



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-2/7/25

Date: February 7, 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: Second National Grievance against the Department of Veterans Affairs for further violations of the Master Agreement and federal law concerning the “deferred resignation” program

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”) files 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 directly dealing with, coercing, and holding formal discussions with bargaining unit employees concerning the “deferred resignation” program. In addition, the Department further bypassed and failed to bargain in good faith with the Union over the “deferred resignation” program.

Specifically, the Department violated, and continues to violate, Articles 2, 3, 17, 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*” and subsequently published, and republished, several iterations of frequently asked questions and guidance regarding the “*Deferred Resignation Program*” (“DRP”). The Union maintains that those communications constituted a violation of the parties’ MCBA and federal law, resulting in a National Grievance filed against the Department on January 29, 2025. The Union hereby incorporates by reference that national grievance, entitled “NG-1/29/25 (OPM Deferred Resignations).”¹ The Union awaits the Department’s response to NG-1/29/25.

¹ Attached as Exhibit A.

Since then, OPM and VA have continued to bypass the Union and engage in intimidating and coercive tactics to entice bargaining unit employees to accept the DRP offer, which constitute separate and independent violations of federal law and the MCBA. Representative examples of these violations are outlined below.

First, on February 3, 2025, a *Message from the Acting Secretary*, Todd Hunter, was sent to all va.gov email addresses.² This message falsely asserted that the January 28, 2025 DRP offer was “**valid, lawful, and will be honored by the VA.**” (emphasis in original). The message asserted a baseless claim that in the event of a government shutdown or lapse in appropriations, those accepting the DRP offer would receive backpay pursuant to the Government Employee Fair Treatment Act of 2019. *Id.* It also reiterated, consistent with OPM’s prior communications, that those employees accepting the DRP offer would not be expected to work through September 30, 2025 and that anyone accepting the offer “will be able to take a non-government job during the deferred resignation period.” *Id.* This email was sent directly to bargaining unit employees without notifying and bargaining with the Union.

The VA’s message therefore constitutes a bypass and failure to bargain with the exclusive representative in violation of the MCBA and the Federal Service Labor-Management Relations Statute (“the Statute”). In addition, the message sought to intimidate and coerce employees into accepting the DRP offer by suggesting that their current positions may still be eliminated through a reduction-in-force or other separation action. Additionally, the message further explained that the DRP offer may also be subject to Voluntary Early Retirement Authority (“VERA”).

Following this message, on February 4, 2025, OPM published a memorandum entitled *Legality of Deferred Resignation Programs* (“Legality Memorandum”) in an effort to update their original FAQs and assure federal employees that the DRP offer was valid and enforceable.³ The Legality Memorandum asserted that the DRP was not conditioned upon congressional appropriations, explained that agency officials have the discretion to place employees on *extended* administrative leave,⁴ and claimed that the DRP did not run afoul of privacy laws. *Id.* Attached to the Legality Memorandum was a *Template Deferred Resignation Agreement* including, among other things, a release of claims, waiver of appeal rights, and an acknowledgment that the agreement could not be rescinded, *except at the sole discretion of the Agency Head. Id.* (emphasis added). Notably, these terms and conditions were not included in the initial DRP offer.

Next, on February 6, 2025, the VA Office of the Chief Human Capital Officer (“OCHCO”) issued a bulletin with terms, conditions, and procedures for implementing the DRP (“OCHCO Bulletin”).⁵ The OCHCO Bulletin noted that any VA employee accepting DRP offer must comply with the guidance set forth therein. *Id.* Additionally, it referenced a spreadsheet containing a list of 140 occupations that were exempt from the DRP. *Id.*

This barrage of misguided, misinformed communications demonstrates anything but government efficiency. The premature, disjointed execution of the DRP by the Department and OPM caused widespread disruption to VA operations at great expense. AFGE, joined by two other federal unions that represent more than 800,000 federal workers, filed a lawsuit in federal court on February 2, 2025 seeking, among other remedies, a temporary restraining order on the implementation of the DRP.⁶ The lawsuit asserted that the DRP was arbitrary and capricious, as well as unlawful on its face. *Id.*

² Attached as Exhibit B.

³ Attached as Exhibit C.

⁴ Notably, this assertion is arguably contrary to 5 U.S.C. §6329a, which limits administrative leave for federal workers to 10 days in a calendar year. The DRP claims employees can be placed on paid leave for eight months.

⁵ Attached as Exhibit D.

⁶ Attached as Exhibit E.

In addition to written communications, the Department held formal discussions with AFGE bargaining unit employees in the form of “emergency meetings” and “townhalls” to review the DRP program and attempt to answer questions. Section 7114(a)(2) of the Statute provides:

An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at – (A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

Holding a formal discussion with bargaining unit employees without providing the Union with notice and an opportunity to attend is an unfair labor practice. The Union is aware of multiple townhalls,⁷ for example, one held by the Director of Veterans Integrated Service Network 8 on February 6, 2025, and specifically reserves the right to supplement this Grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

On February 6, 2025, following a temporary restraining order being granted in AFGE’s lawsuit, OPM announced that the DRP acceptance deadline will be extended to February 10, 2025, at 11:59pmET.⁸

Violations

Since the filing of the first grievance challenging the DRP program, violations of federal law and the MCBA persist. 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 the statutory obligation to bargain in good faith. By holding formal discussions with bargaining unit employees about the DRP, the Department violated 5 U.S.C. §7114(a)(2) and 5 U.S.C. §7116(a)(1) and (8). By subjecting bargaining unit employees to a pattern of intimidating and deceptive conduct, OPM and the Department violated Article 17. Lastly, OPM and the Department’s failure to comply with relevant legal obligations violated Articles 2 and 3.

In sum, OPM and the Department violated and continue to violate Articles 2, 3, 17, 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.

Remedies 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* and all subsequent communications concerning DRP, to include the *Message from the Acting Secretary* and the *OCHCO Bulletin*;
- To cease and desist from further direct dealings with bargaining unit employees;
- To cease and desist from holding formal meetings with bargaining unit employees;
- To permit bargaining unit employees to rescind their resignations and be made whole, to include back pay, benefits, interest, and attorney’s fees;
- To fully comply with the MCBA and the Statute;

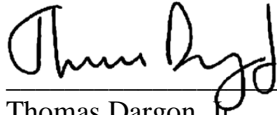
⁷ See email summary of the VISN 8 townhall, attached as Exhibit F.

⁸ See <https://www.opm.gov/fork/> (last accessed Feb. 7, 2025).

- 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.



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

NG-2/7/25: Exhibit A



NATIONAL VETERANS AFFAIRS COUNCIL

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

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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.

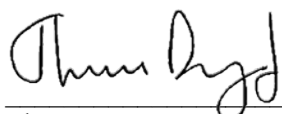
Remedy Requested

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.



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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

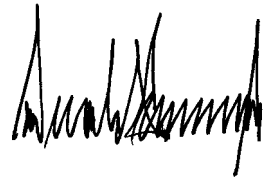
Memorandum of January 20, 2025

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.



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
2nd Exec. V-President
29 Lake Street
Danville, IL 61832-6101

Bill Wetmore, Member
3rd Exec. V-President
2319 Alava Court
Waldorf, MD 20603

Tinita Cole, Member
6th 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

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

NG-2/7/25: Exhibit B

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: US Department of Veterans Affairs <US.VA@va.gov>
Sent: Monday, February 3, 2025 12:27 PM
To: VA All Mailboxes <VAAll.Mailboxes@va.gov>
Subject: MESSAGE FROM THE ACTING SECRETARY

Message from the Acting Secretary

Fellow VA employees,

On January 28, 2025, the U.S. Office of Personnel Management (OPM) sent a government-wide email presenting a deferred resignation offer to federal employees. The email can be viewed at <https://www.opm.gov/fork>. On behalf of the Department of Veterans Affairs, I am informing you that the offer is **valid, lawful, and will be honored by VA.**

In order to ensure and support a healthy transition and operations, if you select resignation, you are to continue to work until your supervisor confirms to you that you are in leave status.

If you accept the deferred resignation offer, you will receive pay and benefits through September 30, 2025, and will not be subject to a reduction-in-force or other premature separation. However, please note that the ability to accept the offer is subject to exceptions agencies may enact to keep onboard those who work in health care, law enforcement, public safety, or other limited categories of essential services.

In the event of a government shutdown or lapse in appropriations, you will be paid through September 30, 2025, just like any other federal employee. Accepting the deferred resignation offer will not impact your entitlement to backpay under the Government Employee Fair Treatment Act of 2019.

In addition, subject to exceptions, you are not expected to work during the deferred resignation period and will be able to take a non-government job during the deferred resignation period, subject to applicable laws and regulations. These include but are not limited to criminal conflict of interest laws and government ethics rules.

VA is also requesting Voluntary Early Retirement Authority (VERA), and OPM has indicated it will grant such requests, so eligible employees may receive VERA if they accept the deferred resignation offer. The employee's full retirement eligibility date must fall within calendar year 2025 and VA will extend the employee's deferred resignation period to the date of full retirement eligibility.

Thank you.

Todd B. Hunter
Acting Secretary

NG-2/7/25: Exhibit C



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

MEMORANDUM

TO: Heads and Acting Heads of Departments and Agencies

FROM: Charles Ezell, Acting Director, U.S. Office of Personnel Management
Andrew Kloster, General Counsel, U.S. Office of Personnel Management

DATE: February 4, 2025

RE: Legality of Deferred Resignation Program

On Tuesday, January 28, 2025, the U.S. Office of Personnel Management (“OPM”) sent an email to federal employees presenting a [deferred resignation offer](#). It allows eligible employees an eight-month transition period—through September 30, 2025—during which they will generally not be expected to work and may look for another job. Eligible employees who accept the deferred resignation offer will also be exempt from any reductions-in-force that are planned for the federal workforce.¹

In addition, an employee who resigns under this program will retain all pay and benefits regardless of their daily workload and will be exempted from all applicable in-person work requirements until September 30, 2025 (or earlier if the employee chooses to accelerate their resignation for any reason). Employees may also be eligible for early retirement under the Voluntary Early Retirement Authority (VERA). The offer is open between January 28, 2025, and February 6, 2025.

The deferred resignation offer has generated considerable scrutiny and numerous questions from interested employees. The program has also been subject to various legal critiques. This memorandum explains why concerns regarding the program’s legality are misplaced and offers clarifying guidance on certain aspects of the plan.

Is the Offer Legally Binding?

The deferred resignation program offers employees who opt into the program an exemption from any return-to-work requirements and full pay and benefits regardless of workload, with the expectation that most employees will transition their duties and be placed on administrative leave for the bulk of the deferred resignation period. Those assurances are binding on the government.

¹ Frequently asked questions about the deferred resignation offer are found here: [Frequently Asked Questions](#).

Were the government to backtrack on its commitments, an employee would be entitled to request a rescission of his or her resignation.²

In addition, to assuage any concerns about enforceability, OPM has circulated a template contract to agencies that can be used to document employee resignations and formalize the government's agreement to abide by the terms of the deferred resignation program. Separation agreements entered into between an agency and its employees are legally binding.³

Is Congressional Approval Required?

Nothing in the deferred resignation program requires congressional approval. The program offers employees an exemption from return-to-work requirements and, in most cases, a significantly reduced workload during the deferred resignation period. Under the program, employees remain in duty status entitled to their regular pay and benefits. The program does not promise employees additional compensation that might require special congressional appropriations.

An employee who has chosen to participate in the deferred resignation program will not be placed at a disadvantage compared to other employees if congressional appropriations lapse. In the event of a partial or complete government shutdown, payments to *all* affected employees (regardless of whether they accepted the deferred resignation offer) would be temporarily paused. Upon passage of another appropriations bill, however, affected employees would be eligible for retroactive pay “at the earliest date possible” under the Government Employee Fair Treatment Act of 2019.⁴

Nor would a shutdown impact the non-pay aspects of the deferred resignation program. Even if an employee's job duties would generally require him or her to work during a shutdown, an “agency may allow an excepted employee to be off duty during periods when the employee was previously scheduled to be on paid leave,” including administrative leave.⁵

May an Employee Be Placed on Administrative Leave During the Deferred Resignation Period?

