

## Breaking Down OPM's 'Fork in the Road' Email to Federal Workers

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*Though the subject line borrows a phrase from Musk's Twitter email, the federal government is not a private company, and its HR policies are arcane and legally binding.*

On Jan. 28, over 2 million employees received an email from the Office of Personnel Management (OPM) with the subject line "[Fork in the Road](#)." The email introduced a new program called "deferred resignation," which offers employees the opportunity to announce their future resignation effective Sept. 30, 2025. In exchange, the program promises employees full pay and benefits and exemption from return-to-work programs until Sept. 30. The email alludes to placing employees on administrative leave or reducing their workload but makes no guarantees. An [FAQ states](#), "[Y]ou may wish to depart the federal government on terms that provide you with sufficient time and economic security to plan for your future—and have a nice vacation." [A separate memo from OPM](#) instructs agencies to place individuals who resign on administrative leave. To confirm their resignation, employees simply need to reply: "Resign."

The "Fork in the Road" email bears the same subject line as [an email sent to Twitter employees following Elon Musk's acquisition](#) of the company. But the federal government is not a private company, and its human resource policies are arcane and legally binding. The deferred resignation program may violate existing statutory law—at least if it operates in the way OPM seemingly intended it to. Moreover, the order may backfire and impede the Trump administration's efforts to create a more politically loyal workforce.

### The Deferred Resignation Program

President Trump has long promised to reduce the size of the federal workforce. The deferred resignation program furthers that goal by offering most full-time federal employees the opportunity to resign in exchange for certain benefits. The OPM memo notes some ineligible employees, including "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.”

The email frames the deferred resignation program as an opportunity for federal employees to leave in light of “significant” changes that the Trump administration intends to make to the workforce. It describes “four pillars” for the reformed federal workforce:

- Agencies will expect employees to physically return to work. The email also anticipates geographic disruption and “relocations for a number of federal workers.”
- Agencies will update performance standards, reward employees who meet these standards, and “address in a fair and open way” employees who do not.
- Agencies “will be downsized through restructurings, realignments, and reductions in force,” resulting in furloughs and reclassification of employees to at-will status.
- Agencies will subject employees to “enhanced standards of suitability and conduct.” The memo specifically states employees should be “reliable,” “loyal,” and “trustworthy”—terms with particular meanings to President Trump.

Overall, the email envisions a slimmer, accountable, and loyal federal workforce.

The deferred resignation program allows employees to announce today their intent to resign effective Sept. 30. Employees who decide to resign must commit to “ensuring a smooth transition during [their] remaining time at [their] employing agency.” Employees may accelerate their resignation but may not extend it. Employees have until Feb. 6 to submit their resignation. An employee may request a rescission of their resignation, but the agency must review and approve the rescission.

What do these employees receive in return? First, employees who participate in the program will be exempted from the executive order requiring federal employees to return to work. Second, employees will “retain all pay and benefits regardless of [their] daily workload” until Sept. 30. Third, the email hints that employees *may* receive—but are not promised—administrative leave or a reduced workload. The accompanying OPM memo explains further that “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.” Fourth and finally, employees are permitted to seek “outside employment during the period from submittal of their resignation to their final resignation date,” subject to restrictions determined by the agency.

The email and OPM memo raise three categories of questions. First, do agencies ever have the authority to offer separation incentives to individuals who voluntarily leave federal employment? Second, are the particular incentives offered by the deferred resignation program authorized by law? If these particular incentives are not lawful, then the deferred resignation program is nothing more than a delayed two-week notice. Third and finally, who is incentivized to participate in this program?

### **Voluntary Separation Incentives**

Agencies do have the authority to offer voluntary separation incentives under a specific program, which traces its roots to the Clinton administration. President Clinton entered office having promised to “reinvent government” by slimming the size of the federal workforce. In February 1993, Clinton signed Executive Order 12839, which ordered most federal agencies to reduce the size of their workforce by 4 percent. By 1999, the Clinton administration had reduced the size of the federal workforce by 377,000 employees, or 17 percent.

In pursuit of a slimmer workforce, Clinton also signed the Federal Workforce Restructuring Act of 1994. The act authorized agencies to offer “voluntary separation incentives payments” (VSIPs) to employees. The act required the VSIP to be the lesser of the severance payment owed to the employee under 5 U.S.C. § 5595 or \$25,000. Analysis from the Government Accountability Office showed that government savings from the buyout program exceeded savings from a traditional reduction in force. By 1996, over 114,000 federal employees had resigned through the buyout program. In 2002, Section 1313 of the Homeland Security Act permanently extended authority to use VSIPs. The goal of the program remains to avoid reductions in force and involuntary separations.

Despite authorization to use VSIPs to “buy out” federal employees, OPM does not appear to have invoked this authority to create the deferred resignation program. Section 3522 of Title 5 requires the head of the agency to submit to OPM a plan outlining the use of VSIPs. Among other things, the plan must include a list of the specific positions to be eliminated and a description of how the agency will operate without the eliminated positions and functions. There is no indication that either OPM or any agency developed such a plan. Moreover, the typical federal employee will receive far more than \$25,000 in salary from February to September, exceeding the maximum VSIP authorized by law.

