for its military and civilian personnel" [Ref. 8, p. 50.]. To accomplish this requirement, the DoD had to formulate and establish a new vision for civilian human resource management.

2. Department of Defense Human Resource Strategic Plan

In accordance with the 2001 Quadrennial Defense Review, the Office of the Under Secretary of Defense for Personnel and Readiness formulated the Civilian Human Resources Strategic Plan (see Figure 1). This plan

provided the foundation for civilian management based upon a DoD vision, to “Design, develop and implement Human Resource policies, strategies, systems and tools to ensure a mission-ready civilian workforce that is motivated to excel” [Ref. 7, p. 6]. Further, specific goals were established to create a framework for civilian employee management transformation, to include “a human resources system that ensures the readiness of tomorrow’s integrated force structure” and to “promote focused, well-funded recruiting to hire the best talent available” [Ref. 7, p. 8, p.14]. This strategic plan applied the direction from the Quadrennial Defense Review and provided the vision to transform current civilian policies and management systems.

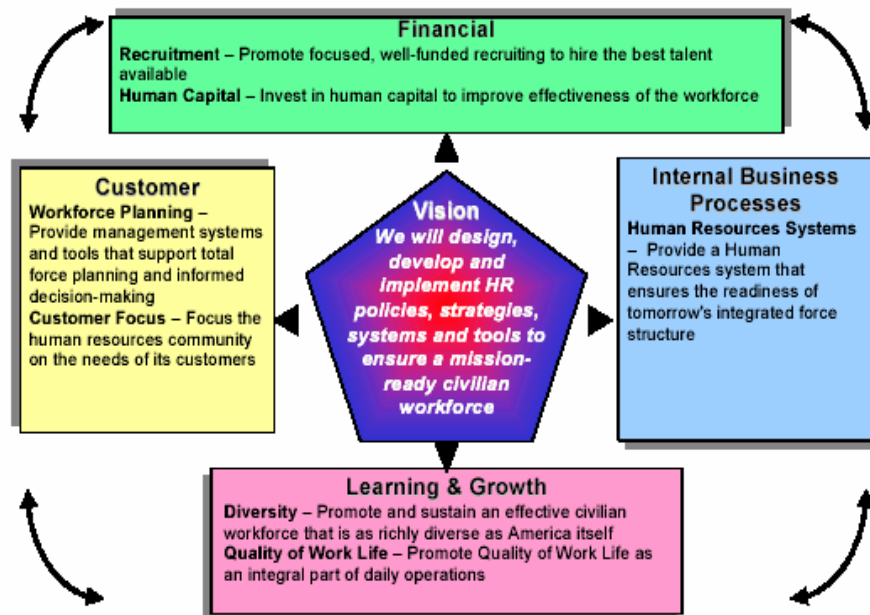


Figure 1. Civilian Human Resources Strategic Plan (Ref. 7)

3. Best Practices Initiative

The 95th U.S. Congress passed the Civil Service Reform Act of 1978, transferring federal personnel oversight to the Office of Personnel Management (OPM) and authorizing

the establishment of demonstration projects to improve human resource management within federal government agencies [Ref. 9]. The National Defense Authorization Act for FY1995 authorized the Secretary of Defense to carry out demonstration projects at designated DoD science and technology reinvention laboratories and extended permanently the China Lake personnel demonstration project for research in HR management [Ref. 10].

In 2000, Congress expanded DoD authority over civilian management demonstration projects with the Floyd D. Spence National Defense Authorization Act for FY2001. This act authorized the Secretary of Defense to establish and operate personnel management demonstration projects in defense laboratories without the review or approval of the OPM director [Ref. 11]. In March 2002, the Under Secretary of Defense for Personnel and Readiness established the DoD Human Resources Best Practices Task Force to review all demonstration projects in the federal government, and additional alternative personnel systems [Ref. 12]. The goal was to determine the "best practices" of HR management that could be applied within the Department of Defense. At the core of the "Best Practices Initiative" was a HR management system based on pay-for-performance, which would later become the foundation for a new Department of Defense human resource management system, the National Security Personnel System.

C. THE NATIONAL SECURITY PERSONNEL SYSTEM

After more than twenty years of testing, the DoD proposed a new human resource management system for the Department of Defense. On April 10, 2003, the Defense

Transformation Act was submitted to the 108th U.S. Congress for review and enactment. As part of this act, Chapter 99 would be added to modify existing DoD civilian management structures found in Title V, Part III, subpart I of U.S. Code [Ref. 5, p. 4].

The following sections detail the major proposals found in Chapter 99 of the Defense Transformation Act, titled the Department of Defense National Security Personnel System. The first section describes the process for creating NSPS, including the requirement to coordinate with the Office of Personnel and Management and labor unions. The remaining three sections provide an overview of proposed personnel policies, reforms to resolve personnel issues and grievances, and the NSPS impact on existing personnel demonstration projects.

1. Creation of NSPS

The National Security Personnel System (NSPS) would be jointly created, modified, and adjusted by the Secretary of Defense and the Director of the Office of Personnel Management [Ref. 13, p. 5]. However, if the Secretary of Defense deemed that any creation, modification, or adjustment was in the interest of national security, the Secretary of Defense, subject to the direction of the President, could waive the requirement to coordinate with the Director of the Office for Personnel Management [Ref. 5, p. 4]. This request by the Bush Administration granted broad authority to the Secretary of Defense, while reducing the control and oversight of the Office of Personnel Management.

a. System Requirements

Under NSPS, the rights of DoD civilian employees would be protected, while providing DoD leaders the flexibility to create and modify a modern human resource management system. The system must "be flexible; be contemporary; and not waive, modify, or otherwise affect public employment principles of merit and fitness, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing" [Ref. 5, p. 5]. These provisions, located in Section 2302 of Title V, were intended to protect civilian workers against practices prohibited in law other than Title V, to include discrimination and nepotism. These protections would not be amended or changed under a new management system.

b. Merit Based Pay System

A central issue surrounding NSPS was the modification of Chapter 53 of Title V, the General Schedule pay system. Under this change, a new pay-for-performance system would be implemented, similar to the pay banding systems used in the demonstration projects. It is important to note that the actual language of the proposal does not address the specifics of a new pay management system, only the authority to create such a system. However, the chapter-by-chapter analysis accompanying the proposal stated that a pay banding system would be implemented [Ref. 5, p. 21].

2. Personnel Policy Issues

A major goal of the National Security Personnel System was to maintain a high level of performance and talent within the DoD civilian workforce. The Department of Defense requested the means to efficiently and effectively incorporate talented individuals into the workforce in order to keep pace with cutting-edge technologies. By becoming a more attractive organization, the DoD believed it would improve the talent pool and its ability to incorporate new technologies. The following proposals were submitted to achieve that objective.

a. Contracting for Personal Services

Under this proposal, the Department of Defense would have funds available to hire individuals for specific services outside the United States, to improve staffing issues and to conduct DoD national security missions [Ref. 5, p. 15]. An important component of this request is the subsequent status of an individual hired on this basis. The individual would not become an employee of the Department of Defense, would not work under the oversight of the Office of Personnel Management, and would not have the protections afforded under Title V. These experts and consultants would be hired if "such procurement is advantageous to the United States; and such services cannot be provided adequately by the DOD" [Ref. 5, p. 16].

As with earlier provisions, implementation of this section would be at the sole, exclusive, and unreviewable discretion of the Secretary of Defense [Ref. 5, p. 16]. The DoD indicated that this authority would address overseas staffing issues not sufficiently supported by the U.S. State Department. The number of individuals

hired and associated costs of this program request were not specified within the NSPS proposal.

b. Highly Qualified Experts

The Secretary of Defense requested the authority to establish a program aimed at hiring highly qualified experts from outside the civil service and uniformed services to perform duties and tasks requiring a specific skill set. These individuals would become employees of the Department of Defense and their term of employment would not exceed five years, with a one year extension for national security missions, as determined by the Secretary of Defense [Ref. 5, p. 17]. Under this program, the DoD would enjoy greater flexibility to expeditiously hire skilled experts needed to combat emerging threats. The total numbers of personnel hired under this program, as well as the total cost of this program, were not included in the proposal.

c. Employment of Older Americans

Certain older Americans have a wealth of knowledge and expertise after a career in their specific field (in this proposal, the term older Americans was defined as any United States citizen who is at least fifty-five years of age) [Ref. 5, p. 18]. The Secretary of Defense requested the authority to hire these individuals for a period of two years, with an additional two year extension, so long as current DoD employees are not displaced and not in a reduction-in-force status for the same or equivalent job [Ref. 5, p. 18, p. 19]. This proposal also requested that retirement annuities, i.e., Social Security or pensions, not be reduced during the duration of such employment. This proposal was designed to increase DoD's ability to rehire annuitants by offering

increased personal income and the application of special expertise for the defense of the United States. However, this proposal did not address the total number of individuals that would be hired, nor did it address the total costs for this initiative.

d. Separation and Retirement Incentives Program

Within the NSPS proposal, the Secretary of Defense requested the authority to permanently establish a separation and retirement incentives program to better structure and manage the personnel within the DoD. Currently, the DoD requests authority to offer Voluntary Separation Incentive Pay (VSIP) on an annual basis and has limits on the total number of individuals eligible. The new program would make the VSIP authority permanent, as well as provide the DoD the permanent authority to offer Voluntary Early Retirement Authority (VERA) [Ref. 14]. This authority would be granted without the oversight of the OPM [Ref. 15]. Under this program, three options would be available for DoD personnel under those commands offering VSIP/VERA: (1) eligibility for early retirement, (2) separation incentive pay, or (3) both [Ref. 5, p. 12]. The DoD believed this program would allow greater flexibility in the management of the civilian workforce structure in order to meet mission or force requirements. Further specifics on the eligibility and amount of separation payments were contained within the NSPS proposal.

3. Resolution of Personnel Issues

Under the guidelines of the NSPS proposal, Chapters 71 (Labor Management), 75 (Adverse Action), and 77 (Appeals) of Title V, would be waived to create new DoD labor management relations and appellate procedures [Ref. 5, p.

22]. The DoD also included provisions within the NSPS proposal to ensure employee collaboration, national level bargaining with union representatives, protection against discrimination and unfair practices, and the right to appeal in such cases. The following sections discuss these initiatives and safeguards found in the NSPS proposal.

a. Collaboration with Employee Representatives

The Department of Defense included a section ensuring collaboration with DoD employee representatives in the "planning, development, and implementation of any human resource management system or adjustments to such system" [Ref. 5, p. 7]. The Secretary of Defense and Director of the OPM would be required to provide written guidance on any new system, allow time for a response from employee representatives, and notify Congress of any changes or modifications to existing management regulations. Should additional consultation or mediation between DoD officials and employee representatives be deemed unsuccessful by the Secretary's sole and unreviewable discretion, "the Secretary may implement any or all of such parts, including modifications made in response to the recommendations as the Secretary determines advisable" [Ref. 5, p. 8, p. 9]. This was the second request by the Secretary of Defense for exclusive authority to expedite the creation and flexibility of the new HR management system.

b. National Level Bargaining

The Department of Defense proposal requested the right to bargain with employees at the national level. The DoD described the collective bargaining process as slow and cumbersome, as DoD officials must negotiate with up to 1,400 local unions on a variety of issues and topics [Ref. 16, p. 1]. This, according to the DoD, does not allow for

a flexible management system. Accordingly, the DoD proposed changes that would allow the Secretary of Defense "at his sole and exclusive discretion," to "bargain at an organizational level above the level of exclusive recognition" [Ref. 5, p. 10]. This represented the third proposal to shift power over personnel policy towards the leadership of the DoD. Further, this section would waive labor management relations found in Chapter 71 of Title V, would be binding for all bargaining participants, would supersede all other collective bargaining agreements, and would not be subject to further negotiations, except as determined by the Secretary of Defense [Ref. 13, p. 12].

c. Appellate Procedures

Under NSPS, a new appeals process would be established within the Department of Defense. These new appellate procedures were intended to improve and expedite handling of performance and conduct evaluations and grievances. The Secretary of Defense would "ensure that employees of the Department of Defense are afforded the protections of due process; and toward that end should be required to consult with the Merit Systems Protection Board before issuing any such regulations" [Ref. 5, p. 11]. Current appeals procedures relating to discrimination and equal opportunity would not be impacted or modified by the implementation of NSPS.

4. NSPS Impact on Existing Demonstration Projects

Under the NSPS proposal, existing civilian personnel management demonstration projects would be realigned with the NSPS through the repeal of previous legislation. Over the past twenty years, legislation authorized demonstration projects at the China Lake Naval Weapons Center and numerous defense science and engineering laboratories, as

well as special hiring and pay authorities to the Defense Advanced Research Projects Agency (DARPA) and to the military departments for scientists and engineers [Ref. 5, p. 23]. Under the NSPS proposal, the following sections would be repealed to accomplish realignment: Section 6 of the Civil Service Miscellaneous Amendments Act of 1983, Section 342 of the National Defense Authorization Act for FY1995, Section 1101 of the Strom Thurmond National Defense Authorization Act for FY1999, and Section 4308 of the National Defense Authorization Act for FY1996 [Ref. 5, p. 20-21].

