



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

MEMORANDUM

TO: Heads and Acting Heads of Departments and Agencies

FROM: Charles Ezell, Acting Director, U.S. Office of Personnel Management
Andrew Kloster, General Counsel, U.S. Office of Personnel Management

DATE: February 11, 2025

RE: Additional Guidance on Compliance with the Age Discrimination in Employment Act as amended by the Older Workers Benefit Protection Act in the Implementation of Deferred Resignation Program Agreements

The U.S. Office of Personnel Management (“OPM”) is providing additional guidance to agencies regarding implementation of the Deferred Resignation Program (“DRP”).

Out of an abundance of caution, agencies should treat the DRP as an “exit incentive program” under section 7 of the Age Discrimination in Employment Act (ADEA), as amended by the Older Workers Benefit Protection Act (OWBPA), and implementing regulations of the Equal Employment Opportunity Commission (EEOC).¹ Accordingly, agencies should provide employees aged 40 and over with a supplemental notice containing additional, agency-specific information necessary to comply with the OWBPA.

An “exit incentive program” is a “voluntary program offered to a group or class of employees where such employees are offered consideration in addition to anything of value to which the individuals are already entitled . . . in exchange for their decision to resign voluntarily and sign a waiver.”²

With respect to the DRP, once OPM notifies the employing agency of which of its employees have indicated their interest in participating in the DRP, the agency should determine whether any of those employees are excluded from participation (“ineligible”), either due to DRP program exclusions or additional agency-specific exclusions. Agency-specific exclusions can be based on certain positions or based on other criteria.

¹ 29 U.S.C. § 626(f); 29 C.F.R. § 1625.22(f).

² See 29 C.F.R. § 1625.22(f)(1)(iii)(A) In particular, an “‘exit incentive or other employment termination program’ includes both voluntary and involuntary programs.” 29 C.F.R. § 1625.22(e)(3).

In their weekly reports to OPM, agencies should notify OPM of the employees it deems ineligible for participation under the DRP.³ Agencies additionally should notify those employees directly that, despite having indicated their interest in participating in the DRP, they are ineligible and will be expected to continue reporting to work consistent with agency requirements. The notice to ineligible employees additionally should clarify that if they nonetheless wish to end their employment (separate from the DRP), they should contact their agency's HR office.

A waiver of age discrimination claims in connection with an exit incentive program must include certain provisions. The template agreement (attached as Appendix 1) provided to agencies includes OWBPA provisions applicable to all agencies:

1. Employees aged 40 and over have 45 days within which to consider and sign the DRP agreement and seven days after signing within which to revoke the agreement;
2. Employees are advised of the right to consult with an attorney prior to signing the agreement; and
3. The waiver specifically refers to the ADEA.⁴

When entering into DRP agreements with individuals aged 40 and over, agencies should provide a supplemental notice that makes written disclosure of additional, agency-specific disclosures required by the OWBPA. This is so an employee has enough information regarding the program to allow the employee to make an informed choice whether to sign a waiver. Agencies should disclose the following information:

1. Any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and
2. The job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.⁵

The disclosure must be written in a manner calculated to be understood by the average individual eligible to participate.⁶

³ See OPM, [Guidance Regarding Deferred Resignation Program](#) (Jan. 28, 2025).

⁴ Agencies may modify the template agreement, for example, to add agency-specific information or to enhance the agreement (including to acknowledge waivers of specific additional claims, as warranted in individual circumstances).

⁵ 29 U.S.C. § 626(f)(1)(H); 29 C.F.R. § 1625.22(f)(1).

⁶ 29 C.F.R. § 1625.22(f)(4)(i).

EEOC regulations provide an example of one way in which agencies could present the required disclosures to employees.⁷ Based upon those regulations, the required disclosure for the DRP could look something like the following:

The Deferred Resignation Program was open from January 28, 2025 through [DATE]. On [DATE], you were given 45 days to consider and accept the terms of the Deferred Resignation Program agreement, and you were advised of your right to consult with an attorney about the agreement before signing it.

The class, unit, or group of individuals covered by the Deferred Resignation Program includes all full-time federal employees in [AGENCY NAME] except for [military personnel of the armed forces], [employees of the U.S. Postal Service], [employees in positions related to immigration enforcement and national security], and [employees in any of the following positions specifically excluded by [AGENCY: LIST ANY AGENCY-SPECIFIC EXCLUSIONS]].

