



NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

Out of Many/**One Union**
AFGE NVAC/AFL-CIO

NATIONAL GRIEVANCE

NG-1/29/25

Date: January 29, 2025

To: Denise Biaggi-Ayer
Executive Director
Office of Labor Management Relations
U.S. Department of Veterans Affairs
Denise.Biaggi-Ayer@va.gov
Sent via electronic mail only

From: Thomas Dargon, Jr., Deputy General Counsel, and Shalonda Miller, Staff Counsel, National Veterans Affairs Council (#53) (“NVAC”), American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: **National Grievance against the Department of Veterans Affairs for bypassing and failing to bargain in good faith with the Union concerning “deferred resignation” offers**

STATEMENT OF THE CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2023) (“MCBA”), American Federation of Government Employees/National Veterans Affairs Council (“NVAC” or “the Union”) is filing this National Grievance against you and all other associated officials and individuals acting as agents on behalf of the Department of Veterans Affairs (“Department” or “VA”) for bypassing and failing to bargain in good faith with the Union concerning “deferred resignation” offers.

Specifically, the Department violated, and continues to violate, Articles 2, 3, 47, and 49 of the MCBA, 5 U.S.C. §7114(a), 5 U.S.C. §7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified. The Union reserves the right to supplement this National Grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

STATEMENT OF THE CASE

On January 28, 2025, the U.S. Office of Personnel Management (“OPM”) sent an email directly to federal employees entitled “*Fork in the Road*”¹ and subsequently published a list of frequently asked questions² and a memorandum entitled “*Guidance Regarding Deferred Resignation Program*.”³

In its January 28, 2025 email, OPM announced forthcoming changes to the civil service consistent with President Trump’s earlier “directives concerning the federal workforce.” See Exhibit A; see also Presidential Memorandum on *Return to In-Person Work*, 90 Fed. Reg. 17 (Jan. 28, 2025).⁴ According to OPM, the first “pillar” of the “reformed federal workforce” is “*Return to Office*.” See Exhibit A.

¹ See Exhibit A.

² <https://www.opm.gov/fork/faq> (last accessed Jan 29, 2025).

³ See Exhibit B.

⁴ See Exhibit C.

Additionally, OPM falsely claims that the “substantial majority of federal employees who have been working remotely since Covid [sic] will be required to return to their physical offices five days a week.” *Id.*

As applied to VA, this claim is categorically false. Performing duties in person at VA facilities is no “fork in the road” but rather the everyday reality of hundreds of thousands of VA workers. At the nation’s largest health care system, the truth remains that the vast majority of VA employees have *always* performed, and continue to perform, their official duties while in person at health care facilities, clinics, benefits offices, and cemeteries across the country. Each day, countless veterans receive bedside care from physicians, nurses, social workers, physical therapists, and other health care professionals at VA hospitals and clinics. Likewise, the employees responsible for sanitizing these facilities, laundering garments, and serving food to patients are not doing so remotely. Cemetery workers responsible for ensuring burial and memorial benefits to eligible veterans and their family members are not doing so remotely.

In its January 28, 2025 email, OPM claims to promise federal employees the continuation of certain pay, benefits, and remote work arrangements through September 30 if they provide notice of their intent to voluntarily resign from federal service by February 6, 2025. *See Exhibit A.* Still, agencies may still elect to eliminate impacted positions through a reduction-in-force, unilaterally reassign impacted employees to other positions, or place employees on administrative leave. Notably, since current appropriations for most agencies are set to expire March 14, 2025, there is no guarantee that agencies can use existing funds for this purpose or that they will have the future funding necessary to continue paying the salaries of employees who submit their resignation.

OPM extended this offer on behalf of the Department and directly to bargaining unit employees without notifying the Union or attempting to engage in good faith bargaining. In addition to OPM’s communications, several senior leaders in VA sent additional communications concerning this subject directly to bargaining unit employees. For example, on January 29, 2025, the Network Director of Veterans Integrated Service Network 10 sent an email to thousands of bargaining unit employees reiterating the points and policies announced by OPM.⁵ This email was sent directly to bargaining unit employees without notifying and bargaining in good faith with the Union. Other senior VA leaders engaged in similar conduct.

On January 29, 2025, the Union submitted a demand to bargain under protest to the VA Office of Labor-Management Relations concerning the “Deferred Resignation” program.⁶

Violations

Dealing directly with bargaining unit employees on matters involving conditions of employment for which there is an obligation to notify and bargain with the Union, such as with the “deferred resignation” program, constitutes an unlawful bypass in violation of the Federal Service Labor-Management Relations Statute and the Master Agreement. This conduct constitutes unlawful interference with the Union’s role as the exclusive representative of bargaining unit employees. *See* 5 U.S.C. §7114(a)(1).