Yes. The decision to grant administrative leave, and for how long, lies largely within the agency's discretion.⁶ A statute governing administrative leave states that, “[d]uring any calendar

² See *Terban v. Dep't of Energy*, 216 F.3d 1021, 1024 (Fed. Cir. 2000) (holding that resignations are deemed involuntary if they are “the product of misinformation or deception by the agency”).

³ See *Green v. GSA*, 220 F.3d 1313, 1317 (Fed. Cir. 2000) (enforcing “a term of the separation agreements” between an employee and his employing agency).

⁴ 31 U.S.C. § 1341(c)(2).

⁵ OPM, [Guidance for Shutdown Furloughs](#), at 10 (Dec. 2021).

⁶ See 89 Fed. Reg. 102256, 102257 (Dec. 17, 2024) (“Federal agencies have the discretion to grant paid administrative leave to employees to help manage their workforces when it is in their best interest to do so.”) (citation omitted).

year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days.”⁷ But binding regulations promulgated by OPM have interpreted that limitation to apply only to a “management-initiated action to put an employee in administrative leave status, with or without the employee’s consent, for the purpose of conducting an investigation.”⁸ The ten-day rule therefore poses no bar to the extended administrative leave contemplated by the deferred resignation program. And the regulations authorize administrative leave when, as here, the “absence is officially sponsored or sanctioned by the agency.”⁹

May an Employee Get a Second Job During the Deferred Resignation Period?

Extended administrative leave frees an employee to obtain a second job. In doing so, employees must comply with the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and other applicable federal laws, as well as any agency-specific regulations. The ethical standards, among other things, provide that “[e]mployees shall not engage in outside employment or activities . . . that conflict with official Government duties and responsibilities.”¹⁰ By minimizing an employee’s job duties and limiting the number of matters in which he or she is involved, administrative leave reduces the potential for conflicts with any outside employment.

Does the Deferred Resignation Email Comply with Privacy Rules?

Yes. OPM was authorized to send the email announcing the deferred resignation program by its broad authority to oversee the federal workforce.¹¹ OPM is authorized to store employee responses under existing systems of records, including systems encompassing personnel records and correspondence to and from the agency.¹² And the deferred resignation offer explicitly provides that, by responding to the email, employees consent to their resignations being shared with their employing agencies. The Privacy Act of 1974 authorizes disclosure of personally identifiable information “with the prior written consent of [] the individual to whom the record pertains.”¹³

Employees’ resignations are stored on secure government systems at OPM. Although the E-Government Act of 2002 requires agencies to conduct a Privacy Impact Assessment when developing certain information technology systems, no such assessment was required here.

⁷ 5 U.S.C. § 6329a.

⁸ 5 C.F.R. § 630.1404(a).

⁹ 5 C.F.R. § 630.1403(a)(1)(iv).

¹⁰ 5 C.F.R. 2635.101(b)(10); *see* 5 C.F.R. 2635.606(a) (providing that an “employee may not participate personally and substantially in a particular matter that, to the employee’s knowledge, has a direct and predictable effect on the financial interests of the person by whom the employee is employed”).

¹¹ *See, e.g.*, Executive Order 9830 and 5 U.S.C. 1103, 1104, 2951.

¹² *See* 88 Fed. Reg. 56058 (Aug. 17, 2023); 80 Fed. Reg. 72455 (Nov. 19, 2015).

¹³ 5 U.S.C. § 552a(b).

Longstanding OMB and OPM guidance expressly provide that Privacy Impact Assessments are unnecessary when a system collects information exclusively from government employees, not from the public.¹⁴

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Chiefs of Staff.

Attachment 1- Template Deferred Resignation Agreement

¹⁴ See OMB, *Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002*, M-03-22, at 5 & n.6 (Sept. 2003); OPM, *Privacy Impact Assessment Guide*, at 2 (Apr. 2010).

Appendix 1- Template Deferred Resignation Agreement

Deferred Resignation Agreement

This agreement is between [AGENCY] and the Employee identified below.

WHEREAS, on or about January 28, 2025, OPM circulated a memorandum to all [AGENCY] employees (Fork in the Road Memo) offering them a voluntary deferred resignation option. The offer allows those employees who accept the offer by February 6, 2025 to retain all pay and benefits and exempts them from all applicable in-person work requirements until September 30, 2025, or earlier if they choose to accelerate the resignation date for any reason (Deferred Resignation Program); and

WHEREAS, [AGENCY] has received Employee's voluntary request to be included in the Deferred Resignation Program; and

WHEREAS, [AGENCY] accepts Employee's request to be included in the Deferred Resignation Program; and

WHEREAS, the parties wish to express the terms and conditions of the agreement between the parties concerning Employee's participation in the Deferred Resignation Program.

WHEREFORE, the parties hereto agree as follows:

1. Employee is accepted into the Deferred Resignation Program.
2. Employee agrees to continue working through [February 28, 2025], in an effort to ensure a smooth transition of Employee's duties, responsibilities and work assignments to other staff. Employee is exempt from all in-person work requirements. Employee agrees to turn in all [AGENCY] equipment and property on or before [February 28, 2025], as directed by Employee's supervisor.
3. Employee shall be placed on paid administrative leave no later than [March 1, 2025]. Employee shall remain on paid administrative leave up through and including September 30, 2025, or such earlier date on which Employee may choose to resign or otherwise separate from federal service (deferred resignation period). During the deferred resignation period, [AGENCY] shall continue to pay Employee's current salary and Employee shall continue to retain and receive all benefits of Employee's federal employment, including but not limited to TSP contributions, health, dental, vision and/or any other similar benefits, with [AGENCY] making the government's contribution. Employee will continue to accrue annual and sick leave during the deferred resignation period. Employee will receive retirement service credit during the deferred resignation period. If Employee becomes eligible for a within-grade increase during the deferred resignation period, [AGENCY] shall process the within-grade increase and Employee shall receive the associated salary increase.

4. Employee shall not be expected to work during the deferred resignation period except in rare circumstances as determined by [AGENCY].
5. Employee agrees that Employee's effective resignation date from [AGENCY], and separation from federal service, shall be September 30, 2025. Employee, however, may resign from the federal service on any date prior to September 30, 2025. [AGENCY] shall not take steps to terminate Employee's employment with the federal service prior to September 30, 2025, except where Employee is convicted of a felony crime that would render Employee ineligible for Federal employment.
6. Employee will receive a lump sum payment of accrued annual leave in accordance with 5 CFR part 550 upon separation from service.
7. Nothing in this agreement prevents Employee from retiring from federal service at any time if Employee is eligible to do so under the applicable provisions of CSRS or FERS. If Employee is eligible and elects to retire before September 30, 2025, Employee's retirement election shall override any benefits that would be available to Employee under this agreement after the effective date of Employee's retirement. Employee understands that Employee is responsible for submitting a CSRS or FERS application.
8. Nothing in this agreement prevents Employee from retiring from federal service on or before [INSERT VERA END DATE] if Employee is eligible to do so under the Voluntary Early Retirement Authority (VERA). If Employee is eligible and elects to retire under VERA, Employee's retirement election shall override any benefits that would be available to Employee under this agreement after the effective date of Employee's retirement. Employee understands that Employee is responsible for submitting a VERA application.
9. Employee may accept non-federal employment during the deferred resignation period provided it does not violate the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 or other applicable federal laws, or any supplemental Standards of Ethical Conduct for Employees or regulations of [AGENCY].
10. By signing this agreement, the parties acknowledge that they have entered the agreement knowingly, voluntarily, and free from improper influence, coercion, or duress. Employee understands that, except as provided in paragraph 14 applicable to Employees 40 years of age or older, this agreement cannot be rescinded, except in the sole discretion of the [AGENCY HEAD], which shall not be subject to review at the Merit Systems Protection Board (MSPB) or any other forum, and waives all rights to challenge the resignation before the MSPB or any other forum.
11. Employee acknowledges that [AGENCY], in conjunction with other federal departments, agencies and units, will immediately rely on the terms of this agreement in consolidating and reassigning roles and otherwise taking steps to reform the agency workforce. Consequently, Employee understands that this agreement is final and Employee's decision to resign effective September 30, 2025, unless Employee resigns or retires earlier as set forth above, is final. [AGENCY] shall comply with all terms of this agreement even if Employee's position is

eliminated or reassigned prior to September 30, 2025. Employee shall not be subject to furlough, termination, reduction in force or layoff as a result of an OPM or federal government reorganization or reduction in force. Employee agrees to cooperate with steps taken by [AGENCY] (such as reassignment to a different component) to exempt Employee from any reduction in force.

12. If there is a lapse in appropriations during the term of this agreement that requires Employee to be placed on furlough status, Employee shall be placed on furlough status during the lapse. Once the lapse is over, Employee shall be taken off furlough and shall receive back pay consistent with the Government Employee Fair Treatment Act of 2019.
13. Employee forever waives, and will not pursue through any judicial, administrative, or other process, any action against [AGENCY] that is based on, arising from, or related to Employee's employment at [AGENCY] or the deferred resignation offer, including any and all claims that were or could have been brought concerning said matters. This waiver includes all claims Employee may have under the Age Discrimination in Employment Act. Employee unconditionally releases [AGENCY] and its present and former employees, officers, agents, representatives, and all persons acting by, through, or in concert with any of those individuals, either in their official or individual capacities, from any and all liability based on, arising from, or relating to the matters that Employee may have against them, including any and all claims that were or could have been brought. Consistent with applicable law, Employee similarly waives any claim that could be brought on Employee's behalf by another entity, including Employee's labor union.
14. If 40 years of age or older, Employee understands that they are entitled to rights and benefits under the Age Discrimination in Employment Act and Older Workers Benefit Protection Act (OWBPA). The parties acknowledge that the Employee has preserved and/or executed the following rights and responsibilities:
 - a. The Employee has reviewed the entire agreement and understands its provisions;
 - b. The Employee has not waived any ADEA or OWBPA rights or claims that may arise after the date this agreement is signed;
 - c. The Employee has the right to consult with an attorney prior to signing this Agreement;
 - d. Federal law provides that the Employee may have 45 days from receipt of this Agreement to review and consider this Agreement before signing it;
 - e. Federal law further provides that the Employee may revoke this Agreement within seven days after signing and delivering the Agreement to the Agency; the Agreement is not effective and enforceable until this seven-day revocation period has passed; and
 - f. Having been informed of these rights and after an opportunity to consult with an attorney, the Employee hereby waives these rights.
15. [AGENCY] agrees to waive any debt owed by Employee to [AGENCY] pursuant to a recruitment incentive, student loan repayment, or other service agreement. [AGENCY] also agrees to waive any remaining service requirements from taking paid parental leave.

16. Should Employee become subject to military orders during the deferred resignation period, then any laws, rules, or other guidance applicable to the Employee as a servicemember that are inconsistent with provisions of this agreement shall supersede the inconsistent terms of this agreement.
17. In case any provision of this shall agreement be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

ON BEHALF OF [AGENCY]:

[NAME, TITLE]

EMPLOYEE

[NAME, TITLE]

NG-2/7/25: Exhibit D

VA



U.S. Department of Veterans Affairs

Office of the Chief Human Capital Officer

VA Central Office
Washington, DC

February 6, 2025

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER (OCHCO) BULLETIN

SUBJECT: Office of Personnel Management Deferred Resignation Program

1. PURPOSE: This OCHCO Bulletin provides guidance regarding the Office of Personnel Management (OPM) Deferred Resignation Program (DRP) to ensure consistent implementation across servicing human resources (HR) offices.