The specifics of realignment under NSPS were not listed within the proposal. The section-by-section analysis stated that the Secretary of Defense would authorize each of these projects to continue under the authority of chapter 99 until NSPS is established and implemented [Ref. 5, p. 23]. DoD believed this would minimize any negative impact on civilian personnel during the transition period.

D. SUMMARY

The National Security Personnel System, as proposed in the Defense Transformation Act, granted broad authority to the Secretary of Defense for creating a human resource management system for civilian DoD employees. As indicated in the Civilian Human Resources Strategic Plan, the Department of Defense desired a new human resource system to optimize and reward civilian performance. DoD officials believed NSPS would accomplish this, as well as attract talented individuals with new expertise in various security and technology fields in order to modernize and improve

tools designed to achieve DoD national security missions. The Department of Defense believed this was a necessary step in the overall transformation of the Department of Defense.

The lack of specifics on the actual design of the National Security Personnel System and the request for "sole and exclusive" authority for the Secretary of Defense to create such a system would be the focal point for debate during the legislative process. The following chapter will overview the U.S. legislative process by tracking the National Security Personnel System through the various congressional structures.

THIS PAGE INTENTIONALLY LEFT BLANK

III. THE U.S. LEGISLATIVE PROCESS

A. INTRODUCTION

The U.S. legislative process can appear complicated due to its bicameral structure, committee systems, and fragmented powers and responsibilities. The framers enumerated specific powers within the U.S. Constitution, while at the same time provided broad authority to ensure that governmental power was not abused. The Constitution provided a foundation for the legislative process and allowed the members of Congress to ultimately determine specific rules and procedures for carrying out legislative duties. As our nation evolved, so did the legislative process. The framers intended for the legislative process to remain current, relevant, and effective in the scope of America's democratic system.

This chapter will first overview the legislative powers of the U.S. Congress and the executive branch as enumerated in the U.S. Constitution. Following this overview, the congressional committee system and associated powers and responsibilities will be discussed. Finally, this chapter will detail the legislative path of the Bush Administration proposal for the National Security Personnel System during the 108th Congress.

B. LEGISLATIVE CONSTITUTIONAL POWERS

The framers of the Constitution allowed for the creation of a government that would remain flexible over time. The Constitution remains viable today because many of the powers and functions of the branches of government

were left for future generations to work out in detail. The basic framework of the legislative process was outlined in general terms.

In Article I, Section 1 of the U.S. Constitution, the U.S. Congress was established and divided into two chambers, the Senate and the House of Representatives. Section 7 states that "Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States." General congressional powers relating to national defense were also included, e.g., "to provide for organizing, arming, and disciplining, the Militia" [Ref. 17, Article I, Section 8]. The powers and structure delineated by the framers of the Constitution were important, but did not specifically address how the legislative process would be carried out.

Key sections of the U.S. Constitution prescribe basic legislative authority for the creation and implementation of the current legislative process. Section 5 states, "Each House may determine the Rules of its Proceedings" [Ref. 17, Article I, Section 5]. Section 8 authorizes and empowers the members of Congress "To make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution" [Ref. 17, Article I, Section 8]. Germane to national defense legislative powers, Section 8 also authorizes Congress to "raise and support Armies...to provide and maintain a Navy...to make Rules for the Government and Regulation of the land and naval Forces" [Ref. 17, Article I, Section 8]. Under these sections, future members of Congress were given the power and

authority to create and modify the legislative process to best fit current political and domestic environments. Over two centuries the U.S. legislative process has evolved into a complicated system of competing chambers, committees, and political parties.

C. PRESIDENTIAL INFLUENCE OVER LEGISLATION

As head of the executive branch of the U.S. government, the president provides recommendations to Congress on an array of issues. The president submits annually his federal budget recommendations to Congress, to include defense spending levels and personnel policy proposals. This privilege of influencing legislation through executive recommendations and positional authority was enumerated in the U.S. Constitution and further defined by subsequent legislative acts.

1. Executive Constitutional Powers

Under Article II, Section 2 of the U.S. Constitution, the President of the United States "shall be the Commander in Chief." Section 3 states that the president "shall from time to time give to Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient." These enumerated powers have evolved and have been interpreted to provide specific legislative influence to the executive branch, to include submittals of federal budgets and defense policy and programs. The president is also granted authority to approve or veto any bills that are submitted from Congress for his approval: "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the

President of the United States: If he approve he shall sign it, but if not he shall return it" [Ref. 17, Article I, Section 7]. This official source of power ensures executive concurrence with and influence on legislation.

2. Presidential Influence

Under the Budget and Accounting Act of 1921, the president is responsible for creating and submitting a federal budget to Congress on an annual basis [Ref. 18, p. 49]. This authority allowed the executive branch to influence the legislative agenda of the nation and provided a starting point for congressional consideration of the annual federal budget. In 1947, the National Security Act established the National Security Council (NSC) and the position of the Secretary of Defense to oversee Department of Defense policies and programs [Ref. 3]. The NSC was placed under the authority of the president and further solidified his authority to submit legislative policies on defense and national security issues. As Commander-in-Chief, the president uses this authority to submit legislation and influence Congress on defense policies and defense budgetary issues that face the Department of Defense.

The president also holds unofficial power as the top official for his political party. Regardless of which party controls Congress, the president can exert his positional authority as the chief executive to promote his party's agenda during the legislative process. Increasingly, the president has provided more legislative input, influencing congressional members and setting the congressional agenda. In recent years, the president has been referred to as the "chief legislator" [Ref. 19, p.

228]. Today, the president of the United States submits a yearly defense budget, as well as legislative proposals relating to specific DoD issues or programs.

D. CONGRESSIONAL POWERS

The U.S. Congress is composed of two chambers, the Senate and the House of Representatives. Both chambers hold legislative sessions to debate and approve defense authorization and appropriations legislation for the upcoming fiscal year. Within each chamber of Congress, a committee system has evolved to handle legislation that must be passed each congressional session. In July 1974, the Congressional Budget and Impoundment Control Act strengthened congressional oversight and control of the annual federal budget with the creation of the Budget Committees and the Congressional Budget Office [Ref. 20]. This act also amended the Budget and Accounting Act of 1921 by requiring that the presidential budget include the same elements as the congressional budget.

1. Defense Budget Process Overview

The defense budget process can be seen as a three-step process [Ref. 21, p. 29]. The first step is the passage of the Congressional Budget Resolution (CBR), which provides a framework to consider the federal budget. The second step is the defense authorization process, which establishes statutory authority for defense programs. The third step is the defense appropriations process, which establishes budget authority for defense programs. The creation, continuation, or modification of specific defense programs is debated and approved within the authorization process. The authorization process may also "set forth the duties and functions of an agency or program, its

organizational structure, and the responsibilities of agency or program officials" [Ref. 22, p. 2]. Typically, each chamber of Congress will debate and approve separate authorizing bills. This is followed by a conference committee comprised of members from both chambers, created to resolve differences between the separate authorization bills. Ultimately, a single piece of authorizing legislation will be approved and sent back to both chambers for final passage and submission to the president.

2. The Committee System

The committee system has evolved to efficiently, effectively, and simultaneously handle the numerous pieces of legislation and congressional action that must take place during a legislative session. President Woodrow Wilson best described the U.S. Congress and its committee system in his 1885 book, *Congressional Records*, as "little legislatures" [Ref. 19, p. 195]. This description is even more accurate today with an increase in legislation and political power within the halls of Congress.

Congressional committees are comprised of representatives and senators with interest or expertise in the issues within those committees' jurisdiction. During the infancy of the U.S. Congress, committees were created to draft specific pieces of legislation and then dissolved upon completion. During modern times, House rules 10 and 11 and Senate rules 24 to 28 have defined the jurisdiction and procedures for congressional committees [Ref. 23, p. 8]. When legislative proposals are presented, the presiding officer of the House of Representatives (Speaker of the House) and the Senate (Senate Majority Leader), refer them to the committee or committees with appropriate

jurisdiction [Ref. 24, p. 7]. Under the defense authorization process, these proposals are sent to the standing committees which have legislative jurisdiction, the House Armed Services Committee and the Senate Armed Services Committee. Standing committees are permanent in nature, in that they carry over from one Congress to the next, and have legislative authority to draft and approve legislative policy [Ref. 23, p. 2, p. 4].

Standing committees perform two formal and important functions: to collect information through hearings and investigations, and to draft and report legislation [Ref. 25, p. 7-2]. This allows for a more efficient, organized process. If a committee decides to act upon the legislation, it will either review and mark-up legislation or refer the legislation to a subcommittee for review and mark-up. Typically, once a committee has approved the authorizing legislation, it is debated, amended, and approved by the entire chamber. If both the House of Representatives and the Senate pass differing versions of the legislation, which is the norm, a conference committee is formed with members of both chambers [Ref. 25, p. 7-4]. Here, the differing versions of authorizing legislation will be debated and conflicts resolved, with a single piece of legislation sent back to the floor of both chambers for final approval. Once this occurs, the final piece of legislation will be forward to the President of the United States for approval or veto. Figure 2 provides an illustration of the typical path of legislation through the legislative process.

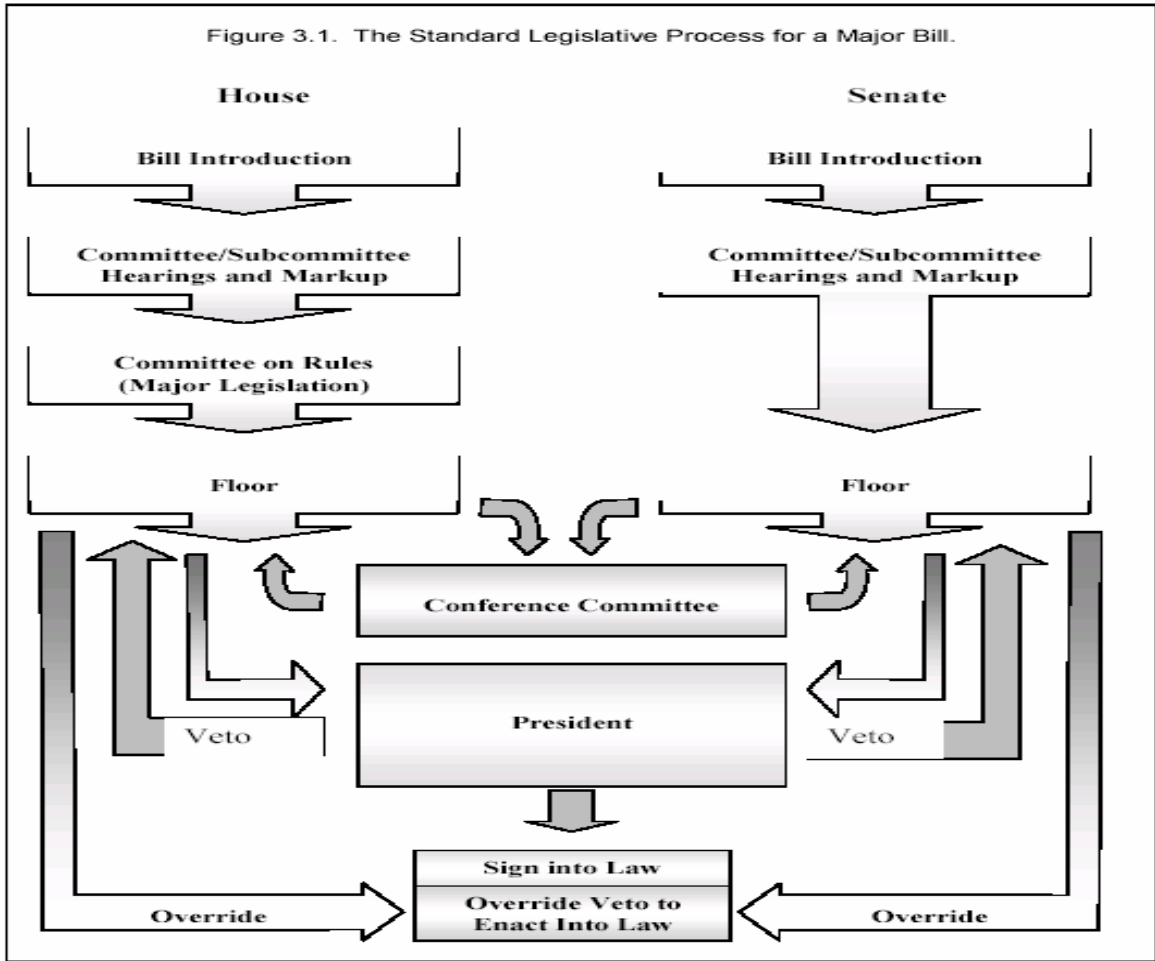


Figure 2. Legislative Process [Ref. 25, p. 7-5]

3. Political Influences

The political party, Republican or Democratic, that holds the majority of members in both chambers wields a great deal of power within the committee system. The majority party controls each chamber, sets legislative agendas, and assigns the committee and subcommittee chairmen. The minority party assigns the ranking minority member for the committees and subcommittees and develops strategies to counter the majority party's influence over spending, policy, and programs. The committee chair has "considerable control over the agenda of the committee, schedules meetings and hearings of the full committee, and

influences the scheduling of subcommittees' meetings and hearings" [Ref. 25, p. 7-16]. Current House and Senate rules allow members to sit on more than one committee.

