



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
DATE: February 4, 2025
RE: Guidance on Collective Bargaining Obligations in Connection with Deferred Resignation Offer

On Tuesday, January 28, 2025, the U.S. Office of Personnel Management (“OPM”) sent an email to federal employees presenting a [deferred resignation offer](#). This offer 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 take the deferred resignation offer will also be exempt from any reductions-in-force that are planned for the federal workforce.¹

If an employee resigns under this program, the employee 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) and may obtain an extension of the September 30, 2025 endpoint if they are expected to become eligible for retirement after that date but on or before December 31, 2025. The offer is open between January 28, 2025, and February 6, 2025.

Some unions have asked to bargain with agencies regarding the deferred resignation program. OPM writes to provide guidance to agencies on any collective bargaining obligations that may apply. The duty to bargain may vary, depending on the facts and circumstances in each organization.

Government-wide regulations at 5 C.F.R. § 715.202 address procedures regarding voluntary resignations. Any collective bargaining will be constrained by these regulations. The principal regulation on this subject, 5 C.F.R. § 715.202(a), provides that “[a]n employee is free to resign at any time, to set the effective date of his resignation, and to have his reasons for resigning entered into his official records.” It further provides that “[a]n agency may permit an employee to withdraw his resignation at any time before it becomes effective. An agency may decline a request to withdraw a resignation before its effective date only when the agency has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative

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

disruption or the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason.” 5 C.F.R. § 715.202(b). The deferred resignation program is consistent with this government-wide regulation. While unions may possibly be able to bargain on resignation matters not covered by this regulation, unions may not seek to negotiate any matter inconsistent with the regulation.²

In addition, the agency has management rights to “determine the . . . number of employees” at the agency and to “layoff,” “direct,” and “retain” employees.³ These management rights preclude bargaining in contravention of management’s “right to establish policies or practices that encourage or discourage employees from remaining employed by an agency.”⁴ This would include management’s rights to honor the terms of the deferred resignation offer; to offer VERA to employees in connection with the deferred resignation offer; and to exempt certain employees from the deferred resignation offer.⁵

Existing collective bargaining agreements (CBAs) may contain provisions regarding resignation. Agencies should review all CBAs to determine whether such matters are already covered by the CBA. To the extent such matters are contained in or covered by an existing CBA between the parties, an agency may not be obligated to bargain on such matters again.⁶ Any CBA provisions inconsistent with the OPM regulation or management rights discussed above are unenforceable.⁷

To the extent any union proposals concerning employment conditions are not covered by a government-wide regulation or the CBA and the agency has discretion on implementation of certain aspects of the deferred resignation program, there may be some limited collective bargaining obligations. For example, negotiable proposals may include such matters as:

- Informing the employee of any benefits available or not available after resignation and of any applicable reemployment rights;⁸

² Under 5 USC 7117(a)(1), the duty of an agency to negotiate with a union extends to the conditions of employment affecting bargaining unit employees except as provided otherwise by Federal law and government-wide rules or regulations. *Nat’l Treasury Emps. Union and Internal Revenue Serv.*, 3 FLRA 748 (1980).

³ 5 U.S.C. 7106(a)

⁴ *Am. Fed’n of Gov’t Emps. Loc. 1827*, 58 FLRA 344, 345 (2003).

⁵ Management rights under 5 U.S.C. 7106(a) are subject to 5 U.S.C. 7106(b). Therefore, agencies should review any union proposals to determine whether the proposals constitute negotiable procedures and appropriate arrangements.

⁶ *See Dep’t of Health & Human Servs., Soc. Sec. Admin., and AFGE.*, 47 FLRA 1004 (1993).

⁷ *See CFPB*, 73 FLRA 670, 675-76 (2023).

⁸ *See NTEU*, 31 FLRA 566, 601-05 (1988).

- Providing the employee a closeout performance appraisal;⁹
- Providing the union a list of eligible bargaining unit employees who accepted the resignation;¹⁰
- Providing the employee a copy of his or her personnel records, upon request, for a period of time after resignation;
- Continuing to process any awards still in progress when the resignation becomes effective; and
- Authorizing eligible employees to be granted early retirement to the extent the agency has received VERA.¹¹

Since the effective date for deferred resignation for most employees is September 30, 2025, agencies have adequate time to engage in any necessary collective bargaining, if applicable, prior to this date.

Finally, there are matters regarding the deferred resignation program that are not within the discretion of employing agencies, and therefore not subject to collective bargaining. For example, employees in positions related to immigration enforcement and national security as well as employees of the U.S. Postal Service are not eligible for the deferred resignation program.¹² In addition, the February 6, 2025 deadline was set by OPM, not the employing agency.¹³ Even if the deadline were deemed bargainable, however, agencies should limit bargaining over that subject, since agreeing to an extended time period might limit the agency's rights to conduct a reduction in force, furlough, or take other necessary actions to respond to budget or other constraints.

Agency labor relations staff should work with agency legal counsel on these issues. For additional information, agency headquarters-level human resources offices may contact OPM at awr@opm.gov. Component-level human resources offices must contact their agency headquarters for assistance.

⁹ See *NAGE, Local RI 144*, 38 FLRA 456 (1990).

¹⁰ See *NTEU v. Dep't of the Treasury*, 31 FLRA 181 (1988) (Provision 5).

¹¹ *AFGE Local 1827*, 58 FLRA 344, 346 (2003).

¹² Fork in the Road [Frequently Asked Questions](#), U.S. Office of Personnel Management website (last accessed February 3, 2025, 10:10 a.m.) (“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, those in positions related to public safety, and those in other positions specifically excluded by your employing agency.”).

¹³ [Fork in the Road](#), U.S. Office of Personnel Management website (last accessed February 3, 2025, 10:10 a.m.) (“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.”).

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