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Proposed Civilian Personnel System Supporting “Space Force”

Background

The Department of Defense (DOD) proposed legislation to Congress that would establish a sixth armed service—United States Space Force—inside the Department of the Air Force (Air Force). The proposal’s various provisions include the establishment of a space civilian personnel system (SCPS) in the excepted service.

Authority for SCPS would reside in the Air Force provisions of Title 10 of the U.S. Code (Title 10), not in the DOD Personnel provisions of Title 10 or Employees provisions of Title 5 of the U.S. Code (Title 5). The SCPS legislation “. . . would amend [Title 10] . . . to provide greater flexibility . . . on personnel matters . . . for the civilian employees . . . assigned to, or who support, the U.S. Space Force or U.S. Space Command, similar to . . . the Defense Civilian Intelligence Personnel System.”

DOD Civilian Personnel Systems

The three bespoke DOD civilian personnel systems below are similar in purpose to SCPS. DOD components and military departments have authority to implement and manage them pursuant to DOD policy.

- *Defense Civilian Intelligence Personnel System* (DCIPS) – exists in parallel to the general personnel system in DOD and the military departments.
- *Cyber Excepted Service* (CES) – provides a skills-based supplemental system in U.S. Cyber Command.
- *Defense Acquisition Workforce* (AWF) – augments the general personnel system in DOD and military department acquisition activities.

SCPS ostensibly would be a DOD-wide civilian personnel system established and managed by the Secretary of Defense. In fact, it would be a military department-only civilian personnel system because SCPS positions would only exist in the Air Force. If enacted, SCPS would be the only bespoke civilian personnel system established by DOD within a military department and under the control of a service secretary.

SCPS

SCPS appears to be a modified version of DCIPS. An Office of the Secretary of Defense (OSD) civilian personnel official stated that the Air Force used DCIPS as a model because it is a proven system. SCPS is distinguishable from DCIPS in at least three areas: interchange authority, compensation, and labor-management relations.

Interchange Authority

SCPS would allow the Secretary of Defense to reappoint SCPS employees within DOD from the excepted service to

the competitive service if certain conditions are satisfied. Generally, unless a position is “excepted” by law all civilian service positions in the executive branch are “competitive.” DCIPS does not have a comparable provision allowing interchange.

Compensation

SCPS compensation provisions significantly differ from DCIPS and could have a *highest pay among equals* effect in comparison to similarly situated DOD employees.

- SCPS maximum rate of basic pay would increase to Executive Schedule Level II; DCIPS must use Level V.
- SCPS aggregate limitation on pay for salary and all other payments for nonexecutive employees would increase to the equivalent of the Vice President’s salary; DCIPS must use Executive Schedule Level I.
- SCPS pay rates would be set using established DOD or labor market rates as needed to recruit and retain personnel; DCIPS must use established DOD rates.
- SCPS qualifying criteria for additional overseas allowances appear less onerous than those in DCIPS.

To illustrate the significance of the maximum rate of basic pay increase, without accounting for locality rate increases, consider that the 2019 Executive Schedule Level V rate applicable to DCIPS is \$156,000, whereas the Level II rate applicable to SCPS is \$192,300. The SCPS maximum rate would be twenty-three percent greater than DCIPS. As for the aggregate limitation on pay, consider that the 2019 Executive Schedule Level I rate applicable to DCIPS is \$213,600, whereas the Vice President’s salary rate, applicable to SCPS, is \$230,700. The SCPS aggregate limitation would be eight percent greater than DCIPS.

Labor-Management Relations

If SCPS becomes law, the Secretary of Defense could implement SCPS without regard to any provision of federal labor-management relations law found in chapter 71 of Title 5. Under existing law, the President may deny collective bargaining rights for the employees of a federal agency or subdivision if he determines that the agency or subdivision has a primary function of intelligence or national security work, and such rights would be inconsistent with national security requirements and considerations. Given the work to be performed by the Space Force (SF), the President may decide that its employees should not have collective bargaining rights.

