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Defense Primer: Department of Defense Civilian Employees

Background

The foundation for the modern federal civil service, which includes defense civilians, is the statutory Merit System Principles found in Title 5 of the U.S. Code. The Office of Personnel Management (OPM) oversees the system. Historically, by the 1830s, challenges in hiring and managing government civilians had become severe when the *spoils system*, in which each presidential administration replaced the federal workforce with its political supporters or party members, sparked increased interest in reform. Post-civil war efforts to eliminate the spoils system were underway in the Congress when a catalyst for immediate change arose from President Garfield's assassination in 1881 by a disgruntled supporter who was denied a job in the President's administration. Beginning in 1883, the Congress periodically passed civil service reform bills for almost a century before establishing the current federal civil service in 1978.

Federal Employment

DOD civilians are appointed to the federal civil service to perform a federal function under the supervision of another federal employee or an appropriate federal official. DOD may employ individuals in the various federal civil service employment classes consistent with its yearly appropriation for direct hire employees. Indirect-hire, government contractor, and non-appropriated fund employees are not members of the federal civil service. DOD civilians may exercise management or supervisory authority over service members when authorized, but they do not have command or military justice authority over them.

Civil Service Employee Classification

There are three classes of federal civil service appointments under Title 5 of the U.S. Code: competitive service, excepted service, and senior executive service (SES). The competitive service consists of all federal civil service positions that are not specifically excluded by OPM, statute, or the President. The majority of federal employees and over 80 percent of DOD civilians are appointed in the competitive service. The excepted service consists of all federal civil service positions that are not included in the competitive service or SES. SES positions are those with high-level managerial, supervisory, and policy making responsibilities. The SES makes up less than one percent of the federal civil service. A SES position in DOD is often analogous to a flag or general officer military position, but it does not include command authority.

Civil Service Authority and Oversight

The general law governing DOD civilians is found in Titles 5 and 29 of the U.S. Code, and Title VII of the Civil Rights Act of 1964, among others, and their associated federal regulations. Title 5 identifies 14 Prohibited Personnel Practices which complement the Merit System Principles.

Some of the federal entities overseeing most DOD civilians include the:

- Office of Personnel Management (OPM);
- Merit Systems Protection Board (MSPB);
- Equal Employment Opportunity Commission (EEOC);
- Federal Labor Relations Authority (FLRA); and
- Office of Special Counsel (OSC).

The FLRA oversees DOD civilians who are members of a collective bargaining unit (union). Because OPM does not typically have jurisdiction over elements of the U.S. Intelligence Community (IC), OSC does not have jurisdiction over IC elements in DOD and, with the exception of preference eligible veterans with more than one year of federal civilian service, MSPB does not have jurisdiction over the DOD civilian intelligence workforce.

Specific law and policies governing DOD civilians are found in Title 10 of the U.S. Code and defense or military department directives, instructions, and manuals. The DOD official with direct responsibility for DOD civilians is the Undersecretary of Defense for Personnel and Readiness (USD(P&R)), who also serves as DOD's Chief Human Capital Officer (CHCO) (10 U.S.C. § 136; 5 U.S.C. § 1402).

Civilians

DOD appropriates funds each year for DOD civilians based on the number of direct-hire Full-Time Equivalent (FTE) units needed to meet its requirements (1 unit equals 2080 hours per year). The actual number of DOD civilians typically fluctuates from the budgeted FTE number. The Defense Manpower Data Center (DMDC) reported 755,386 total DOD civilians as of September 30, 2019. **Table 1** includes the FY 2020 authorized and FY 2021 requested DOD FTE units.

Table 1. DOD Direct-Hire FTE

DOD Component	FY 2020 Authorized	FY 2021 Requested	Percent Change
Defense	217,300	210,400	-4.00%
Army	180,800	186,100	2.90%
Navy	207,000	208,900	0.90%
Air Force	169,800	168,100	-1.00%
Total	774,900	773,600	-0.20%

Source: DOD Budget Overview for FY 2021, p. 2-8, available at https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf. **Note:** FTE numbers rounded by source.

Policy

DOD personnel policies, procedures, and programs for managing DOD civilians are to be binding on all DOD components. DOD civilians fill positions that do not require military service members. DOD policy mandates that managers of DOD civilians apply merit system principles and prohibits certain personnel practices. DOD civilian policy is to be issued only when necessary to meet DOD unique needs or supplement federal civil service policy (DOD Directives 1400.5, 1400.25).

