



Last week, the president issued an executive order (EO) establishing a new category of excepted service employees, known as Schedule F. This is a potentially far-reaching EO that could move tens of thousands of federal employees into the new Schedule F which would strip them of their civil service protections and allow them to be hired and fired at will. Schedule F would be broadly composed of “employees in confidential, policy-determining, policy-making, or policy-advocating positions.” The EO also instructs agencies to seek to exclude employees classified as Schedule F from bargaining units.

Our Office of General Counsel reviewed the EO to determine any potential legal action. As a result, NTEU filed a lawsuit in the U.S. District Court for the District of Columbia against the president and OPM. The lawsuit asks the court to declare the Executive Order is contrary to law and to enjoin its implementation.

At this point, none of our members have been harmed by the EO. That is, no NTEU member has been switched to Schedule F thus losing long-standing due process protections or status as a bargaining unit member. Under the timeframe established by the EO, agencies must make a preliminary determination within 90 days of which jobs fit into the categories outlined in the EO, and must make a final determination within 210 days to submit to OPM.

In response to this EO, Representative Gerry Connolly (D-VA), Chairman of the House Government Operations Subcommittee, joined by House Oversight and Reform Committee Chairwoman Carolyn Maloney (D-NY) and House Majority Leader Steny Hoyer (D-MD), introduced the Saving the Civil Service Act. This NTEU-endorsed bill would rescind the

President's EO creating Schedule F, prevent the use of funding to implement the EO or any successor EO, return positions and employees that are moved to Schedule F back to their previous designation, and prevent new employees that were non-competitively hired into a Schedule F position from converting to the competitive service.

The media has been very interested in understanding the full effect of the EO and NTEU has released information to reporters. You can [read the union's initial statement](#) and [see some of the coverage the EO has received](#) at the NTEU Media Center. That includes a strongly-worded opinion piece from the editorial board at the Washington Post.

Responding to this EO, the head of the Federal Salary Council, Ron Sanders, tendered his resignation because he could no longer work for an administration intent on politicizing the federal workforce. You can [read his letter](#) and [NTEU's statement in response](#). Sanders was appointed to his position by President Trump.

The executive order allows OPM to issue any necessary implementing regulations. On Friday, OPM issued [instructions](#) for how agencies are to identify federal employees to be switched to the newly created Schedule F. OPM's instructions appear to give agency heads wide latitude in determining which employees qualify for Schedule F. Following are some of the guideposts that agency heads can use, but they are not determinative, according to OPM:

- substantive participation in the advocacy for or development or formulation of policy, especially (A) substantive participation in the development or drafting of regulations and guidance; or (B) substantive policy-related work in an agency or agency component that primarily focuses on policy;
- the supervision of attorneys;
- substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;
- viewing, circulating, or otherwise working with proposed regulations, guidance, executive order or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either: (A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or (B) working in the agency or agency component executive secretariat (or equivalent); and
- conducting, on the agency's behalf, collective bargaining negotiations under chapter 71 of title 5 United States Code.

This latest EO is another direct assault on federal employees and your rights. It undermines the non-partisan, merit-based civil service that has been in place for 137 years. This EO cannot stand unchallenged and NTEU will challenge it through every avenue we have. This is another glaring effort by this administration to paint federal employees as obstructionists rather than dedicated professionals who serve the American people.

**For more information about NTEU and organizing at BLM, visit [www.nteu.org/organizing](http://www.nteu.org/organizing) or email [organize@nteu.org](mailto:organize@nteu.org).**