

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

February 7, 2025

## VIA ELECTRONIC MAIL

Mr. Charles Ezell  
Acting Director  
Office of Personnel Management  
Theodore Roosevelt Federal Building  
1900 E Street, NW  
Washington, DC 20415

Ms. Susie Wiles  
Chief of Staff  
Executive Office of the President  
White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Acting Director Ezell and Ms. Wiles:

On January 28, 2025, the Office of Personnel Management (OPM) sent over two million federal employees an email with the subject line “Fork in the Road” that purported to offer “deferred resignation” to any employee who opted into its program by February 6.<sup>1</sup> Yesterday, a federal judge extended the deadline pending further legal review on February 10.<sup>2</sup> According to OPM, under this “deferred resignation” program, employees “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.”<sup>3</sup> Not only do the promises made to federal workers in this program contravene existing law, but by promising unlimited numbers of federal workers the opportunity to “stay at home and relax or to travel to your dream destination” with their full salary and benefits for a staggering eight-month period, OPM will contribute untold amounts to government waste and inefficiency.<sup>4</sup> Pursuant to the authority under Senate Rule XXV of the Standing Rules of the Senate and Senate Resolution 59, Section 12, we write to request documents and information regarding these concerning actions.

OPM’s “deferred resignation” program includes numerous legally questionable actions. Its February 4, 2025 Memorandum on the “Legality of Deferred Resignation Program” does not provide sound legal justification for OPM’s actions. Of chief concern, because the program is not legally binding and OPM cannot legally commit to program participants that they will “retain all pay and benefits” until September 30, 2025, these actions risk causing lasting harm to hundreds of

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<sup>1</sup> Office of Personnel Management, “Fork in the Road” ([www.opm.gov/fork/](http://www.opm.gov/fork/)) (accessed Feb. 6, 2025).

<sup>2</sup> Plaintiffs’ Complaint for Declaratory and Injunctive Relief (February 4, 2025), *AFL-CIO, et al. v. Charles Ezell et al.*, D.Mass. (No. 1:25 CV 10276).

<sup>3</sup> Office of Personnel Management, *supra* note 1.

<sup>4</sup> Office of Personnel Management, “Frequently Asked Questions” ([www.opm.gov/fork/faq/](http://www.opm.gov/fork/faq/)) (accessed Feb. 6, 2025).

thousands of individuals throughout the country.<sup>5</sup> The Constitution expressly assigns to Congress the authority to appropriate federal funds, including to pay federal government employees, and Congress has not funded the federal government beyond March 14, 2025.<sup>6</sup> The Supreme Court’s “cases underscore the straightforward and explicit command of the Appropriations Clause. ‘It means simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.’”<sup>7</sup> Congress has further made clear that an agency “may not . . . involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”<sup>8</sup> Because the “deferred resignation” program has not been funded by Congress, OPM’s claim that “[n]othing in the deferred resignation program requires congressional approval” is dangerously misleading to millions of dedicated public servants attempting to make sense of OPM’s communications.<sup>9</sup> Federal agencies simply cannot promise that they will be able to pay program participants through September 30. Moreover, because Congress has prescribed limitations on voluntary separation incentives agencies can offer, it is not clear that any agency can lawfully offer “deferred resignation” terms that exceed or contradict the terms specifically authorized by law.<sup>10</sup>

Further, despite OPM’s assurance that participants can go on administrative leave until the end of the “deferred resignation” period, agencies “would still need a valid legal justification for prolonged administrative leave, and it is not clear that OPM’s offer would be sufficient.”<sup>11</sup> Agencies already appear to be backtracking on OPM’s assurance: this week, the Internal Revenue Service told employees who already opted into the “deferred resignation” program that they would need to work through May 15 because they are “essential” to this year’s tax filing season.<sup>12</sup> OPM’s suggestion that program participants “get a second job during the deferred resignation period”

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<sup>5</sup> Memorandum from Acting Director Charles Ezell and General Counsel Andrew Kloster, Office of Personnel Management to the Heads and Acting Heads of Departments and Agencies, Legality of Deferred Resignation Program (Feb. 4, 2025) ([www.chcoc.gov/content/legality-deferred-resignation-program](http://www.chcoc.gov/content/legality-deferred-resignation-program)).

<sup>6</sup> Const. Art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”).

<sup>7</sup> *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990) (quoting *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937)).