If legislation is supported by a sitting president and the congressional leaders from the political party in the majority, the committee chairs will influence its subsequent treatment and approval. Party influence is strongest in the House of Representatives, due to the rules under which that chamber operates. In the Senate, party affiliation still plays an essential role, but its impact is lessened due to the smaller number of senators holding proportionally greater amounts of power and the rules under which the Senate operates. This leads to less political party influence and more individual political power and control [Ref. 26].

E. NSPS LEGISLATIVE TRACK DURING THE 108TH CONGRESSIONAL SESSION

With Republican control of the House of Representatives and the Senate in 2003, the Bush Administration's National Security Personnel System proposal was assured its place on the Congressional legislative calendar. As of January 2003, the 108th Congress was narrowly divided between the major political parties, with the Republican party holding a slight majority. The Senate was comprised of 51 Republicans, 48 Democrats, and 1 Independent and the House of Representatives was comprised of 229 Republicans, 205 Democrats, and 1 Independent [Ref. 27]. The political

control and make-up of the 108th Congress would impact the placement and track of NSPS through the legislative process.

The following sections will overview the legislative path followed by NSPS from DoD submittal to committee passage within both chambers of Congress. NSPS was simultaneously considered by the four committees with jurisdiction over Department of Defense civilian personnel management policies and programs, the House and Senate Armed Services Committees, the House Government Reform Committee, and the Senate Governmental Affairs Committee.

1. Submittal of NSPS

On April 10, 2003, the Bush Administration submitted the Defense Transformation Act. This proposal was issued from the General Counsel of the Department of Defense to the legislative heads of both chambers of Congress; the Speaker of the House of Representatives, Dennis Hastert, and the President of the Senate, Richard Cheney. The proposal was submitted with a letter from the DoD General Counsel, William J. Haynes II, stating that "the Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of this Bill for your consideration and the consideration of Congress" [Ref.5]. Within the Defense Transformation Act, the NSPS proposal requested the authority to create a new civilian human resource management system. NSPS would be considered and debated within the committees identified below.

2. House Armed Services Committee

The jurisdiction of the House Armed Services Committee (HASC) includes issues that pertain to "Common defense

generally. The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally pay, promotion, retirement, and other benefits and privileges of members of the armed forces" [Ref 28]. This committee is the House authorizing committee, responsible for the authorization of all programs and policies that affect the Department of Defense. Every fiscal year, a defense bill will be approved, authorizing defense programs and spending for military and DoD civilian personnel. The Defense Transformation Act and the impact of NSPS would be debated within the hearings conducted by the HASC.

On February 5, 2003, prior to official receipt of the NSPS proposal, the HASC held hearings on the defense authorization request for FY2004 [Ref. 29]. The HASC Total Force Subcommittee held hearings on March 13 to discuss total force transformation, to include NSPS [Ref. 30]. On April 4, the National Defense Authorization Act for FY2004, house bill H.R. 1588, was introduced by Committee Chairman Duncan Hunter and referred to the HASC for committee hearings and debate [Ref 31]. Full committee hearings were held on May 1 and 2 to address the Defense Transformation Act. Within these hearings, the NSPS was heavily debated among committee members and witnesses. After hearings concluded, HASC members conducted markup sessions on the NSPS proposal, including the original language of the Bush administration proposal, within the context of the full authorization bill. On May 16, H.R. 1588 was reported out of the HASC and placed on the Union Calendar for full House consideration.

3. House of Representatives Government Reform Committee

The jurisdiction of the House Government Reform Committee encompasses "Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement Government management and accounting measures generally. Reorganizations in the executive branch of Government" [Ref 32]. NSPS and its impact on the management of DoD civilian personnel also fell under the jurisdiction of this committee. This committee specifically addressed NSPS with the creation of H.R. 1836, the Civil Service and National Security Personnel Improvement Act [Ref. 33].

On April 29, 2003, H.R. 1836 was introduced by Committee Chairman Tom Davis and referred to the Committee on Government Reform. Hearings commenced on this date within the Subcommittee on Civil Service and Agency Organization [Ref. 34]. Due to the content of this bill and overlapping committee jurisdictions, H.R. 1836 was also referred to the House Armed Services Committee, the House Ways and Means Committee, and the House Sciences Committee [Ref. 33]. On May 6, House Government Reform Committee hearings were held. Subsequently, the Government Reform committee conducted mark-up of this bill on May 7. H.R. 1836 was reported to the House for full consideration on May 19. Floor consideration was delayed due to requested extensions by the HASC and Science Committees. All extensions for further considerations ended on July 25, with HASC, Science, and Ways and Means Committees being discharged from consideration of the bill [Ref. 33]. This multi-committee consideration of H.R. 1836 would ultimately

influence the HASC legislation pertaining to NSPS. H.R. 1836 was placed on the Union Calendar on July 25 for floor consideration.

4. Senate Armed Services Committee

The Senate Armed Service Committee (SASC) is responsible for "the common defense; the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force, generally"[Ref. 35]. Like its House counterpart (HASC), the SASC authorizes defense programs and policies for the upcoming fiscal year defense budget. On April 28, 2003, Senator John Warner introduced Senate bill S.927, the Defense Transformation for the 21st Century Act of 2003 [Ref. 36]. This bill was read twice and referred to the SASC. No further action was taken by the SASC on S.927. Subsequent debate on NSPS, while not extensive, occurred during the SASC hearings on the FY2004 defense authorization bill, S.1050.

Testimony referencing NSPS was held within the SASC prior to the receipt of the Defense Transformation Act on April 10, 2003. In February of 2003, SASC hearings were held to discuss the Bush Administration's defense budget request for FY2004 [Ref. 37]. On March 11, 2003, the SASC Personnel Subcommittee held hearings on military and civilian personnel programs found within S.1050 [Ref. 38]. NSPS was addressed within these hearings. Further, on March 31, NSPS was discussed among members at a hearing by the Emerging Threats and Capabilities Subcommittee of the SASC [Ref. 39]. Testimony regarding NSPS and the subsequent legislative response by the SASC was not as extensive as reported out of the HASC hearings and mark-up.

NSPS was not included within S.1050 when that bill was reported out of the SASC on May 13 and placed on the Senate Legislative Calendar for full Senate consideration [Ref. 40].

5. Senate Governmental Affairs Committee

The Committee on Governmental Affairs is responsible for proposed legislation relating to "Federal Civil Service ... Intergovernmental relations...Organization and reorganization of the Executive Branch of the Government" [Ref. 41]. Appropriately, NSPS was considered within this committee's jurisdiction. On May 12, 2003, a Federal Work Force and the District of Columbia Subcommittee hearing was held to discuss the merits of the proposed NSPS and its impact on the DoD civilian workforce [Ref. 42].

Senate bill S.1166, a bill specific to the establishment of a Department of Defense National Security Personnel System, was introduced by Senator Susan Collins on June 2, 2003 [Ref. 43]. Full committee hearings were held on June 4 and a mark-up session followed on June 17 [Ref. 44]. On September 5, S.1166 was reported out of the Governmental Affairs committee and placed on the Senate Legislative Calendar for consideration [Ref. 43].

F. SUMMARY

The U.S. legislative process is comprised of the legislative and political efforts of the executive branch and the numerous committees and subcommittees within the House of Representatives and the Senate. In order to handle enormous volumes of legislation in a given session

of Congress, the committee system has emerged as a leading force in the debate, drafting, and amending of legislation and policy.

During the 108th Congress, four committees considered and addressed NSPS: the House and Senate Armed Services Committees, the House Government Reform Committee, and the Senate Governmental Affairs Committee. Within each of these committees, legislation was passed and reported to the respective chamber for full consideration. Specifically, three bills left committee that would impact the creation of NSPS: H.R.1588, H.R.1836, and S.1166. The next chapter will detail the key issues that were debated during committee consideration of NSPS and their respective legislation.

THIS PAGE INTENTIONALLY LEFT BLANK

IV. KEY ISSUES DURING COMMITTEE CONSIDERATION

During the 108th Congress, NSPS was debated among the four committees with jurisdiction over Department of Defense civilian personnel policies and programs: the House and Senate Armed Services Committees, the House Government Reform Committee, and the Senate Governmental Affairs Committee. These committees and their subcommittees held numerous hearings to debate the merits of NSPS. Testimony was provided by senior leadership within the Department of Defense, the Office of Personnel Management, and the General Accounting Office. Debate followed, including protest from union representatives.

Throughout the hearings, key issues regarding NSPS and its impact on the DoD civilian workforce rose to the forefront. These key issues included matters of legislative processes and powers, and statutory language found within the NSPS proposal. Ultimately, the debate and deliberation of these issues would frame the final products submitted from each of the four committees. This chapter will explore the central issues surrounding NSPS that produced intense scrutiny and deliberation among various committee members. The following sections will explore the timing of the proposal, the request for authority, and the impact of NSPS on civilian personnel policy.

A. TIMING OF PROPOSAL

On April 10, 2003, NSPS was submitted to the 108th Congress during a recess in the legislative session. For certain representatives returning from spring recess, this was their first exposure to the NSPS proposal and its

impact on existing civilian rules and regulations found under U.S. Code, Title V. The timing of the NSPS submission also occurred during Operation Iraqi Freedom, a time when members of Congress wanted to appear in support of the war on terror, the DoD and U.S. troops in combat, and administration efforts to transform the DoD in the 21st century. Combined with a typical congressional session, the 108th Congress had a full legislative agenda to consider and deliberate.

Each congressional session reviews and enacts thousands of pages of legislation. The committee system expedites this process, but ultimately, the members must have the time and the staff to adequately review and pass judgment on a given piece of legislation. In the case of NSPS, certain members had serious reservations on the timing of the proposal and its rush to passage. These concerns fell roughly along political party lines. Specifically, the Democratic leadership of the committees expressed their concern over the "haste" at which the Bush Administration proposal was moving through the legislative process.

This issue of "haste" was expressed numerous times during the HASC hearing held on May 1. Representative Ike Skelton, (D-MO) stated in his opening remarks:

I have to mention, to begin with, my serious concern with the situation that's brought us to this hearing today, which was hastily scheduled ... But unlike, Mr. Chairman, the Goldwater-Nichols bill, this committee will not hold a series of hearings over many weeks, many months in bipartisan drafting. The Goldwater-Nichols bill was developed over a period of five

legislative years. And this committee will have less than three weeks to consider these sweeping changes [Ref. 45].

Rep. Skelton continued to press Deputy Secretary of Defense Paul Wolfowitz, asking "Did the civilian work force in the United States of America cause the young men and young women to do poorly on the battlefield? Of course not, so what is the rush to judgment? Why now?" [Ref. 45]. Mr. Wolfowitz testified that "we had over 100 meetings--that's 100 meetings with members and staff--on the various provisions. That helped to shape, in substantial measure, those things that we thought should be presented to the Congress ... The input that we received from the Congress has been invaluable in the development of the bill that is before you" [Ref. 45]. The Chairman of the HASC, Rep. Duncan Hunter (R-CA), assured all committee members that adequate time and explanation of the proposal would take place before the committee would proceed to mark-up and committee vote.

Similar language was used during a House Government Reform Committee during its consideration of the NSPS proposal. The Ranking Democratic Member, Rep. Henry Waxman (CA), stated his disapproval of the pace of legislative events: "Now that the Defense Department has marched through Iraq in three weeks, it intends to do the same with Congress" [Ref. 46]. The House Minority Whip, Rep. Steny Hoyer (D-MD), echoed this sentiment:

I am dismayed, however, by the manner in which a civil service reform of this magnitude is being rushed through the legislative process. It is shameful, in my opinion, that we will give no more than cursory consideration to legislation

that will strip more than a third of our federal civil employees [sic] their most basic worker protections [Ref. 46].

These views, held mainly by certain Democratic members, would be noted. However, these concerns would not slow down or derail committee consideration of NSPS. The Republican committee chairs ensured that debate and consideration of NSPS would take place, whether as a single, stand-alone piece of legislation or as part of the defense authorization bill. While the outcries of "haste" were more partisan in nature, both political parties would take issue with the scope of certain powers requested by the DoD in the NSPS proposal.

B. REQUEST FOR BROAD AUTHORITY

Within the NSPS proposal, the Department of Defense requested broad authority to establish a new human resource management system for the civilian DoD employees. The NSPS proposal contained two fundamental problems for many senators and representatives from both sides of the aisle: the erosion of constitutional legislative powers and lack of details on this new National Security Personnel System.

1. "Sole, Exclusive, and Unreviewable Discretion"

During committee hearings, congressional members had serious concerns over the language used in the DoD proposal. Four times within the NSPS proposal, the Secretary of Defense requested "sole", "exclusive", or "unreviewable" discretion when undertaking specified duties in the creation and modification of a new civilian management system [Ref. 5]. The NSPS proposal stated that the Secretary of Defense would work jointly with the Director of the Office of Personnel Management (OPM) to

create and modify NSPS. However, consolidation of authority within the DoD was again requested, as follows: "If the Secretary certifies that issuance or adjustment of a regulation, or the inclusion, exclusion, or modification of a particular provision therein, is essential to the national security, the Secretary may, subject to the direction of the President, waive the requirement in the preceding sentence that the regulation be issued jointly with the Director" [Ref. 5].