Additionally, other provisions of the deferred resignation program are in tension with the VSIP program. The OPM memo states, “Deferred resignation does not affect employees’ ability to apply to work for the federal government in the future.” The VSIP program has some restrictions on the ability of employees who voluntarily separate to return to federal service. Section 3524 of Title 5 specifies that an individual who receives a VSIP must repay “the entire amount of the

incentive payment” if they accept employment with the federal government within five years of the payment. OPM may waive this repayment if “the individual involved possesses unique abilities and is the only qualified applicant for the position” or there is an emergency that requires the employee’s temporary service. By contrast, the deferred resignation program places no limitations on an employee’s ability to return to federal service, further suggesting that OPM is not operating within the VSIP program.

While agencies *do* have legal authorization to “buy out” federal employees, OPM does not appear to be acting pursuant to that authority. VSIPs are the clearest authority for this type of program. Because OPM is not using VSIPs, the deferred resignation program raises questions about where legal authority for this program may otherwise reside.

### **Continued Pay and Administrative Leave**

An alternative theory is that the Trump administration simply intends to pay employees the remainder of their salary appropriated for fiscal year 2025. This aligns with the fact that the resignation date is Sept. 30—the final date of the federal government’s fiscal year. Employees would be placed on administrative leave and continue to receive the money appropriated for their salary until the end of the fiscal year.

There are three problems with this theory. First, the deferred resignation program promises to pay employees through Sept. 30, but agencies lack the budgetary authority to make that promise. Discretionary federal programs are currently funded through a continuing resolution that expires on March 14. Congress has not appropriated funds for agencies to pay employees whose salaries come from discretionary funds beyond this date. An employee who resigns pursuant to the deferred resignation program has no guarantee that their position will be funded for the remainder of the fiscal year. If there is a reduction in force triggered by a budgetary shortfall, employees who have already agreed to resign may be targeted.

Second, the deferred resignation program intends to place employees on administrative leave for eight months. This duration of administrative leave may violate the Administrative Leave Act. Although federal law does not explicitly authorize administrative leave, agencies have long used their discretion to regulate “the conduct of [their] employees” to authorize administrative leave. In passing the Administrative Leave Act of 2016, Congress found that the use of administrative leave had “exceeded reasonable amounts” and resulted in “significant cost to the Federal Government.” Accordingly, 5 U.S.C. § 6329a limits the length of time that an agency may place an employee on administrative leave to a period of 10 work days per calendar year. The deferred resignation program appears to violate this restriction.

A recent OPM regulation may provide the Trump administration with sufficient cover. The regulation specifies that the 10-day limit applies only to administrative leave related to an investigation for misconduct. Personally, I am skeptical of this interpretation. The definition of “administrative leave” makes no mention of an investigation or misconduct. The Administrative Leave Act authorized investigative leave under a separate section of the statute. The Report from the Senate Committee on Homeland Security and Governmental Affairs seems to contemplate that administrative leave and investigative leave were to operate separately from one another. It states, “*Separate from the maximum five-day administrative leave, the bill establishes two new forms of leave for excused absences due to personnel matters: investigative and notice leave*” (emphasis added). Moreover, the report shows that the Senate was concerned with the wide variation in policies for administrative leave related to activities like labor organization and education.

Third, the deferred resignation program promises to allow participants to find outside employment while continuing to “work” for the federal government. Although some employees are subject to limitations, other employees are not subject to blanket prohibitions on dual employment. Nevertheless, ethics laws restrict which outside jobs are available to employees. For example, employees cannot receive compensation while acting as an agency or attorney in a matter in which the United States has a direct and substantial interest. The deferred resignation program does not acknowledge the legal hurdles that impede employees from pursuing outside employment while still working for the federal government.

No clear legal authority supports OPM’s plan. It does not use the existing VSIP program to establish the buyout. It promises funds to employees that have not been appropriated by Congress. Finally, it intends for agencies to authorize a period of administrative leave that exceeds current limits. In theory, Congress could ratify the Trump administration’s program by appropriating the necessary funds and authorizing longer administrative leave for employees who resign. Employees who elect to resign, however, take a gamble on the willingness of Congress to authorize the program.

### **Is This Even a “Buyout”?**

The deferred resignation program clearly contemplates that employees will receive full pay and extended administrative leave. But it offers no formal or legally binding guarantees.

Nothing requires agency leaders to place the employee on administrative leave. Employees must commit to “completing reasonable and customary tasks and processes to facilitate [their] departure.” This includes “ensuring a smooth transition during [their] remaining time at [their] employing agency.” Agency

leaders may decide that a smooth transition requires employees to continue working long after they submit their resignation on Feb. 6. Indeed, agencies may need these employees to function in light of the hiring freeze, firings, and immediate departures. Employees who submit their resignation are guaranteed nothing more than the ability to continue teleworking.