<sup>8</sup> 31 U.S.C. § 1341(a)(1)(B).

<sup>9</sup> Memorandum from Acting Director Charles Ezell and General Counsel Andrew Kloster, *supra* note 5; OPM’s citation to 31 U.S.C. § 1341(c)(2), a provision of law that provides backpay during a federal government shutdown, but does not guarantee the availability of payments to program participants pay because Congress may modify or lower an agency’s funding “upon passage of another appropriations bill.” *Id.*

<sup>10</sup> *See* 5 U.S.C § 3523(b) (limiting agency use of “Voluntary Separation Incentive Payments” to an amount “not to exceed \$25,000” per employee); 5 U.S.C § 5597 note (providing for “Voluntary Separation Incentives” according to specific terms including a voluntary separation incentive payment “not to exceed \$25,000”).

<sup>11</sup> Suzanne Summerlin, *Beware the “Deferred Resignation” Offer: A Legally Dubious Proposal for Federal Employees*, Just Security (Jan. 29, 2025) ([www.justsecurity.org/107094/deferred-resignation-dubious-federal-employees](http://www.justsecurity.org/107094/deferred-resignation-dubious-federal-employees)).

<sup>12</sup> *Some IRS employees taking OPM’s ‘deferred resignation’ offer told to keep working until May 15*, Federal News Network (Feb. 5, 2025) ([federalnewsnetwork.com/hiring-retention/2025/02/some-irs-employees-taking-opms-deferred-resignation-offer-told-to-keep-working-until-may-15/](http://federalnewsnetwork.com/hiring-retention/2025/02/some-irs-employees-taking-opms-deferred-resignation-offer-told-to-keep-working-until-may-15/)).

ignores that a second job may conflict with their federal employment.<sup>13</sup> In reality, the broad and varied nature of the federal government’s economic activities makes securing conflict-free secondary employment unlikely for many workers.<sup>14</sup> Furthermore, Appendix 1 of the February 4, 2025 Memorandum is a Template Deferred Resignation Agreement with a sweeping waiver of employee rights—including protections available under employee collective bargaining agreements and through the Merit Systems Protection Board—that strips participants of any meaningful recourse for claims related to their employment or resignation, including any future claims they may not currently be aware of.<sup>15</sup> The template agreement also states that employees opt into the program “free from improper influence, coercion, or duress,” yet OPM is simultaneously telling employees “federal agencies are likely to be downsized,” and managers in federal agencies have reportedly told their staff that layoffs are likely.<sup>16</sup>

Disturbing news reports have noted the sudden appearance of employees of companies owned by Elon Musk demanding sensitive employment information from OPM and detailed the existence of an unauthorized email server at OPM, which has been given unfettered access to federal employees’ personal information.<sup>17</sup> The presence of this email server seems particularly surprising given President Trump’s well-known concerns about the use of private email servers to conduct government business.<sup>18</sup> In addition, acting through Elon Musk and the Department of Government Efficiency (DOGE), in the last two weeks the Trump Administration has moved to shutter the U.S. Agency for International Development without the authority under the Constitution to do so, despite its status as an independent agency, placing its 10,000 staff members on administrative leave.<sup>19</sup>

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<sup>13</sup> Memorandum from Acting Director Charles Ezell and General Counsel Andrew Kloster, *supra* note 5.

<sup>14</sup> OPM’s citation to a single provision of law pertaining to recusal of conflicted employees ignores many other specific prohibitions and ethical requirements that apply to federal government employees. See e.g., 5 CFR §§ 2635.801-2635.809; *Can you work a second job as a Federal Employee?*, FEDWeek (Aug. 2, 2022) ([www.fedweek.com/careers/can-you-work-a-second-job-as-a-federal-employee/](http://www.fedweek.com/careers/can-you-work-a-second-job-as-a-federal-employee/)).

<sup>15</sup> Memorandum from Acting Director Charles Ezell and General Counsel Andrew Kloster, *supra* note 5, at Appendix 1; Michelle Singletary, *Federal workers shouldn’t sign OPM’s sham resignation agreement*, Washington Post (Feb. 4, 2025) ([www.washingtonpost.com/business/2025/02/04/federal-workers-opm-resignation-agreement-dont-sign/](http://www.washingtonpost.com/business/2025/02/04/federal-workers-opm-resignation-agreement-dont-sign/)).