This clause appeared to grant full authority to the Secretary of Defense to establish NSPS, as the phrase "essential to national security" can be broadly interpreted in today's post-9/11 world. These requests for broad authority and unreviewable discretion were viewed by some members of Congress as an encroachment on their legislative responsibilities.

Under Article I, Section 8 of the U.S. Constitution, the U.S. Congress shall "make Rules for the Government and the Regulation of the land and naval Forces" [Ref. 17]. This delineated power allows Congress to issue, approve, and oversee policy and regulations pertaining to the Department of Defense. It can be interpreted that the language in the NSPS proposal usurped congressional authority and oversight on two levels. First, some members of Congress were concerned with the lack of congressional involvement with such sweeping reform of civilian personnel management. They believed that while the DoD can draft policy and request a new management system, the Congress should have been involved in the creation of the proposal and ultimately decide on the merits of such a proposal. Second, members believed the language used in the request

overstepped the DoD's authority on civilian legislative policy. The following excerpts from congressional testimony exemplify these concerns.

Rep. Skelton (D-MO) detailed his concerns with the NSPS proposal: "Most importantly, I worry about the abrogation of the congressional oversight and the ceding of authority to another coordinate branch of government in a way that diminishes the checks and balances contemplated by the separation of powers provided by the Constitution" [Ref. 45]. Rep. Neil Abercrombie (D-HI) shared this concern, stating "I am interested in this committee engaging in the kind of hearing and depth that are required when we make policy decisions because it may not be noticeable to everybody else in some quarters of government, but the Constitution says that we make the policy decisions. We're the ones that are elected" [Ref. 45].

Referring to the proposal's language "at the secretary's sole, exclusive, and unreviewable discretion", Rep. John Spratt (D-SC) observed that "this is a hell of a grant of authority" [Ref. 45]. These concerns were not limited to Democratic members. Chairman Duncan Hunter (R-CA), noted that, "So, acknowledging my good friend's concerns, and I think concerns that we all have that we retain our constitutional right and power to oversight in this area" [Ref. 45]. This sentiment was obviously bipartisan.

2. Approval of Authority, Not the System

Under the NSPS proposal, the Secretary of Defense requested the authority to establish, in conjunction with the Director of OPM, a new civilian personnel management

system. The text of the legislation does not detail the specifics of the system or how the system will operate. While the section-by-section analysis at the end of the proposal stated that the new HR management system would incorporate the "Best Practices" determined through analysis of the demonstration projects, the proposed statutory language did not guarantee this. The core of the NSPS proposal was the request for authority by the Secretary of Defense to establish and modify a civilian HR management system. This broad authority concerned many members of Congress.

During the May 1 HASC hearing, Rep. Jim Cooper (D-TN) stated "We are not being asked to approve a new system of civilian personnel. What we are being asked to do is to allow the Secretary of Defense to think up a new system so that when we are asked by the 600,000 or 700,000 civilian employees in the Defense Department what new system we approved in this legislation, we will not be able to answer that question" [Ref. 45]. Rep. C.A. Dutch Rupperberger (D-MD) echoed this concern during the May 6 House Government Reform Committee: "Rather than asking Congress to approve the details of a new civilian personnel system, you're asking for sweeping authority, in my opinion at least, to waive existing laws and create a new system by the administration" [Ref. 46].

While the Republican members were not as outspoken as their Democratic counterparts, their concerns were also expressed. If the NSPS proposal was signed into law as submitted by the Bush Administration, this broad authority would apply to current and future Secretaries of Defense, while possibly reducing congressional oversight and

limiting legislative authority pertaining to Department of Defense civilian employees.

Members of Congress were also concerned with the ability of the Defense Department to create a new human resource management system based on pay-for-performance. At the forefront of this debate was the DoD's readiness to institute and manage a new HR system. David Walker, Comptroller General of the United States and head of the General Accounting Office (GAO), testified on this issue before the May 1 HASC hearing. In his prepared statement, Mr. Walker described in theory the benefits of a pay-for-performance management system within not only the DoD, but other government agencies as well. He stressed, however, that adequate management structures, training, and personnel safeguards must be in place prior to instituting such a system. In reference to the DoD, Mr. Walker stated, "Unfortunately, based on GAO's past work, most existing federal performance appraisal systems, including a vast majority of DoD's systems, are not currently designed to support a meaningful performance-based pay system" [Ref. 47]. Mr. Walker provided safeguards for Congress to consider should they authorize any type of pay-for-performance management system for any government agency.

C. CHANGES TO EXISTING PERSONNEL POLICY

The Department of Defense requested greater authority to manage and shape the civilian workforce structure. Two specific issues were debated during committee consideration: recruitment of talent and shaping of the civilian workforce. A central goal of NSPS was to transform the DoD into a more attractive organization in

order to recruit talented individuals. This entailed rewarding performance and providing flexibility within the civilian management system. The following sections detail key points made during committee hearings.

1. Recruitment of Talent

The Department of Defense predicted a possible shortage of skilled civilian employees in the near future. The appeal of a career in the civil service was giving way to higher paying, high-tech jobs found in the private sector. During a June 4 hearing by the Senate Governmental Affairs Committee, Secretary of Defense Donald Rumsfeld testified, "This is a problem that will grow more acute every year as the baby-boomer generation employees start to retire ... it's estimated that up to 50% of the federal employees will be eligible to retire over the next five-plus years" [Ref. 44]. The DoD argued that the slow, cumbersome hiring practices currently in place were deterring highly-qualified individuals from entering the civil service. Sec. Rumsfeld continued to press this issue: "According to one institute, a recent survey of college students found that most would not consider a career in government because, among other things, the hiring process was Byzantine" [Ref. 44]. The DoD requested authority for on-the-spot hiring and further streamlining of the hiring process by repealing certain regulations found in Chapter 31, Title V. This request was similar to that approved in the Homeland Security Act [Ref. 42].

During the May 12 hearing by the Senate Governmental Affairs Committee, Under Secretary of Defense for Personnel and Readiness David Chu emphasized the need to reform DoD hiring practices so that "we are seen as one of the best,

not one of the worst by young Americans. It takes us, in the Department of Defense, an average of about 90 days to hire someone today. That's far too slow in competition with the private sector" [Ref. 42]. Members of Congress were concerned with the DoD request to waive most of Chapter 31, which provides protections against nepotism and cronyism, instead of streamlining current processes and authorities already afforded to the DOD.

2. Rehiring Expertise

The DoD requested the authority to rehire individuals collecting annuities to maintain expertise within the civilian workforce and offset the impact of the baby-boomer retirements over the next five years and beyond. Prior to the approval of NSPS, the DoD had limited approval from OPM under an emergency provision to re-employ retirees. The DoD sought to make this authority permanent and at the "sole, exclusive, and unreviewable discretion" of the Secretary of Defense [Ref. 5].

During the May 6 House Government Reform Committee, Rep. Jo Ann Davis (R-VA) questioned this request; "You're trying to waive getting OPM's approval. Is that correct?" [Ref. 46]. Deputy Secretary of Defense Wolfowitz stated, "Since September 11th, we've had a provision, an emergency provision that allows us to bring back civil service people to do specific tasks without sacrificing their retirement pay. And what we're seeking is a continuation of that provision" [Ref. 46]. Director of OPM, Kay Coles James, agreed with Deputy Secretary Wolfowitz, stating that they did grant that authority to the Department of Defense and felt confident that providing the authority on a permanent

basis would allow the DoD to run the program in a responsible manner and that the DoD would use it to attract retirees [Ref. 46].

Chairman Thomas Davis (R-VA) provided an interesting perspective, with which Deputy Secretary Wolfwitz agreed: "You have a lot of people retiring now, getting their full retirement and coming back as contractors, and really cleaning up. And that could actually save money if you could keep them on as federal employees" [Ref. 46]. However, Rep. Jo Ann Davis (R-VA) expressed concern over the impact on other government agencies if the DoD was granted this authority. She asked if employees would retire from other agencies, receive their entitled annuities, then get re-hired at the DoD for essentially an overall pay increase [Ref. 46]. The result could negatively impact the civilian workforce at other government agencies.

During the May 1 HASC hearing, debate also focused on the associated cost of this authority. Rep. Davis, when addressing Under Secretary Chu, expressed concern over this section of the NSPS proposal, as there were no set limits on the number of individuals that would be hired: "We're looking at bankrupting Social Security down the road anyways. And what will this do to us? We don't have any limits, we're not setting anything in this bill, you know. What is going to be the cost of this bill?" [Ref. 45]. Under Secretary Chu replied that the limit for re-employment personnel would be two years, with a maximum additional two years, and expressed a willingness to work on possible limits to the number of individuals hired under this proposal.

3. Shaping the Workforce

Discussion also surrounded the DoD's request for permanent VSIP and VERA authority for all civilian employees. This authority would provide DoD leadership flexibility to shape the workforce. During the May 12 hearing by the Senate Governmental Affairs Committee, Dr. Beth Ash, a senior economist for the RAND Corporation, testified for the DoD on the effectiveness of these programs:

By providing federal workers with an incentive to retire early or separate, it is hoped that managers will be able to hire or possibly outsource replacement workers with different skills and experience levels. A key question is whether these flexibility-related tools are effective. Our study finds that if used, these tools could be highly effective in changing the retirement behavior among Defense civilian employees [Ref. 42].

In 2003, the DoD had authority, with OPM oversight, to grant 9,000 early or voluntary separations. Sen. Voinovich (R-OH) questioned Dr. Ash on the effectiveness of this limited authority to reshape the workforce: "They've got these authorities that we granted them, 9,000, and they've started to utilize them. Is it working out as what we envisioned, that is providing early retirement, early separation? Are we reshaping, in your opinion?" [Ref. 42]. Ash replied that the system is working, but did not know if the system was allowing for force reshaping. Because there are over 700,000 DoD civilian personnel and the authority is only limited to certain commands, the flexibility required to reshape the entire workforce would be difficult to achieve with only 9,000 VERA or VSIP recipients.

D. INCLUSION OF EMPLOYEE REPRESENTATION

Congressional deliberation focused on personnel protections for DoD civilian employees. As DoD civilian management continued to evolve in the Cold War era, numerous reforms and protections were signed into law, ensuring employees due process and protection against prohibited practices. During committee hearings, questions arose about the level of collaboration with DoD employees and their union representatives over the development of the NSPS proposal and subsequent collaboration in the implementation of NSPS. Other concerns were heard over the waiving of certain provision in Title V dealing with employee rights for appeals and collective bargaining. This section will address committee hearings pertaining to the resolution of these personnel issues.

1. Outside Collaboration

Committee members expressed concern over the lack of congressional, union, or direct employee collaboration in the creation of the NSPS proposal. This produced further suspicion by some members that the DoD was overstepping its legal bounds in requesting broad, unlimited, and unchecked authority. With respect to congressional input, DoD officials stated that numerous staff meetings occurred on the upcoming release of the NSPS proposal. However, as previously mentioned, certain members of Congress felt left out of the drafting process. This sentiment was mainly limited to Democratic congressional members.

The issue of union collaboration in the development and drafting of the NSPS proposal was introduced during the May 1 House Armed Services Committee hearing. Rep. Skelton (D-MO) questioned Under Secretary Chu on this matter,

referencing a Washington Post article. This article reported that Mr. Walker, Comptroller General, criticized the DoD process for not consulting with union leadership. Under Secretary Chu noted that the unions were not part of the design team. He emphasized that "the demonstration projects were the basis of our conclusions here--in eight of the nine demonstrations currently in force, they included unionized employees. And so in that demonstration process, you do have consultation with unions" [Ref. 45].

Future union involvement was discussed during the May 6 hearing by the House Government Reform Committee. Rep. Danny Davis (D-IL) reiterated concern for the lack of union involvement and questioned Mrs. James, Director of OPM, on how future collaboration would occur. Union collaboration during the creation of NSPS would be essential in the effectiveness of the new HR system. Mrs. James replied that "it is my understanding that as they (DoD) move forward it is absolutely their intention to be inclusive, to involve stake holders, to have the appropriate people at the table as we move forward and develop the systems that are so necessary and so important for the civilian employees in the Department of Defense right now" [Ref. 46].

Earlier in this committee hearing, Deputy Secretary Wolfwitz also provided testimony on DoD's future collaboration with employees on the creation and establishment of NSPS: "As in the Department of Homeland Security, the meetings with National Consultation Rights would be asked to participate in the establishment of the policies and implement them in the personnel system. We value our employees" [Ref. 46].

2. National Bargaining

Under the NSPS proposal, the Secretary of Defense requested national bargaining authority with union representatives to streamline a cumbersome and redundant process among the many local unions representing over 700,000 DoD civilians. Members of Congress were concerned with the waiving of existing provisions and the broad and unchecked authority that was requested within the proposal. During the May 6 Government Reform Committee hearing, Rep. Waxman (D-CA) took issue with what he described as a "broad sledgehammer approach" in reform bargaining procedures by waiving Ch. 71 of Title V:

The problem I have with your bill is it does away with these important rights, and it specifically states that if the Secretary disagrees with any suggestion made by the union, the Secretary may do whatever he wants in the Secretary's sole and unreviewable discretion. So if you gave the Secretary sole and unreviewable discretion, that's not collective bargaining, it's a formulation that gives all the power to the secretary [Ref. 46].