2. BACKGROUND: On January 28, 2025, OPM sent an important Federal workforce announcement to all full-time Federal employees. Re-employed annuitants are not eligible for DRP. Probationary employees who are full-time are eligible for DRP. The information along with Frequently Asked Questions can be viewed at [Fork in the Road](#). OPM launched a government-wide deferred resignation program that is available to eligible employees through 11:59PM on February 10, 2025. Deferred resignation is available to all full-time Federal employees unless the position is excluded by the agency. The program provides employees with an option to submit a deferred resignation letter with an effective date of September 30, 2025. Deferred resignation exempts those employees who choose to resign from return-to-office requirements. OPM has developed a deferred resignation agreement. Department of Veterans Affairs (VA) employees will be required to sign the agreement to participate in DRP. A copy of the Agreement is attached.

In addition, OPM granted the VA Voluntary Early Retirement Authority (VERA). Eligible employees may receive VERA while on administrative leave only if they accept the deferred resignation offer. Those serving under an appointment that is time limited, such as Title 38 Senior Executive Service Equivalents appointed under 38 U.S.C. §7306, are not eligible for VERA. VA may extend this opportunity to employees who meet regular retirement eligibility provided/only if the employee's eligibility date falls within calendar year 2025. To be eligible for VERA, an employee must have been continuously employed by the agency for at least 31 days before the date that the agency initially requested OPM approval of VERA (February 4, 2025), hold a position that is not a time-limited appointment, and have not received a final removal decision based upon misconduct, or unacceptable performance.

Example: Employee opts-in to DRP. Employee is not on a time limited appointment and at least age 50 with at least 20 years creditable Federal service, or any age with at least 25 years creditable service. VA will obtain confirmation from the employee that their separation date will either be 1) retirement on September 30, 2025, or 2) the employee's regular retirement date if it falls between September 30 and December 31, 2025. The DRP will be extended to match the VERA retirement date.

3. REQUIRED ACTIONS: To comply with the requirements of DRP, servicing HR offices, supervisors, and any VA employee accepting the offer to resign/retire must fully comply with all guidance in this Bulletin:

- a. Starting February 6, 2025, OPM will provide data to VA of employees who have accepted the offer to resign/retire. No later than February 10, 2025, OCHCO will start to provide the information to the employee's servicing HR office.
- b. The servicing HR office will contact the employee and acknowledge receipt of the resignation/retirement request. If the employee no longer has access to their government email, the servicing HR office will contact the employee through personal contact information in the employee record. It is important for VA to maintain contact with the employee during the period they are on administrative leave either through government or personal contact information.
- c. The servicing HR office will confirm the employee is eligible to resign/retire (e.g., position is not excluded from eligibility, employee is in a full-time position, etc.). A list of excluded positions is enclosed.
- d. The servicing HR office will notify the employee of their eligibility status and coordinate with the employee's supervisor the date the employee will begin administrative leave and ensure the leave is coded in VAs Time and Attendance System (VATAS).
- e. The servicing HR office is responsible for processing the notification of personnel action in VA's HR system of records and working with the employee and the employee's supervisor to complete all customary offboarding actions to properly separate the employee from federal service. VA will follow all regulatory and contractual obligations related to resignations and retirements from Federal service to include any requirements in collective bargaining agreements. See OPM Guidance on Collective Bargaining Obligations in Connection with Deferred Resignation Offer dated February 4, 2025.
- f. Deferred Resignation Agreements when signed by the employee and the supervisor will be returned to the servicing HR office and retained in the employee's personnel record.

Attached is additional information on VERA provided by OPM.

Attached are Frequently Asked Questions provided by OPM.

Should you or any VA official know of an employee who wants to accept the DRP offer but has not received the information due to extended absence or not having access to their government email to reply during the election period, the employee should use their personal email to reply to tracking@opm.gov and carbon copy their servicing HR office and immediate supervisor. Extensions of time to the February 10, 2025, deadline may be considered for employees who did not receive notification of DRP on or around January 28, 2025. The first level senior executive can approve extensions that are submitted within 5 business days from the employees return from an approved leave status.

4. NEXT STEPS: HR Officers must share this information with their staff and first line supervisors and managers. OCHCO will keep you informed of any additional information received from OPM.

Issued by: VA/OCHCO

Voluntary Early Retirement Authority and Deferred Resignation Program

The Department of Veterans Affairs (VA) has been given approval for the [Voluntary Early Retirement Authority \(VERA\)](#). The OPM approved plan limits this opportunity to employees who meet VERA's eligibility criteria **and** have also opted into the [deferred resignation program](#) (DRP) by the February 10, 2025, deadline, to retire early. The VERA will be available from February 10, 2025, to December 31, 2025. The VERA is not available to employees who have not accepted the DRP offer.

VERA is designed to allow agencies undergoing significant change such as restructuring, downsizing, transfer of function, or reorganization to temporarily reduce the age and service requirements, thereby making more employees eligible for retirement.

VERA Eligibility Requirements:

To be eligible to retire under VERA, an employee must:

- (1) Meet the VERA minimum age and service requirements (i.e., the employee has completed at least 20 years of creditable service and is at least age 50 or has completed at least 25 years of creditable service, regardless of age).
 - The minimum age and service requirements are set by statute in 5 U.S.C. 8336(d)(2) for CSRS employees, and in 5 U.S.C. 8414(b)(1) for FERS employees. OPM has no authority to waive either the minimum age or service requirement for VERA eligibility.
- (2) Have been continuously employed by VA for at least 31 days before the date that the agency initially requested OPM approval of VERA (February 4, 2025).
- (3) Hold a position that is not a time-limited appointment.
- (4) Have not received a final removal decision based upon misconduct, or unacceptable performance.
- (5) Hold a position covered by the agency's VERA plan; and
- (6) Retire under the VERA option during VA's VERA window (in most cases September 30, 2025, and for retirement eligibles, no later than December 31, 2025).

Those who apply for retirement through VERA must do so during the early out period from February 10th to no later than December 31, 2025. For employees with retirement

dates falling after October 1, 2025, the DRP will be extended through the retirement date.

To accept the DRP and VERA, follow the instructions in the email for the DRP and indicate your decision to separate by the current deadline to respond by February 10, 2025. State that you meet the requirements for VERA and note the date you will be eligible for VERA. OPM, in its government wide capacity, will notify VA's Chief Human Capital Officer (CHCO) of your acceptance of the DRP and a staff member from VA will contact you to begin the retirement application procedures. As noted in the Deferred Resignation Agreement, if Employee is eligible and elects to retire under VERA, Employee's retirement election shall override any benefits that would be available to Employee under this agreement after the effective date of Employee's retirement.

OPM Deferred Resignation Program Questions & Answers

Q1: Why is the federal government offering deferred resignation to the federal workforce?

A1: 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.

Q2: Who is eligible for deferred resignation?

A2: 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. Re-employed annuitants are not eligible for deferred resignation. Probationary employees who are full-time employees are eligible for deferred resignation.

Q3: What do we do if employees did not receive the deferred resignation email?

A3: Direct the employee to visit the OPM website where they can review the email and all associated instructions. Fork in the Road

Q4: What happens if employees do not respond to the email or accept deferred resignation?

A4: Nothing. Employees have no obligation to respond to the email. Accepting deferred resignation is in employees' sole discretion and is completely voluntary.

Q5: 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?

A5: Yes. Employees need to respond by the deadline to be eligible. Should employees elect to retire (either early or normal) before their final resignation date, the retirement election will override the deferred resignation.

Q6: How do we handle employees who were on approved leave during some or all of the period between January 28, 2025, and February 10, 2025, and who, as a result, did not get a sufficient opportunity to evaluate and/or accept the deferred resignation letter?

A6: Employees who missed the February 10, 2025, deadline due to approved absence for some or all of the period from January 27, 2025, to February 10, 2025, are entitled to request an extension and employing agencies may grant reasonable extensions.

OPM Deferred Resignation Program Questions & Answers

Q7: If an employee decides after February 10, 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?

A7: Deferred resignation will generally not be available to those who resign after February 10, 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 10, 2025.

Q8: If an employee resigns and later changes their mind, will the employee be able to rescind their resignation?

A8: Employees have the right to request a rescission of their resignation at any time up until the effective date of the deferred resignation agreement 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.

Q9: May employees accelerate their resignation date to earlier than September 30, 2025?

A9: Yes, employees may unilaterally accelerate their final resignation date for any reason.

Q10: Can employees get another job outside of their current employing agency during the period between submission of their resignation and the final resignation date?

A10: 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. Employees may accept non-federal employment during the deferred resignation period provided it does not violate the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 or other applicable federal laws, or any supplemental Standards of Ethical Conduct for Employees.

Q11: Can employees return to work in the federal government?

A11: Deferred resignation does not affect employees' ability to apply to work for the federal government in the future.

Q12: How will employees know their resignations have been received and accepted?

A12: Employees will be contacted by their servicing HR office to confirm acceptance and eligibility. Given the volume of emails, this contact email may be delayed. Employees should retain the record of their resignation email.

OPM Deferred Resignation Program Questions & Answers

Q13: Is there any additional paperwork needed to resign?

A13: An employee's acceptance of the agency provided deferred resignation letter will serve as a formal acceptance of deferred resignation. A Department of Veterans Affairs employee will be required to sign the Deferred Resignation Agreement and provide any additional documentation necessary to complete their separation from Federal service.

Q14: Is there a formal agreement I can sign with my agency reflecting the terms of this offer?

A14: Yes. If you are eligible for the deferred resignation program and accept it, you will execute the agreement provided by the agency reflecting the terms of the agreement.

Q15: Does the deferred resignation program comply with all records and privacy laws?

A15: Yes. The deferred resignation program uses only basic contact information about federal employees, like name and government email address, along with short, voluntary email responses. That information is stored on secure government systems. To the extent the Privacy Act applies, all information relevant to the program is covered by existing OPM System of Records Notices.

Q16: How can employees make clear that they wish to retire, not just resign, through the Deferred Resignation Program?

A16: Employees who wish to retire as part of the Deferred Resignation Program are welcome to type "retire" into the reply email, but it is not required. If employees simply write "resign" and are eligible for retirement, their agency will process their separation as of September 30, 2025, OR their actual approved separation date. If retiring, employees must submit an application for retirement in their agency and OPM will process it in accordance with statute. Agencies must make clear the process of applying for retirement so that employees may exercise that option if they wish. For information on retirement, please visit OPM's Retirement Center webpage.

Q17: Are Re-employed Annuitants eligible to participate in the Deferred Resignation Program?

A17: No. Re-employed Annuitants are not eligible to participate in this program.

Q18: Are employees who opt in to the Deferred Resignation Program permitted to remain working until September 30th?

A18: Yes, employees who opt in to the Deferred Resignation Program may choose, but typically should not be required, to continue working in their roles until September 30, 2025, instead of being placed on administrative leave as early as possible. Agencies should be sure that such employees sign an agreement ensuring that their resignation is not revoked to prevent these employees from using the Deferred Resignation Program to avoid return-to-work requirements.

OPM Deferred Resignation Program Questions & Answers

Q19: The current funding bill for the federal government expires on March 14. Will I still receive full pay and benefits if the money runs out?

A19: Any government shutdown could potentially affect an employee's pay regardless of whether he or she has accepted the deferred resignation offer. Moreover, if you accept the deferred resignation offer, you would still be entitled to backpay under the Government Employee Fair Treatment Act of 2019. See 31 U.S.C. 1341(c)(2).

Q20: At what time are applications due on February 10, 2025?

A20: Applications are due by 11:59 p.m. EST.

Q21: Is VERA an entitlement?

A21: While VERA is not an entitlement, agencies should generally be approving VERA except in cases where a position is exempted from consideration for DRP. Those on time limited appointments, such as Title 38 Senior Executive Service (SES) Equivalent (EQV) positions appointed under 38 U.S.C. § 7306, are not eligible for VERA.

Q22: May an employee rescind a DRP request if the employee is not approved for VERA due to not meeting eligibility requirements?

A22: Yes, in the event that you are determined to not be eligible for VERA, you do not have to sign the agreement, which would result in a rescission of your request.

Q23: Does my agency have VERA for employees who opt to take the deferred resignation offer?

A23: Yes. Employees who are eligible for the deferred resignation offer and are at least age 50 with at least 20 years creditable Federal service, or any age with at least 25 years creditable Federal service are eligible for VERA along with the deferred resignation offer.

