

DEC 3 2004

The Honorable Edward M. Kennedy  
United States Senate  
Washington, D.C. 20510-6300

Dear Senator Kennedy:

Thank you for your November 19, 2004, letter requesting that we provide an advance copy of the National Security Personnel System (NSPS) proposed regulations to the United Defense Workers Coalition and the Senate Armed Services Committee. You also expressed concern that publication of the regulations may be imminent and the unions have had insufficient opportunity to participate in the process.

First, the proposed regulations are still under development, and are not available for review or distribution. Any drafts that exist today are predecisional, as neither of us fully reviewed or approved them. Our plan is to complete the proposed regulations by the end of the calendar year, at which time they will be published as proposed rules in the Federal Register under the Administrative Procedure Act (APA). The APA process, coupled with the statutory requirements to "meet and confer" with employee unions on the content of the regulations, should provide ample opportunity for the unions to review and express their views before the NSPS regulations are finalized.

We know the unions are anxious to see the proposed regulations. We are also looking forward to sharing them, not only with our unions, but also with employees and managers at the Department, employee advocacy groups, and a variety of public interest groups. The Department and OPM have an obligation to bring to the public the NSPS proposed regulations as quickly as possible in order to better focus further discussions, additional comments, recommendations, and suggestions for improvement.

We concur that the unions have a special status as the exclusive representatives of many of our employees. We recognize their unique role and, accordingly, have conducted eight consultation sessions with the employee unions to gather input for the design of the system and have offered to continue meeting throughout our regulation-writing period. We also hosted over 50 town hall meetings and 101 focus group sessions with employees all over the world, and conducted numerous briefings with public interest groups, veterans' service organizations, and non-union advocacy groups. All of this was conducted prior to beginning the effort to draft regulations to ensure we considered a broad range of perspectives and experiences.

The APA process is rigorous and inclusive, and incorporates a thorough interagency review for legal sufficiency and policy consistency. It would, therefore, be

inappropriate to release draft proposed regulations before they have been fully vetted within the Administration.

You also expressed concerns that civil service protections and collective bargaining rights for DoD employees may be affected adversely. We can assure you that, based on our public statements and testimony, and those of other Administration officials, NSPS will preserve merit system principles, guard against prohibited personnel practices, and protect the right of employees to bargain collectively – all as the law requires. We have had prior experience in protecting the fundamental precepts of civil service, and neither of us will settle for anything less in the development of the NSPS.

We thank you for your interest in this matter, and are pleased at the level of interest in NSPS exhibited by our employees and their union representatives. We look forward to continuing discussions with all of our stakeholders throughout this process,



Kay Coles James  
Director, Office of  
Personnel Management



Paul Wolfowitz  
Deputy Secretary of Defense