Deputy Secretary Wolfwitz stated that this authority was granted by Congress to the Transportation Security Agency and is ultimately reviewable by Congress. Rep. Waxman believed the wording of the bill should reflect specific changes to grant national level bargaining, remain transparent for review, and not waive all the civilian employee protections found in Ch. 71.

The National President of the American Federation of Government Employees, Mr. Bobby Harnage, expressed similar concerns during the May 1 House Armed Services Committee Hearing. As the president of a national union that

represents over 200,000 DoD civilian employees, Mr. Harnage had serious reservations with the sweeping authorities requested in the NSPS proposal, stating that the "DoD's 'shock and awe' strategy, designed to stun and confuse its opponents, has been wrongly applied to the legislative arena" [Ref. 48]. In reference to collective bargaining, Mr. Harnage underscored that while the NSPS proposal "ostensibly ensures the right of employees to organize and bargain collectively," they are ultimately restricted to the "sole and exclusive discretion" of the Secretary of Defense [Ref. 48]. He strongly disagreed with the DoD's request to waive Chapter 71 protections to create a new HR system.

Under Secretary Chu expressed the difficulty involved in negotiating with over 1,300 local unions on matters that could be resolved more efficiently on the national level. The endgame, from the DoD's perspective, was to streamline existing procedures. Under Secretary Chu amplified this sentiment in response to Rep. Schrock's questioning: "To get these issues settled, we'd like to work with the national unions on those issues when they're going to apply to the entire work force. When it's a local question, like where the parking space is located or how you're going to come into work or something like that, that should be left to the local union" [Ref. 45]. Chairman Hunter (R-CA) believed that common ground could be reached when drafting authorizing legislation that would satisfy the request for national bargaining, while protecting civilian representation at the local union level. Under Secretary Chu agreed [Ref. 45].

E. SUMMARY

In order to maximize flexibility and shape a new workforce for the 21st century, the DoD requested broad authority, reduced oversight, and the waiving of existing regulations found in Title V. The DoD was attempting to increase flexibility and centralize control through a system rewarding personnel performance and achievement with a new pay banding system while preserving rules against prohibited practices. However, many members of Congress and union representation believed the DoD proposal was too broad in authority and was possibly overstepping constitutional bounds. While many Republican and Democrat members applauded the DoD efforts to modernize the outdated civilian management system, many had concerns with the consolidation of power and lack of oversight in the creation of NSPS.

These concerns and the subsequent debates within the various committee hearings shaped the resulting mark-up and passage of each respective committee bill relating to NSPS. The next chapter will analyze the committee bills encompassing NSPS, which were forwarded to the House and Senate for full consideration and approval. Ultimately, these bills were incorporated and approved as part of the conference agreement on the defense authorization bill.

THIS PAGE INTENTIONALLY LEFT BLANK

V. CONGRESSIONAL OUTCOMES

A. INTRODUCTION

During the committee hearings on NSPS, many key issues came to the forefront, including the requests from the Secretary of Defense to create NSPS and national level bargaining rights with union representatives. The debate and deliberation of these key issues impacted the subsequent mark-up sessions for each of the four committees with jurisdiction over civilian DoD personnel. The legislative products from each committee, differing on the resolution of the original NSPS proposal, were forwarded to the House and Senate floors for full consideration and votes. However, due to legislative and political influences, certain bills were not approved as stand-alone legislation, but rather, were incorporated into broader defense authorization legislation.

H.R. 1836 and S. 1166, while considered and approved by their respective committees, would not reach full House or Senate consideration. These bills would become the framework for the responses of the House and Senate Armed Services Committees on NSPS, as found in their respective defense authorization bills, H.R. 1588 and S. 1050. The House and Senate defense authorization bills were considered and approved, followed by a conference by members from both chambers to resolve differences in the two bills.

This chapter details the committee bills impacting the NSPS proposal and their legislative treatment after committee approval. It then analyzes the conference committee's final piece of legislation that would

ultimately address the original proposal by the Department of Defense, a new civilian human resource management system, the National Security Personnel System.

B. H.R. 1836

On May 19, 2003, the House Government Reform Committee reported H.R. 1836 to the House of Representatives for consideration. Titled the "Civil Service and National Security Personnel Improvement Act", this bill impacted existing federal civilian policies, to include the Department of Defense, the National Aeronautics and Space Administration, and the Securities and Exchange Commission [Ref. 49]. Within H.R. 1836, the House Government Reform Committee approved legislation that mirrored a large portion of the original NSPS proposal found in the Defense Transformation Act. Certain sections were modified to increase congressional oversight and ensure civilian DoD personnel protections. This bill provided the framework for inclusion of NSPS in the House defense authorization bill. The following sections will address the critical provisions of the bill reported out of the House Government Reform Committee.

1. Creation of NSPS

Section 9902 of H.R. 1836 granted the Secretary of Defense much of the authority originally requested in the NSPS proposal. While the system requirements for NSPS mandated flexibility and protection of DoD civilian employees against prohibited personnel practices, H.R. 1836 included the DoD request to waive the requirement to coordinate with OPM in matters "essential to national security" [Ref. 49]. This broad authority to remove OPM

oversight, with approval from the President, was granted to the DoD despite dissention among certain committee members.

H.R. 1836 did limit or specify authorities in establishing NSPS. All members of the House Government Reform Committee understood the importance of modernizing the existing DoD civilian personnel management structure by granting certain authorities and flexibilities to the Secretary of Defense. This would be balanced with delineated congressional powers and oversight over DoD civilian policies and programs. Statutory language regarding "sole", "exclusive", or "unreviewable" discretion was removed in H.R. 1836.

Committee members also included specific statutory safeguards for the implementation of NSPS. Originating during testimony from the Comptroller General, Mr. David M. Walker [Ref. 50], they included: (1) a link between the performance management system and the agency's strategic plan, (2) a fair, credible, and transparent employee performance appraisal system, (3) a means for ensuring employee involvement in the design and implementation of the system, and (4) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance [Ref. 49]. These safeguards provided a balance between granting "unchecked authority" to the DoD to create a new human resource management system and allowing congressional input and oversight. These safeguards were also incorporated in other committees' versions of this same legislation.

Another major modification of the original NSPS proposal focused on the authorized waivable and nonwaivable provisions found in Title V. The DoD requested authority

to waive many provisions of Title V to streamline the creation and execution of a new civilian human resource management system. Committee members debated the scope and intentions of waiving certain provisions that were originally created to protect civilian worker rights. H.R. 1836 included more nonwaivable Title V provisions than originally proposed by the DoD and delineated specific DoD authorities. This further limited DoD authority, while providing additional congressional oversight and safeguards.

Specifically, H.R. 1836 included these nonwaivable provisions: Subpart B (Employment and Retention), Chapter 41 (Training), Chapter 55 (Pay Administration), and Chapter 59 (Allowances) [Ref. 49]. Provisions within Title V have evolved over many years to protect and guarantee civilian DoD employee rights. Committee members were deeply concerned with cronyism and nepotism affecting worker performance and reward if the above provisions relating to hiring and pay were waived entirely. Members believed that the DoD could establish a new civilian management system within the confines of certain existing civilian rules, protections, and regulations. The House Government Reform committee did authorize the waiving of Chapters 71 (Labor Management), 75 (Adverse Actions), and 77 (Appeals) to facilitate the creation and implementation of NSPS [Ref. 51]. These authorizations would provide the DoD flexibility to streamline cumbersome bargaining and appeals processes.

2. Personnel Policy

The House Government Reform Committee included language in H.R. 1836 regarding personnel policy issues

similar to what was originally proposed in the DoD version of NSPS. The major distinction of H.R. 1836 was the deletion of Section 9903 from the original DoD proposal. This DoD request for authority to have funds available to hire individuals for national security missions abroad was not included in H.R. 1836 [Ref. 49]. Section 9903 of H.R. 1836, which addressed attracting highly qualified experts, was almost identical to the NSPS proposal with the exception of an inclusion limiting an employee's total annual compensation [Ref. 49].

Section 9904 was identical to the NSPS proposal, except for the deletion of the Secretary of Defense's "sole, exclusive, and unreviewable" discretion over the appointment of older Americans within the DoD [Ref. 49]. Within section 9905, which addressed special pay and benefits, the House Government Reform Committee changed the definition of individuals who would be authorized additional financial benefits to read "as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment" [Ref. 49]. This provided congressional justification for increased financial payments, while limiting DoD authority to grant such special pay and benefits. Section 9905, which addressed provisions relating to separation and retirement incentives, was identical to the request in the NSPS proposal.

3. Union Issues

H.R. 1836 included language similar to that in the DoD proposal regarding resolution of personnel issues with a

few modifications. Under the section including provisions to ensure collaboration with employee representatives in the creation of NSPS, H.R. 1836 removed all language referring to the Secretary's "sole and unreviewable discretion" [Ref. 49]. This section of the bill increased congressional oversight by extending the time allotted before the Secretary of Defense could implement unresolved recommendations from employee representatives: "but only after 30 days have elapsed after notifying Congress of the decision to implement the part or parts involved (as so modified, if applicable) [Ref. 49].

This section of H.R. 1836 also limited DoD authority by removing a subsection from the original NSPS proposal which limited outside oversight on internal procedures used to carry out employee collaboration: "Any procedures necessary to carry out this subsection shall be established as internal rules of department procedure which shall not be subject to review" [Ref. 5]. Language requesting broad, unchecked authority to bargain nationally was removed. The NSPS proposal requested that the Secretary "at his sole and exclusive discretion may bargain at an organizational level above the level of exclusive recognition." National level bargaining was granted within H.R. 1836; however, oversight and transparency of the process were ensured with the removal of "sole and exclusive discretion" [Ref. 49].

H.R. 1836 also limited DoD authority and increased outside oversight in the creation and implementation of appellate procedures within NSPS. H.R. 1836 established requirements for due process and a new appeals system to include an independent review panel, notification of appropriate committees within Congress, and consultation

with the Merit Systems Protection Board and the Equal Employment Opportunity Commission. This section was an attempt by House Government Reform Committee members to protect the rights of DoD civilian employees, while still granting the DoD authority to waive Ch. 77 to create a new appeals process. This independent review board would be "appointed by the President" and shall not include "the Secretary or the Deputy Secretary of Defense or any of their subordinates" [Ref. 49].

4. Impact on Existing Demonstration Projects

Within the NSPS section of H.R. 1836, Ch. 47 (Demonstration Projects) was included as a nonwaivable Title V provision. H.R. 1836 deleted the original DoD proposal to repeal conforming amendments in order to incorporate existing demonstration projects under NSPS. Committee members were concerned with the inclusion of demonstration projects under an unproven, untested NSPS. The demonstration projects would continue to operate independently under the DARPA authorities granted in previous defense authorizing legislation.

Committee members provided additional safeguards for existing demonstration projects within Title II, Department of Defense Civilian Personnel. Under Section 210, a pay-for-performance system may not be initiated under Ch. 47 (Demonstration Projects) of Title V, unless it contains the safeguards originally proposed by the Comptroller General, David M. Walker [Ref. 49]. Committee members wanted to ensure that demonstration projects properly managed DoD civilian personnel operating under its authorities and that they remained transparent for outside review and congressional oversight.

H.R. 1836 granted a majority of the authorities requested by the Secretary of Defense within the original NSPS proposal, including the main request to create and implement a new civilian employee management system. Committee members included a majority of the original provisions from the DoD proposal. Members also limited the authority of the Secretary of Defense by increasing congressional oversight of NSPS. The Senate Governmental Affairs Committee legislation, S. 1166, would further reduce DoD authority over NSPS, increase congressional oversight, and provided additional civilian worker protections.

C. S. 1166

On September 5, 2003, the Senate Governmental Affairs Committee reported S. 1166 for full Senate consideration [Ref. 52]. Titled the "National Security Personnel System Act", this bill went to greater lengths than its House counterpart, H.R. 1836, to increase congressional oversight and limit the DoD's request for broad authority. Committee members included provisions defining new system requirements and civilian personnel protections. S. 1166 became the foundation for the overall Senate position on NSPS during the conference on the defense authorization bill. The following section highlights modifications made within S. 1166 to the original NSPS proposal.

1. Creation of NSPS

Section 9902 of S. 1166 more clearly defined the establishment of a new human resource management system. Many provisions within this section were the result of testimony before the Senate Governmental Affairs Committee.

S. 1166 prescribed the joint establishment of NSPS between the Secretary of Defense and the Director of OPM. Any reference to waiving this requirement due to "national security" was removed [Ref. 52].

Similar to H.R. 1836, S. 1166 included additional nonwaivable provisions found within Title V: Subpart B (Employment and Retention), Chapter 41 (Training), Chapter 55 (Pay Administration), and Chapter 59 (Allowances), and Chapter 71 (Labor Management Relations) [Ref. 52]. Committee members were concerned with waiving numerous provisions in their entirety that were originally created to protect federal workers. S.1166 also included the safeguards referenced by the Comptroller General during the Senate Governmental Affairs Committee hearings on NSPS. Almost identical to the safeguards within H.R. 1836, the safeguards within S. 1166 required that a performance management system include "a fair, credible, and equitable system that results in meaningful distinctions in individual employee performance" and "a link between the performance management system and the agency's strategic plan" [Ref. 52].