<sup>16</sup> Memorandum from Acting Director Charles Ezell and General Counsel Andrew Kloster, *supra* note 5, at Appendix 1; Office of Personnel Management, *supra* note 3; *Federal layoffs ‘likely’ if too few employees choose to quit, memo says*, Washington Post (Feb. 4, 2025) ([www.washingtonpost.com/politics/2025/02/04/federal-government-layoffs-likely-memo/](http://www.washingtonpost.com/politics/2025/02/04/federal-government-layoffs-likely-memo/)).

<sup>17</sup> *Musk associates given unfettered access to private data of government employees*, Popular Information (Feb. 3, 2025) ([popular.info/p/musk-associates-given-unfettered/](http://popular.info/p/musk-associates-given-unfettered/)); *Lawsuit Accuses Trump Admin of Funneling Data to Ex-Musk Employee*, Newsweek (Jan. 29, 2025) ([www.newsweek.com/lawsuit-trump-admin-data-federal-employees-2022583](http://www.newsweek.com/lawsuit-trump-admin-data-federal-employees-2022583)).

<sup>18</sup> See, e.g., *Trump: FBI decision on Clinton proves ‘our system is totally rigged’*, CNN (July 5, 2016) ([www.cnn.com/2016/07/05/politics/election-2016-donald-trump-hillary-clinton-fbi/index.html](http://www.cnn.com/2016/07/05/politics/election-2016-donald-trump-hillary-clinton-fbi/index.html)).

<sup>19</sup> *USAID employees around the world will be placed on leave Friday and ordered to return to US*, CNN (Feb. 5, 2025) ([www.cnn.com/2025/02/04/politics/usaid-officials-administrative-leave/index.html](http://www.cnn.com/2025/02/04/politics/usaid-officials-administrative-leave/index.html)).

Given our grave concerns over the actions taken by OPM to implement its “deferred resignation” program, please provide the Senate Committee on Homeland Security and Governmental Affairs the documents and information requested no later than February 18, 2025, and on any subsequent basis as indicated in each question. The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV (k)(2)(B) of the Standing Rules of the Senate to investigate matters that aid the Committee in “studying the efficiency, economy, and effectiveness of all agencies and departments of the Government.” Under Senate Resolution 59, Sec. 12(e)(2), of the 118th Congress, the Committee’s investigative duties “shall not be construed to be limited to the records, functions, and operations of any particular branch of the Government and may extend to the records and activities of any persons, corporation, or other entity.”

First, on a weekly basis beginning no later than February 11, 2025, please provide data on the number of employees and types of agency positions involved with the “deferred resignation” program, as described in more detail below. In a memorandum you issued on January 28, 2025, you direct the heads and acting heads of all agencies and departments to send a weekly email to OPM by 5:00 p.m. each Friday that tracks the number of personnel at each agency who have offered their resignations as a part of the “deferred resignation” program and whom the agency has placed on administrative leave, among other data points.<sup>20</sup> We request this documentation, as well as additional information on the geographic location of the employees, amount of the administrative leave payments, and the roles and positions of the employees. We also request all records<sup>21</sup> related to the “deferred resignation” program. **Please send the requested data and records to the Senate Homeland Security and Governmental Affairs Committee (HSGAC) and the Permanent Subcommittee on Investigations (PSI) by Tuesday of each week starting on February 11, 2025, until the end of the deferred resignation program.**

We also have concerns about how OPM arrived at the decision to send an email directly to the employees of other agencies offering an immediate resignation option, including questions about who did and did not participate in the development of the deferred resignation program, what analysis and data OPM did or did not consider before making the decision to send the email, processes involved with sending the email, and how OPM will track the impact of the program going forward. As such, please provide responsive documents and information to the questions below.

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<sup>20</sup> Memorandum from Acting Director Charles Ezell, Office of Personnel Management to the Heads and Acting Heads of Departments and Agencies, *Guidance Regarding Deferred Resignation Program* (Jan. 28, 2025) ([www.chcoc.gov/content/guidance-regarding-deferred-resignation-program](http://www.chcoc.gov/content/guidance-regarding-deferred-resignation-program)).

