



# NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Affiliated with the International Association of Machinists & Aerospace Workers, AFL-CIO

## NFFE Guidance: Deferred Resignation Offer

February 5, 2025

In response to new information released this week by the Office of Personnel Management (OPM) regarding its "fork in the road" offer, the National Federation of Federal Employees (NFFE-IAM) reaffirms our message to all members and federal employees: **Do not resign.**

Although the offer and sample contract agreement from OPM may sound promising, union leadership, our legal team, and our partner unions remain unconvinced. First, the offer still contains **significant flaws** that make it inadvisable for any federal employee to accept. Second, we **do not support downsizing the federal workforce** in any capacity.

If the Trump Administration intends to downsize the federal workforce, they must comply with the law. NFFE will assert the rights of federal employees and will not permit employees to be subjected to an improper RIF (Reduction in Force) or fired without cause.

OPM's new leadership has created an environment of intimidation designed to pressure federal employees into believing they must resign or be terminated. This is not the case. **Federal employees have rights that provide far better protections than the template agreement shared by OPM.** Agencies are not required to use the template agreement should you resign, and OPM guidance and FAQs are not legally enforceable.

### Six major problems with the deferred resignation offer and the template agreement:

- 1. Employees are being pressured to resign and to sign sample agreements – a violation of EEO laws.**
  - If you are 40 years old or older, federal law requires the employer to give you at least 21 days to review an agreement before making a decision.
  - If a RIF is contemplated, management must give you 45 days to consider the agreement.
  - Federal employees have, at best, had a day or two to consider the offer with these waivers.
  - The offer may be in violation of the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).
  - The EEOC's own guidance says, if your employer has not given you a reasonable amount of time, or rushes your decision, this is a red flag.
- 2. For most, the deferred resignation program does not offer anything employees are not already entitled to.**
  - The only real guarantee here is employees will not be subject to return to in-office work requirements. 54% of the federal workforce are not subject to the return to the office callbacks, because 54% of the federal workforce is not eligible to telework or work remotely.
  - The template agreement says employees would be paid out for unused leave after ending their service, for example, but all employees have that option.
  - Debts employees may owe could be waived, but this is typically reserved for exchanges like reimbursing student loan payments for a commitment to working for a certain number of years.



# NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Affiliated with the International Association of Machinists & Aerospace Workers, AFL-CIO

- 3. There is absolutely no guarantee employees will be paid and not required work.**
  - Administrative leave remains in the discretion of the agency.
  - Federal appropriations expire on March 14th, so the offer to pay employees until September has no actual money backing it.
  - The template agreement does not affirmatively state the agency will place the employee on admin leave. Written poorly, “employee shall be placed” is a sentence without an actor – the agency is not committing to take any action.
  - The FAQ tries to give “assurances.” But “assurances” are not legally enforceable. Many employees are dealing with putting their entire careers in jeopardy. There is far too much uncertainty to accept the offer when the stakes are this high.
  
- 4. The template agreements conflict with the Code of Federal Regulations**
  - The template agreement states the “employee’s decision to resign is final.”
  - **5 CFR § 715.202** allows employees to request withdrawal of resignation and that request can only be declined when the agency has a valid reason and explains that reason to the employee. These agreements do not comport with the law.
  
- 5. The template agreements are NOT enforceable.**
  - Template includes a very broad waiver of all rights to challenge or enforce the terms.
  - One of our original critiques of the offer is that employees have no recourse if the agency reneged on their end of the bargain. That is still our critique.
  - Similar agreements historically specify that in the case of breach of contract, an arbitrator or some other body can enforce the terms. The template agreement says in case of breach, employees may not use any forum to challenge the agency.
  - OPM’s memo says if “the government were to backtrack on its commitments” then the employee’s only recourse is to request rescission of their resignations. This is unacceptable.
  
- 6. The waivers included in the template agreement violate EEO laws and would be immediately deemed invalid by a court.**
  - a. No one can legally waive an employee’s right to file a charge with the EEOC for discrimination or wrongful termination.
  - b. Employers cannot legally ask an employee to waive rights or claims that may arise after the signing the waiver.
  - c. Employees cannot be asked to release their claim for unemployment compensation benefits, workers compensation benefits, claims under the Fair Labor Standards Act (FLSA), health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA), or claims with regard to vested benefits under a retirement plan governed by the Employee Retirement Income Security Act (ERISA).