



Tips and Tidbits
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Question: What are the major changes to the National Security Personnel System based on the National Defense Authorization Act of 2008?

The Department of Defense (DoD) and the Office of Personnel Management (OPM) recently issued final enabling regulations for the National Security Personnel System (NSPS). NSPS was authorized by the National Defense Authorization Act of 2004 (NDAA 2004) and amended by NDAA 2008. Accordingly, NSPS regulations were updated to reflect this amendment. The main purpose of the changes was to incorporate lessons learned and proven practices for uniform and consistent program application across the Department of Defense (DoD).

Changes in NSPS coverage include the following:

- Allows for limited coverage under NSPS pay setting and classification for employees appointed for less than 90 days. This is to enhance DoD's competitiveness in the labor market when hiring temporary employees for 90 days or less.
- Excludes Federal Wage System employees from coverage under NSPS.
- Extends and expands exclusion for certain DoD laboratories from NSPS coverage through October 1, 2011.

Some of the detailed and specific guidance in the area of pay setting and compensation include the following:

- Establishes a "conversion/movement out" process for employees moving to GS positions, which provides the opportunity for more favorable pay setting upon movement to a position classified in the GS or other non-NSPS pay system.
- Extends within-grade increase "buy-in" provision to Federal Wage System employees who move into NSPS.
- Extends accelerated compensation for developmental positions (ACDP) to trainee positions assigned to the Student Career Experience Program in the student pay schedule.
- Revises definition of "rate of pay" to ensure consistency and conformity regarding pay issues. Pay will be set using "adjusted salary" and any physician's comparability allowance payable for the position held prior to reassignment. When the new position is in a different location, a geographic pay conversion will be processed.
- Grandfathers GS pay retention timeframes for employees covered by GS grade or pay retention rules at the time of their conversion to NSPS. These employees will not be subject to the 104 week limit on pay retention. They will be entitled to pay retention indefinitely, subject to specifically identified pay retention termination events.

Modifications to the performance management regulations include the following:

- All employees with a performance rating above "unacceptable" or who do not have a current performance rating are mandated to receive no less than sixty percent (60%) of the annual Government-wide General Schedule pay increase. In accordance with the statute, the other forty

percent (40%) will be allocated to pay pools for the purpose of increasing rates of pay based on performance at the “valued performer” and higher levels.

- All NSPS employees with a performance rating above “unacceptable” or who do not have a current performance rating receive locality pay in the same manner and extent as General Schedule employees.
- Expansion of topics considered during the performance reconsideration process to include individual performance objectives in addition to the overall rating of record. The ability to request review of individual performance objectives enables employees to seek redress on all performance rating decisions affecting their pay.
- Provisions for performance payouts when employees do not meet the minimum 90 day period of performance due to extended and approved paid leave status or performance of labor activities on “official time”. The pay adjustments will be based on the modal rating of a pay pool.
- Requires organizations to share aggregate pay pool results, including the average rating, ratings distribution, share value (or average share value), and average payout (expressed as a percentage of base salary), at the completion of the performance payout process.

Revised regulations concerning labor relations include the following:

- Preserves the right of employee representatives to bargain collectively. The statutory collaboration process for employee representatives to participate in the design and implementation of NSPS was eliminated. The NDAA 2008 treats the revised regulations as government-wide regulations for collective bargaining purposes. Employee representatives retain the right to bargain the implementation of these regulations to the same extent they would bargain on any other government-wide regulation.
- Provides that any NSPS “rate of pay” is non-negotiable for collective bargaining purposes and does not require collective bargaining regarding the procedures followed when implementing “rate of pay” decisions made by management.
- Requires advance Congressional notification for OPM/DoD jointly-prescribed NSPS regulations.

Finally, the regulation changes included the removal of authority for NSPS-specific adverse actions, appeals and labor management relations systems. The NSPS rules governing these areas were never implemented when the NSPS began execution in April 2006. Consequently, NSPS has and will continue to operate under the government-wide rules at 5 USC Chapter 71 with no changes to employee rights. Additionally, all appeals will continue to be processed through the Merit Systems Protection Board.

To view a copy of the final regulations please refer to the Civilian Personnel Management System website at the following link:

<http://www.cpms.osd.mil/nsps/docs/NSPSFederalRegister2008FinalRule.pdf>

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