<sup>21</sup> “Records” include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (text messages, WhatsApp messages, emails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

### **Weekly Request for Data and Records**

1. In the “Guidance Regarding Deferred Resignation Program” Memorandum issued January 28, 2025, you direct the heads and acting heads of all agencies and departments to send a weekly email to OPM no later than 5:00 p.m. each Friday until the end of the “deferred resignation” period with the below information.<sup>22</sup> We request that on each Monday immediately following the weekly Friday deadline, you send a copy of the information you have received from all agencies and departments to Chairmen and Ranking Members of HSGAC and PSI:
  - a. The number of employees who have offered their resignations as part of the “deferred resignation” program;
  - b. The number of agency employees who are part of the “deferred resignation” program placed on administrative leave;
  - c. The number of agency employees who have applied for early and normal retirement since January 27, 2025;
  - d. 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;
  - e. The number of employees who have sought to rescind their resignations, and the status of each request;
  - f. The number of applications to extend the “deferred resignation” deadline (beyond February 6);
  - g. The number of applications from potential retirees to extend the “deferred resignation” end-date beyond September 30, 2025 (to accommodate impending retirement); and
  - h. The roles and number of personnel excluded by your agency from the deferred resignation program.
  
2. With respect to each agency and department, we request that you send to the Chairmen and Ranking Members of HSGAC and PSI the following additional information:
  - a. The number of employee resignations broken down by the geographic location of the employees;
  - b. A running total of how much the agency is spending on administrative leave for the employees identified in (b) of data request 1; and
  - c. The list of positions affected by employee resignations, placement in administrative leave, as described in (a)(b)(c)(d), (f), and (g) in data request 1, and:
    - i. A description of the agency functions involved with the list of positions;
    - ii. A description of how the agency will cover the functions described in (i), including if the agency will seek to eliminate that function; and
    - iii. A description of which positions have or will be eliminated.

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<sup>22</sup> Memorandum from Acting Director Charles Ezell, *supra* note 20.

3. Please provide all records, and send any new records on a weekly basis, relating to the “deferred resignation” program, including but not limited to:
  - a. All briefings, memoranda, and other materials, whether interim or final, prepared by OPM or received by OPM;
  - b. All communications between OPM and federal agencies;
  - c. All internal communications at OPM related to the decision to implement the “deferred resignation” program and the preparation of the January 28, 2025 and February 4, 2025 Memoranda providing guidance on the “deferred resignation” program; and
  - d. All communications between OPM and other entities related to the decision to implement the “deferred resignation” program and the preparation of the January 28, 2025 and February 4, 2025 Memoranda providing guidance on the “deferred resignation” program.

### Additional Questions

1. Please describe the individuals involved with or consulted during the process for developing the “deferred resignation” offer sent to federal employees on January 28, 2025.
  - a. Which individuals at OPM participated in the development of the “deferred resignation” program and email?
  - b. Did you consult with any heads or acting heads of federal agencies or departments or any agency officials involved in personnel management before sending the “deferred resignation” email? If so, which agencies and what official at each agency? What did these officials advise?
  - c. Were non-government individuals involved with the development of this program? If so, which individuals, and what did these individuals advise?
  - d. Has OPM sought an opinion from the Department of Justice’s Office of Legal Counsel regarding the legality of its “deferred resignation” program? Has the Office of Legal Counsel provided an opinion? If so, please provide a copy of that opinion.
2. What type of impact and cost analyses did you conduct before sending the “deferred resignation” offer to federal employees on January 28, 2025?
  - a. Did you assess the potential costs or savings to agency budgets, including payments to employees on administrative leave and any expenses or savings generated by the absence of the employee?
    - i. If so, how did you conduct this exercise? What data did you use and what timeframes did you consider? For which agencies did you run a cost assessment?
    - ii. What are the findings from your cost assessment on an agency-by-agency basis?
  - b. The Trump Administration has asserted that the “deferred resignation” program will save the federal government “around \$100 billion.”<sup>23</sup>

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<sup>23</sup> Elon Musk, X, Jan. 28, 2025 (*available at* [x.com/elonmusk/status/1884374441456476408](https://x.com/elonmusk/status/1884374441456476408)).

