

# *AFGE*

## *NSPS MYTHS & DOD FACTS PLUS IMPORTANT AFGE FACTS*

**\*Note: DoD has released material it has called NSPS: Myths and Facts. We have kept their material and added sections called “AFGE’s Important Facts” to give you a little more detail in each of these areas.**

### **MYTH**

NSPS does nothing to help with national security

### **DOD STATED FACT**

Not true. The mission of DoD is national security, and civilians play a vital role in supporting that mission. NSPS provides the Department the tools necessary to recruit, retain and manage the civilian workforce to accomplish our critical mission in a more effective and efficient manner. NSPS will also provide flexibilities so we can reduce our reliance on the military to perform jobs that civilians can and should perform, freeing up the military to perform its war fighting duties. NSPS is a mission-driven, performance-based system that motivates, recognizes and rewards excellence, which will result in an overall improvement to mission effectiveness and enhanced national security. This is critical in the global war on terrorism.

### **AFGE IMPORTANT FACTS**

**During the Legislative process DoD stated that NSPS was vital to our future National Security. We believe that current employees are 100% committed to National Security. The “NSPS” proposals treat the front line employees as though they are not committed. These “flexibilities” take away your right to have a real voice on working conditions and take away rules that protect basic fairness and merit. NSPS will actually create turmoil and undermine National Security readiness. The current system is a mission driven, performance based merit system that can motivate, recognize and reward excellence. Performance recognition has suffered from the fact that DoD has tight budgets and never adequately funded it. But, for NSPS, DoD has emphatically stated no additional funding will be allowed.**

**The Merit System Protection Board recently highlighted a report by the Corporate Leadership Council which concluded that even successful pay for performance programs had little impact on organizational performance (i.e., mission). The report indicated that successful employee engagement did improve organizational performance. Yet DoD has proposed to eliminate most collective bargaining, the core of employee engagement.**

## MYTH

Under NSPS, DoD civilians can be assigned anywhere in the world, even to a war zone, with little or no notice.

## DOD STATED FACT

Currently DoD has the authority to reassign employees, including reassignment to overseas locations, when necessary to support the mission. We do this under today's system. This authority is unaffected by NSPS. One of the goals of NSPS is to reduce its reliance on military to perform jobs that could be performed by civilians.

## AFGE IMPORTANT FACTS

**Today, before NSPS – this procedure is negotiable with DoD's labor representatives. And the unions have negotiated fair assignment procedures into collective bargaining agreements that spell out the rules on these "Temporary Assigned Duties," that allow for qualified volunteers to be utilized to the maximum extent before forcing qualified non volunteers to go. While DoD can, under certain conditions, make involuntary assignments to employees, DoD has generally used volunteers. DoD officials have consistently stated in public forums that in the future they will rely on their flexibility to assign DoD employees, rather than use qualified employees who volunteer. DoD employees will be required to be on ready alert to go anywhere in the United States or the world at a moments notice, including combat locations.**

## MYTH

I will lose my benefits under NSPS

## DOD STATED FACT

NSPS will not affect rules governing retirement benefits or eligibility, health and life insurance, leave, attendance, and other similar benefits.

## AFGE IMPORTANT FACTS

**AFGE agrees that NSPS will not affect basic entitlement.**

**However, we believe the DoD pay system which DoD has proposed, will likely mean smaller pay increases in the future for most employees than under the current pay system. If your salary is lower in the future under NSPS than under the current pay system, your future retirement benefit will be less as a result.**

## MYTH

NSPS eliminates veterans' preference for reduction in force (RIF) and hiring.

## DOD STATED FACT

NSPS preserves veterans' preference. DoD is committed to the principles of veterans' preference; under NSPS veterans continue to receive preference for both hiring and RIF.

## AFGE IMPORTANT FACTS

**AFGE agrees that NSPS does not eliminate veterans' preference in hiring. In RIF's under NSPS, a manager could "gerrymander" the RIF to the point that all the veterans are in a single area of competition, so they are the only ones subject to losing their jobs! In RIF's, the "bump and retreat rights" have been curtailed for all employees thus watering down veterans' and non veterans' protections as provided in the current Civil Service system. If you have the right, but your options to**

**use your veterans preference have been substantially eliminated, than your veterans preference is substantially eliminated.**

**MYTH**

Seniority and veterans' preference will no longer count in the event of a reduction in force (RIF).

