



Schedule Policy/Career and the Social Security Administration: History, Implications, and Limitations

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Summary

The Trump Administration has proposed to create a new category of excepted service positions¹ called “Schedule Policy/Career” (Schedule P/C, formerly called Schedule F). Under President Trump’s January 2025 executive order and the Office of Personnel Management (OPM)’s proposed regulations issued last month, the President would designate certain “policy-influencing” positions as Schedule P/C.² Positions in this category would be excepted from the adverse action protections that apply to competitive service positions, but would continue to be hired competitively and to be considered career (not political) employees. OPM estimates that about 50,000 positions, or two percent of Federal employees, would ultimately fall under Schedule P/C.³

After a brief background on Schedule P/C, this brief explores the text and the legislative history of the statutory limit on SSA’s excepted service positions. It concludes that any positions designated as Schedule P/C would be subject to the statutory limit in the Social Security Act—which expressly prohibits the Social Security Administration (SSA) from having more than 20 full-time positions that are excepted from the competitive service due to their “confidential, policy-determining, policy-making, or policy-advocating character.”

As the Trump Administration moves toward implementing Schedule Policy/Career (Schedule P/C), this statutory language means that—legally—the new schedule cannot be widely implemented at SSA. An alternate proposal from a House committee would avoid a direct conflict with this statutory language, but would still be inconsistent with the spirit of the law.

Schedule Policy/Career Applies to “Confidential, Policy-Determining, Policy-Making, or Policy-Advocating” Positions

Currently, the excepted service (positions specifically excepted from the competitive service) designates most political positions – those with a “confidential, policy-determining, policy-making, or policy-advocating character” – as Schedule C. Schedule C includes “most political appointees below the cabinet and subcabinet levels,” and these positions do not have the protections and appeal rights that apply to the competitive service.⁴

The executive order and OPM’s proposed regulation would maintain Schedule C for political (noncareer) positions, but would add the new Schedule P/C to cover a broader swath of positions that have a “confidential, policy-determining, policy-making, or policy-advocating character,” which OPM refers to as “policy-influencing.” The regulation includes a lengthy analysis and discussion of the meaning of this key phrase. OPM concludes that:

[W]hile the “policy-influencing” terms do encompass political appointments, they are not exclusively limited to them. Rather, these terms have the natural, plain English meaning of describing positions involved in determining, making, or advocating for government policy, or positions of a confidential nature. Such positions include, but are not restricted to, political appointments.⁵

In contrast, the Biden Administration’s April 2024 final rule from OPM had narrowly defined “confidential, policy-determining, policy-making, or policy-advocating character” as “refer[ring] to noncareer political appointees typically listed in Schedule C.”⁶ The current proposal, however, would rescind and reverse that definition.

A separate proposal from the House Committee on Oversight and Government Reform would have much the same effect as Schedule P/C, but would achieve it in a different way. The committee’s proposal would “giv[e] new Federal employee hires the option to elect to serve “at will” in exchange for higher take-home pay.”⁷ Employees who opt in to the “at-will employment” could be fired or face other adverse actions with no protections or notice, effectively making them political appointees in all but name.⁸

The Limitations in the Social Security Act

Section 704(c) of the Social Security Act (42 U.S.C. 904(c)) limits the number of policy-influencing excepted service positions that SSA can have.⁹ The full text of the section is reproduced below, with annotations:

Statutory Text of Section 704(c):

(c) Employment restriction

The total number of positions in the Administration (other than positions established under section 902 of this title) which—

- (1) are held by noncareer appointees (within the meaning of section 3132(a)(7) of title 5) in the Senior Executive Service, or
- (2) have been determined by the President or the Office of Personnel Management to be of a confidential, policy-determining, policy-making, or policy-advocating character and have been excepted from the competitive service thereby,

may not exceed at any time the equivalent of 20 full-time positions.

