



August 3, 2022

**VIA ELECTRONIC MAIL**

Cheryl Campbell  
Assistant Secretary for Administration  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

**RE: Wrongful FLSA Exemption of ACF GS-101 Program Specialists and Repudiation of NTEU-HHS Settlements and Arbitration Decisions**

Dear Assistant Secretary Campbell:

I am writing to bring your attention to an important matter that I hope we can amicably and expeditiously resolve. Over the last several months, HHS has redesignated groups of employees in the GS-101 Program Specialist position in the Administration for Children and Families (ACF) as exempt from the Fair Labor Standards Act (FLSA). These redesignations occurred over NTEU's objection. In the last ten years, NTEU has successfully challenged the agency's wrongful FLSA designation of approximately 2,000 HHS employees, resulting in more than \$3.6 million in back pay and liquidated damages paid to affected employees.

Since filing a broad FLSA grievance against the agency in 2012, NTEU has successfully challenged the FLSA coverage of GS-101 Program Specialists under various position descriptions. More specifically:

- In January 2015, NTEU negotiated a favorable settlement agreement with HHS covering 150 Head Start Program Specialists. Settlement payments totaled approximately \$1.2 million dollars in back pay and damages to employees.
- In September 2015, NTEU negotiated a favorable settlement agreement with HHS covering 57 Aging Services Program Specialists. Settlement payments totaled approximately \$100,000 dollars in back pay and damages to employees.
- Also in September 2015, NTEU negotiated a favorable settlement agreement with HHS covering five positions, to include Child and Family Program Specialists, most Child Support Program Specialists, and most Child Welfare Program Specialists. An arbitration hearing was held on the remaining Child Support and Child Welfare Program Specialist positions, which NTEU won in October 2016. As a result, almost 400 additional employees were eligible for settlement payments totaling approximately \$580,000 in back pay and damages.
- In May 2018, NTEU negotiated a favorable settlement agreement with HHS covering 250 GS-101 ACF Program Specialists. This included Child Care Program Specialists,

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Domestic Violence Program Specialists, Youth Services Program Specialists and more.  
Settlement payments totaled approximately \$150,000 in back pay and damages to employees.

The above list covers ACF Program Specialists. It does not reflect the favorable FLSA settlement agreements negotiated by NTEU covering Paralegal Specialists (March 2016) and Government Information Specialists (October 2016). Nor does it include the February 2017 arbitration decision, in which Arbitrator Creo found that Office of Refugee Resettlement Field Program Specialists must be properly covered by the FLSA. It also does not include Arbitrator Vaughn's May 24, 2022 decision, which found that HHS Investigators should be FLSA nonexempt. Arbitrator Vaughn determined that HHS's improper FLSA designation of those employees was willful considering earlier arbitration decisions. Finally, it does not include the 2019 global settlement between NTEU and HHS which covered the FLSA designation of employees in 11 different positions. That settlement alone resulted in the payment of more than \$1.5 million dollars to affected employees.

Going forward, like all FLSA-covered employees, these redesignated employees are entitled to time-and-a-half pay for overtime hours and a choice between compensatory time and overtime when asked to work extra hours.

Notwithstanding HHS's failure to successfully defend the FLSA-exempt designation of any GS-101 Program Specialist, ACF has determined that it no longer will comply with the negotiated settlement agreements and arbitration decision pertaining to Program Specialists in its division. We are aware of at least four ACF Specialist positions that have recently been wrongly designated as FLSA-exempt. NTEU has filed three grievances challenging these designations, with at least one more grievance set to be filed in August 2022.

Given NTEU's history of success in FLSA matters, we remain confident in our position on these grievances, and, if necessary, we will arbitrate them. Still, these matters could (and should) be resolved with a simple agreement. That agreement must state that covered employees will be designated FLSA-nonexempt (covered). Employees must also be appropriately compensated for any period in which they were wrongly designated as FLSA-exempt.

I trust that you share NTEU's interest in avoiding protracted litigation that would negatively affect HHS employee morale and HHS services. These disputes will result in significant and unnecessary costs to American taxpayers because of employees' statutory entitlement to liquidated damages when the agency has wrongly designated them as FLSA-exempt, as well as the payment of attorneys' fees. NTEU's Office of General Counsel is happy to work with HHS to identify the affected positions, correct the erroneous FLSA designations, and resolve NTEU's grievances. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony M. Reardon". The signature is fluid and cursive, with the first name "Anthony" being more prominent and the last name "Reardon" following in a similar style.

Anthony M. Reardon  
National President

cc: Samuel Bagenstos, General Counsel