Nor is it clear that this “buyout” ultimately accomplishes the Trump administration’s goal of reducing the size of government. Reductions in force and privatization of federal programs often increase the federal government’s use of contractors. Contractors come with their own fiscal bloat, ethical concerns, and managerial hurdles. Shifting from a system of federal employment to contracting is akin to rearranging the deck chairs on the Titanic.

### **Who Might Leave?**

In some respects, the deferred resignation program raises questions more suited for political science than law. The Trump administration undoubtedly hopes to shrink the overall size of the federal workforce, even if that shrinkage occurs in a relatively indiscriminate way. Unquestionably, however, the Trump administration wants the “right” people to leave. Talk of “loyalty” and “faithful implementation” reflects efforts to push individuals who may oppose President Trump’s agenda to leave federal employment. Yet whether these people *will* leave remains an open question. Political science provides some reasons to think that the deferred resignation program may backfire.

Understanding the possibility of backfire requires background on the motivations of civil servants. Many federal employees have high levels of “public service motivation,” which James Perry and Lois Wise define as “an individual’s predisposition to respond to motives grounded primarily or uniquely in public institutions and organizations.” These employees are committed to working for particular agencies because they personally identify with the agency’s mission. Public service is an intrinsic part of who many civil servants are as people. The opportunity to serve the public and influence policy often encourages these individuals to forgo higher salaries in the private sector. Who are these people? Individuals with high levels of public service motivation tend to have higher levels of education and identify with a particular profession.

Of course, other employees view government work as a “job.” They have reasonable opportunities in the public sector, and they are unafraid to take those opportunities for a decent pay raise. To be clear, there is nothing inherently wrong with this behavior. Much of government work involves day-to-day implementation of massive programs. The federal government participates in the labor market like any other employer. The promise of an eight-month paid vacation may appeal to those who have low public service motivation and opportunities for similar pay in

the private sector. To the extent many of these individuals are involved in implementation, their departure will significantly diminish the capacity of programs enjoyed by ordinary Americans.

Some individuals with high public service motivation will leave. Perceptions of politicization encourage civil servants to exit federal service. The email echoes other orders that promise to remove civil servants who fail to faithfully implement the president's agenda. Don Moynihan has suggested that individuals "who cannot see themselves dealing with four years of being abused by their employer, engaging in illegal actions, or serving an administration that seeks to undermine the mission that attracted them to public service" will be enticed by the deferred resignation program. Yet presidential transitions always encourage some degree of turnover. Individuals enticed by this program may have left within the coming months anyway.

Other risk-averse individuals may take the offer due to the uncertainty and chaos. Frankly, much of the email reads like a threat. The email speaks of reductions in force, relocations, and demands of loyalty. For employees who choose to stay, the email warns "we cannot give you full assurance regarding the certainty of your position or agency."

Paradoxically, however, the program may have *increased* the incentives for some individuals to stay. In terms of salary, the private sector would offer better opportunities for most of the government's well-educated professionals. Yet the private sector cannot offer these employees the same satisfaction. Again, these individuals identify with their agencies, and many will view the Trump administration's attacks as personal. Testimonials from civil servants evidence this phenomenon. Here are some quotes from the /r/fednews subreddit on Reddit related to the deferred resignation program:

One user, who identified as a "blue collar fed," wrote:

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It illustrated to me a fundamental misunderstanding the current administration seems to have of the kind of person who works for the federal government. If we were able to be bought with empty promises and dubious buyouts, we'd be in the private sector, making 25% more money than we do here. If we were gullible enough to fall for something so obviously suspect, we wouldn't have passed the background check. We swore an oath to the constitution and the people of these United States of America. We're here because we know that not everyone can do the jobs we do, and we know that what we do is important.

Another used more colorful language:

“

I remain a proud civil servant. I remain extremely effective, remote or otherwise. I'm not going to [be] bullied out, no matter what lies they tell about me. I'm going to stay and I'm going to continue helping and serving those who need help until I literally can't anymore. Take your resignation scheme and fuck right off.

One Reddit user posted:

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I must confess that it's kind of cool that doing my safe, boring, anonymous work to the best of my ability day in and day out is now kind of sexy. Updating my spreadsheets? Revising those talking points? Drafting an email for my exec to send out? No, I'm fighting for the American people, thank you very much.

Yet another was even more to the point: “I’m running on spite at this point.”

Assuming they were posted by actual federal workers, these comments demonstrate that the program has invigorated some employees. Their rhetoric suggests that they may be more likely to resist the Trump administration’s broader agenda than some other employees.

To be clear, the deferred resignation program is a net negative for administrative capacity. Some employees will choose to resign—even without the guarantee that the federal government can uphold its end of the bargain. Their departure will impact implementation of federal programs that benefit ordinary Americans. Flights will be delayed as air traffic controllers resign. Fewer workers will remain to maintain facilities in national parks. In some cases, the drain of administrative capacity will hinder Trump’s policy agenda. Career employees play an integral role in proposing and repealing administrative policy. Employees who choose to stay may be more likely to resist this policy agenda, making it even more difficult for the Trump administration.

*Editor's Note: The deferred resignation program has continued to evolve since this article was first published. A second article includes some brief updates.*



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