Q24: Will I really get my full pay and benefits during the entire period through September 30, even if I get a second job?

A24: Yes. You will also accrue further personal leave days, vacation days, etc. and be paid out for unused leave at your final resignation date.

Q25: How would electing the Deferred Resignation Program impact employees with existing TSP loans?

A25: If employees on administrative leave continue earning basic pay, they continue to make TSP contributions and loan payments. NOTE: Employees may elect to change or stop making TSP contributions; however, employees cannot elect to stop making loan payments.

Q26: How would an extended administrative leave status under the Deferred Resignation Program impact TSP benefits/requirements?

OPM Deferred Resignation Program Questions & Answers

A26: If employees on administrative leave continue earning basic pay, they continue to make TSP contributions and loan payments. NOTE: Employees may elect to change or stop making TSP contributions; however, employees earning basic pay cannot elect to stop making loan payments. Employees who continue earning basic pay and contributing to the TSP also will continue to receive the agency automatic 1% contribution as well as agency matching contributions on up to 5% of their salary. TSP participants who separate from federal service may leave their savings in the TSP, where it will continue to grow.

Q27: Can outstanding TSP loans be waived for employees who elect DRP? Employees with outstanding loans are concerned that if they accept this program, they will have to pay back loans immediately that they had planned to pay back over several year and it might be enough to create a hardship/disincentive.

A27: Under current law, employees who elect DRP cannot waive their outstanding TSP loan. Employees who separate from their federal civilian job or from the uniformed services with an outstanding loan balance must continue to make payments on their own, pay off the balance, or allow the loan to be foreclosed and pay: (1) taxes on the balance and accrued interest; and (2) early withdrawal penalties if they are under the age of 55 by 12/31/2025 per Internal Revenue Code.

Q28: May an employee who is eligible for regular retirement or VERA under DRP at any point in 2025 elect a retirement date of December 31, 2025, and remain on administrative leave through that date?

A28: Yes, provided the employee indicates their intent to do so when electing DRP by 11:59 p.m. on February 10, 2025.

NG-2/7/25: Exhibit E

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
80 F Street N.W.,
Washington, D.C. 20001,

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
LOCAL 3707
975 Patriot Ave,
Chicopee, MA 01022,

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO,
1625 L Street, N.W.
Washington, D.C. 20036,

Case No. 1:25-cv-10276

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, INC.
159 Thomas Burgin Parkway
Quincy, MA 01269

Plaintiffs,

v

CHARLES EZELL, in his official capacity as
Acting Director of the Office of Personnel
Management,
1900 E Street, N.W. Washington, D.C. 20415,

and

OFFICE OF PERSONNEL MANAGEMENT,
1900 E Street, N.W.
Washington, D.C. 20415

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs American Federation of Government Employees, AFL-CIO (AFGE), AFGE Local 3707 (Local 3707), American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME), and National Association of Government Employees, Inc. (NAGE) bring this action against the Office of Personnel Management (OPM) and the Acting Director of OPM and allege as follows:

1. The Office of Personnel Management’s January 28, 2025 decision to offer a purported “deferred resignation” program to federal career employees is the latest effort by this Administration to drastically reduce the nonpartisan career civil service upon which this country has depended and under which it has thrived for more than 140 years.

2. The continued success of government is based, in large part, on the institutional memory of its career civil servants who are committed to the missions of their agencies and the prospect of working for the American people. These civil servants are professionals and subject matter experts, many of whom have worked diligently and impartially through successive administrations of both major parties to implement changing administration priorities. If these employees leave or are forced out *en masse*, the country will suffer a dangerous one-two punch. First, the government will lose expertise in the complex fields and programs that Congress has, by statute, directed the Executive to faithfully implement. The government will have fewer qualified employees to execute the statutorily-required tasks that still remain.

3. And second, when vacant positions become politicized, as this Administration seeks to do, partisanship is elevated over ability and truth, to the detriment of agency missions and the American people. That is why Congress, since 1883, has established rights and processes for

protecting these employees from undue political influence and has granted employees who have completed a probationary period, or prior applicable service, protections from termination.

4. The Administration, in its first two weeks, has purported to wipe away longstanding civil service protections and merit system principles mandated by Congress with strokes of a pen. On Inauguration Day, the President signed an executive order, quickly followed by an OPM memorandum, that would make it possible for him to convert large swaths of the civil service to at-will employment, in contravention of the CSRA and OPM regulations (*see* 89 Fed. Reg. 24982 (Apr. 9, 2024)). The President signed an executive order declaring that career members of the Senior Executive Service serve at the pleasure of the President, even though Congress specifically granted these civil servants adverse-action rights (*see* 5 U.S.C. §§ 7541-7543). Daily, the President is also eliminating offices and programs that are supported by Congressional appropriations and tasked by Congress with specific functions.

5. In line with these efforts, on January 28, 2025, Defendants sent federal employees an email titled “Fork in the Road,” offering employees what they called a “deferred resignation . . . program” – the ability to resign now and purportedly retain all pay and benefits until September 30, 2025. *Fork in the Road*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025) (hereinafter, “the Directive” or “the Fork Directive”).

6. Employees were given a little more than a week, until February 6, 2025, to accept or reject the offer. *Id.*

7. To leverage employees into accepting the offer and resigning, the Fork Directive threatens employees with eventual job loss in the event that they refuse to resign. OPM stated that “the majority of federal agencies are likely to be downsized through restructurings, realignments,

and reductions in force,” and Defendants “cannot give you full assurance regarding the certainty of your position or agency.” *Id.*

8. Plaintiffs, who are routinely called upon to advise their federal employee members, as well as unions affiliated with Plaintiffs who directly represent federal employees, are unable to render dependable advice because basic information is absent from the Directive, including:

- a. Whether OPM can (or will) honor the financial commitment for agencies across government when Congress has appropriated no funds for this purpose, and the statutory basis and appropriation for this promise remain unclear;
- b. Whether and under what circumstances employees are expected to continue working for the federal government, and whether they can seek outside employment before their final resignation date;
- c. The implications for pensions, health insurance, retirement eligibility, service tenure requirements, reinstatement rights, and similar issues; and
- d. How and when the threatened restructuring, realignments, and reductions in force will be announced and whether the Administration will honor employees’ adverse-action and due process protections.

9. The Fork Directive is arbitrary and capricious in numerous respects, including that the Directive: (1) fails to consider possible adverse consequences of the Directive provided to millions of federal employees to the continuing functioning of government; (2) offers conflicting information about employees’ rights and obligations if they accept the government’s offer; (3) runs counter to long-standing rules and requirements for federal employees; (4) is contrary to reasoned practices of government restructuring, (5) ignores history and practices around effective

workforce reduction, (6) sets an arbitrarily short deadline; and (7) is pretext for removing and replacing government workers on an ideological basis.

10. The Fork Directive is also contrary to law. OPM has offered no statutory basis for its unprecedented offer. Moreover, the current appropriation for most federal agencies expires on March 14, 2025, but the Directive purports to make or authorize an expenditure or obligation through September 30, 2025, before an appropriation is authorized. The Antideficiency Act forbids such a guarantee.

11. Plaintiffs are labor organizations that collectively represent more than 800,000 federal civil servants. They have a direct interest in ensuring that their members make informed decisions about their employment, and that the ability to make those decisions is not compromised by an irrational and illegal offer made on such a compressed and arbitrary timetable. Plaintiffs have had to expend significant resources to counsel their federal employee members, as well as unions affiliated with Plaintiffs who represent those members, about the effects of the directive.

12. Because the Fork Directive is a final agency action that, as written, is arbitrary and capricious and contrary to law, the Court should, *inter alia*, declare that the Directive as issued is arbitrary, capricious, and not in accordance with law, vacate and remand the Directive to OPM to provide a reasoned basis for the Directive and extend the deadline accordingly, and until such time as Defendants provide an adequate justification for the Directive, and enjoin the February 6, 2024 deadline.

PARTIES

13. The American Federation of Government Employees, AFL-CIO (“AFGE”) is a labor organization and unincorporated association headquartered at 80 F Street N.W., Washington,

D.C. 20001. AFGE, the largest federal employee union, represents approximately 800,000 federal civilian employees through its affiliated councils and locals in every state in the United States.

14. AFGE members include nurses caring for our nation's veterans, border patrol agents securing our borders, correctional officers maintaining safety in federal facilities, scientists conducting critical research, health care workers serving on military bases, civilian employees in the Department of Defense supporting our military personnel and their families, and employees of the Social Security Administration making sure retirees receive the benefits they have earned.

15. AFGE was founded in 1932 by federal employees seeking to create a right to fair employment and pay during the Great Depression. As the union grew, it advocated for and secured numerous victories for career civil servants, including the passage of the Civil Service Reform Act in 1978.

16. AFGE is dedicated to fighting for dignity, safety, and fairness on the job for its members, and promoting efficiency and the improvement of government service so that government can more effectively serve the American people.

17. AFGE Local 3707 ("Local 3707") is a labor organization and unincorporated association based at the Westover Airforce Reserve Base, Chicopee, MA 01022. Local 3707 represents approximately 400 civilian employees at Westover Reserve Air Base.

18. The American Federation of State, County & Municipal Employees, AFL-CIO ("AFSCME") is a national labor organization and unincorporated membership association headquartered at 1625 L Street N.W., Washington, D.C. 20036. AFSCME is the largest trade union of public employees in the United States, with around 1.4 million members organized into approximately 3,400 local unions, 58 councils and other affiliates in 46 states, the District of Columbia, and Puerto Rico. AFSCME, through its affiliate District Council 20 and its constituent

local unions, represents federal civilian employees in agencies and departments across the federal government.

19. AFSCME was founded in 1932 by civil servants seeking to combat state efforts to replace a competitive civil service system with political patronage, united by a simple idea: that a professional civil service is essential to a strong democracy, and public service should be delivered by individuals dedicated to serving their communities, not those who have close connections to politicians. This idea has sustained AFSCME through nearly nine decades, as the union has succeeded in its efforts to pass or strengthen civil service laws across the United States.

20. AFSCME members include nurses, corrections officers, childcare providers, emergency medical technicians, sanitation workers, school bus drivers, civil engineers, policy analysts, and more, all with one thing in common: a dedication to making our communities stronger, healthier, and safer. Its members working for the federal government make our communities stronger, healthier, and safer by working to ensure aviation safety at the Federal Aviation Administration, criminal justice through the Department of Justice, and more.

21. The National Association of Government Employees, Inc. (“NAGE”) is a national labor organization and is affiliated with the Service Employees International Union. NAGE is incorporated in the state of Delaware with its place of business at 159 Thomas Burgin Parkway, Quincy, MA 02169. NAGE and its local units are the certified exclusive bargaining representative of approximately 125,000 employees, including nearly 75,000 federal employees in 43 states, including Massachusetts.

22. NAGE members, many of whom are veterans, include health care workers, police officers, scientists, office workers, researchers, childcare providers, janitorial staff, drivers, and

more, working at many federal agencies such as the U.S. Department of Defense, U.S. Department of Veterans Affairs, the U.S. Department of Transportation, and the National Park Service.

23. Founded in 1961, NAGE is an organization of members united by the belief in the dignity and worth of workers and the services they provide, dedicated to improving the lives of workers and their families, and creating a more just and humane society.

24. AFGE, Local 3707, AFSCME, and NAGE bring this action on behalf of themselves as organizations.

25. Defendant Office of Personnel Management (OPM) is a federal agency that serves as the chief human resources agency and personnel policy manager for the Federal government.

26. Defendant Charles Ezell is the Acting Director of OPM. He is sued in his official capacity.

JURISDICTION AND VENUE

27. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346. This Court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 *et. seq.*, and the Administrative Procedure Act, 5. U.S.C. § 701, *et seq.*

28. Venue is proper in the District of Massachusetts pursuant to both 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiffs AFGE Local 3707 and NAGE are residents of this district, and a substantial part of the events or omissions giving rise to this Complaint occurred and continue to occur within the District of Massachusetts, where thousands of their members have received the Fork Directive.

