

February 6, 2025

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

The Honorable Lee M. Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Acting Director Ezell and Administrator Zeldin:

I write to express deep concerns about the legality and legitimacy of the so-called “Deferred Resignation” offer that the Office of Personnel Management (OPM) has extended to executive branch employees, including those at the Environmental Protection Agency (EPA). The offer’s basis in law is highly dubious, and the circumstances raise the specter of fraud in the inducement—a doctrine of liability where false representations are made to encourage an individual to enter into a contractual agreement that will not be honored. Because uncertainty about your ability to follow through on this offer runs high, I urge you to suspend indefinitely the deadline¹ for federal employees to accept the “Deferred Resignation” offer and otherwise stand down until you respond to my inquiries below and explain how you are protecting EPA employees from being fraudulently induced to enter into a sham agreement to resign from the organization.

Based on public reporting and information obtained by the office of the Ranking Member of the Senate Committee on Environment and Public Works, I understand the following to be true:

- On January 28, 2025, OPM sent federal government employees an email with the subject line “Fork in the Road,” inviting agency staff to decide by February 6, 2025, whether they wished to continue their current role in the federal workplace.² In return, the email purports to assure any employees choosing to leave their roles that they would “retain all pay and benefits regardless of [their] daily workload and will be exempted from all

¹ Initially, OPM set the deadline for federal employees to accept the “Deferred Resignation” offer for 11:59pm on February 6, 2025. In the early afternoon of February 6, 2025, Judge George O’Toole of the United States District Court for the District of Massachusetts entered an order temporarily pausing the deadline until at least the afternoon of Monday, February 10, 2025, providing time for briefing and a hearing on the issue. See Nick Niedzwiadek, “Judge temporarily blocks Trump’s exist plan for federal employees,” *GreenWire* (Feb. 6, 2025).

² U.S. Office of Personnel Management, “Fork in the Road,” <https://www.opm.gov/fork> (accessed Feb. 5, 2025).

applicable in-person work requirements until September 30, 2025 (or earlier if [they] choose to accelerate [their] resignation for any reason).”³

- On January 29, 2025, then-Acting Administrator James Payne sent an email to all EPA employees confirming that the EPA “will honor OPM’s offer of deferred resignations for all employees who wish to accept this offer” and referring employees to FAQs about the proposal.
- On January 30, 2025, OPM sent additional FAQs by email, reiterating that employees would be paid through September 30, 2025, and were permitted to work other jobs and take vacation.
- On January 31, 2025, EPA’s Chief Human Capital Officer—apparently at the behest of OPM—informed all EPA employees that the Fork in the Road offer was “valid, lawful, and will be honored by EPA. 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.”
- On February 2, 2025, OPM sent additional FAQs attempting to address questions concerning the effect of a government shutdown on deferred compensation and whether the program complied with all records and privacy laws. OPM assured government employees that they were entitled to back pay and that the program complies with all applicable laws.
- On February 3, 2025, EPA’s Chief Human Capital Officer emailed a reminder about the offer and included an “Example Deferred Resignation Agreement.” As discussed more fully below, many terms of that example agreement are deeply troubling.

Despite the assurances provided in the various emails and FAQs, I have significant concerns about the legitimacy and good faith of this purported offer. It is not clear there is adequate federal statutory authority or available funding for OPM or any individual agency to make such a wide-reaching offer to federal employees. Although the Office of Personnel Management (OPM) cites Executive Order 9830 and 5 U.S.C. §§ 301, 1103, 1104, 2951, 3301, 6504, 8347, and 8461 as the bases for its authority to extend such an offer, none of those sources provide any legal authority for OPM, EPA, or any other agency to provide the sort of buyout agreement contemplated by the “Deferred Resignation” offer. While 5 U.S.C. §§ 3521 *et seq.* allow OPM to offer voluntary separation incentive pay, the process is subject to specific statutory guidelines *and* buyout pay is capped at \$25,000.⁴

Here, OPM has offered all employees accepting the “Deferred Resignation” up to nearly eight months of severance pay, which in many cases would significantly exceed the cap.⁵ Accordingly,

³ *Id.*

⁴ 5 U.S.C. 3521; U.S. Office of Personnel Management, “Voluntary Separation Incentive Payments,” <https://www.opm.gov/policy-data-oversight/workforce-restructuring/voluntary-separation-incentive-payments/> (accessed Feb. 5, 2025).

