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1750 H Street N.W. • Washington, D.C. 20006 • (202) 572-5500

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**Contact: Dina Long, Ext. 7058  
Sheila McCormick, Ext. 7034  
Mike Drapkin, Ext. 7011**

## **Kelley Calls on OPM to Change Proposals In Order to Protect Employee Overtime Pay**

**Washington, D.C.**—Proposed changes by the Office of Personnel Management (OPM) to federal wage-and-hour regulations impacting overtime pay—particularly adoption of a dollar-based salary test—would unfairly target a large number of federal employees by threatening their overtime rights, the leader of the nation’s largest independent union of federal employees said today.

In comments submitted to OPM, President Colleen M. Kelley of the National Treasury Employees Union (NTEU) called on the agency to amend its proposed changes to the so-called ‘white-collar’ regulations identifying the executive, administrative and professional federal employees who are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA).

Changes in the OPM proposal, including deleting a minimum salary-test adopted for private sector employees by the Department of Labor (DOL) two years ago, are necessary, President Kelley said, because OPM is responsible for “reconciling government FLSA rules with the federal classification system.” Currently all employees classified as a GS-4 or below are entitled to FLSA rights. If the proposed minimum-salary test is adopted for the federal sector, all employees making less than \$23,660 per year would be covered by the FLSA.

But that would lead to a number of irrational disparities, Kelley pointed out. For instance, GS-4

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employees in some parts of the country could lose the protection of the FLSA because their higher locality pay pushes them beyond the set salary level.

“In fact, some employees at the GS-2 or even GS-1 levels could lose their overtime rights,” President Kelley said. Under the salary-based test, a GS-5, Step 1 employee in San Francisco could lose her FLSA rights. “There clearly is no logic in adopting a dollar-figure test that results in such disparate treatment depending on an employee’s location,” Kelley added.

OPM previously had considered, and rejected, adoption of a minimum-salary test to determine FLSA eligibility, Kelley noted in her written comments, previously saying that protecting employees’ FLSA rights based on a grade level “makes more sense than using only absolute dollar figures.”

The NTEU leader pointed out that “having previously rejected a minimum-salary test as ill-suited for use with the government’s classification system, OPM cannot now adopt such a test without even attempting to explain why harmonizing with DOL’s rules suddenly makes sense.”

Kelley also made a number of other strong suggestions for changing the OPM proposal in such areas as temporary assignments, the use of discretion and independent judgment, and the scope of the exemption for administrative work.

The OPM proposals are a follow-up to a contentious proceeding two years ago in which DOL sought to broaden the definition of executive, administrative and professional employees—an action that would have exempted millions of private-sector workers from overtime pay eligibility. NTEU joined with other groups across the nation in protesting that action; DOL ultimately adopted a much less severe version of its proposal.

Although OPM, rather than DOL, administers the FLSA in the federal sector, its regulations must be consistent with those issued by the Labor Department—differing only to the extent necessary to accommodate variances between federal and private sector personnel systems. NTEU often pursues FLSA actions on behalf of federal employees in court, as well as in the grievance and arbitration procedures.

NTEU is the largest independent federal union, representing some 150,000 federal workers in 30 agencies and departments.