Development

Career development models in DOD are to be designed to achieve a flexible and adaptable workforce of competent employees. Developmental assignments are to be available to aspiring civilian leaders to develop the competencies needed to succeed at higher levels of responsibility and to provide advancement opportunities commensurate with ability. These assignments are to be made throughout DOD, in other federal agencies, and with private industry.

Unions

In 1978, Congress found that labor organizations and collective bargaining in the federal civil service are in the public interest and concluded that unions contribute to the effective conduct of public business (5 U.S.C. § 7101). DOD intelligence, law enforcement, and other designated employee categories are excluded from bargaining units by statute or executive order. Managers and supervisors in any employee category, and service members, are specifically excluded by statute (5 U.S.C. § 7103).

Excepted Service

Excepted service appointments to the federal civil service are not subject to the competitive service requirements prescribed by OPM or Title 5 of the U.S. Code. Such appointments are made throughout DOD and across the federal government. DOD has additional authority to make excepted service appointments to the federal civil service, under Title 10 of the U.S. Code, for a designated system, service, workforce, or position, such as those discussed below.

DOD Civilian Intelligence Personnel System

The Defense Civilian Intelligence Personnel System (DCIPS) is a human resource system, independent from OPM, established in Sections 1601-1623 of Title 10 of the U.S. Code. DCIPS is the exclusive system for DOD civilians serving in intelligence and security positions. A DCIPS objective was to make the DOD intelligence and security enterprise an employer of choice for top talent. The Undersecretary of Defense for Intelligence (USD(I)) exercises overall supervision and policy oversight for DCIPS, subject to coordination with the USD(P&R). DCIPS has several features that distinguish it from the general civil service system. Two of them include the authority for DOD intelligence organizations to establish a pay-banding and rank-in-person workforce. This allows competitive qualification for a pay-level commensurate with one's performance and responsibilities without rigid time in service requirements (pay-band), and retention of pay-level regardless of the position to which one is assigned (rank-in-person).

DOD Cyber Excepted Service

Section 1599f of Title 10, U.S. Code, authorizes DOD to establish positions in the excepted service for carrying out the responsibilities of U.S. Cyber Command. This authority includes individual pay setting for a DOD civilian required to perform, manage, or supervise U.S. Cyber Command operations. Compensation under this authority is to be designed to attract and retain civilians with highly sought cyber skills needed for DOD cyber operations.

DOD Civilian Acquisition Workforce

Section 1762 of Title 10 of the U.S. Code authorizes DOD to establish a *demonstration project* for a DOD civilian acquisition workforce. The DOD civilian acquisition workforce includes all DOD civilians occupying designated defense acquisition positions. **Table 2** includes the current civilian acquisition workforce total and component populations. A defense acquisition position is one that requires greater than 50 percent of its responsibilities to be acquisition functions. Section 4703 of Title 5 of the U.S. Code allows DOD to apply recruitment, appointment, and pay setting practices for the demonstration project positions that differ from those that apply to the general civil service system. Implemented in 1999, the project's outcome after its termination in 2023 is expected to allow DOD to determine whether its modifications for improving the human resource management of the DOD civilian acquisition workforce should be permanent.

Table 3. DOD Civilian Acquisition Workforce

DOD Component	Inside U.S.	Outside U.S.	Component Total
Army	12,039	230	12,269
Navy	7,228	20	7,248
Marine Corps	1,855	1	1,856
Air Force	19,416	96	19,512
Defense	5,248	54	5,302
AcqDemo Total	45,786	401	46,187

Source: AcqDemo, <https://acqdemo.hci.mil/demographics.html> (Accessed April 4, 2020).

DOD Designated Positions

Certain provisions in Title 10 of the U.S. Code allow DOD to appoint civilians into designated excepted service positions, such as experts at departmental laboratories and faculty at service colleges and service academies.

Senior Executive Service

DOD manages members of the SES as a cohort through a career lifecycle, which includes selection, training, and assignments. DOD integrates the SES with its political appointee and general and flag officer leadership. The SES in DOD is to be designed for civilian leaders who possess the skill and experience needed to support its warfighting role and meet its management requirements.

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