S. 1166 contained a unique provision that delineated the basic framework of NSPS and provided committee members with a more structured civilian personnel system to approve and oversee. This section was included as a direct response to certain committee members charges that they were voting on a bill that granted authority to create NSPS and contained minimal guarantees concerning the actual system itself. This provision required that DoD officials "group employees into pay bands ... establish a performance rating process ... ensure that performance objectives are

established for individual position assignments and position responsibilities" [Ref. 50]. This section also required that any DoD civilian employee under NSPS shall be compensated as if they were still operating under the General Schedule (GS) pay system through 2008 [Ref. 52].

S. 1166 also prescribed a phase-in of DoD civilian employees into NSPS: "up to 120,000 civilian employees of the Department of Defense in fiscal year 2004; up to 240,000 civilian employees ... in fiscal year 2005 ... more than 240,000 civilian employees in a fiscal year after fiscal year 2005" if adequate system safeguards and pay formulas are in place [Ref. 52]. This inclusion provided a legislative safeguard ensuring the DoD was prepared for the enrollment of civilian employees into a new human resources management system.

2. Personnel Policy

Regarding issues of personnel policy, S. 1166 included language very similar to that found within the NSPS proposal. However, as with H.R. 1836, this bill limited DoD's original request for broad authority and increased congressional control. Section 9903 included the provision for contracting for personal services, which had been removed from the House bill. Under the Senate committee's version, the Secretary may hire individuals for services outside the United States. However, the original request for specific funds to carry out this authority was not granted. Further, this section removed the original NSPS request for the Secretary to have "sole, exclusive, and unreviewable discretion" [Ref. 52].

Section 9904, which addressed attracting highly qualified experts, contained many of the provisions found

within the NSPS proposal, but limited the authority to 300 individuals [Ref. 52]. Section 9905 of the NSPS proposal, covering the employment of older Americans, was removed from this Senate committee bill. Section 9905 within S. 1166 authorized special pay and benefits to those employees determined by the Secretary "to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements" [Ref. 52].

S. 1166 also authorized the Secretary to establish a program offering separation and retirement incentives to improve the management of the DoD civilian workforce. This section limited the total number of individuals authorized under this program to 10,000 in any given year, not to include personnel affected by base closures or realignment [Ref. 52]. This section also required the DoD to submit a report each fiscal year listing those employees who received separation and retirement incentives as a result of base closures or realignment. This report would be issued to the Senate and House Armed Services Committees, the Senate Governmental Affairs Committee, and the House Government Reform Committee [Ref. 52].

3. Union Issues

S. 1166 contained provisions similar to those found in the original NSPS proposal regarding collaboration with DoD civilian employee representatives. The Secretary's "sole and unreviewable" discretion to implement any recommendations if further consultation is deemed unlikely to resolve any disputes was removed from this section [Ref. 52]. Additionally, a clause was included that allowed the Secretary to implement recommendations on any unresolved issues, but not prior to 30 days after notifying Congress

[Ref. 52]. This was another attempt by the committee to increase oversight and ensure DoD civilian employee protections.

Regarding national level bargaining, S. 1166 removed the Secretary's "sole and exclusive discretion" when bargaining at the national level [Ref. 52]. Further, this section stipulated that the Secretary may bargain with a labor organization at an organizational level above the level of exclusive recognition only "For issues impacting more than 1 bargaining unit" [Ref. 52]. It also removed the original clause stating that any national bargaining "except as otherwise specified in this chapter, not be subject to review or to statutory third-party dispute resolution procedures outside the Department of Defense" [Ref. 52]. Third-party review external to the DoD would be authorized and protected.

S. 1166 prescribed in greater detail new provisions relating to appellate procedures. This section authorized the Secretary to "establish an appeals process that provides...fair treatment in any appeals" [Ref. 52]. It also expanded legal protections afforded to employees that are adversely affected under the new appeals process, to include "the right to petition the Merit Systems Protection Board for review of that decision" [Ref. 52].

The last section of S. 1166 included amendments regarding external third-party review of labor-management disputes, as located in Ch. 71 of Title V. The amendments establish time limits and criteria for action by the Federal Labor Relations Authority, external to the Department of Defense [Ref. 52]. This section was designed

to streamline the existing appeals process external to the DoD, while still incorporating many of the safeguards found within Ch. 71.

4. Impact on Existing Demonstration Projects

Within section 9902 of S. 1166, committee members addressed the impact of NSPS on existing demonstration projects. The original NSPS proposal repealed existing laws to incorporate the demonstration projects and their civilian employees under the newly created NSPS. S. 1166 removed these repeals, listing the ten demonstration projects that would remain independent from NSPS. These demonstration projects would continue developing and improving their own human resource management models under the authority of the Defense Advanced Research Projects Agency and the military departments for scientists and engineers.

D. NSPS GOES TO CONFERENCE

The original NSPS proposal was submitted late within the defense authorization process during the first session of the 108th Congress. As previously discussed, many members of Congress had reservations concerning the timing and perceived "rush" to pass this broad DoD civilian personnel reform. Within the committee system, a majority of the deliberation on NSPS occurred in the House Government Reform Committee and the Senate Governmental Affairs Committee during hearings, mark-up, and approval. The committee reported bills, H.R. 1836 and S. 1166, that would provide the foundation for NSPS within the fiscal year 2004 defense authorization legislation [Ref. 53]. However, the timing of submission by the DoD and the pace

at which NSPS was deliberated and reported out of committee ultimately impacted their inclusion in the House and Senate defense authorization bills.

1. House Action

The House Government Reform Committee promptly addressed the NSPS proposal. Upon completing committee consideration and mark-up on May 7 [Ref. 49], H.R. 1836 was forwarded to the HASC for consideration and inclusion within the context of the defense authorization bill , H.R. 1588 [Ref. 53]. The NSPS legislation approved within H.R. 1588 was almost identical to that approved in H.R. 1836. On May 22, H.R. 1588 was approved in the House by a vote of 361-68 and forwarded to the Senate for its approval [Ref. 54]. The last legislative action on H.R. 1836 took place on July 25, when it was placed on the Union Calendar for full House consideration [Ref. 49]. This never occurred as the legislation had already been incorporated and voted upon in H.R. 1588.

2. Senate Action

The Senate Governmental Affairs Committee initiated more extensive modifications to the original NSPS proposal, and was unable to complete deliberation on S. 1166 prior to the passage of the Senate defense authorization bill, S. 1050 [Ref. 53]. Consequently, there was no inclusion of the NSPS proposal within S. 1050 when it was reported out of the SASC on May 13 [Ref. 55] and passed on May 22 by a vote of 98-1 [Ref. 56]. Upon receipt of H.R. 1588, the Senate struck all of the text of H.R. 1588 and amended the bill with S. 1050. On June 4, the Senate passed the modified H.R. 1588 by voice vote and notified the House on June 5.

With the defense authorization bills passed by each chamber in place, a conference committee was convened to resolve differences between them, including the issue of NSPS. On September 9, S. 1166 was finally placed on the Senate Legislative Calendar for full Senate consideration [Ref. 52]. Language within S. 1166 became the framework for the Senate's position on NSPS during conference and was never voted upon by the Senate.

3. Conference Committee

On July 16, the House agreed to a conference committee to resolve differences between the two defense authorization bills [Ref. 57]. The Senate and the House of Representatives appointed conferees with expertise from the committees of jurisdiction over H.R. 1588. Specifically relating to a resolution of the NSPS legislation, members were appointed from the Senate and House Armed Services Committees, the Senate Governmental Affairs Committee, and the House Government Reform Committee. Conferees included Sen. Warner, Sen. McCain, Sen. Collins, Sen. Nelson, Rep. Hunter, Rep. Skelton, Rep. Davis, and Rep. J. Davis [Ref. 57]. On November 7, the conference committee completed deliberation and filed conference report H.Rept. 108-354 to accompany H.R. 1588 [Ref. 57]. Within this report, differences were resolved regarding the creation and implementation of NSPS. The conference report was forwarded to the Senate and House of Representatives for full consideration and approval.

E. THE ENDGAME: H.R. 1588 AND NSPS

On November 7, the House of Representatives approved the conference agreement, by a vote of 362-40 [Ref. 57].

On November 12, the Senate also approved the conference report, by a vote of 95-3 [Ref. 57] and forwarded it to the President for his approval. The NSPS resolution within the conference bill included legislation from the original Bush Administration proposal and legislation from committee bills H.R. 1588, H.R. 1836, and S. 1166. The "endgame" of NSPS granted the DoD authority to create and implement a new human resource management system for DoD civilian personnel, with additional congressional input and guidelines. The conferees balanced the original request for authority and flexibility with DoD employees' rights and protections. The following sections will analyze the "endgame" of NSPS as agreed upon by both chambers of Congress.

1. Creation of NSPS

While approving the creation of NSPS, Congress incorporated provisions to limit the original DoD request for broad authority and increase congressional oversight. Section 9902 of the conference report contained provisions similar to those found in S. 1166. Under this section, NSPS would be jointly created and implemented by the Secretary of Defense and the Director of OPM. Conferees removed the provision granting the Secretary of Defense authority to waive OPM involvement in the interest of "national security."

Nonwaivable provisions of Title V in the conference report were similar to those included in H.R. 1836 and S. 1166. H.R. 1588 included the original NSPS Title V provisions, with these additional provisions: Subpart B (Employment and Retention), Chapter 41 (Training), Chapter 59 (Allowances), and Chapter 71 (Labor Management

Relations) [Ref. 57]. Pay administration provisions were also included as a non-waivable provision, with the exception of the section relating to premium pay. Conferees agreed that waiving these provisions was unnecessary and a possible danger to worker rights and protections. The DoD would have to operate within existing laws and flexibilities of the conference report to create and implement NSPS. The conference agreement also included the performance management safeguards recommended by the Comptroller General, Mr. Walker [Ref. 57].

Similar to provisions found in S. 1166, Section 9902 also included a provision requiring that the rate of compensation for DoD civilian employees shall be in the same rate and proportion as those for the uniformed services [Ref. 57]. Further, this section stipulated that through fiscal year 2008, all DoD employees operating under NSPS would be compensated at an amount no less than had they not been converted to NSPS [Ref. 57]. Employee pay benefits would be protected until NSPS and an adequate pay-for-performance system were in place. This section also required that "regulations implementing the National Security Personnel System shall provide a formula for calculating the overall amount to be allocated for fiscal years after fiscal year 2008" [Ref. 57].

H.R. 1588 called for a phase-in of DoD civilian employees into NSPS to ensure civilian employee protection and DoD preparedness. Conferees agreed that the Secretary of Defense "may apply the National Security Personnel System to an organizational or functional unit that includes up to 300,000 civilian employees of the Department of Defense" without having to determine if system

requirements for a new performance management system are in place [Ref. 57]. For inclusions greater than 300,000 personnel, the Secretary must determine if the system requirements for a new performance management system meet the prescribed criteria [Ref. 57].

2. Personnel Policy

Personnel policy legislation within conference bill H.R. 1588 included language from the original NSPS proposal, H.R. 1588, H.R. 1836, and S. 1166. Within each of the bills, certain sections were removed from the original proposal. The conference report also removed key sections regarding changes to personnel policy. Similar to H.R. 1836, conference bill H.R. 1588 deleted the original Section 9903, which addressed contracting for personnel services. Within the conference bill, Section 9903 provided language on attracting highly qualified experts for employment in DoD. This section contained similar language as found in the original NSPS proposal, yet provided congressional input by limiting the total number of experts appointed and retained to 2,500 at any time [Ref. 57]. This provided the DoD flexibility to hire talented individuals for national security missions, while controlling the fiscal impact of such a program by limiting the total number of personnel hired under this program.

Section 9904 of the conference bill incorporated the exact legislation found in S. 1166 relating to special pay and benefits for DoD employees outside the United States. Conferees agreed that the Secretary of Defense may provide special allowances and benefits to those employees "in support of Department of Defense activities abroad hazardous to life or health or so specialized because of

security requirements as to be clearly distinguishable from normal Government employment" [Ref. 57]. This authority provided the Secretary of Defense flexibility to reward the increasing sacrifices of DoD employees in the post-9/11 environment.

Also similar to S. 1166, conference bill H.R. 1588 did not respond to the original DoD request for authority to hire older Americans. This section was heavily debated during committee hearings due to the possible impact on the budget and other government agencies. Without detailed information on associated cost, the number of individuals eligible, and possible job losses at other government agencies, conferees were unable to reach a resolution and removed this section from NSPS legislation.

An agreement was reached regarding the number of DoD employees authorized to participate in a permanent separation and retirement incentives program. The original NSPS proposal and H.R. 1836 provided for the establishment of such a program, but did not address the number of DoD civilian employees who would be eligible to receive VSIP or VERA. The goal of such a program was to provide the DoD with permanent flexibility to restructure the workforce. Under conference bill H.R. 1588, the Secretary of Defense may not authorize payment of voluntary separation incentive pay to those eligible for early retirement to more than 25,000 employees in any fiscal year [Ref. 57]. This provision granted the DoD permanent authority and increased the total number of employees eligible for such a program.