Annotations:

Administration: The Social Security Administration.¹⁰

Positions established under section 902 of this title: Commissioner, Deputy Commissioner, Chief Actuary, Chief Financial Officer, Inspector General. (The Chief Actuary was a more recent addition to this list, added in 1996.)¹¹

Noncareer appointees under 5 U.S.C. 3132(a)(7): Noncareer (i.e., political) Senior Executive Service (SES) appointments. This includes any SES position that is not a career appointment, a limited term appointment, or a limited emergency appointment.¹²

In short, the provision says that – not counting the 5 specified leadership roles (Commissioner, Deputy Commissioner, Chief Actuary, Chief Financial Officer, and Inspector General) – SSA cannot have more than 20 full-time-equivalent positions that are noncareer (i.e., political) SES positions or that are designated as policy-influencing excepted service positions.

Legislative History of Section 704(c)

This provision was enacted as part of the Social Security Independence and Program Improvements Act of 1994 (P.L. 103-296), which made SSA an independent agency separate from the Department of Health and Human Services. The language has remained unchanged since then.

As Congress deliberated throughout the 1980s and early 1990s about whether and how to make SSA into an independent agency, one of the major reasons was to de-politicize it following years of turbulence and political interference. In the words of Representative Dan Rostenkowski (D-IL), who chaired the House Committee on Ways and Means during the independence effort:

This bill takes an important step toward restoring confidence in an agency which was decimated during the late 1980's. During the two previous administrations, the agency was starved of resources, and its staff was cut by over 20 percent. As a result of these actions, disability applications piled up and the quality of service to the public declined. [...] As an independent agency, SSA can focus on the goal of improving service; insulate itself from the political pressures under which it operated in the 1980's; and return to the stature it enjoyed in the past.¹³

He later explained that “[o]ur goal has been to restore the agency’s mission of excellence, and protect SSA from short-term political pressures.”¹⁴ Similarly, the ranking member of the Social Security Subcommittee, Representative Jim Bunning (R-KY), said that the bill “emancipates the Social Security Administration from the bonds of politics and insulates it against the gale winds of Presidential posturing, bureaucratic infighting, and budgetary games. This bill insures that Social Security will no longer be a political football.”¹⁵

The efforts to de-politicize SSA mainly took the form of giving the Commissioner position a fixed 6-year term. But as early as 1991, several Senate bills on SSA’s independence also included a provision limiting the number of political appointments at SSA. Senators Daniel Patrick Moynihan (D-NY)¹⁶ and Lloyd Bentson (D-TX)¹⁷ – the future and then-current chair of the Senate Finance Committee, respectively – both introduced bills that year with a limit of 10 full-time positions, and in June 1992, the Committee approved a version with only 5 such positions.¹⁸

In 1993, as Congress doubled down on its efforts to create an independent and de-politicized SSA, the Senate Finance Committee under the leadership of Senator Moynihan again approved an SSA independence bill with similar language, this time setting the limit at 10 full-time positions:

Employment Restriction

(c) The number of positions in the Administration which may be excepted from the competitive service, on a temporary or permanent basis, because of the confidential or policy-determining character of such positions, may not exceed at any time the equivalent of 10 full-time positions.¹⁹

In its report to the full Senate, the Committee explained that this provision was intended to ensure that the newly independent SSA – including its leadership – would be made up primarily of career employees:

In its testimony before the Finance Committee on September 14, 1993, the General Accounting Office offered a “cautionary note about filling SSA’s top management positions with political appointees,” and the Committee shares that concern. As the GAO has advised in the past, it is vitally important that the agency’s top management include career civil service employees who can provide operational continuity and an institutional memory. It is the view of the committee that career employees and others who are qualified by virtue of their experience in Government and knowledge of social insurance programs, should be considered in filling SSA’s top management positions. [...]

This section limits to the equivalent of not more than 10 full-time positions the number of positions which may be excepted from the competitive service because of the confidential or policy-determining character of such positions.

In limiting to no more than 10 the number of positions in SSA which may be excepted from the competitive civil service, it is the intent of the Committee to assure that career employees will generally be used to fill important leadership positions. The 10-position limit applies to all appointments made to fill any of the positions within the Social Security Administration.²⁰

The House, meanwhile, did not include a similar provision in the bill that it passed. The conference committee to resolve differences between the two chambers adopted the Senate version, but modified the language used to describe the positions – adopting the language that remains to this day in the statute – and increased the limit to 20 full-time positions. The Joint Explanatory Statement described the conference agreement as follows:

The conference agreement generally follows the Senate amendment, except that the limit would be set at 20 and would apply only to non-career Senior Executive Service (SES) and schedule C positions. The four SSA positions authorized by this statute—Commissioner, Deputy Commissioner, Inspector General, and Chief Financial Officer—would not be counted toward the limit, nor would the staff hired by the Social Security Advisory Board.^{21, 22}

The legislative history is clear: Congress limited the number of excepted service positions in order to help insulate SSA from political pressures, by ensuring that the large majority of its leadership and staff were held by career employees.