By dealing directly with bargaining unit employees concerning conditions of employment and bypassing the Union, OPM and the Department violated 5 U.S.C. §7114(a)(1) and 5 U.S.C. §7116(a)(1), (a)(5), and (a)(8). By unilaterally implementing changes in conditions of employment without satisfying its duty to bargain in good faith with the Union, OPM and the Department violated Articles 47 and 49 as well as its statutory obligation to bargain in good faith. Lastly, OPM and the Department’s failure to comply with relevant contractual and statutory obligations violated Articles 2 and 3.

⁵ *See Exhibit D.*

⁶ *See Exhibit E.*

In sum, OPM and the Department violated and continue to violate Articles 2, 3, 47, and 49 of the MCBA, 5 U.S.C. §7114(a), 5 U.S.C. §7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified.

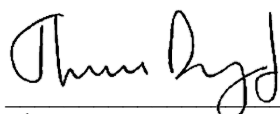
Remedy Requested

The Union requests the following remedies:

- To return to the *status quo ante*;
- To rescind the January 28, 2025 email, *Fork in the Road*;
- To cease and desist from further direct dealings with bargaining unit employees;
- To bargain in good faith with the Union;
- To make-whole any AFGE bargaining unit employees adversely affected, including back pay, interest, and attorney's fees;
- To fully comply with the MCBA and the Statute;
- To issue an electronic notice posting to all AFGE bargaining unit employees concerning its unfair labor practices;
- To agree to any and all other remedies appropriate in this manner.

Time Frame and Contact

This is a National Grievance, and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have questions, please contact the undersigned counsel.



Thomas Dargon, Jr.
Deputy General Counsel, NVAC
Office of the General Counsel
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
tel: 202-639-6424
efax: 202-379-2928
thomas.dargon@afge.org



Shalonda Miller
Staff Counsel, NVAC
Office of the General Counsel
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
tel: 202-639-6424
efax: 202-379-2928
shalonda.miller@afge.org

cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC

Exhibit A



[OPM.gov](https://www.opm.gov) / /

FORK IN THE ROAD

[Frequently Asked Questions](#)

Below is the email that was sent to federal employees on January 28, 2025 presenting a deferred resignation offer. If you did not respond to that email and wish to accept the deferred resignation offer, you may do so by following these steps.

- 1) Send an email to hr@opm.gov from your government account. Only an email from your .gov or .mil account will be accepted.
- 2) Type the word "**Resign**" into the "Subject" line of the email. Hit "Send".

Deferred Resignation Email to Federal Employees

January 28, 2025

During the first week of his administration, President Trump issued a number of directives concerning the federal workforce. Among those directives, the President required that employees return to in-person work, restored accountability for employees who have policy-making authority, restored accountability for senior career executives, and reformed the federal hiring process to focus on merit. As a result of the above orders, the reform of the federal workforce will be significant.

The reformed federal workforce will be built around **four pillars**:

w

- 1) **Return to Office:** The substantial majority of federal employees who have been working remotely since Covid will be required to return to their physical offices five days a week. Going forward, we also expect our physical offices to undergo meaningful consolidation and divestitures, potentially resulting in physical office relocations for a number of federal workers.
- 2) **Performance culture:** The federal workforce should be comprised of the best America has to offer. We will insist on excellence at every level — our performance standards will be updated to reward and promote those that exceed expectations and address in a fair and open way those who do not meet the high standards which the taxpayers of this country have a right to demand.

- 3) **More streamlined and flexible workforce:** While a few agencies and even branches of the military are likely to see increases in the size of their workforce, the majority of federal agencies are likely to be downsized through restructurings, realignments, and reductions in force. These actions are likely to include the use of furloughs and the reclassification to at-will status for a substantial number of federal employees.
- 4) **Enhanced standards of conduct:** The federal workforce should be comprised of employees who are reliable, loyal, trustworthy, and who strive for excellence in their daily work. Employees will be subject to enhanced standards of suitability and conduct as we move forward. Employees who engage in unlawful behavior or other misconduct will be prioritized for appropriate investigation and discipline, including termination.

Each of the pillars outlined above will be pursued in accordance with applicable law, consistent with your agency's policies, and to the extent permitted under relevant collective-bargaining agreements.