3. Union Policy

Conference bill H.R. 1588 incorporated the provisions in S. 1166, ensuring collaboration with DoD employee

representatives. Conferees ensured that employee representatives would be involved in all planning and implementation stages. A provision was included that authorized the Secretary to implement any modifications or recommendations not agreed upon by union representatives, but only after "30 days have elapsed after notifying Congress" [Ref. 57]. As in S. 1166, the Secretary of Defense's broad request for "sole and unreviewable discretion" regarding the continuation of consultation with employee representatives and subsequent implementation of any recommendations was deleted. These modifications to the original NSPS proposal increased congressional oversight and involvement in their areas of jurisdiction over DoD civilian employee policies and programs.

Regarding national level bargaining, conferees ensured continued civilian participation and protection by modifying the original NSPS proposal. Similar to H.R. 1836 and S. 1166, the Secretary of Defense was granted authority to bargain with employee representatives at the national level. However, language requesting "sole and exclusive discretion" to accomplish this was removed. Also, H.R. 1588 stipulated that any bargaining agreement shall be "subject to review by an independent third party" as established under a new labor relations system [Ref. 57].

H.R. 1588 included new provisions impacting the creation of a new labor relations system. Conferees wrote provisions similar to those prescribed for collaboration with employee representatives in the creation of NSPS. The conference agreement stated that the Secretary of Defense and the Director of OPM shall "afford employee representatives and management the opportunity to have

meaningful discussions concerning the development of the new system" [Ref. 57]. Conferees granted this authority "to establish, implement, and adjust the labor relations system" for a six year period after the date of enactment of the conference bill, unless otherwise extended in the future [Ref. 57] This provision incorporated protocol and timelines with regard to notification of Congress and implementation similar to those found in the section regarding national collaboration with employee representatives.

Conferees also increased congressional involvement in DoD's request for reforming cumbersome appellate procedures. Expanding upon language approved in S. 1166, H.R. 1588 authorized the Secretary of Defense to establish an appeals process for DoD employees enrolled in NSPS that provides "fair treatment in any appeals that they bring in decisions relating to their employment" [Ref. 57]. Any new regulations for an appeals system must "afford the protections of due process and toward that end, be required to consult the Merit Systems Protection Board" [Ref. 57]. Further, conferees indicated how the appeals process would coordinate with the rights and protections of existing employees.

4. Impact on Existing Demonstration Projects

The original NSPS proposal called for repeal of current laws, incorporating the existing demonstration projects under NSPS. H.R. 1836 did not include any such provisions. S. 1166 restricted their inclusions under NSPS. Conference bill H.R. 1588 resolved this issue by establishing a timeline and criteria for their eventual inclusion under NSPS: "The National Security Personnel

System shall not apply with respect to a laboratory ... before October 1, 2008, and shall not apply on or after October 1, 2008, only to the extent that the Secretary determines that the flexibilities provided by the National Security Personnel System are greater than the flexibilities provided to those laboratories" [Ref. 57].

While the "Best Practices" initiatives would be incorporated into NSPS, Congress was concerned with the readiness of DoD supervisors, managers, and personnel to operate under a performance-driven pay and promotion system. A transition period would be required to provide sufficient time for implementation and modifications to the design management model. Leaving the demonstration projects under DARPA authority until October 1, 2008 protected the innovative and essential research laboratories from pre-mature inclusion into an untested NSPS.

F. SUMMARY

On November 24, President Bush signed into law H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004 [Ref. 57]. After years of development and months of congressional deliberation, the authority to create and implement a new civilian human resource management system, the National Security Personnel System, was granted to the DoD. Many of the original DoD requests to modernize a cumbersome, outdated management system were approved. Conferees debated and approved specific provisions, while retaining their constitutional oversight in matters of national defense, specifically the management of DoD civilian personnel. H.R. 1588 granted a majority of the

authorities found in the original NSPS proposal and guaranteed continued congressional oversight over NSPS and enrolled DoD civilian personnel for future members of Congress.

THIS PAGE INTENTIONALLY LEFT BLANK

VI. SUMMARY AND CONCLUSIONS

A. SUMMARY

During the past two decades, the Department of Defense has undertaken a research and development effort to modernize its civilian personnel management. In April 2003, the DoD submitted the results to the 108th Congress as the Defense Transformation Act. The proposed National Security Personnel System included requests by the DoD for new authorities and flexibilities to streamline and modernize antiquated civilian personnel management systems to maximize the effectiveness of the civilian workforce in the post-9/11 world. On November 24, 2003, after months of deliberation within Congress, President Bush signed NSPS into law.

This thesis began with an analysis of the original NSPS proposal. The proposal included DoD requests for broad authority to create and implement NSPS. To accomplish this, the DoD requested increased flexibilities, oversight, and the authority to waive existing civilian personnel protections within Title V of the U.S. Code. Chapter III reviewed the current U.S. legislative process, to include congressional powers, responsibilities, and jurisdictions. Legislation pertaining to NSPS originated within the committees with jurisdiction over DoD civilian personnel and programs.

Chapter IV detailed the debate over NSPS within these committees. Each committee approved legislation that impacted the creation and implementation of NSPS. Following the analysis of committee hearings and deliberation, Chapter V examined legislative outputs and

their impact on the original NSPS proposal. This chapter concluded by reviewing the final legislation on of NSPS, as found in the National Defense Authorization Act for FY2004 by the 108th Congress and President Bush.

The following section provides conclusions reached during research of the NSPS proposal, the congressional response to the NSPS proposal, and the final NSPS legislation approved within H.R. 1588. Following this discussion, recommendations for future study are provided.

B. CONCLUSIONS

This thesis focused on key research questions to systematically examine the DoD request to create NSPS and the subsequent response by the 108th Congress. These questions provided the structure for researching and presenting data on the original NSPS proposal, the response of the 108th Congress to the NSPS proposal, and the final NSPS legislation signed into law by President Bush. The following sections provide conclusions based on these research questions.

1. The Bush Administration's NSPS Proposal

In April 2003, the Bush Administration submitted the NSPS proposal to the 108th Congress for consideration and approval. This proposal requested authorities to modernize an antiquated DoD civilian personnel management system. At the heart of this proposal was the request for authority to waive existing provisions in Title V. The statutory language in the proposal did not provide details on the new system. DoD officials gave testimony indicating that the system would incorporate the findings of the "Best

Practices Initiative" which included managing civilian personnel under a pay-for-performance system.

The Secretary of Defense also requested broad authority; four times within the text of the proposal, the Secretary requested "sole", "exclusive", and "unreviewable" discretion to create and implement components of NSPS [Ref. 5]. The overall language of the proposal requested broad authority, raising concerns about the ability of Congress to conduct oversight. Members of the 108th Congress would address these issues during hearings and within their legislation.

The NSPS proposal did request specific authorities to initiate, or make permanent, programs to modernize and shape the civilian workforce. These requests included: 1) creating a new appeals process for civilian employees, 2) national level bargaining authority for the Secretary of Defense when negotiating or collaborating with union representatives, 3) making funds available for contracting personnel outside the U.S., 4) creating a program to hire highly qualified experts, 5) employing older Americans receiving retirement annuities without requiring the employee to sacrifice part of that annuity, and 6) making permanent VSIP/VERA authority to reshape the civilian workforce [Ref. 5].

The main purpose for these requests was to create a flexible, attractive civilian management system that rewards performance, while reducing cumbersome management practices. The NSPS proposal encompassed over two decades of experience with the demonstration projects and DoD internal reviews of current civilian management practices. The NSPS proposal was a continuation of policies and

studies supported by both Democratic and Republican controlled Congresses and Administrations. The Bush Administration and the Department of Defense believed the NSPS proposal maintained an appropriate balance between protecting civilian employee rights and modernizing outdated management practices. They believed transformation within the civilian ranks was necessary to successfully conduct national security missions while prosecuting the War on Terror and operating in the post-9/11 world.

2. The Response of the 108th Congress to NSPS

The congressional response to the NSPS proposal included intense deliberation among committee members from both political parties. Upon receipt of the NSPS proposal, four committees with jurisdiction conducted hearings to debate the merit of the DoD's request: the House and Senate Armed Services Committees, the House Government Reform Committee, and the Senate Governmental Affairs Committee. These hearings provided excellent insight into the proposed legislation, the influences of the legislative process, and the impact of political parties. The House Armed Services Committee, House Government Reform Committee, and Senate Governmental Affairs Committee each provided differing legislation that would ultimately shape the final outcome of NSPS, as found with H.R. 1588. The Senate Armed Services Committee did not address NSPS within their fiscal year defense authorization bill. Extensive data was compiled from these committee hearings to define the scope of issues being debated within the NSPS proposal.

Three major factors ultimately influenced the final congressional response to NSPS as found in H.R. 1588: 1)

constitutional responsibilities, 2) political influences, and 3) timing of submission. The DoD proposal requested broad authorities to create and implement a new human resource management system. Many members of Congress argued that the DoD was overstepping constitutional bounds in drafting and implementing such a program with minimal input from Congress. Members of Congress have a constitutional responsibility to oversee policies and programs affecting DoD. The NSPS proposal requested broad authority to implement a personnel management system without specifying in advance its actual design. The 108th Congress addressed their oversight role by removing all references to the Secretary of Defense's "sole", "exclusive", and "unreviewable" discretion in the conference bill and included statutory language that provided more specifics and requirements for NSPS design.

Political influences shaped the final NSPS legislation and ensured its inclusion within the defense authorization bill. NSPS was submitted to a Republican controlled Congress from a Republican administration, ensuring that at a minimum, it would be placed on the legislative calendar for consideration. Transforming the Department of Defense was a major goal of the Bush administration. Republican congressional leadership ensured that NSPS would be debated and voted upon by the 108th Congress. This is not to minimize opinions held by both political parties about the perceived merits of NSPS. Many members from both political parties were displeased with the lack of involvement in drafting the NSPS proposal or the timing of submission. Many believed the request was too broad, impacted essential

civilian personnel policies and protections, and was being rushed through Congress.

Democratic members were more vocal than their Republican counterparts due to the impact of NSPS on union employees, a traditionally large and faithful constituency for the Democratic Party. Union representatives adamantly opposed the broad requests for authority and the waiving of entire provisions in Title V. Their concerns were echoed through many media sources and clearly registered with the Democratic congressional leadership. Ultimately, the possible negative impact on civilian worker rights and protections became the major influencing factor shaping the NSPS legislation. Transformation was needed, but not at the cost of waiving worker rights and protections that have evolved over the past century.

The timing of submission during April 2003 also influenced the 108th Congress's response to NSPS. The effects of a nation at war provided political capital for the Republican leadership of Congress to ensure NSPS would be considered. In the post-9/11 world, the U.S. military has enjoyed an overall increase in public support. The War on Terror, to include a successful campaign against the Taliban in Afghanistan, highlighted the importance of a strong, modern, and agile military machine. Contributions by the civilian workforce are an integral part of the overall success of the U.S. military. This pro-military surge was strengthened by the initial successes of Operation Iraqi Freedom. An 87 billion dollar supplemental bill to fund the reconstruction of Iraq was also being debated during the summer of 2003. Members from both political parties wanted to be seen as supportive of our

troops and the civilian support personnel operating at home and around the world. The timing of the bill and defense transformation, combined with world events, provided Republican leaders the political capital to move NSPS through the committee system and ensure inclusion within the defense authorization legislation.

3. The Final Outcome: NSPS and H.R. 1588

On November 24, NSPS was signed into law as part of H.R. 1588, the National Defense Authorization Act for FY2004. After over two decades of research and development within the demonstration projects, the DoD was granted the authority to create and implement NSPS. Overall, many of the original requests were granted to the senior DoD leadership. Members of the 108th Congress applauded the DoD's effort to modernize current civilian management practices. They balanced this necessity to transform against their constitutional responsibilities and the rights and protections of civilian DoD employees. The "endgame" included a majority of the original DoD requests.

Under NSPS, the Secretary of Defense, in conjunction with the Director of the Office of Personnel Management, is authorized to create, implement, and modify a new civilian human resource management system. Congress included provisions that require NSPS to provide "adherence to merit principles ... a fair, credible, and transparent employee performance appraisal system ... effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance" [Ref. 57]. Congress incorporated additional nonwaivable provisions under Title V to secure civilian worker protections.

Congress granted the Secretary of Defense the following authorities under NSPS: 1) national level bargaining with union representatives, 2) creation of a new appeals process, 3) a permanent VSIP/VERA program, 4) a program designed to attract highly qualified experts, and 5) provide funds for DoD workers outside the United States [Ref. 57]. Congress also required a phase-in of DoD civilian personnel into NSPS and authorized the continuation of the demonstration projects under DARPA authority. Both of these provisions were included to prevent premature inclusion of civilian personnel into an untested NSPS. Congress did not approve DoD's request for authority to establish funds to contract for non-DoD personnel services outside the U.S. and the hiring of older Americans receiving annuities. This thesis concludes that these requests were not approved due to the lack of specifics on the requested programs and the unknown fiscal impact on the defense budget.