LEGAL FRAMEWORK

29. Under the Administrative Procedure Act (APA), a court shall “hold unlawful and set aside agency action ... found to be arbitrary, capricious, an abuse of discretion, or otherwise

not in accordance with law.” 5 U.S.C. § 706(2)(A). The APA likewise requires a court to hold unlawful agency actions that are “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. § 706(2)(B).

30. The Appropriations Clause of the Constitution commands that “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const., Art. I, § 9, cl. 7. In 1870, Congress enacted the Antideficiency Act (31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519) to address the increasingly common problem of the executive branch obligating funds in advance of appropriations, which put pressure on Congress to then appropriate those funds so that creditors would be paid.

31. The Antideficiency Act protects Congress’s constitutional power of the purse. Section 1341 of the Act provides, in relevant part, that a federal official may not (1) “make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation”; or (2) “involve” the federal government “in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.” 31 U.S.C. § 1341(a).

ALLEGATIONS

32. On the afternoon of January 28, 2025, OPM sent an email directly to all—or nearly all—federal employees with the subject title, “Fork in the Road,” which announced a “deferred resignation” “program” to those employees—the “Fork Directive.” *Fork in the Road*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025).

33. The Fork Directive instructed recipients to reply to the email with the word “RESIGN” directly to hr@opm.gov to participate. Specifically, OPM’s message stated:

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 [].

Id.

34. OPM announced that “deferred resignation is available to all full-time federal employees” except those in certain national security roles and at the U.S. Postal Service and “any other positions specifically excluded by your employing agency.” *Id.*

35. In making this extraordinarily broad solicitation for resignations, OPM offered employees barely more than a single week to respond, demanding a single word response—“RESIGN”—by February 6, 2025.

36. This incredibly short timeframe was accompanied by implicit threats of earlier termination for those who failed to accept a deferred resignation date of September 30, 2025, and substantial uncertainty about the legality and details of the newly announced program and the breadth of its exclusions.

37. Indeed, the Fork Directive itself made clear that “the majority of federal agencies are likely to be downsized,” including through reductions in force and furloughs. *Id.* The OPM website now explains to workers that the “federal workplace is expected to undergo significant near-term changes” and advises that employees “may wish to depart” “on terms that provide you with sufficient time and economic security to plan for your future.” *Frequently Asked Questions*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork/faq> (last visited Feb. 4, 2025) (“Why am I being offered deferred resignation?”).

OPM failed to consider numerous factors, including critical concerns of continuity and service across government operations, in promulgating the Directive

38. In issuing the Directive across the government barely a week after the new Administration was sworn in, OPM did not conduct any analysis of which agencies were likely to experience high levels of resignations, the optimal number of resignations, or where staffing was

already woefully insufficient such that soliciting resignations would be incontrovertibly harmful to government operations. *See, e.g.*, Department of Veterans Affairs, Office of Inspector General, *OIG Determination of Veterans Health Administration’s Severe Occupational Staffing Shortages Fiscal Year 2024* (Aug. 7, 2024), <https://www.vaog.gov/reports/national-healthcare-review/oig-determination-veterans-health-administrations-severe-0> (documenting 2,959 Veteran Health Administration medical facilities with “severe occupational staffing shortages” in the fiscal year (FY) 2024).

39. Compounding the confusion, OPM sent the Fork Directive to individuals that it ultimately deemed ineligible to participate. Even where OPM may have made determinations to exclude employees in critical positions from the program, those employees were still sent multiple emails soliciting their resignations, creating uncertainty and suggesting their employment could be in jeopardy if they did not resign. *See, e.g., Fork in the Road*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025) (“the majority of federal agencies are likely to be downsized through . . . actions . . . likely to include the reclassification to at-will status for a substantial number of federal employees”). For example, air traffic controllers received this email even as an OPM official told media that air traffic controllers were exempt from the program. *See Thomas Beaumont et al., Air traffic controllers were initially offered buyouts and told to consider leaving government*, ABC News (Jan. 31, 2025), <https://abcnews.go.com/US/wireStory/air-traffic-controllers-initially-offered-buyouts-told-leaving-118330627>.

40. Nor did OPM consider the programmatic or other impacts on government service of dramatically—and with almost no advance warning—reducing the size of the federal workforce. OPM offered no plan or analysis as to how many employees they expected to take advantage of the program, or how the hundreds of agencies and their components across the government would

ensure continuity of expertise and operations in light of the sudden unplanned administrative leave of some untold number of federal workers.

41. Indeed, OPM acknowledges that some federal agencies actually require larger workforces to function, stating that “a few [unspecified] agencies . . . are likely to see increases in the size of their workforce.” *Fork in the Road*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025). But the Fork Directive is addressed in an overwhelmingly blanket fashion to millions of employees without targeting or analysis. OPM’s program can only be expected to cause resignations and resultant staff reductions at even the unspecified agencies it acknowledges will require increases in the size of their workforce at a time of low unemployment.

The Directive, which provides conflicting information regarding employees’ rights and obligations if they accept the government’s offer, does not reflect reasoned decision-making

42. The Directive and related materials offer conflicting information about employees’ rights and obligations if they accept the government’s offer.

43. Following the original communication, OPM began publishing Frequently Asked Questions (FAQs) concerning the program, and sent a follow-up email on the evening of January 30, 2025 to encourage federal employees to resign, facetiously citing their ability to travel to “a dream destination” and asserting that “The way to greater American prosperity is encouraging people to move from lower productivity jobs in the public sector to higher productivity jobs in the private sector.” Kate Kelly, Michael C. Bender, and Zolan Kanno-Youngs, *Official Email Urges Federal Workers to Find ‘Higher Productivity’ Jobs* (Jan. 31, 2025), <https://www.nytimes.com/2025/01/31/us/politics/federal-workers-opm.html>; *Fork in the Road*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025).

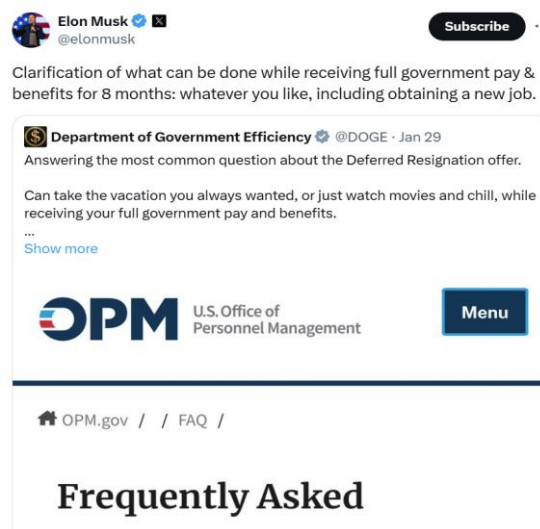
44. The FAQs continue to be changed, with OPM adding and changing material on the FAQ over the following days. *See Frequently Asked Questions*, U.S. Office of Pers. Mgmt., https://web.archive.org/web/202500000000000*/https://www.opm.gov/fork/ (internet archive showing numerous changes to Fork Directive FAQs).

45. This guidance continues to shift in a way that obscures the true nature of the Directive from Plaintiffs, federal employees, and the public.

46. For example, OPM has repeatedly shifted its position as to whether and when employees who accept the offer in the Fork Directive will be expected to work.

47. The initial communication from OPM on January 28, 2025 suggested that employees would be required to continue working, but “will be exempted from all applicable in-person work requirements,” *Fork in the Road*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025).

48. And, among other things, OPM purported to reverse its positions regarding whether employees would be required to work during the deferred resignation period, stating that “[e]xcept in rare cases determined by your agency,” employees were “not expected to work.” @Elonmusk, X (Jan. 29, 2025, 8:56 AM), <https://x.com/elonmusk/status/1884601571347943773>.



Questions

Am I expected to work during the deferred resignation period?

No. Except in rare cases determined by your agency, you are not expected to work.

See also <https://web.archive.org/web/20250129012319/https://www.opm.gov/fork/faq> (same).

49. But OPM provided no guidance as to the “rare” circumstances under which employees would be expected to work.

50. OPM sent a second email on January 30, 2025 that purported to provide clarity. @News_MTorres, X (Jan. 31, 2025, 9:26 AM), https://x.com/News_MTorres/status/1885333873766080615 (post on X showing OPM email providing “Fork in the Road FAQs”).

51. At some point, OPM subsequently revised this guidance yet again, apparently in an effort to sweeten the deal and encourage employees to resign. As of February 1, 2025, OPM’s response to a question about whether employees will be expected to work their government jobs during the deferred resignation period simply reads, “No.” Fork in the Road, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025).

Frequently Asked Questions

Am I expected to work at my government job during the deferred resignation period?

No.

52. Beginning on or about January 30, 2025, agencies across the federal government advised federal employees by mass emails, at OPM’s direction, that the Fork in the Road program

was “valid, lawful, and will be honored.” Anne Flaherty, Mary Alice Parks, and Soo Youn, *Federal workers told offer to get paid through September if they resign is ‘valid,’ ‘lawful’*, ABC News (Jan 31, 2025), <https://abcnews.go.com/Politics/federal-workers-told-offer-paid-september-resign-valid/story?id=118317566>.

53. OPM’s decision to issue a “deferred resignation” program that gave employees—and Plaintiffs who advise them—little more than a week to decide the future of their career is unprecedented.

54. Particularly in light of the extremely compressed timeline to participate in the Fork Directive, OPM’s continual changing of the contours of that program—and the rights and obligations of employees under it—reflects the opposite of reasoned decision-making.

55. OPM’s need to broadly and flatly assert that the exploding offer in the Fork in the Road directive was “lawful” and “valid” only demonstrates the agency’s awareness of the tremendous extent of uncertainty surrounding the directive’s validity, and an effort to rush federal employees to make a decision in a matter of days despite that uncertainty. *See* Andrea Hsu, *Legal questions surround Trump’s federal worker resignation offer*, NPR (Jan. 31, 2025), <https://www.npr.org/2025/01/31/nx-s1-5282075/trump-federal-employees-resignation-offer-legal-questions>.

The Directive fails to consider or adequately explain how it is consistent with long-standing ethics rules concerning outside employment, which place agency-specific restrictions on employees’ ability to obtain additional employment

56. OPM’s FAQs following the issuance of the Directive flatly stated that federal employees could obtain a “second job” if they submitted their resignation. Indeed, OPM stressed that employees could “Absolutely!” obtain additional employment during the period they would

be placed on administrative leave. *Frequently Asked Questions*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork/faq> (last visited Feb. 4, 2025).

Am I allowed to get a second job during the deferred resignation period? —

Absolutely! We encourage you to find a job in the private sector as soon as you would like to do so. The way to greater American prosperity is encouraging people to move from lower productivity jobs in the public sector to higher productivity jobs in the private sector.

57. But this bald assertion contradicts longstanding regulations and nuanced rules that federal employees must consider when engaging in outside employment while still employed by the federal government.

58. Federal ethics regulations provide that federal employees who seek outside employment must comply with numerous conditions, including “[a]ny agency-specific requirement for prior approval of outside employment or activities.” 5 C.F.R. § 2635.801. And the regulations further provide that agencies may impose a prior-approval requirement before individuals employed at the agency can accept outside employment. *Id.* at § 2635.803. Some agencies have codified their requirement for prior approval by regulation and these policies could hardly be expected to change uniformly in the accelerated timeframe created by the Fork Directive. *See, e.g.*, 5 C.F.R. § 5701.101 (Federal Trade Commission regulations).

59. There are further restrictions on outside employment for federal employees, including a prohibition on receiving dual pay from federal employment. *See* 5 U.S.C. § 5533. But OPM informs employees that, should they resign from their positions, doing so “does not affect your ability to work for the federal government in the future.” *Frequently Asked Questions*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork/faq> (last visited Feb. 4, 2025).

60. OPM’s blanket assertions that all federal employees who accept the exploding deferred resignation offer can “Absolutely!” obtain a second job are simply incorrect.