⁵ Moreover, by law, federal employees separated from their employment are owed a lump-sum payment of unused leave, requiring agencies to have still more funds on hand to consummate these deals. Indeed, EPA acknowledges

the administration would need to seek authority from Congress and specific appropriations to enact its proposal. It has not done so, and Congress has not appropriated any applicable funds. Indeed, despite its many assurances between January 28 and February 2, 2025, that employees would fully be paid through September 30, 2025, the example agreement shared on February 3 **explicitly conditions** EPA’s ability to pay its obligations under the contract on the “availability of appropriations.”⁶ There is, therefore, a very real risk that employees who accept OPM’s offer will not be paid what they have been promised.⁷

My concerns that OPM and EPA may be fraudulently inducing employees to accept the “Deferred Resignation” proposal are only bolstered by recent public reporting and information my office obtained that shows, among other things, that the formal contract being offered to EPA employees provides broadly that EPA, without any specification of office or individual, may unilaterally rescind the offer at any time without any administrative or legal recourse available to the employees:⁸

11. 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 this agreement cannot be rescinded, except in the sole discretion of EPA, which shall not be subject to review at the Merit Systems Protection Board or otherwise.

The contract also includes an unduly broad waiver of claims clause that, even if enforceable, could prevent employees from bringing any legal or administrative claims arising out of not only the “Deferred Resignation” offer but also any “matters that Employee may have against [the agency or its personnel], including any and all claims that were or could have been brought.”⁹

14. Employee forever waives, and will not pursue through any judicial, administrative, or other process, any action against EPA that is based on, arising from, or related to Employee’s employment at EPA or the deferred resignation offer, including any and all claims that were or could have been brought concerning said matters. Employee unconditionally releases EPA 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.

These provisions do nothing to assuage my concerns that the contract offer may fraudulently induce EPA’s employees to accept it, and even that the Trump Administration may have no intent to honor it in the first place.

I am certainly not the only one concerned about the legality of the “Deferred Resignation” program. On February 5, 2025, leading Democratic members of the Senate Committee on Appropriations sent a letter to Acting Director Ezell demanding answers about the offer’s

as much in its example agreement. *See* Environmental Protection Agency, *Example Deferred Resignation Agreement* ¶ 8 (Feb. 3, 2025).

⁶ *Id.* ¶ 3 (“**Subject to the availability of appropriations**, employee shall remain on paid administrative leave up through and including September 30, 2025 During the deferred resignation period, **subject to the availability of appropriations**, EPA shall continue to pay Employee’s current salary” (emphases added)).

⁷ If this occurs, it would not only injure the employees but also potentially run afoul of the Antideficiency Act, which prohibits federal agencies from obligating or expending federal funds in advance or in excess of an appropriation. *See* 31 U.S.C. §§ 1341, 1342, 1517.

⁸ *See* Environmental Protection Agency, *Example Deferred Resignation Agreement* ¶ 11 (Feb. 3, 2025).

⁹ *See id.* ¶ 14.

legality and enforceability.¹⁰ Also on February 5, 2025, several federal employee unions filed a lawsuit in federal court in Massachusetts alleging that the offer violates the Administration Procedure Act and other federal laws, resulting in the judge pausing the deadline until at least February 10, 2025 (and likely longer), to allow for briefings and a hearing.