Acting Secretary of Defense Patrick M. Shanahan informed Congress that DOD’s approach to the role of labor organizations in SCPS is based on integration with the National Reconnaissance Office—an intelligence agency. If large numbers of current space support employees with

collective bargaining rights serve outside the U.S. Intelligence Community, the Air Force would likely reappoint them from a personnel system with collective bargaining rights into one without them by broadly applying what is an otherwise narrow practice.

The American Federation of Government Employees informed Congress that it opposes denying collective bargaining rights to employees in SCPS. If current space support employees are less like the intelligence workforce, where bargaining units are uncommon, and more like the general workforce in DOD, where they are common, SCPS might face challenges reappointing current space support employees into future SCPS employees.

The SCPS proposal does not include a provision that allows a collective bargaining agreement (CBA) to remain in effect like 10 USC 1613 in the DCIPS provisions. Allowing future SCPS employees to retain collective bargaining rights, and including a provision that allows for the continued effectiveness of an existing CBA, could potentially preserve labor organizations when practicable and could potentially mitigate stakeholder opposition to SCPS.

Considerations

The following is a nonexhaustive examination of topics or questions arising from the SCPS proposal.

Joint Integration

It may not be possible for joint organizations to establish SCPS-coded positions because the proposed *10 USC 9376* only authorizes them in the Air Force. This likely would prevent SCPS employees from serving under the control of a joint organization. Establishing SCPS as a DOD-wide system, similar to intelligence or acquisition, might make it easier to accommodate joint requirements for SCPS personnel.

DOD Consolidation

If the SCPS provisions are realigned to more closely mirror DCIPS, by eliminating or reducing their differences, expanding DCIPS into a defense civilian intelligence and space personnel system could potentially be an alternative to SCPS. Some argue that, among other things, this would avoid the *highest pay among equals* effect; allow DOD-wide SCPS positions; and avoid the costs and burden of establishing a new civilian personnel system. A similar consolidation approach could be taken regarding CES if only a U.S. Space Command (SPACECOM) is established.

Personnel Availability

To meet future SF and SCPS requirements, what consideration has Air Force given to the number of

- SCPS positions required;
- Civilian personnel required from the Air Force, other services, and DOD organizations;
- Air Force employees required who are part of a CBA;
- Air Force DCIPS employees required who will reappoint into SCPS; and
- SF Senior Executive Service and SF Senior Level positions required in SCPS?

System Alternatives

What consideration has DOD given to whether it should establish SCPS within

- OSD as a DOD-wide system like DCIPS or AWF;
- SPACECOM as a command-wide system like CES; or
- OSD as a DOD-wide system like DCIPS or AWF should DOD not establish SF or SPACECOM?

Statutory Structure Comparison

Title 10	
Proposed Law	Current Law
SCPS	DCIPS
<i>Draft Sections</i>	<i>Corresponding Sections</i>
9375. Definitions and implementation	1614. Definitions 1613. Miscellaneous
9376. Space Force civilian personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay	1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay
9377. Basic pay	1602. Basic pay
9378. Additional compensation, allowances, and incentives	1603. Additional compensation, incentives, and allowances
9379. Limitation on certain payments	1603. Additional compensation, incentives, and allowances
9380. Benefits for certain employees assigned outside the United States	1605. Benefits for certain employees assigned outside the United States
9381. Space Force Senior Executive Service	1606. Defense Intelligence Senior Executive Service
9382. Space Force Senior Level positions	1607. Intelligence Senior Level positions
9383. Time-limited appointments	1608. Time-limited appointments
9384. Termination of Space Force employees	1609. Termination of defense intelligence employees
9385. Reductions and other adjustments in force	1610. Reductions and other adjustments in force
9386. Postemployment assistance: certain terminated Space Force employees	1611. Postemployment assistance: certain terminated intelligence employees
9387. Appointment of Space Force employees to competitive service positions in the Department of Defense	None
9388. Merit system principles; civil service protections; right of appeal	1612. Merit system principles and civil service protections: applicability

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