The Fork Directive is contrary to reasoned practices of restructuring and seeds chaos, not effective government functioning

61. On information and belief, the Fork in the Road directive is based on a staff reduction approach of the same name conducted by Elon Musk shortly after taking over Twitter (now X). Mr. Musk is reportedly deeply involved in OPM’s operations, has close ties to senior OPM staff politically appointed by the new Administration, and has repeatedly commented publicly on the Fork Directive.

62. OPM’s rapid adoption of Musk’s private-sector program confirms that the agency took very little time to consider the suitability of applying an approach used with questionable success in a single for-profit entity to the entirety of the federal workforce. *See, e.g.,* Dave Lawler, *The Elon-ification of the federal government*, Axios (Jan. 30, 2025), <https://www.axios.com/2025/01/30/elon-musk-government-takeover-federal-workers> (“A workforce discombobulated by chaotic recent events receives an email with the subject line ‘Fork in the Road.’ Inside, a deadline to quit or commit to the new mission. That’s the scenario Twitter employees faced in November 2022 — and the one now confronting some 2.3 million government workers.”); Clare Duffy, *The ‘Muskification’ of the federal government is in full swing*, CNN (Jan. 30, 2025), <https://www.cnn.com/2025/01/29/tech/elon-musk-government-cuts-twitter-takeover/index.html>.

63. The “Fork in the Road” approach at Twitter was widely regarded as chaotic, and the company’s value declined precipitously after it was implemented. As one report summarized, “While Mr. Musk ultimately transformed Twitter, reducing staff by 80 percent and minimizing its real estate footprint, its business has declined. Advertisers have fled the site in droves, and at least

one major asset management firm, Fidelity Investments, estimates the company is now worth 72 percent less than the \$44 billion he paid for it.” Kate Conger and Ryan Mac, *Déjà Vu: Elon Musk Takes His Twitter Takeover Tactics to Washington*, N.Y. Times (Jan. 30, 2025), <https://www.nytimes.com/2025/01/30/technology/musk-doge-x-playbook.html>.

64. The Directive offers no rationale for translating a questionable private-sector experiment into a program for virtually the entire federal civilian workforce.

As the Fork Directive rashly replicates the chaotic private-sector approach employed at Twitter, it eschews the reasoned, logical, and congressionally authorized approach used for federal workforce reduction through voluntary departure in the recent past.

65. In the mid-1990s, then-President Clinton and his Administration undertook a significant effort to streamline and reduce the size of the federal workforce to increase efficiency and reduce the deficit. See <https://www.presidency.ucsb.edu/documents/statement-the-buyout-program-for-federal-employees>.

66. President Clinton charged Vice President Gore with first leading a National Performance Review to gather information and make reasoned recommendations concerning government efficiency.

67. After the National Performance Review conducted information-gathering and analysis, the Administration sought and received approval from Congress to offer buyouts to certain federal employees, with targeted offers.

68. The offers were designed to reduce unproductive layers of management, with 70 percent of buyout uptake coming from managerial employees.

69. This approach led to a reduction of more than 100,000 federal government positions a little more than a year after obtaining congressional authorization.

70. The buyout authorities obtained from Congress in the Clinton Administration, *see* Public Law No. 103-226, 108 Stat. 111 (1994), generally gave agencies a calendar year—not nine days—to make and accept buyout offers from employees using considered principles articulated both by statute and in Office of Management and Budget guidance. These principles required the use of strategic plans before offering buyouts, ensuring the maintenance of productivity and ability to achieve agency objectives, and targeting to specific positions and integrating the efforts into restructuring plans. *See* U.S. Gov't Accountability Off., GGD-97-124, *Federal Downsizing: Effective Buyout Practices and Their Use in FY 1997*, <https://www.gao.gov/products/ggd-97-124>.

The Directive's deadline is arbitrary

71. Federal employees must weigh whether to accept the Fork Directive in short order, by February 6, 2025. But the Directive comes with a questionable legal basis, continually changing guidance, and with no clear mechanism to ensure that its promise will be fulfilled. Employees are advised if they forgo the offer—even with all of this attendant lack of clarity— they risk unemployment.

72. The February 6, 2025 deadline to respond to the Fork Directive is not mandated by law. It is an arbitrary date Defendants selected to put maximum pressure on the federal workforce so that they would accept the offer, in many cases contrary to federal agency and federal employee interests.

The Directive is pretext to remove career federal civil servants and replace them with staff who are politically aligned with the Administration

73. The Fork Directive itself concedes that some agencies require more—not less—less staffing.

74. Statements made by the Administration and their surrogates make clear that they intend to reduce the size of the government in part so that they can replace career federal employees with individuals ideologically aligned with the Administration.

75. The President has pledged to fire wide swaths of civil servants, promising to “throw off the political class that hates our country.” Donald J. Trump, Speech at Conservative Political Action Conference (March 4, 2023), <https://tinyurl.com/2hjrs5ah>. As he explained, “you’ll see that on the first day of my presidency, the deep state which is destroying our nation. The tables will turn and we will destroy the deep state. We’re going to destroy the deep state.” Donald J. Trump, Speech at South Carolina GOP Dinner (Aug. 5, 2023), <https://tinyurl.com/36uhbe74>.

76. President Trump has singled out Democrats and so-called “RINOs” (Republicans In Name Only) for termination. For example, in one video post from May 2023, Trump told a reporter that he would make “very big changes” to the FBI in a potential second term. Donald J. Trump (@realDonaldTrump), Truth Social (May 15, 2023, 11:04 PM ET), <https://tinyurl.com/bdesuz3w>. The DOJ and FBI, Trump said, personify the “deep state” as they are filled with “thousands and thousands” of “RINOs and with Democrats” that have been there for decades. Rebecca Jacobs, *Trump Has Said He Wants to Destroy the “Deep State” 56 Times On Truth Social*, CREW (Aug. 1, 2024), <https://tinyurl.com/36z27phm>. In another speech, he criticized the “deep state” workers who “work with the with the Democrats and the Republicans, and those are the Republicans I don’t like.” Donald Trump, *Speech at Political Rally in Sarasota, Florida* (July 3, 2021), <https://tinyurl.com/58r46v4a>.

77. Vice President Vance reiterated that President Trump should “[f]ire every single midlevel bureaucrat, every civil servant in the administrative state, replace them with our people.”

Andrew Prokop, *J.D. Vance's Radical Plan to Build a Government of Trump Loyalists*, Vox (July 18, 2024), <https://tinyurl.com/4rsvn7xv>.

78. The scattershot approach of the Fork Directive—which does not set a target for specific goals, agencies, positions or functions—can only be understood as an effort to hollow out the federal government to allow the Administration to make room for the Administration's partisan hiring. See The White House, *Reforming the Federal Hiring Process and Restoring Merit to Government Service*, <https://www.whitehouse.gov/presidential-actions/2025/01/reforming-the-federal-hiring-process-and-restoring-merit-to-government-service/> (directing agencies to make federal “recruitment and hiring processes more efficient” by, *inter alia*, involving political appointees “throughout the full hiring process” and prioritizing hiring of individuals “passionate about the ideals of our American republic”).

The Fork Directive is contrary to law as it was promulgated with no clear statutory basis or authorization and violates the Antideficiency Act

79. OPM has offered no explanation or statutory basis for offering the Directive, nor has it identified how the federal government intends to pay an unspecified number of workers for not performing work for the next eight months.

80. Nor has OPM offered a justification for this apparently unprecedented use of administrative leave.

81. The Antideficiency Act prohibits federal officials from making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or from contracting or obligating for the payment of money before an appropriation is made (31 U.S.C. § 1341(a)). This is precisely what Defendants are purporting to do via the Fork Directive.

82. The government is currently operating on a continuing resolution that expires on March 14, 2025. There is currently no appropriation in place to cover the salaries of federal

employees after that date. The Directive, however, unequivocally promises all pay and benefits until September 30, 2025. As written, Defendants are making or authorizing an obligation for the payment of money before an appropriation is made. *See* Fork in the Road, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork> (last visited Feb. 4, 2025) (original communication to employees, explaining that workers will “maintain [their] current compensation...until [their] final resignation date”).

83. Following significant concerns about whether, in light of the lack of appropriations and other concerns, employees would “really” receive “full pay and benefits through September 30,” OPM doubled down in its FAQs without reservation, stating, “Yes.” *Frequently Asked Questions*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork/faq> (last visited Feb. 4, 2025)

Will I really get my full pay and benefits during the entire period through September 30, even if I get a second job? —

Yes. You will also accrue further annual leave, sick leave, etc. and be paid out for unused leave at your final resignation date.

84. These questionable assertions led to public concerns about the lawfulness of the Fork Directive given the lack of government appropriations beyond March 14, 2025, Andrea Hsu, *Legal questions surround Trump's federal worker resignation offer*, NPR (Jan. 31, 2025), <https://www.npr.org/2025/01/31/nx-s1-5282075/trump-federal-employees-resignation-offer-legal-questions>.

85. In response, OPM— changed the contours of the Directive’s guidance. OPM added a statement to the FAQ that asserts that a lapse in funding could affect employees’ pay regardless of whether they submit a deferred resignation. OPM nonetheless unequivocally assured employees that they will be entitled to back pay in case of a lapse in appropriations under the Government

Employee Fair Treatment Act of 2019. *Compare Frequently Asked Questions*, U.S. Office of Pers. Mgmt., <https://www.opm.gov/fork/faq> (retrieved February 3, 2025. 8:49 AM) (explaining that a government shutdown could impact pay, but assuring employees that they would be entitled to backpay after any shutdown) *with id at* <https://web.archive.org/web/20250131184447/https://www.opm.gov/fork/faq> (extant version at 6:44 PM, Jan. 31, 2025) (FAQ does not include any equivocation on the entitlement to pay). In adding this new FAQ, OPM neither rescinded previous communications to federal employees nor changed its other unequivocal statements that employees “really” will be paid through September 30, 2025.

86. Whether or not an employee is guaranteed backpay following Congress’s issuance of an appropriation, the Antideficiency Act forbids OPM from guaranteeing payment without an appropriation. Particularly where, as here, OPM does not know the contours of future appropriations or funding levels, this promise is improper. If Congress decides to not fund certain offices after March 14, for example, employees in those offices who accepted the Fork Directive would have no appropriation to satisfy their promised pay.

Plaintiffs have been, and will continue to be, harmed by the Fork Directive.

87. AFGE, on its own and in conjunction with its affiliated councils and locals, represents members and bargaining unit employees in agencies and departments across the federal government for which it has been certified as the exclusive representative pursuant to 5 U.S.C. § 7111.

88. Local 3707 represents members and bargaining unit employees consisting of most civilian employees of the Westover Airforce Reserve Base in Chicopee, Massachusetts, for which it has been certified as the exclusive representative pursuant to 5 U.S.C. § 7111.

89. AFSCME, through its affiliated District Council 20 and its constituent local unions, represents members and bargaining unit employees in agencies and departments across the federal government for which AFSCME District Council 20 has been certified as the exclusive representative pursuant to 5 U.S.C. § 7111.

90. NAGE, on its own and in conjunction with its locals, represents members and bargaining unit employees in agencies and departments across the federal government for which it has been certified as the exclusive representative pursuant to 5 U.S.C. § 7111.

91. Membership in AFGE, Local 3707, AFSCME, and NAGE is voluntary.

92. The leadership of AFGE, Local 3707, AFSCME, and NAGE are democratically elected by and from their respective members.

93. The activities of AFGE, AFSCME, and NAGE are funded by their respective members through voluntary membership dues.

94. AFGE members who are federal employees work in a wide variety of positions, in every U.S. state and the District of Columbia, and in agencies including the Environmental Protection Agency, the Department of Labor, the Department of Veterans Affairs, the Social Security Administration, the Department of Defense, and the Department of Homeland Security.

95. AFSCME members who are federal employees work in a wide variety of positions at multiple federal agencies including AmeriCorps, the Department of Agriculture (USDA), the Department of Justice (DOJ), the Federal Aviation Administration (FAA), the Peace Corps, and Voice of America.