If you choose to remain in your current position, we thank you for your renewed focus on serving the American people to the best of your abilities and look forward to working together as part of an improved federal workforce. At this time, we cannot give you full assurance regarding the certainty of your position or agency but should your position be eliminated you will be treated with dignity and will be afforded the protections in place for such positions.

If you choose not to continue in your current role in the federal workforce, we thank you for your service to your country and you will be provided with a dignified, fair departure from the federal government utilizing a deferred resignation program. This program begins effective January 28 and is available to all federal employees until February 6. If you resign under this program, you will retain all pay and benefits regardless of your daily workload and will be exempted from all applicable in-person work requirements until September 30, 2025 (or earlier if you choose to accelerate your resignation for any reason). The details of this separation plan can be found below.

Whichever path you choose, we thank you for your service to The United States of America.

Upon review of the below deferred resignation letter, if you wish to resign:

- 1) Select "Reply" to this email. You must reply from your government account. A reply from an account other than your .gov or .mil account will not be accepted.
- 2) Type the word "**Resign**" into the body of this reply email. Hit "Send".

THE LAST DAY TO ACCEPT THE DEFERRED RESIGNATION PROGRAM IS FEBRUARY 6, 2025.

Deferred resignation is available to all full-time federal employees except for military personnel of the armed

forces, employees of the U.S. Postal Service, those in positions related to immigration enforcement and national security, and those in any other positions specifically excluded by your employing agency.

DEFERRED RESIGNATION LETTER

January 28, 2025

Please accept this letter as my formal resignation from employment with my employing agency, effective September 30, 2025. I understand that I have the right to accelerate, but not extend, my resignation date if I wish to take advantage of the deferred resignation program. I also understand that if I am (or become) eligible for early or normal retirement before my resignation date, that I retain the right to elect early or normal retirement (once eligible) at any point prior to my resignation date.

Given my impending resignation, I understand I will be exempt from any "Return to Office" requirements pursuant to recent directives and that I will maintain my current compensation and retain all existing benefits (including but not limited to retirement accruals) until my final resignation date.

I am certain of my decision to resign and my choice to resign is fully voluntary. I understand my employing agency will likely make adjustments in response to my resignation including moving, eliminating, consolidating, reassigning my position and tasks, reducing my official duties, and/or placing me on paid administrative leave until my resignation date.

I am committed to ensuring a smooth transition during my remaining time at my employing agency. Accordingly, I will assist my employing agency with completing reasonable and customary tasks and processes to facilitate my departure.

I understand that my acceptance of this offer will be sent to the Office of Personnel Management ("OPM") which will then share it with my agency employer. I hereby consent to OPM receiving, reviewing, and forwarding my acceptance.

Upon submission of your resignation, you will receive a confirmation email acknowledging receipt of your email. Any replies to this email shall be for the exclusive use of accepting the deferred resignation letter. Any other replies to this email will not be reviewed, forwarded, or retained other than as required by applicable federal records laws.

Once your resignation is validly sent and received, the human resources department of your employing agency will contact you to complete additional documentation, if any.

OPM is authorized to send this email under Executive Order 9830 and 5 U.S.C. §§ 301, 1103, 1104, 2951, 3301, 6504, 8347, and 8461. OPM intends to use your response to assist in federal workforce reorganization efforts in conjunction with employing agencies. See 88 Fed. Reg. 56058; 80 Fed. Reg. 72455 (listing routine uses). Response to this email is voluntary. Although you must respond to take advantage of the deferred resignation offer, there is no penalty for nonresponse.

Exhibit B



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

MEMORANDUM

TO: Heads and Acting Heads of Departments and Agencies
FROM: Charles Ezell, Acting Director, U.S. Office of Personnel Management
DATE: January 28, 2025
RE: Guidance Regarding Deferred Resignation Program

Pursuant to its authority under 5 U.S.C. § 1103(a)(1) and (a)(5), the U.S. Office of Personnel Management (“*OPM*”) is providing guidance to agencies regarding OPM’s government-wide deferred resignation program. This program provides employees with an option to submit a deferred resignation letter with resignation effective on September 30, 2025. Deferred resignation exempts those employees who choose it from return-to-office requirements.

Employees who accept deferred resignation should promptly have their duties re-assigned or eliminated and be placed on paid administrative leave until the end of the deferred resignation period (generally, September 30, 2025, unless the employee has elected another earlier resignation date), unless the agency head determines that it is necessary for the employee to be actively engaged in transitioning job duties, in which case employees should be placed on administrative leave as soon as those duties are transitioned.