**DOD STATED FACT**

Not true. Veterans' preference eligibles are still retained over employees without veterans' preference in RIF. Also, seniority continues to be a factor in RIF. However, because NSPS is a performance based system, the proposed regulations give greater weight to performance in RIF retention by placing performance ahead of length of service. Employees competing for retention under RIF who have the same performance ratings will be retained based on length of service.

**AFGE IMPORTANT FACTS**

**Today, years of committed service (seniority) and performance are both taken into consideration. Under NSPS your last performance rating determines your retention standing. For example, an employee with 20 years service with 19 years of "outstanding ratings" and the most recent appraisal of "excellent" would be let go before a 3 year employee with 2 years of "meets expectations," whose most recent rating was outstanding.**

**MYTH**

I will lose my job security and there will be layoffs

**DOD STATED FACT**

No jobs will be eliminated because of NSPS. In fact, under NSPS, there may be more opportunities for civilians as military positions are converted to civilian. By easing the administrative burden routinely required by the current system, managers will turn to civilians first when assigning vital tasks.

**AFGE IMPORTANT FACTS**

**AFGE agrees that NSPS does not require layoffs. However, NSPS would make downsizing easier and faster to do and make it easier to compete and contract out the work. Why do they want to do this? To insure your job security? The Navy has already announced they are planning a RIF in excess of 11,000.**

**MYTH**

I will lose pay under NSPS and I won't get credit for time I've already spent waiting for my next within grade increase.

**DOD STATED FACT**

Employees will not lose pay upon conversion to NSPS. Employees will be converted into NSPS at their current salary. In many cases, employees will receive a salary increase equal to the amount they have earned towards their next within grade increase (this is known as the WGI buy-in).

**AFGE IMPORTANT FACTS**

**AFGE agrees that employees will not lose pay during conversion to NSPS. DoD mentions the WGI buy-in, but the proposed regulations do not require it – it would be at the Secretary's discretion. Once they are converted, employees will lose all future WGI's in this system which will affect their overall salaries and compensation for the future. Under NSPS, as proposed, you will not receive the annual salary increase that the rest of the GS/FWS employees receive. Our concern is not so much the conversion "loss of money," but your reduced standard of living in the years ahead.**

## MYTH

There will be no locality pay under NSPS.

## DOD STATED FACT

The proposed NSPS pay system includes a locality-based component of pay called “local market supplement” that is paid in addition to an employee’s basic pay. The local market supplement will be based on market conditions related to geographical and occupational factors, and may differ from one occupation to another in a given locality area. Employees will be entitled to increases to the local market supplement, unless they are performing at an unacceptable level.

## AFGE IMPORTANT FACTS

**While NSPS includes a locality based component, it will be much different than today. Only some jobs will receive a locality increase and only if DoD’s tight budgets allow for funding.**

## MYTH

NSPS is just a way to freeze the pay of DoD civilians, since we’re no longer entitled to the automatic January pay increase or within grade increase.

## DOD STATED FACT

The annual January pay increase, as we know it now, will change. The proposed pay rules provide for periodic “rate range” adjustments, to adjust the minimum and/or maximum rate of a pay band. When a minimum rate of pay band is adjusted upward, employees will receive an equivalent increase. There are no “steps” similar to the GS system. Instead, pay increases and/or performance bonuses are based primarily on your performance rating. Unacceptable performers are no eligible for pay increases under the proposed system.

## AFGE IMPORTANT FACTS

**The annual increase under the GS pay system was guaranteed. In the future, the Office of Management and Budget (OMB) will dictate how much can be spent on employee pay. The NSPS proposed rules do provide for periodic “rate range adjustments,” however, DoD says that it will adjust these rate ranges at their discretion through an undisclosed process. If DoD had conformed to OMB guidance over the last 3 years instead of the current pay process, your salary level would be about 6% less. In the Federal Aviation Administration, that has a pay system similar to NSPS, many employees, including those rated outstanding, have not had a pay increase in 3 years. Many have filed age discrimination claims as a result.**

## MYTH

Under NSPS, funds for salaries and bonuses will no longer be certain.

## DOD STATED FACT

DoD is committed to ensuring civilian compensation is protected. In fact, the law requires that the aggregate amount of money allocated for civilian compensation for organizations under NSPS cannot be less than the amount that would have been allocated under the existing system. Under NSPS, the overall amount of money that would have been used for the annual January pay adjustment, within grade increases, quality step increases and similar payments will be used for civilian pay, and those funds will be protected. However, the proposed NSPS pay system will distribute those funds based primarily on performance.

