

What was Schedule F?

Schedule F was a 2020 Executive Order that would have allowed agencies to shift potentially large numbers of employees from the competitive service to the excepted service. The order intended that those employees would then be easier to fire. 85 Fed. Reg. 67631 (Oct. 21, 2020).

The order also told agencies to “expeditiously” ask the Federal Labor Relations Authority whether any covered employees should be kicked out of bargaining units.

President Biden rescinded the order on January 22, 2021.

Which employees would be covered by Schedule F?

Employees covered by Schedule F would be employees doing “confidential, policy-determining, policy-making or policy advocating” work.

Critically, political appointees heading up agencies would decide which employees meet this definition.

So only employees who write policy, or who work with “confidential” matters, would be covered by Schedule F?

No. Those terms are vague. An OPM memo issued after the Schedule F order explicitly stated that no statute or caselaw “precisely define[s] these terms.” We know agencies will lump lots of employees into these categories, even if the employees’ duties do not explicitly include “confidential” or “policy-making” work.

As an example, before Schedule F was rescinded, one agency (the Office of Management and Budget) started making a list of all the positions that it would include in Schedule F. OMB included employees that no one would think of as doing confidential or policy-making work, like human resources specialists, administrative assistants, IT specialists, and employees at the GS-9 and GS-10 levels. (See [NTEU’s Schedule F webpage](#) to review the relevant OMB documents.)

There are estimates that at least 50,000 employees would be affected by Schedule F. Drew Friedman, [Biden administration locks in plan aiming to block Schedule F for good](#), *Federal News Network* (April 4, 2024) (“experts estimated Schedule F would have affected about 50,000 career feds across government”); Brooks Anderson, [A conversation with James Sherk](#), *Harvard Undergraduate Law Review* (Fall 2022) (“We estimated the order would apply to about 50,000 employees in the executive branch”). NTEU is concerned the number could easily be higher.

What are the competitive service and the excepted service?

All federal employees are either in the (1) competitive service, (2) the excepted service, or (3) Senior Executive Service. <https://www.opm.gov/policy-data-oversight/hiring-information/types-of-hires/>.

Excepted service employees are hired outside of the normal competitive hiring process. Some have statutory protections against “adverse actions” (which are serious personnel actions like terminations), but some do not. Excepted service employees who perform “confidential, policy-

determining, policy-making or policy-advocating” work and who are excepted by the President from the competitive service (such as Schedule F employees) are not included in the adverse action statute. See 5 U.S.C. § 7511(b).

Those same types of employees are also not included in the statute which provides protection against prohibited practices, like political coercion or nepotism. See 5 U.S.C. § 2302(a)(2)(B).

So, the risks for any employees moved into a Schedule F is that they are not covered by the adverse action or prohibited personnel practice laws.

What is the legal basis for any President to issue a Schedule F order?

A statute allows Presidents to create new schedules of excepted service employees if “necessary” and if “conditions of good administration warrant.” See 5 U.S.C § 3302.

Different Presidents have used that authority to create new excepted service schedules over several decades—Schedules A, B, C, D and E.

Was Schedule F just about reclassifying employees? Why is that a big deal?

Schedule F was not about some technical reclassification issue. The order explicitly and repeatedly stated that its purpose was to make it easier to fire more employees. Commentators who support the order have specifically said the same thing, over and over again. See, e.g., James Sherk, [The President Needs the Power to Fire Bureaucrats](#), *Wall Street Journal* (Aug. 8, 2022).

Don't all federal employees have due process rights under the Constitution and federal law? How can any President take that away?

The Supreme Court has held that non-probationary public employees have a due process property interest in their employment. *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532 (1985). In NTEU's view, employees hired into the competitive service with an expectation of having certain rights keep those rights even if they are moved into a new Schedule F and even if an Administration tries to fire them. In NTEU's view, no Presidential order can override those constitutionally based rights. But others do not share that view. And it would be a fight once employees are shifted into Schedule F and termination notices start issuing.

What actually happens if an employee is reclassified as Schedule F?

Under the order, agencies were directed to quickly come up with lists of positions to be moved into Schedule F. OPM had to sign off on those lists. If an employee's position was on the list and it was finalized, the employee's designation would change from competitive service to excepted service. In the view of the officials who drafted the order, those employees would then be at-will and could be fired for any reason—or no reason—at all.

What is NTEU doing to stop Schedule F?

1. NTEU immediately filed suit in federal court after the order was first issued. Because President Biden rescinded it, the lawsuit became unnecessary.
2. In 2022, NTEU petitioned the Office of Personnel Management to issue regulations to protect employees affected by Schedule F. A coalition of 13 other unions supported our petition. NTEU asked OPM to clarify that employees moved to a Schedule F keep their due process rights and cannot simply be switched to being at-will.

OPM has acted on NTEU's request and finalized regulations on April 9, 2024. [89 Fed. Reg. 24982](#) (April 9, 2024). The regulations also narrowly define who is covered by Schedule F to only noncareer, political appointees. And the regulations create a new appeal right to the Merit Systems Protection Board for employees shifted involuntarily from the competitive service to Schedule F.

3. NTEU also supported regulations proposed and finalized by the Merit System Protection Board which codify this new appeal right for employees affected by Schedule F.
4. NTEU has asked many of our agencies to issue regulations that would guarantee Schedule F employees protection against prohibited personnel practices. Those employees are not covered by the prohibited personnel practice statute, but agencies could act to add those protections by regulations.
5. NTEU is also fighting for legislation that would limit the harm of a future Schedule F by capping the number of employees who could be affected and requiring an employee's consent before being moved to an excepted service schedule.
6. NTEU is working with good government groups on an ongoing basis to educate our members and the public about the dangers of Schedule F.

NTEU's website has a dedicated [webpage](#) with Schedule F updates.

Isn't the danger of Schedule F over because OPM has issued protective regulations?

OPM's new regulations—issued in response to an NTEU petition—are important and very helpful. But regulations can be undone. A new administration and a hostile OPM can propose rescinding those same regulations. That would take months, but it could be done.

Can a new President simply issue another Schedule F order?

That order cannot lawfully conflict with federal regulations, like OPM's new protective regulations. With that said, there is no guarantee that a new Presidential administration would honor this settled law, meaning that litigation may ultimately be necessary to reestablish the appropriate limits of Presidential authority.