96. NAGE members who are federal employees work in a wide variety of positions in 43 states, in agencies including the Department of Veterans Affairs, the Department of Defense, the Department of Transportation, the Environmental Protection Agency, and the National Park

Service.

97. AFGE members are located in all fifty states. AFGE has several affiliates across the State of Massachusetts, representing approximately 2,900 federal workers at various agencies, including the Department of Veterans Affairs, the Department of Defense, the Social Security Administration, and the Environmental Protection Agency.

98. Among AFSCME's thousands of affiliated subordinate bodies throughout the country, AFSCME Council 93 and its affiliated local unions represent employees of public and private employers in the State of Massachusetts including but not limited to employees of the City of Springfield and the Springfield Housing Authority.

99. NAGE has multiple units in Massachusetts, representing approximately 7,000 federal employees at various federal agencies, including the Department of Veterans Affairs, Department of Defense, and Department of Transportation.

Plaintiffs have already expended significant resources responding to the Directive and will be forced to continue to expend and divert resources to respond to the Directive.

100. One of AFGE, AFSCME, and NAGE's core services is responding to inquiries and concerns, both from individual members of the union and the union affiliates who directly represent those members, as well as counseling union members about issues that relate to the workplace. In general, AFGE, AFSCME, and NAGE, through their affiliates, work to ensure that all member inquiries receive a response, whether by email, phone, or meeting.

101. One of AFGE's core functions is to provide guidance, legal representation, training, and other services to its over 800 affiliates.

102. AFGE has over 150 employees who regularly receive inquiries directly from members and affiliates.

103. Core to Local 3707's mission is providing advice and guidance to the civilian

employees at Westover Airforce Reserve Base.

104. Local 3707 provides guidance and representation to its members through elected and volunteer union officers and stewards.

105. AFSCME has over 100 employees in its Organizing and Field Services Department whose role is to provide member relations services; they regularly receive calls and emails from members and affiliates, including from federal employee members of AFSCME District Council 20 and its subordinate bodies.

106. AFSCME represents its members through its constituent local unions, councils and other affiliates. Within this structure, one of AFSCME's core functions is to provide resources and guidance to its affiliates for organizing, bargaining, political action and education, legal issues of national significance, and the administration of members-only benefits.

107. NAGE provides guidance, legal representation, training, and services to its locals, members, and bargaining unit employees.

108. NAGE has employees who regularly receive inquiries directly from federal local affiliates and federal employees.

109. Since the Fork Directive, AFGE, Local 3707, AFSCME, and NAGE have been inundated by members and affiliates seeking advice and information about the Fork Directive.

110. For example, since January 28, 2025, AFGE has received thousands of emails from members and affiliates asking about the Fork Directive. AFGE has received countless additional inquiries through other channels, including phone calls, town hall meetings, and site visits. AFGE members and affiliates have asked about the implications of the Fork Directive and guidance on how to respond to OPM's email. AFGE affiliates have also asked for services and support in responding to member and press inquiries about the Fork Directive.

111. Since January 28, 2025, Local 3707 has received numerous inquiries about the Directive. Responding to these questions has demanded a significant amount of time from the union's limited group of volunteer officers and stewards—time that would have otherwise been spent representing members, organizing new members, and addressing other important issues.

112. OPM's unclear and ever-changing guidance on the Directive has made it particularly challenging to provide accurate advice. An example of how this has been particularly difficult for Local 3707 involves the impact of accepting the Fork Directive on dual-status Air Reserve Technician employees represented by Local 3707. Specifically, it is unclear whether acceptance would make them ineligible for continued military service.

113. Since the Directive, AFSCME District Council 20 and its constituent local unions have also received emails and phone calls from members asking about the implications of the Fork Directive. AFSCME local unions have been requesting guidance about the legality of the Fork Directive, the implications of the Fork Directive on the future of AFSCME members' work, and whether AFSCME members should respond to OPM's email.

114. Since January 28, 2025, NAGE has received hundreds of inquiries, emails, and telephone calls from locals and federal employees asking about the Directive and seeking guidance. NAGE members have questions about the legality of the Directive, its implications, effects on their benefits, their options, and how to respond.

115. Responding to these concerns has required AFSCME, Local 3707, AFGE, and NAGE to devote substantial additional resources into counseling members and affiliates and responding to inquiries.

116. For example, at least one AFGE attorney and one AFGE communications staff member spent almost the entirety of their working day on January 29, 2025, working on Fork

Directive-related issues. Several other staff members have spent a significant portion of each day since the 28th responding to and researching Fork Directive related issues. These staffers would ordinarily be performing other necessary work, such as preparing for affiliate arbitrations, reviewing affiliate requests for legal and communications advice, and drafting newsletters and other AFGE communications.

117. Because of the volume of inquiries, AFGE has held 2 virtual town halls for its affiliates. Each town hall took place in the evening and required over 25 staff members to perform duties outside their normal working hours.

118. Likewise, because of numerous inquiries by AFSCME members, AFSCME attorneys and communication department staff have had to devote resources to preparing a Frequently Asked Questions (“FAQ”) document to address AFSCME member questions about the Fork Directive, diverting these AFSCME employees from performing other necessary work servicing AFSCME members and affiliates in other jurisdictions nationwide. And AFSCME local unions of federal employees have scheduled special meetings with their bargaining-unit members to discuss the Fork Directive and provide guidance.

119. NAGE has utilized several attorneys and representatives to receive questions, research issues, prepare a FAQ, and host two webinar-style town halls. Each town hall lasted over an hour and required multiple staff members to present materials and answer live questions. These NAGE staff would ordinarily perform other necessary work, including legal representation and union representational assistance with grievances, bargaining, communications, and other matters.

120. In addition to directly responding to inquiries from affiliates and members, AFGE, AFSCME, and NAGE employees have invested significant time and effort into researching issues related to the Fork Directive. These efforts have been necessary to develop written guidance to

help members and affiliates, to try to ensure as well-informed an approach to addressing these issues as is possible under the circumstances.

121. The substantial increase in volume of inquiries and counseling requests from members and affiliates has required AFGE and NAGE to divert resources from other work. For example, the attorney time spent developing guidance and responding to inquiries has resulted in delays in preparing for arbitration hearings and responding to non-Directive-related affiliate inquires.

122. In addition, media outlets have contacted AFGE, AFSCME, and NAGE seeking comment or information about the Fork Directive. These inquiries continue.

123. These resource challenges are particularly acute because of the very limited timeframe and changing guidance surrounding the Directive. Members need answers to their questions by the impending deadline presented by the Fork Directive, and are urgently reaching out to Plaintiffs for advice.

The Directive impedes Plaintiffs' ability to perform their missions.

124. Core to Plaintiffs' mission is fighting for fairness and full protection of the law on behalf the employees they represent.

125. Because of the paucity of information about the Fork Directive, it is challenging for Plaintiffs to adequately advise their members or affiliates as to many of their questions.

126. For example, it is unclear whether members will really be guaranteed full payment of wages through September 30, 2025, even if appropriations lapse, the government shuts down, or Congress passes a law that forbids employees to be paid when they are not working.

127. Dual employment is unclear, and whether members could seek outside employment while in this "deferred resignation" period, in light of prior guidance and ethics rules limiting

federal workers' ability to work for others while on the federal payroll.

128. It is unclear whether members could leave the country while in "deferred resignation" status given prior government guidance about leaving the country or the commuting area while employed.

129. It is unclear what authority or appropriations the government has to provide this program and to guarantee that employees will be paid without working.

130. The potential effect of a government shutdown on a "deferred resignation" if a budget or continuing resolution is not passed in the future is unclear.

131. It is unclear what will happen there are later reductions in force or other layoffs, and whether members would continue to be paid.

132. The implications for pensions, health insurance, retirement eligibility, service tenure requirements and other issues are unclear.

133. It was unclear whether members would retain competitive status or reinstatement rights, whether they will continue to accrue annual leave and sick leave, and whether they will receive their annual leave payout.

134. Given the very limited information available about the Fork Directive, and the absence of a clear statutory basis for some of the claims in the January 28, 2025 email, it is challenging for Plaintiffs to adequately counsel or advise their members as to many of these issues.

135. The difficulty in responding to inquiries, and time spent addressing concerns, is amplified by the inconsistent guidance provided to Plaintiffs' affiliates and members by different federal agencies and OPM, and the changing nature of that guidance.

136. The Directive's lack of clarity and shifting contours thus directly undermine Plaintiffs' core mission of serving and counseling their members.

137. The substantial increase in volume of inquiries and counseling requests from members and affiliates has required AFSCME, Local 3707, AFGE, and NAGE to divert resources from being otherwise used to further their mission by organizing and representing employees, negotiating with employers, and advocating for improved employment conditions. For example, AFGE and NAGE attorneys are not preparing for arbitrations and answering other affiliate concerns, and AFGE field representatives (also known as national representatives) are able to devote less time handling grievances and bargaining issues. Likewise, an AFSCME attorney working on the union's efforts to counsel members and affiliates about the Fork Directive would otherwise be engaged in supporting other AFSCME affiliates in preparing for arbitrations in other jurisdictions, filing unfair labor practices against non-federal employers, and other AFSCME core services for its affiliates nationwide.

138. In addition, Plaintiffs will likely lose revenue because of the Fork Directive. Members currently pay voluntary dues through payroll deductions. The vast majority of members who leave federal service for reasons other than retirement cease being members of their respective unions and cease paying dues. Members' deferred resignations will reduce Plaintiffs' membership rolls, thereby reducing the revenue available to further Plaintiffs' mission.

139. Further, as members look to AFSCME, Local 3707, AFGE and NAGE to provide answers about the Fork Directive and its unclear and ever-changing guidance, AFSCME, Local 3707, AFGE and NAGE are at risk of reputational harm among their membership, and more broadly among other federal employees, due to the difficulty of providing satisfactory answers to members concerning an agency policy with enormous potential consequences for members' interests.

140. Given the short timeline attendant to the Directive, and the ongoing lack of clarity,

Plaintiffs will not be able to improve on their advice to members, or offer further clarity, in the future – the time will have simply expired.

CLAIMS FOR RELIEF

**Count One
(Administrative Procedure Act - Arbitrary, Capricious)**

141. Plaintiffs repeat and incorporate by reference each of the foregoing allegations as if fully set forth herein.

142. Under the APA, a court shall “hold unlawful and set aside agency action ... found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

143. The Fork Directive is arbitrary and capricious for a host of reasons.

144. Defendants have failed to consider innumerable potential consequences of the Fork Directive, which was sent a mere week after the beginning of the new Administration to millions of federal employees, including the impact on continuity and effectiveness of government functioning.

145. The Directive and related materials offer conflicting information regarding employees’ rights and obligations if they accept the government’s offer.

146. The Directive adopts a questionable approach from the private sector, without considering whether it is applicable in the federal context or consistent with prior history relating to restructuring.

147. The Directive aims to entice federal employees to relinquish their livelihoods on the basis of barely-veiled threats of future termination.

148. The Directive runs contrary to long-standing rules and requirements for federal employees, including prior guidance and ethics rules regarding outside employment.

149. The Directive provides an arbitrarily short deadline for decision that is not based in any articulated need or statutory requirement and—particularly in light of open questions and changing guidance—puts Plaintiffs in an impossible position in advising their members and developing guidance.

150. The Directive is pretext for removing federal workers on an ideological basis to replace them with staff who are politically aligned with the Administration.

151. The arbitrary and capricious nature of OPM’s decision has harmed Plaintiffs.

Count Two
(Administrative Procedure Act – not in accordance with law,
and exceeding statutory authority)

152. Plaintiffs repeat and incorporate by reference each of the foregoing allegations as if fully set forth herein.

153. The Fork Directive and related communications include no indication as to the statutory or appropriations basis for OPM’s “deferred resignation” program.

154. The Appropriations Clause of the Constitution commands that “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const., Art. I, § 9, cl. 7.

155. The Antideficiency Act forbids an agency from authorizing or obligating the payment of money before an appropriation is made.