## **AFGE IMPORTANT FACTS**

**There are two important things to know. The aggregate, or overall, amount of compensation money is protected through 2008 only. Second, after 2008, DoD can balance the needs of employees with its own desire to use that money for other things. As we mentioned above, the OMB will dictate how much funding will be available for the January adjustment. DoD wants to purchase new “wage survey data” that compares what federal employees are paid with their local counterparts rather than use data from the Bureau of Labor Statistics which does it now. Some jobs may get an across the board raise while other jobs do not, based on DoD’s interpretation of labor market data. Nor will the performance pay increase for people receiving the same rating i.e., outstanding, etc. be the same. It will vary from job to job, location to location and pay pool to pay pool. It’s all done behind closed doors by managers who can do what they want to do. This system lacks transparency, credibility and fairness.**

## **MYTH**

My supervisor will not be prepared and equipped to fairly and objectively rate my performance, and will not be held accountable for exercising his responsibility under NSPS.

## **DOD STATED FACT**

Supervisors and managers will have an important role in determining performance-based pay increases. The flexibilities proposed in the NSPS regulations bring with them an increased need for accountability. This includes employee accountability for performance as well as supervisory and managerial accountability for the proper exercise of the authorities of NSPS. Extensive training will be given to supervisors and managers, both military and civilian. Training will focus on improving skills needed for effective performance management: setting clear expectations; communicating with employees; and linking individual expectations to the goals and objectives of the organization. Supervisors and managers will be held accountable for how effectively they use the tools provided by NSPS. They will also be subject to the pay and performance provisions of the system, and their pay will be affected by how well they perform their duties as supervisors and managers.

## **AFGE IMPORTANT FACTS**

**While DoD indicates it will now train supervisors, these are the same people that have supposedly been trained and held accountable for their actions for the last 30 years. Training resources are always scarce due to other priorities. While DoD may do some training, past history demonstrates that training dollars will be spent for other important things. DoD has also proposed to take away your right to insure that your rating is fair by no longer allowing you to file under a grievance/ arbitration process for independent review. Instead, you can ask for reconsideration through an internal process DoD has not yet described.**

## **MYTH**

Unions have had no involvement in developing NSPS

## **DOD STATED FACT**

The proposed NSPS regulations are the product of a broad-based, collaborative effort across the Department that began in 2004. This includes a number of meetings with employee representatives involving extensive and fruitful discussions on the potential options for the design of the system. In several areas, the proposed regulations reflect the interests and concerns voiced during those consultation sessions. We also held numerous focus groups and town hall meetings, many of which included local union involvement, to gather input and feedback on the system design. Now that we have published our proposed regulations, the next step in this process is to gather comments and recommendations on the proposed regulations, and engage in more discussion and dialogue with employee representatives as called for in the law authorizing NSPS.

## **AFGE IMPORTANT FACTS**

**Employees have had absolutely no meaningful role in the process to develop NSPS regulations thus far. DoD held meetings with a small number of employees to give them vague information last year. The employees in those Town Hall Meetings and focus groups didn't ask for a system like the proposed NSPS.**

**DoD met with employee representatives, but would not offer any details on the problems it wanted to solve and therefore wouldn't discuss the solutions either. You can't have meaningful discussions under these conditions. Employee representatives were not allowed to be a part of or participate in the DoD working groups that created the regulations. DoD made no effort to educate the employees on the NSPS regulations and limited the comment period to 30 days so it would be hard for employees to comment. That should tell you a lot. The unions representing employees in DoD filed a federal lawsuit against DoD/OPM for violation of this very requirement that employee representatives help develop and implement NSPS.**

## **MYTH**

NSPS will do away with bargaining units and employee unions.

## **DOD STATED FACT**

Not true. The implementation of the NSPS labor relations system will not eliminate unions or bargaining units. Employees will still be able to be represented by labor organizations and to bargain collectively. The proposed rules enable the Department to act expeditiously in carrying out its mission by limiting the situations that are subject to bargaining and speeding up the bargaining process.

## **AFGE IMPORTANT FACTS**

**The myth is carefully worded. While we agree that NSPS will not do away with employee unions, it takes away the vast majority of your ability to bargain the important items which affect an employee's everyday working life. We have bargained these issues for decades. Under NSPS, certain groups of employees who presently enjoy the protection of belonging to a union will be removed from coverage. While we endorse speeding up the bargaining process, these proposed rules trample on the rights and freedoms you have helped defend for all America.**

## **MYTH**

Employees will lose their fundamental rights to grieve or appeal unfair decisions or adverse actions.