In addition, each week (no later than Friday at 5:00 PM) through September 30, 2025, agencies should email to tracking@opm.gov the following information:

- The number of employees who have offered their resignations as part of the deferred resignation program;
- The number of agency employees who are part of the deferred resignation program placed on administrative leave;
- The number of agency employees who have applied for early and normal retirement since January 27, 2025;
- The number of agency employees who have actually resigned (and whether or not such employee had previously submitted accepted Deferred Resignation) beginning January 27, 2025;
- The number of employees who have sought to rescind their resignations, and the status of each request;

- The number of applications to extend the deferred resignation deadline (beyond February 6);
- The number of applications from potential retirees to extend the deferred resignation end-date beyond September 30, 2025 (to accommodate impending retirement); and
- The roles and number of personnel excluded by your agency from the deferred resignation program.

Attached as Appendix 1 are FAQs that OPM is providing for Chief Human Capital Officers (CHCOs) regarding the deferred resignation program.

Please contact tracking@opm.gov if you have any questions regarding this memorandum.

cc: CHCOs, Deputy CHCOs, Human Resources Directors, and Chiefs of Staff

Appendix 1: Deferred Resignation FAQs for CHCOs

Q: Why is the federal government offering deferred resignation to the federal workforce?

A: The federal workforce is expected to undergo significant near-term changes. As a result of these changes and uncertainty, or for other reasons, some employees may wish to depart the federal government on terms that provide them with sufficient time and economic security to plan for their future.

Q: Who is eligible for deferred resignation?

A: Deferred resignation is available to all full-time federal employees except for military personnel of the armed forces the U.S. Postal Service, positions related to immigration enforcement and national security, and any other positions specifically excluded by your employing agency.

Q: What do we do if employees did not receive the deferred resignation email?

A: Either:

- 1) Send the email directly to the employee from your agency.
- 2) Direct the employee to visit the OPM website where they can review the email and all associated instructions.

Q: What happens if employees do not respond to the email or accept deferred resignation?

A: Nothing. Employees have no obligation to respond to the email. Accepting deferred resignation is in employees' sole discretion and is completely voluntary.

Q: For employees who become eligible for early/normal retirement during the deferred resignation period (i.e., before September 30, 2025), will they be able to accept deferred resignation and still accept early/normal retirement during the deferred resignation period?

A: Yes. Employees will continue to accrue retirement benefits during the deferred resignation period. Should employees elect to retire (either early or normal) before their final resignation date, the retirement election will override the deferred resignation.

Q: Will employees who become eligible for normal (or early) retirement shortly after September 30, 2025 be permitted to accept deferred resignation without compromising their impending retirement?

A: Agencies should review any such requests on a case-by-case basis and may extend a waiver to accommodate reasonable requests.

Q: How do we handle employees who were on approved leave during some or all of the period between January 28, 2025 and February 6, 2025 and who, as a result, did not get a sufficient opportunity to evaluate and/or accept the deferred resignation letter?

A: Employees who missed the February 6, 2025 deadline due to approved absence for some or all of the period from January 27, 2025 to February 6, 2025 are entitled to request an extension and employing agencies may grant reasonable extensions.

Q: If an employee decides after February 6, 2025 that they would like to resign under the terms offered in the January 28, 2025 deferred resignation letter, will they still be allowed to?

A: Deferred resignation will generally **not** be available to those who resign after February 6, 2025. Certain exceptions might be made for employees who were on approved absence for some or all of the period from January 28, 2025 to February 6, 2025.

Q: If an employee resigns and later changes their mind, will the employee be able to rescind their resignation?

A: Employees have the right to request a rescission of their resignation at any time and the employing agency will need to review such rescission requests. As noted in the deferred resignation letter, it is the objective of the program to move quickly to consolidate and/or reassign roles and in many cases place employees on administrative leave which would likely serve as a valid reason to deny rescission requests.

Q: May employees accelerate their resignation date to earlier than September 30, 2025?

A: Yes, employees may unilaterally accelerate their final resignation date for any reason.

Q: Can employees extend their final resignation date?

A: The terms of the deferred resignation letter do not allow for an extension of the final resignation date. As noted above, there is a narrow possible exception for employees with impending retirement dates.

Q: Can employees get another job outside of their current employing agency during the period between submission of their resignation and the final resignation date?

A: Nothing in the deferred resignation letter prevents agency employees from seeking outside employment during the period from submittal of their resignation to their final resignation date. Employing agencies should assess what restrictions, if any, exist for employees who have resigned but remain employed (including on administrative leave) by their employing agency.

Q: Can employees return to work in the federal government?

A: Deferred resignation does not affect employees' ability to apply to work for the federal government in the future.

Q: How will employees know their resignations have been received and accepted?