- i. Please provide a detailed description of how this estimate was calculated, and
    - ii. Please produce all workpapers, analyses, and other records used to determine this estimate.
  - c. Did you assess the potential impact of the “deferred resignation” program on agency performance?
    - i. If so, how did you conduct this exercise? What data did you use and what timeframes did you consider? For which agencies did you run a cost assessment?
    - ii. Did you assess the impact of the “deferred resignation” program on constituent services, such as the ones provided by agencies designated as High-Impact Service Providers?
    - iii. What are the findings from your impact assessments on an agency-by-agency basis?
  - d. For any assessments conducted as described in responses to (a)-(c) of this question:
    - i. Did you map out varying impacts based on different numbers of staff accepting the offer? If so, please share your findings on the range of possible outcomes.
    - ii. Did you map out varying impacts based on the range of expertise or skillsets lost among staff who accept the offer? If so, please share your findings on the range of possible outcomes.
    - iii. Please provide a copy of all analyses conducted.
3. Did OPM notify the heads or acting heads of federal agencies or departments in advance of sending the “deferred resignation” offer to federal employees on January 28, 2025?
  - a. If so, how far in advance of the email did each agency or department head or acting head receive notice?
  - b. Were some agencies notified and others not notified? Please describe.
  - c. In the January 28, 2025 email, OPM directed employees interested in accepting the “deferred resignation” offer to send a letter of resignation directly to OPM by replying to the email.
    - i. Has OPM notified agency heads or acting heads which employees have accepted the “deferred resignation” offer?
    - ii. If so, when and how has OPM notified the agency heads or acting heads which of the agency’s employees have accepted the “deferred resignation” offer?
4. Please describe in detail how OPM compiled an email list to provide it the capability to send emails to all federal employees.
  - a. What protections were put in place to guard against the illicit use of this new federal email list?
  - b. Please describe in detail whether any unauthorized server has been granted access to OPM’s network, including what information this server has access to, who has access to the information on this server, and the extent of each individual’s access.

5. The initial “deferred resignation” email on January 28, 2025 stated that: “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.”<sup>24</sup> Between Friday, January 31 and Monday, February 3, a change to the FAQ page for the deferred resignation on OPM’s website added “those in positions related to public safety” to the list of exempted positions.<sup>25</sup>
  - a. Which specific immigration enforcement positions at which agencies are exempt from the “deferred resignation” program?
  - b. Which specific national security positions at which agencies are exempt from the “deferred resignation” program?
  - c. Which specific public safety positions at which agencies are exempt from the “deferred resignation” program?
  - d. On January 28, 2025, did OPM refrain from sending the “deferred resignation” email to certain federal positions outside of the military or U.S. Postal Service? If so, which ones?
  
6. On February 4, 2025, OPM issued a memorandum that included a “Template Deferred Resignation Agreement.”<sup>26</sup> However, there was no mention of such an agreement in OPM’s January 28, 2025 Memorandum, which simply stated, “An employee’s acceptance of the deferred resignation letter will serve as a formal acceptance of deferred resignation.”<sup>27</sup>
  - a. Will OPM and the employee’s employing agency allow any employee who opted into “deferred resignation” in advance of receiving this template to rescind their resignation without any additional review if they wish to do so?
  - b. The template agreement states, “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.”<sup>28</sup> Please detail the steps taken by OPM to ensure that this statement does not conflict with any existing collective bargaining agreements.
  
7. Going forward, how will OPM measure the impact and cost of the “deferred resignation” program on federal agencies?
  - a. What data and processes will you use to assess actual costs or savings to agency budgets?

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<sup>24</sup> Office of Personnel Management, *supra* note 1.

<sup>25</sup> Office of Personnel Management, *supra* note 4.

<sup>26</sup> Memorandum from Acting Director Charles Ezell and General Counsel Andrew Kloster, *supra* note 5

<sup>27</sup> Memorandum from Acting Director Charles Ezell, *supra* note 20.

<sup>28</sup> *Id.* at Appendix 1.



- b. What data and processes will you use to assess the impact of the “deferred resignation” program on delivery of services to constituents?
- c. What data and processes will you use to assess if and how the “deferred resignation” program affected immigration enforcement, national security, and public safety operations?
- d. Do you commit to providing Congress, including this Committee, with the assessments described in (a)-(c)?

**Please send written responses to these questions and provide a time for the appropriate OPM staff to brief members and staff no later than February 18, 2025.** Please contact the Committee with any questions.

Sincerely,



Gary C. Peters  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs



Richard Blumenthal  
Ranking Member  
Permanent Subcommittee on Investigations

cc: The Honorable Rand Paul, Chair  
Homeland Security and Governmental Affairs Committee

The Honorable Ron Johnson, Chair  
Permanent Subcommittee on Investigations