156. The Fork Directive purports to obligate payment until September 30, 2025 to civil servants who accept the deferred resignation offer, even though the federal government’s current appropriations will expire on March 14, 2025.

157. By purporting to obligate payments for six months past the March 14, 2025 continuing resolution deadline, the Fork Directive violates the Antideficiency Act, and is therefore

not in accordance with law and is beyond statutory authority, in violation of the Administrative Procedure Act. 5 U.S.C. 706(2).

158. Defendants' violation causes ongoing harm to the Plaintiffs.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- A. Declare that the Fork Directive, as currently drafted, is arbitrary, capricious, and not in accordance with law in violation of the Administrative Procedure Act;
- B. Vacate the Fork Directive and remand to OPM to provide a reasoned basis as required by the APA for the Directive and extend the purported deadline for the Fork Directive accordingly;
- C. Preliminarily and permanently enjoin Defendant Charles Ezell, Acting Director of the Office of Personnel Management; Defendant Office of Personnel Management; and their agents and successors from implementing or otherwise giving effect to the February 6, 2024 deadline in the Fork in the Road Directive until such time as Defendants can provide adequate legal justification for the Fork Directive and adequate legal assurance of its terms;
- D. Order Defendant Charles Ezell, Acting Director of the Office of Personnel Management; Defendant Office of Personnel Management; and their agents and successors to prepare and submit for Court approval a corrective communication to send all government workers who received the Fork in the Road Directive, advising them that the Directive is suspended and the deadline is held in abeyance for a reasonable period of not less than 60 days following OPM's completion of the required consideration of the Directive's legal basis, justifications, and funding.

- E. Award Plaintiffs their costs, attorneys' fees, and other disbursements for this action; and
- F. Grant any other relief this Court deems appropriate.

DATED this 4th day of February, 2025.

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**pro hac vice pending*

Verification

Cory Bythrow being first duly sworn hereby affirm and state under the penalties of perjury the following:

I am the Chief of Staff of the American Federation of Government Employees, AFL-CIO (AFGE), Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I verify under penalty of perjury that the foregoing paragraphs relating to AFGE are true and correct.

Dated: February 4, 2025
Washington, DC
(City) (State)



Cory Bythrow
Chief of Staff
American Federation of Government
Employees, AFL-CIO

Verification

Fernando Colon being first duly sworn hereby affirm and state under the penalties of perjury the following:

I am the Associate General Counsel of the of State, County, and Municipal Employees, AFL-CIO (AFSCME), Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I verify under penalty of perjury that the foregoing paragraphs relating to AFSCME are true and correct.

Dated: February 4, 2025
Washington, DC
(City) (State)



Fernando Colon
Associate General Counsel
American Federation of State,
County, and Municipal Employees,
AFL-CIO (AFSCME)

Verification

Lee Sutton being first duly sworn hereby affirm and state under the penalties of perjury the following:

I am the Federal Director of the National Association of Government Employees, Inc. (NAGE), Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I verify under penalty of perjury that the foregoing paragraphs relating to NAGE are true and correct.

Dated: February 4, 2025
Alexandria, Virginia


Lee Sutton

Lee Sutton
Federal Director
National Association of Government
Employees, Inc.

James Johnson being first duly sworn hereby affirm and state under the penalties of perjury the following:

I am the President of American Federation of Government Employees, AFL-CIO (AFGE), Local 3707, Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I verify under penalty of perjury that the foregoing paragraphs relating to AFGE, Local 3707 are true and correct.

Dated: February 4, 2025
Springfield, MA
(City) (State)



James Johnson
President
American Federation of Government
Employees, AFL-CIO, Local 3707

NG-2/7/25: Exhibit F

[REDACTED]

From: Hawkins, Carrie L. <Carrie.Hawkins@va.gov>
Sent: Thursday, February 6, 2025 5:28:00 PM
To: VHABAY All Employees <BayPinesAllEmployees@med.va.gov>
Subject: FW: Message from the Network Director | Implementing Change: Navigating Executive Orders and Workforce Adjustments

Good evening team,

Below is some helpful information from our VISN 8 Network Director. It nicely summarizes everything we discussed today in our townhall.

Thank you for everything you do to care for our Nation's Heroes.

carrie

Carrie Hawkins MS, RN, CCRN-K, NEA-BC
Associate Director for Patient Care Services/Nurse Executive
Bay Pines VA HealthCare System
727-398-6661

(Message shared with VISN 8 All Network Staff, VISN 8 CCC All Staff, VISN 8 HR; VISN 8 Directors; VISN 8 PAOs – please share with employees)



From the Network Director Bulletin: *Implementing Change*

VA Sunshine Healthcare Network (VISN 8)

VISN 8 Staff –

As the VISN 8 Network Director, I am dedicated to transparently guiding our organization through the current Administration transition. Additional email communications will be shared with you routinely to address quickly evolving guidance and information moving forward.

While our mission to serve Veterans remains unchanged, adapting to new executive orders and workforce adjustments is essential for our effectiveness. Change presents both challenges and opportunities. We must stay agile and proactive, viewing these adjustments as a chance to improve our services for Veterans. Together, we will meet these challenges with resilience.

Understanding Executive Order Implementation

The process of implementing executive orders involves a structured flow of communication and action across various government levels. This graphic outlines the sequential steps taken to ensure compliance and effective implementation of executive orders.

Employees should wait until official guidance is communicated through the VISN before taking any actions.

Federal-wide Workforce Restructuring Hiring Freeze

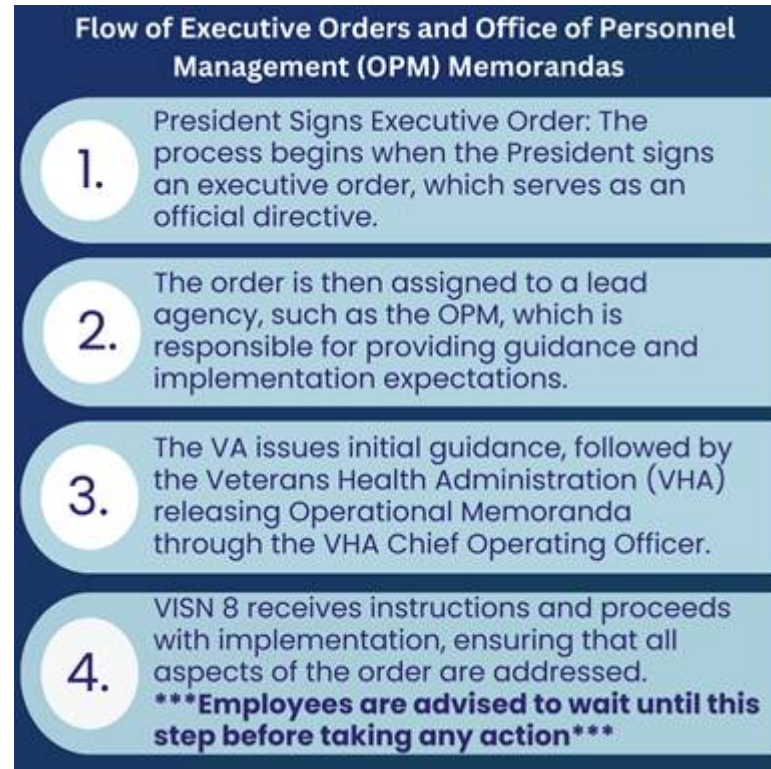
An executive order initiated a hiring freeze, with exceptions granted for specific positions. The Office of Management and Budget (OMB) and OPM play key roles in determining these exceptions.

- **First Wave of Exceptions:** Mainly clinical positions were exempted, allowing in-process recruitment for essential roles like physicians and nurses to continue, thus ensuring that critical services remain uninterrupted.
- **Second Wave of Exceptions:** A list of additional VHA positions proposed for exemption is under review, with the goal of expanding hiring capabilities while adhering to the freeze, allowing agencies to address emerging needs effectively. Additional information will be shared when available.

Deferred Resignation Program

The [Deferred Resignation Program](#) (DRP) offers employees the option to resign at a future date while providing them with the flexibility to plan their transitions. Important aspects include:

- **Deadline for Interest:** Employees interested in DRP are required to respond by February 6th at 11:59 p.m., with no expected extensions.
- **Exclusion List:** Certain positions may be excluded from DRP eligibility, aligning closely with hiring exemption lists. The final exclusion list is pending, which ensures that operational needs are met while offering employees choices.
- **Reporting to Work:** If you've responded to the DRP and received an email indicating your effective date for this program has been approved by OPM, **you must continue reporting to work until you receive formal**



instructions from the agency. Employees who assume they do not need to show up without official notification will be marked absent.

Voluntary Early Retirement Authority (VERA)

OPM's [VERA](#) allows eligible employees to retire early. The program aims to optimize workforce management while accommodating employees' retirement preferences, ultimately fostering a more adaptable workforce. While we have been told VHA has been approved for VERA, official guidance from the department is pending.

Return to In-Office Work

The concept of "return to work" can be misleading, as everyone has been significantly contributing all along. To clarify, we are focusing on an "in-office return" to work.

VHA, VISN 8, and medical centers are actively working to implement this requirement, focusing on space management and allocation. Over the next few weeks, operations will be evaluated and adjusted to support this transition. If space constraints arise, delays or exemptions may be necessary. Additional guidance will be shared when available.

Return to in-office work will be phased in over time.

- Beginning February 24, 2025, Senior Executives and supervisors at all levels who reside within our network area (Florida, South Georgia, Puerto Rico, and U.S. Virgin Islands) will be expected to return to in-office work unless approved for an existing Reasonable Accommodation.
- Non-Bargaining Unit Employees will be expected to return to in-office work in April.
- Bargaining Unit Employees are not included in this requirement at this time.

No New Telework Submissions or Proposed Changes

- In an effort to comply with the implementation of the January 20, 2025 Presidential Executive Order Memorandum [Return to In-Person Work](#), **until further notice, no new telework agreements or proposed changes to telework agreements should be submitted through the HR Smart [Talent Experience Platform \(TXP\)](#) - Employee Self Service .**
- Should you have any questions or concerns please reach out to the VISN 8 Worklife and Leave team for assistance at VISN8LeaveHelp@va.gov.

Reasonable Accommodation

- We recognize that some employees may require reasonable accommodations to facilitate their return to the office. Employees seeking accommodations should inform their supervisors or HR representatives as soon as

possible to discuss potential options. We are committed to working collaboratively to find suitable solutions that meet the operational requirements of the organization.

VA Leadership Announcements and Links

- Doug Collins was confirmed on Feb 4 as the 12th Secretary of the Department of Veteran Affairs (SECVA).

[SECVA Collins Bio](#) [Message from SECVA Collins](#)

- [Presidential Actions](#)
- [OPM Memorandums](#)
- [VHA Operational Memos](#)

Thank you for your dedication and hard work in supporting this transition. If you have any questions, please direct them to your leadership team.

DAVID ISAACKS, FACHE
VISN 8 Network Director

“To fulfill President Lincoln’s promise to care for those who have served in our nation’s military and for their families, caregivers, and survivors.”

VA



U.S. Department of Veterans Affairs
Veterans Health Administration
VA Sunshine Healthcare Network (VISN 8)

VA Sunshine Healthcare Network (VISN 8)
Tampa, FL | 813-558-3900

Located in Tampa, Florida, the VA Sunshine Healthcare Network (VISN 8) is the nation’s largest system of hospitals and clinics serving a population of more than 1.5 million Veterans residing in 79 counties in Florida, South Georgia, Puerto Rico and the U.S. Virgin Islands. VISN 8’s seven healthcare systems include eight Joint Commission-accredited VA medical centers and more than 60 large and small outpatient clinics. About 30,000 full-time VISN employees work at these facilities, providing a full range of high quality, cost-effective medical, psychiatric and extended care services in an inpatient, outpatient, nursing home, and home care settings.

To learn more about the facilities and services offered by VISN 8, please visit <https://department.va.gov/integrated-service-networks/visn-08/>

For any questions about the content of this message, please contact the VISN 8 Office of Communication and Stakeholder Relations at VISN8CommunicationOffice@va.gov.