A: Employees will receive an email confirming receipt with additional information on next steps. Given the volume of emails, this confirmation email may take up to 48 hours. Employees should retain the record of their resignation email.

Q: What if somebody resigns for on behalf of another employee without that employee's authorization?

A: Deferred resignation can only be submitted from a secure government email. If someone has accessed an employee's email without authorization, you should immediately follow your agency's protocol for addressing such unauthorized use.

Q: Is there any additional paperwork needed to resign?

A: An employee's acceptance of the deferred resignation letter will serve as a formal acceptance of deferred resignation. If the employing agency requests additional documentation, the

deferred resignation letter obligates employees to cooperate with their employing agency to complete all reasonable and customary documentation.

Exhibit C

Presidential Documents

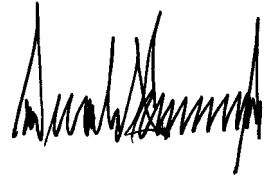
Memorandum of January 20, 2025

Return to In-Person Work

Memorandum for the Heads of Executive Departments and Agencies

Heads of all departments and agencies in the executive branch of Government shall, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary.

This memorandum shall be implemented consistent with applicable law.

A handwritten signature in black ink, appearing to be the signature of Donald Trump, located on the right side of the page.

THE WHITE HOUSE,
Washington, January 20, 2025

Exhibit D

Please see email below from the Network Director. This information will be shared at the 12:00pm OPM Memo Briefing / EO Information briefing.

Dear Colleagues,

This email serves as a follow up to the message that VA employees are in the process of receiving from the Office of Personnel Management (OPM) titled "*Fork in the Road.*" I want to take a moment to confirm that this communication is valid and represents official guidance from OPM. It outlines significant changes to the federal workforce, including the Deferred Resignation Program, the return-to-office mandate, updated performance expectations, workforce restructuring, and enhanced standards of conduct.

As we move forward, we will work closely with VA Leadership to implement this guidance and agency decisions in a way that aligns with our mission. A key focus will be determining which groups of occupations may be excluded from the Deferred Resignation Program, as stated in OPM's message:

"and those in any other positions specifically excluded by your employing agency."

Similar to the exclusions already outlined for military, national security, and enforcement, we will ensure a thorough review to identify roles critical to operations that may also be exempt. No immediate decisions regarding exclusions have been made at this time, but we are actively engaged in discussions to provide clear direction. We will prioritize open communication and provide updates as soon as additional details are finalized. I encourage all employees to review the OPM message thoroughly to understand its key provisions and timelines.

I recognize that this message and the broader changes announced by OPM may raise questions or concerns. Please know that we are committed to keeping you informed as we receive additional guidance. Thank you for your continued professionalism and dedication to our mission as we navigate these changes together.

Exhibit E



**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL VETERANS AFFAIRS COUNCIL #53
Affiliated with the AFL - CIO
Mid-Term Bargaining Committee**

Oscar L. Williams Jr., Chair 2 nd Exec. V-President 29 Lake Street Danville, IL 61832-6101	Bill Wetmore, Member 3 rd Exec. V-President 2319 Alava Court Waldorf, MD 20603	Tinita Cole, Member 6 th District Rep., VAMC Dayton. Dayton, OH 45428	Nicholas Keogh, Member National Rep. 811 Vermont Ave Washington, DC 20420	Linda Ward-Smith, Member President AFGE Local 1224 6900 North Pecos Rd North Las Vegas 89086
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January 29, 2025

Denise A. Biaggi-Ayer, Executive Director
Office of Labor Management Relations (LMR)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Subject: HR hr@OPM.gov Fork in the Road email to Bargaining Unit Employees

Dear Ms. Biaggi-Ayer:

In accordance with Article 47, Section 2, of the Master Agreement, National VA Council #53 is, formally demanding to bargain on OPM email Fork in the Road as cited above within the Department. Please provide the NVAC's Mid-Term Bargaining Committee named above with all information and/or data related to this subject. The negotiations of this matter should normally begin no later than twenty (20) workdays after the Management Chief's Negotiator in this matter receives our demand to bargain.

Please cease and desist any implementation until the bargaining obligation has been met. The NVAC's Mid-Term Bargaining Committee may request a briefing over the cited subject above, before sending any proposals. If you have any questions, please call me at (217) 554-4979.

Sincerely,

Oscar L. Williams, Jr.
Chairperson, Mid-Term Bargaining Committee
2nd Executive Vice President
National VA Council #53

cc: Alma L. Lee, President National VA Council #53
NVAC Executive Committee

AFGE: Good Government We Are Ready