C. RECOMMENDATIONS FOR FUTURE STUDIES

The importance of transforming the DoD civilian workforce cannot be overstated. The United States maintains the most powerful, most technologically advanced military in history. Our leaders and lawmakers must continue to provide the tools and resources necessary to continue transforming the military. This includes modernizing the civilian support structures essential to complete U.S. national security missions. This was the main goal of the Bush Administration when including the NSPS proposal within the Defense Transformation Act.

Each component of NSPS and the associated authorities granted to the Secretary of Defense will have far-reaching consequences within the DoD and other government agencies. A November 24 briefing paper on the approval of NSPS detailed the creation of NSPS and called for phased implementation over the next two years [Ref. 58]. The DoD modeled certain aspects of NSPS after authorities granted to the newly-founded Department of Homeland Security. This thesis concludes that other government agencies are likely to use NSPS as a model for transforming their respective agencies to remain competitive and effective in the 21st century. Further research on the impact of NSPS on DoD national security missions and other government agencies is recommended.

As of May 2004, NSPS is still being intensely debated within Congress, the Department of Defense, the Office of Personnel Management, and union organizations. Issues are being raised over the accelerated pace of DoD implementation of NSPS and the lack of collaboration with employee representatives. During a March 2 Senate Armed Services Committee hearing, Sen. Carl Levin (D-MI) stated that the DoD "got off on the wrong foot" in the creation of NSPS [Ref. 59]. Sen. John Warner, (R-VA), reiterated that Congress was "going to be a constant oversight" as the DoD moved forward with the creation of NSPS [Ref. 59]. On March 9, the Director of OPM, Kay Cole James sent a letter to the Secretary of Defense stating that "the department's personnel system tramples veterans' rights, offers a bad model for changing federal pay and represents a strategic blunder in the attempt to modernize the federal civil service government wide" [Ref. 60].

In response to these charges, the DoD appointed the Secretary of the Navy, Gordon England, to head the design and implementation of NSPS and increase collaboration with OPM and union representatives. Secretary England was selected due to his business experience negotiating with union representatives and his time serving as the Deputy Secretary of Homeland Security [Ref. 59]. Navy civilian personnel were originally designated to participate in the first phase of implementation of NSPS exclusively. The DoD decided to incorporate a greater variety of occupations and departments to adequately test NSPS. On 15 April, 2004, the DoD published a employee presentation on NSPS which promised "full partnership with OPM" and the DoD goals of "mission-first but also employee-centric with broad collaboration [Ref. 61]. Six focus teams are currently working together to modify a personnel management system that will begin the first phase of implementation in July 2005. [Ref. 61].

The approval of NSPS by the 108th Congress was a starting point in the development and implementation of a new DoD civilian personnel management system. Members of Congress and union leaders will continue to closely oversee the DoD's effort to transform civilian personnel management. Collaboration and intense debate will no doubt continue as the final NSPS design takes form and is implemented throughout the DoD. In an April 12 American Federation of Government Employees press release, National President John Gage stated: "AFGE is hopeful that Senator Warner will use his authority ... to stop the implementation of the horrendous proposals DoD has developed" [Ref. 62]. Apparently, there is still a need

for greater collaboration and deliberation among all key players. NSPS will continue to be a major issue for the DoD, OPM, and future sessions of Congress. Future research is recommended to examine the final design and implementation of NSPS, its impact on other government agencies, and the continued oversight of the legislative branch.

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF REFERENCES

1. Total Force Structure for Department of Defense, October 31, 2003. Retrieved December 17, 2003 from <http://web1.whs.osd.mil/mmid/mmidhome.htm>.
2. Prepared Statement by Deputy Secretary of Defense Paul Wolfowitz before the House Government Reform Committee, Washington, D.C., Tuesday, May 6, 2003.
3. History of National Security Council. Retrieved December 3, 2003 from <http://trumanlibrary.org/hstpaper/nsc.htm>.
4. 99th U.S. Congress, Conference report on H.R. 3622, Goldwater-Nichols Department of Defense Reorganization Act of 1986, Report 99-824, 12 September, 1986.
5. U.S. Department of Defense. (2003) *The Defense Transformation for the 21st Century Act*. Washington, D.C.: U.S. Government Printing Office.
6. Rumsfeld, D. (2003, May 22). Defense for the 21st Century. *The Washington Post*, p. A35. Retrieved July 7, 2003 from <http://proquest.umi.com/pqdweb?Did=000000339207971>.
7. U.S. Department of Defense. (n.d.) *Civilian Human Resource Strategic Plan*. Retrieved November 24, 2003 from <http://www.cpms.osd.mil/nsps/>.
8. U.S. Department of Defense. (2001) *Quadrennial Defense Review Report*. Retrieved December 16, 2003 from <http://www.defenselink.mil/pubs/qdr2001pdf>.
9. 95th U.S. Congress, Civil Service Reform Act of 1978, Public Law 95-454, October 13, 1978.

10. 103rd U.S. Congress, National Defense Authorization Act for Fiscal Year 1995, Public Law No. 103-337, October 5, 1994.
11. 106th U.S. Congress, National Defense Authorization Act for Fiscal Year 2001, Public Law No. 106-398, October 30, 2000.
12. National Archives and Records Administration, Federal Register, Part II-Department of Defense, Office of the Secretary, Science and Technology (S&T) Reinvention Laboratory Personnel Management Demonstration Program; Notice, April 2, 2003. Retrieved from http://www.cpms.osd.mil/nsps/best_pract.html.
13. Congressional Research Service. (2003, November 24) Department of Defense Transformation Proposal and H.R. 1588 Conference Report: A Side-by-Side Comparison.
14. Overview, The National Security Personnel System. Retrieved October 14, 2003 from www.cpms.osd.mil/nsps/.
15. Analysis of NSPS as Proposed by the Administration. Retrieved September 23, 2003 from <http://www.cpms.osd.mil/nsps/>.
16. Question and Answer Briefing on the National Security Personnel System. Retrieved October 24, 2003 from <http://www.cpms.osd.mil/nsps/>.
17. U.S. Constitution. Retrieved from January 1, 2004 from http://www.archives.gov/national_archives_experience/constitution_transcript.html.
18. Schick, A. (1995). *The Federal Budget: Politics, Policy, Process*. Washington, D.C.: Brookings Institute.
19. Davidson, R. & Oleszek, W. (1990). *Congress And Its Members*. Washington, D.C.: Congressional Quarterly Inc.
20. 93rd U.S. Congress, Congressional Budget and Impoundment Control Act, Public Law 93-344, July 12, 1974.

21. Tyszkiewicz, M. & Daggett, S. (1998). *A Defense Budget Primer*. A CRS report for Congress retrieved January 18, 2004 from <http://www.globalsecurity.org/military/library/report/crs/crs-budget.htm>.
22. Heniff, B. (2001). Overview of the Authorization-Appropriation Process. A CRS report for Congress retrieved October 14, 2003 from <http://www.house.gov/rules/rs20371.pdf>.
23. Smith, S. & Deering, C. (1990). *Committees in Congress*. Washington, D.C.; Congressional Quarterly, Inc.
24. Schneider, J. (2001). *House and Senate Rules of Procedure: A Comparison*. A CRS report for Congress retrieved January 19, 2004 from <http://www.house.gov/rules/rl30945.pdf>.
25. Smith, S., Roberts, J., & Vander Wielen, R. (2003). *The American Congress*, (3rd ed.). Online version retrieved January 14, 2004 from <http://congress.wustl.edu/book.html>.
26. Interview with congressional staffer, 108th Congress.
27. 108th Congressional Pictorial Directory. Retrieved on January 27, 2004 from http://www.access.gpo.gov/congress/108_pictorial/class.htm.
28. Rules of the 108th Congress, House Armed Services Committee jurisdiction. Retrieved January 24, 2004 from <http://www.house.gov/rules/RX.htm>.
29. Committee Hearing, House Armed Services Committee, February 5, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
30. Subcommittee Hearing, House Armed Services Subcommittee on Total Force, March 13, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
31. House of Representatives bill, H.R. 1588. Retrieved January 24, 2004 from <http://thomas.loc.gov>.
32. House Committee on Government Reform jurisdiction. Retrieved January 24, 2004 from <http://www.house.gov/rules/RX.htm>.

33. House of Representatives bill, H.R. 1836. Retrieved January 24, 2004 from <http://thomas.loc.gov>.
34. Subcommittee Hearing, House Government Reform Subcommittee on Civil Service and Agency Organization, April 29, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
35. Senate Armed Services Committee jurisdiction. Retrieved January 24, 2004 from <http://www.senate.gov/~armedservices/about.htm>.
36. U.S. Senate bill, S.927. Retrieved January 24, 2004 from <http://thomas.loc.gov>.
37. Committee Hearing, Senate Armed Services Committee, February 13, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
38. Subcommittee Hearing, Senate Armed Services Subcommittee on Personnel, March 11, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
39. Subcommittee Hearing, Senate Armed Services Subcommittee on Emerging Threats and Capabilities, March 31, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
40. Senate bill, S. 1050, reported out of the Senate Armed Services Committee. Retrieved March 10, 2004 from <http://thomas.loc.gov>.
41. Senate Governmental Affairs Committee jurisdiction. Retrieved February 02, 2004 from http://www.senate.gov/~gov_affairs/.
42. Subcommittee Hearing, Senate Governmental Affairs Subcommittee on the Federal Work Force and the District of Columbia, May 12, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
43. U.S. Senate bill, S.1166. Retrieved January 24, 2004 from <http://thomas.loc.gov>.
44. Committee Hearing, Senate Governmental Affairs Committee, June 4, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.

45. Committee Hearing, House Armed Services Committee, May 1, 2003. Retrieved October 16, 2003 from <http://web.lexis-nexis.com>.
46. Committee Hearing, House Government Reform Committee, May 6, 2003. Retrieved January 26, 2004 from <http://web.lexis-nexis.com>.
47. Statement of David M. Walker, Comptroller General of the United States. Committee Hearing, House Armed Services Committee, May 1, 2003. Retrieved October 14, 2003 from <http://www.gao.gov/new.items/d03741t.pdf>.
48. Statement of Bobby L. Harnage, Sr, National President of the American Federation of Government Employees (AFL-CIO). Committee Hearing, House Armed Services Committee, May 1, 2003. Retrieved October 14, 2003 from <http://www.house.gov>.
49. House of Representatives bill, H.R. 1836, reported out of the House Government Reform Committee. Retrieved March 10, 2004 from <http://thomas.loc.gov>.
50. Statement of David M. Walker, Comptroller General of the United States. Subcommittee on Civil Service and Agency Organization Hearing, House Government Reform Committee, April 29, 2003. Retrieved September 22, 2003 from <http://gao.gov/new.items/d03717t.pdf>.
51. House Report 108-116, Submitted with H.R. 1836, House Government Reform Committee bill. Retrieved March 3, 2004 from <http://thomas.loc.gov>.
52. Senate bill, S. 1166, reported out of the Senate Governmental Affairs Committee. Retrieved March 10, 2004 from <http://thomas.loc.gov>.
53. Legislative insight provided by congressional staffer, March 24, 2004.
54. House of Representatives bill, H.R. 1588, passed in the House. Retrieved March 31, 2004 from <http://thomas.loc.gov>.
55. Senate Bill, S. 1050, reported out of the Senate Armed Services Committee. Retrieved March 10, 2004 from <http://thomas.loc.gov>.

56. Senate Bill, S. 1050, passed in the Senate. Retrieved March 10, 2004 from <http://thomas.loc.gov>.

57. National Defense Authorization for Fiscal Year 2004, H.R. 1588 accompanied with H.Rept. 108-354, as agreed upon by the Senate and House. Retrieved March 31, 2004 from <http://thomas.loc.gov>.

58. Briefing Papers on NSPS. Retrieved December 16, 2003 from www.cpms.osd.mil/nsps/.

59. Committee Hearing, Senate Armed Services Committee, March 2, 2004. Retrieved May 20, 2004 from <http://web.lexis-nexis.com>.

60. Lee, C. (2004, May 17). OPM Chief Faults Rumsfeld Plan; Defense Reconsiders Approach to Revamping Work Rules. Retrieved May 20, 2004 from <http://web.lexis-nexis.com>.

61. DoD Employee Presentation. Retrieved May 19, 2004 from <http://www.cpms.osd.mil/nsps/>.

62. American Federation of Government Employees Press Release. Retrieved May 20, 2004 from <http://www.afge.org>.

INITIAL DISTRIBUTION LIST

1. Defense Technical Information Center
Ft. Belvoir, Virginia
2. Dudley Knox Library
Naval Postgraduate School
Monterey, California
3. Nimitz Library
United States Naval Academy
Annapolis, Maryland
4. LEAD Program
United States Naval Academy
Annapolis, Maryland
5. CDR Robert Proano, USN
United States Naval Academy
Annapolis, Maryland
6. Dr. Richard Doyle, Code GB/Dy
Naval Postgraduate School
Monterey, California
7. CDR Phil Candreva, Code GB/Dy
Naval Postgraduate School
Monterey, California
8. LT Sean Foss
United States Naval Academy
Annapolis, Maryland