My fears about the possibility that this Administration could defraud federal employees are not unfounded in view of the pattern and practice of breaching contracts in which President Trump has engaged throughout his career. In 2016, an analysis found that Mr. Trump had been involved in more than 3,500 lawsuits over the previous three decades, many of which alleged that he and his companies simply refused to pay the plaintiffs. Between 2005 and 2016, Mr. Trump's companies were also cited for at least 24 violations of the Fair Labor Standards Act for failing to pay overtime or minimum wage, according to U.S. Department of Labor data—including 21 citations against the defunct Trump Plaza in Atlantic City and Trump Mortgage LLC in New York. From the 1980s to the present, Mr. Trump and his companies and properties also faced over 200 mechanic's liens filed by contractors and employees claiming they were owed money for work they have completed.¹¹

In some of those cases, Mr. Trump settled claims by paying back wages. But the American government is not one of Mr. Trump's private operations, and dedicated federal workers—just like the dedicated Americans who worked for Mr. Trump's companies—should not be made to fight a protracted legal battle in order to defend their jobs or be paid what they are due. Moreover, the terms of the offer extended to EPA's employees would seem to prevent them from even enforcing the agreement should they eventually be denied the offer's promised terms.

Accordingly, in order to assist in my understanding of OPM's and EPA's actions, please respond to the following questions and requests for production of documents by no later than February 13, 2025:

1. **[For OPM only]** On what legal grounds does OPM believe it has the authority to offer the “Deferred Resignation” agreement to all federal government employees to whom it has extended the offer? Please cite to specific statutory or regulatory authority that permits OPM and/or relevant federal agencies to compensate employees in the manner being proposed without specific Congressional authorization or appropriation. I note that executive orders do not qualify as such statutory or regulatory authority, as they are neither statutes nor regulations.
2. **[For EPA only]** On what legal grounds does EPA believe it has the authority to offer the “Deferred Resignation” agreement to its employees? Please cite to specific statutory or regulatory authority that permits EPA to compensate employees in the manner being proposed without specific Congressional authorization or appropriation. I note that

¹⁰ U.S. Senate Committee on Appropriations, *Top Appropriators: Trump Administration's “Deferred Resignation” Scheme is Deceptive, Legally Questionable, & Puts Vital Taxpayer Services at Risk* (Feb 5, 2025), <https://www.murray.senate.gov/top-appropriators-trump-administrations-deferred-resignation-scheme-is-deceptive-legally-questionable-puts-vital-taxpayer-services-at-risk/>.

¹¹ Steve Reilly, “USA Today Exclusive: Hundreds allege Donald Trump doesn't pay his bills,” *USA Today* (June 9, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/06/09/donald-trump-unpaid-bills-republican-president-laswuits/85297274/>.

executive orders do not qualify as such statutory or regulatory authority, as they are neither statutes nor regulations.

3. The Anti-Deficiency Act (31 U.S.C. 1341 and FAR 32.702) prohibits federal agencies from creating or authorizing funds in advance or in excess of a Congressionally-provided appropriation. OPM and EPA have, in writing, suggested to employees that they will receive pay and benefits after the end of the current continuing resolution, which expires on March 14, 2025, but EPA has also stated in its Example Deferred Resignation Agreement that any distribution of wages was conditioned upon the “availability of appropriations.” Please explain how OPM and EPA’s offer complies with the Anti-Deficiency Act.
4. **[For OPM only]** Without discussing the nature or substance of the advice, has OPM received legal counsel concerning the legality of the “Deferred Resignation” offer? If yes, who has provided this legal advice: counsel internal to OPM, counsel to The White House, or external counsel?
5. **[For EPA only]** Without discussing the nature or substance of the advice, has EPA received legal counsel concerning the legality of the “Deferred Resignation” offer? If yes, who has provided this legal advice: counsel internal to EPA, OPM counsel, counsel to The White House, or external counsel?
6. Please provide all emails dated November 5, 2024, through present, among and between the Trump-Vance Transition Team, The White House, Elon Musk, anyone working for or affiliated with the so-called “Department of Government Efficiency,” OPM, and EPA—including but not limited to all “special government employees”—concerning the “Deferred Resignation” offer and/or “Fork in the Road” email, dated January 28, 2025.

Finally, I reiterate my request that you suspend indefinitely the deadline for federal employees to respond to the “Deferred Resignation” offer until you have fully responded to these inquiries. Thank you for your attention to this matter.

Sincerely,



United States Senator
Ranking Member
Committee on Environment
and Public Works

cc: Senator Shelley Moore Capito
Chairman, Senate Committee on Environment and Public Works