



Legal questions surround Trump's federal worker resignation offer

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Billionaire Elon Musk (left) is seen as the architect of the "deferred resignation" offer to federal employees. He sent a similarly worded offer to Twitter staff when he bought that company in 2022. Here, he speaks as President Trump looks on at a MAGA victory rally on Jan. 19.

Jim Watson/AFP via Getty Images

Federal employees are receiving additional communications that appear designed to entice them to accept the Trump administration's "[Fork in the Road](#)" resignation offer, despite mounting questions about whether the offer is legal.

While the initial offer to federal employees to resign by Feb. 6 and retain their pay and benefits through Sept. 30 came directly from the U.S. Office of Personnel Management (OPM), some of the latest guidance is coming from agency leaders, further sowing confusion over what's to be believed.

Employment attorneys and union representatives emphasize that OPM, which handles many human resource matters for federal workers, lacks the authority to promise paid leave for government employees other than its own.

OPM acknowledges as much in a [fact sheet](#) on its own website. It states "OPM does not regulate the use of administrative leave. This authority rests with each agency head."

Agencies don't have funding guarantees past March 14

Moreover, agency budgets are controlled by Congress, not OPM, and many agencies will run out of money on March 14 if Congress doesn't approve a new budget or pass another continuing resolution.



POLITICS

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"Congress has the power of the purse. The power of the executive to spend money is limited by the appropriations approved by Congress and signed by the president," wrote Donald Kettl, professor emeritus at the University of Maryland School of Public Policy, in an email. "The executive branch cannot legally now obligate the government to make payments past March 14. An offer for paid leave past that point is unlawful."

The law Kettl points to, called the [Anti-Deficiency Act](#), states "no officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law."

In a [blog post](#), Robert Reich, former secretary of labor under President Bill Clinton, urged federal workers to reject the resignation offer, tying it directly to billionaire Elon Musk, who is seen as the architect of the "Fork in the Road" deal.

"Don't accept Elon's offer," he wrote. "Congress could declare the entire offer illegal — which it is. Then where would you be?"



NATIONAL

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Even so, the language in some of the latest communications appears to ignore the law while offering reassurance to federal workers weighing their options.

"On behalf of the National Science Foundation, I am informing you that the offer is valid, lawful, and will be honored by NSF," wrote Wonzie L. Gardner, chief human capital officer for the National Science Foundation, in an email sent Thursday that was described to NPR by federal employees not authorized to speak on the matter.

The email went on to assure employees who choose to accept the offer that they would not be let go before Sept. 30, even though the original "Fork" memo included no such promise.

"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 (RIF) or other premature separation," Thursday's email said.

Friday morning, employees at the U.S. Department of Agriculture received a nearly identical email, sent by USDA Chief of Staff Kailee Tkacz Buller, a Trump appointee, according to screenshots obtained by NPR.

Invitation to take a second job may violate ethics rules

Additionally, the emails from some agency leaders tell employees that except in rare cases, those who resign can take a second, nongovernment job "during the deferred resignation period," a claim also made in the [FAQ posted to OPM's website](#) and shared with employees by multiple agencies.

"We encourage you to find a job in the private sector as soon as you would like to do so," the FAQ reads. "The way to greater American prosperity is encouraging people to move from lower productivity jobs in the public sector to higher productivity jobs in the private sector."

While federal employees are in some cases allowed to take outside employment as long as it doesn't interfere or conflict with their work obligations, they typically need supervisor approval, says Kettl.

Many agencies have ethics rules that require prior approval. Those rules still apply to employees who are furloughed, [according to the U.S. Office of Government Ethics](#).



MEDIA

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Kettl says he can imagine a scenario in which agency supervisors might grant blanket approvals to federal workers who accept the deferred resignation offer.

"But it would have to be done in advance," he says. "It's not clear that OPM's FAQ would be sufficient to be legal approval."

OPM declined a request from NPR to disclose how many people have responded "Resign" to the "Fork in the Road" email, as they are directed to do if they want to accept the offer. OPM has given employees through Feb. 6 to do so.

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