As a result of this statutory provision as well as the nonpartisan focus of the agency’s mission, SSA has long had a very small number of political appointees – with “one of the highest ratios of civil servants to political appointees in government.”²³ In 2024, out of 58,000 total staff, SSA had just 19 political positions:²⁴

- 5 Presidential appointments with Senate confirmation (Commissioner, Deputy Commissioner, and 3 Social Security Advisory Board members) – *not counted toward statutory limit*;
- 8 noncareer SES positions; and
- 6 Schedule C positions.

In contrast, other agencies often have far more political positions. For instance, out of a much smaller 17,000 staff, the Environmental Protection Agency had 12 Presidential appointments, 38 noncareer SES positions, and 64 Schedule C positions in 2024.²⁵

Implications for Schedule P/C at SSA

Section 704(c) limits SSA to no more than 20 full-time positions that are noncareer SES or excepted service due to having a “confidential, policy-determining, policy-making, or policy-advocating character.” Meanwhile, OPM is proposing to implement Schedule P/C by using a newly-broadened definition of “confidential, policy-determining, policy-making, or policy-advocating character” excepted service positions. This sets up a potential conflict at SSA.

Section 704(c) and Schedule P/C both turn on the identical phrase “confidential, policy-determining, policy-making, or policy-advocating character,” which OPM spends much of the proposed regulation discussing and redefining. Under these proposed regulations, OPM has chosen to define the phrase broadly, to include some – potentially many – career Federal employees.

Since the identical language is used in Section 704(c), that same broader definition would also apply there; by broadening the definition as it applies to one statute, OPM necessarily broadens the definition as it applies to another. Whether that policy-influencing phrase is defined broadly (as under the new proposed regulation) or narrowly (as under the previous April 2024 final rule), excepted service positions of the policy-influencing nature are subject to Section 704(c)’s statutory limit.

This does not mean that SSA could not make any use of Schedule P/C. But it does mean that any positions designated as Schedule P/C would be subject to the statutory limit in Section 704(c).

According to widespread reporting, SSA is planning to designate wide swaths of the agency’s career staff as Schedule P/C, including all of the senior executives and dozens of entire offices.²⁶ More than 10,000 staff, or 20 percent of the agency, could be affected.²⁷ However, implementing that plan would appear to violate the statutory limit on SSA’s use of excepted service positions – and the implications would be alarming. To comply with Section 704(c), SSA would then need to either fire nearly all (9,980 or more) of the Schedule P/C staff, or attempt to argue that all of those positions are somehow exempt from the statutory restriction. However, the plain text of the law and the fact that the identical phrase is used in Schedule P/C would make that claim highly implausible.

In short, Section 704(c) allows at most 20 noncareer SES or policy-influencing excepted service positions. Yet SSA is reportedly planning to designate up to 10,000 positions as Schedule P/C. It is difficult to see a way SSA could implement this without blatantly violating the law in Section 704(c).

The Oversight committee’s alternative proposal would avoid a direct conflict with Section 704(c) by letting individual employees opt in, rather than designating positions as “confidential, policy-determining, policy-making, or policy-advocating.” However, the proposal would be inconsistent with the spirit – if not the letter – of Section 704(c).

As the legislative history makes clear, Congress intended the provision to ensure that a large majority of SSA’s leadership and staff are career employees who are insulated from political pressures and serve across political administrations. Converting career employees to at-will employment would do the opposite, directly subjecting them – and the agency – to political pressures.



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Endnotes

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10. Defined in 42 U.S.C. 901 (Section 701 of the Social Security Act), <https://www.govinfo.gov/link/uscode/42/901>.
11. 42 U.S.C. 902 (Section 702 of the Social Security Act), <https://www.govinfo.gov/link/uscode/42/902>.
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