## **DOD STATED FACT**

NSPS does not change critical employee rights such as merit systems principles, due process, whistleblower protections, and protection against discrimination and personnel practices. There will continue to be avenues for employees to seek redress. For bargaining unit employees, negotiated grievance procedures will remain part of the process and other employees will continue to have access to administrative grievance procedures, as well as formal appeals processes for adverse actions.

## **AFGE IMPORTANT FACTS**

**The processes are changed significantly undermining due process, fairness, merit system principles and the ability to be a whistleblower. "Poor" managers will be free to motivate by fear and intimidation without real accountability. Even the Merit Systems Protection Board won't be able to change a suspension or termination it deems unreasonable.**

## MYTH

Under NSPS, there is no process for employees to challenge their performance rating.

## DOD STATED FACT

DOD is developing a process that will allow employees to request reconsideration of their rating to a higher authority. This process will apply to all employees under the NSPS. Under current law, employees in the same organization are often subject to different procedures and avenues when challenging performance ratings. This sometimes results in inconsistent decisions. Because of the importance of the performance rating process and its impact on pay, DOD will ensure that every employee has the same opportunity to see appropriate redress.

## AFGE IMPORTANT FACTS

**For employees represented by unions, your right to challenge your rating to an independent third party is being taken away. DoD doesn't want its managers' decisions held accountable. If DoD cares so much about its employees' right to appropriate redress, it should give employees the right to an independent, neutral, and external process. DoD is leaving out an important part – under NSPS, you will not be able to challenge the performance payout you receive – not even through a reconsideration process.**

## MYTH

Under NSPS, there is no due process for employees affected by an adverse action.

## DOD STATED FACT

Not true. The proposed regulations preserve due process rights for employees who are subject to an adverse action (e.g., removal, suspension or more than 14 days, reduction in pay or pay band level). In all such cases, employees continue to have the right to notice of proposed action, the right to reply, the right to representation, and the right to appeal that action. The rule changes proposed in the regulations seek to streamline this process so that workplace issues are resolved quickly, while ensuring due process, recognizing the need for workplace accountability, and providing efficient tools for dealing with performance and conduct issues.

## AFGE IMPORTANT FACTS

**We won't argue with the way DoD worded their myth-that there is no due process. Let's just say very little. The proposed regulation does take away key due process protections in adverse actions. As we stated, the Merit System Protection Board will not be able to change actions it finds to be unreasonable. DoD is trying to make it look like protections are in place, but it is rigging the rules so managers' decisions are almost always upheld – right or wrong. NSPS actually makes the system more cumbersome in addition to unfair because of new rights it gives itself to intervene.**

## MYTH

The proposed appeal system is not an impartial process.

## DOD STATED FACT

Under NSPS, employees retain the right to appeal to a third party in adverse action cases. The proposed regulations retain Merit Systems Protection Board (MSPB) administrative judges as the initial adjudicators of employee appeals of adverse actions. Although the proposed regulations provide for Departmental review of those initial administrative judge decisions, employees retain the right to appeal to the full MSPB to review a final Department decision.

## **AFGE IMPORTANT FACTS**

**As you can see, DoD wants to review the judge's decision. As we stated, the Merit System Protection Board will not be able to change actions it finds to be unreasonable. DoD is trying to make it look like protections are in place, but it is rigging the rules so managers' decisions are almost always upheld – right or wrong. DoD doesn't want to be held accountable for its actions or the actions of its managers. Today if they lose a case before the MSPB, DoD must pay your attorney costs. Not only is it fair, but it holds DoD accountable. Now, NSPS would change that. If you overcome all the new rules hindering due process, and win your case, DoD has written NSPS to make it look like your attorney fees would still be paid, but the regulations contain a huge loophole making it almost impossible that DoD will ever pay attorney fees.**

## **CONCLUSION**

**We encourage each employee to read the regulations and obtain as much detailed information as possible. Attend union sponsored forums to learn more and visit [www.afge.org](http://www.afge.org). You have a Voice. Be sure to use it. Comments on NSPS must be submitted by March 16<sup>th</sup>. Visit [www.afge.org](http://www.afge.org) to make your comment.**