



AFGE is aware that AFGE members were sent an email asking you to resign from federal service yesterday with a vague promise of reward for resigning by February 6.

There is not yet any evidence the administration can or will uphold its end of the bargain, that Congress will go along with this unilateral massive restructuring, or that appropriated funds can be used this way, among other issues that have been raised. We are encouraging AFGE members NOT to resign or respond to this email until you have received further information and clarification.

In the meantime, we have developed some frequently asked questions to provide you with the best guidance we can given the current uncertainty.

Frequently Asked Questions (FAQs) on OPM's Deferred Resignation Program Email

1. What is the Deferred Resignation Program?

The Deferred Resignation Program ("Program") was introduced by an email sent to federal employees on January 28, 2025. Preceded by threats to modify and downsize the federal workforce, the Program purports to allow federal employees to submit a resignation letter that will become effective on September 30, 2025. In exchange, the Program claims that employees will be exempt from "Return to Office" requirements and will maintain their current compensation and benefits until the effective date of their resignation.

Employees should not take the Program at face value. The Program documentation, including the introductory email, an associated guidance memorandum issued by the Office of Personnel Management ("OPM") on January 28, 2025, and OPM-issued FAQs, is riddled with inconsistencies and uncertainties. It is also unclear whether OPM has the legal authority to support the Program or its alleged benefits, and the eligibility criteria are vague.

2. Is the Program a buyout?

No, the Program is not a buyout nor is it a Voluntary Separation Incentive Payment ("VISIP") program. Instead, it purports to offer employees the ability to submit a deferred resignation and claims that employees who do so will continue to receive pay, while still possibly working, until September 30, 2025.

Notably, however, the Program contains no guarantee that an employee's resignation will be accepted. Nor does the Program guarantee that an employee whose resignation is accepted will receive the benefits that the Program purports to offer.

3. If an employee chooses to accept the program, are they required to work during the deferred resignation period?

They may be. OPM's statements are conflicting on this point. According to the OPM email and letter, employees will not be required to work in person but may be assigned remote work duties. The OPMFAQ page also suggests that employees will not be required to work except in "rare cases," without defining what constitutes "rare cases." At the same time, the FAQ's describe the deferred resignation period as a "nice vacation" and the Program states that employees may be placed on "paid administrative leave."

4. Can an employee take another job during the deferred resignation period?

The FAQ states that the resignation letter does not explicitly prohibit outside employment. However, other existing policies, such as agency-specific regulations requiring prior authorization for outside work, are likely to apply.

5. Are all federal employees eligible for the program?

No. Employees in positions related to immigration enforcement and national security, as well as those in any positions specifically excluded by their employing agency, are not eligible. USPS employees and military personnel are also excluded. There is no guidance on how employees can confirm their eligibility or if their agency has specific exclusions.

6. Will employees who opt-in be protected from termination before their resignation date?

Nothing in the Program documentation prohibits the termination or separation of an employee who accepts deferred resignation. While the OPM email suggests that employees will maintain their compensation and benefits until the effective date of their resignation, it does not explicitly state that employees are shielded from layoffs or other adverse actions before September 30, 2025. There is no guarantee that employees opting in to the Program will not be targeted by such actions.

The Program also does not indicate what may occur in the event of a lapse in congressional appropriations. At present, many agencies of the federal government are only funded through March 14, 2025.

7. What happens if an agency requires an employee to continue working despite OPM's FAQ stating that continued work should be rare?

While OPM's FAQ states that work will only be required in "rare cases," the Program's details vary across the different OPM documents. If an agency insists on continued work, employees may not have a clear administrative remedy, as the enforceability of the promises and statements in OPM's FAQ is uncertain.

8. What legal recourse do employees have if the government does not honor the terms of deferred resignation?

It is unclear what recourse, if any, employees might have if the government fails to honor the terms of their deferred resignation. There is no certainty that the statements made in the OPM Program documents will be legally enforceable. Even if the email and FAQ page are interpreted as an implied contract or offer, there is no guarantee that such a claim would be enforceable. For example, while each case will be fact-specific, resignation is generally considered to be a voluntary action. It is therefore unclear whether violations of the policy would be appealable to the Merit Systems Protection Board, through the grievance process, or any other forum.

9. How can employees ensure the administration will follow through on the Program?

Given the inconsistencies among the Program's documents issued by OPM, as well as the ambiguous and conflicting language regarding work obligations and exclusions, there is no guarantee that the claims in the Program will be honored by the Government. The Program may also face legal challenges that could alter the terms of all or portions of the Program. Employees who opt-in to the Program will be at the mercy of the administrators of the Program, whose claims contain inconsistencies and lack stated legal underpinning.

10. Is there an assurance that the promised continued salary will be funded?

No. Nothing in the OPM documentation contains such an assurance. Moreover, because current appropriations for most civilian agencies are set to expire March 14, 2025, it is not guaranteed that agencies subject to the current appropriations bill will continue to have adequate funding for the promised salary beyond the bill's expiration.

11. Why did AFGE file a lawsuit challenging the Program?

AFGE's lawsuit aims to protect its members and force OPM to produce information supporting the legitimacy of the offers as stated in the Program. It is critical for employees to ensure that any offer from OPM is legally supported and that any participation in the Program will be honored and is enforceable. Based on the current terms of the Program, and the manner in which it has been implemented, government claims of its legitimacy are specious.

12. What is AFGE asking for as relief in the lawsuit?

AFGE is seeking that the Program be declared a violation of the Administrative Procedure Act and remanded to OPM to provide the reasoned basis and support for the Program as required by law. AFGE is also seeking to enjoin OPM from implementing the Program until such time as Defendants can provide justification for the legitimacy of the Program and assurance of its terms.

13. Does AFGE's lawsuit affect my ability to accept the offer?

Not directly or immediately. Unless and until the court issues an injunction or similar order, there is no change to the Program as presented by OPM. If the court does issue an injunction or otherwise grant the relief sought in the lawsuit, that could preclude employees from enrolling in the Program.

14. I have received an agreement from my agency. Should I sign it?

Even if you have received an agreement or form regarding the Program from your agency, AFGE continues to advise its members not to participate in the Program or sign any related documents. Employees should carefully review the terms presented in the Program and pay special attention to the inconsistencies, vagueness, and lack of legal support.

15. What would I be waiving by signing the agreement?

The updated language in the Program and accompanying distributed agreements contain language that waives employees' rights to appeal or challenge any claims arising from their employment or participation in the Program in any judicial or administrative forum. OPM states that employees who enroll cannot rescind their choice and that the agency head has the sole discretion to unilaterally rescind enrollment in the Program. OPM further asserts that the agency head's decision to rescind an employee's enrollment is not subject to review by the Merit Systems Protection Board or any other forum. These waivers are troubling, to say the least.

16. What actions can Locals and Councils take to protect bargaining unit employees from the Program?

Locals and councils may:

- Consider filing requests for information under 5 U.S.C. § 7114(b)(4).
- Consider filing a demand to bargain over the Program.
- Consider grievances alleging the Program violates terms of their collective bargaining agreement or regulations (e.g. regulations concerning administrative leave).
- Locals and councils may also have a basis for a grievance or unfair labor practice charge alleging, among other things, a bypass of the Union with respect to communications about the Program directly to employees.

Please Note: This publication is for informational purposes only and does not guarantee any particular result in a specific case. The information provided is not, nor is it intended to be, a substitute for individualized legal or professional advice.