The following is a listing of the job titles and ages of employees who were and were not eligible for the Deferred Resignation Program and offered consideration for signing the waiver. No other employee is eligible or was offered consideration in exchange for signing the waiver.

Position Title	Age	Number of Employees Eligible for DRP	Number of Employees not Eligible for DRP
Job Title 1	25 ⁸	5	1
	32	6	2
	45	2	3
Job Title 2	60	10	0
	40	9	2
	52	20	1
	29	4	8

For more information about these OWBPA requirements, please consult EEOC's regulations at 29 C.F.R. § 1625.22 and related guidance, including [Q&A-Understanding Waivers](#)

⁷ 29 C.F.R. § 1625.22(f)(4)(vii).

⁸ The numbers in this chart are illustrative only. Follow EEOC guidance regarding age groupings.

[of Discrimination Claims in Employee Severance Agreements | U.S. Equal Employment Opportunity Commission.](#)

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Chiefs of Staff.

Attachment 1- Template Deferred Resignation Agreement

Appendix 1- Template Deferred Resignation Agreement

This agreement is between [AGENCY] (“Agency”) and the Employee identified below.

WHEREAS, on or about January 28, 2025, OPM circulated a memorandum to all Agency employees (Fork in the Road Memo) offering them a voluntary deferred resignation option. The offer states that those employees who accept the offer will not be subject to any reduction in pay and benefits by their agency and exempts them from all applicable in-person work requirements until September 30, 2025, or earlier if they choose to accelerate the resignation date for any reason (Deferred Resignation Program); and

WHEREAS, Agency has received Employee’s voluntary request to be included in the Deferred Resignation Program; and

WHEREAS, Agency accepts Employee’s request to be included in the Deferred Resignation Program; and

WHEREAS, Employee agrees to waive certain rights as detailed below in exchange for participation in the Deferred Resignation Program; and

WHEREAS, the parties wish to express the terms and conditions of the agreement between the parties concerning Employee’s participation in the Deferred Resignation Program.

WHEREFORE, the parties hereto agree as follows:

1. Employee is accepted into the Deferred Resignation Program.
2. Employee agrees to continue working through the later of [DATE], 2025 or one week after signing this agreement if Employee is age 40 or over, in an effort to ensure a smooth transition of Employee’s duties, responsibilities and work assignments to other staff. Employee is exempt from all return to in-person work requirements. Employee agrees to turn in all Agency equipment and property on or before the later of [DATE], 2025, or one week after signing this agreement if Employee is age 40 or over, as directed by Employee’s supervisor.
3. Employee shall be placed on paid administrative leave by the later of [DATE], 2025, or one week after signing this agreement if Employee is age 40 or over. Employee shall remain on paid administrative leave up through and including September 30, 2025, or such earlier date on which Employee may choose to resign or otherwise separate from federal service (deferred resignation period). Employee agrees not to challenge the Agency’s use of paid administrative leave in any forum. In the event that the use of paid administrative leave is found unlawful or set aside, Employee agrees to accept placement into another duty status, with the understanding that Agency shall not require Employee to perform work after [DATE], 2025.

4. During the deferred resignation period, and subject to the availability of appropriations, [AGENCY] shall continue to pay Employee's current salary and Employee shall continue to retain and receive all benefits of Employee's federal employment, including but not limited to TSP contributions, health, dental, vision and/or any other similar benefits, with Agency making the government's contribution. Employee will continue to accrue annual and sick leave during the deferred resignation period. Employee will receive retirement service credit during the deferred resignation period consistent with the retirement provisions applicable to Employee. If Employee becomes eligible for a within-grade increase during the deferred resignation period, Agency shall process the within-grade increase and Employee shall receive the associated salary increase.
5. After the later of [DATE], 2025, or one week after signing this agreement if Employee is age 40 or over, Employee shall not be expected to work during the deferred resignation period—regardless of what duty status the employee is placed in.
6. Employee agrees that Employee's effective resignation date from Agency, and separation from federal service, shall be September 30, 2025. Employee, however, may resign from the federal service on any date prior to September 30, 2025. Agency shall not take steps to terminate Employee's employment with the federal service prior to September 30, 2025, except where Employee is convicted of a felony crime that would render Employee ineligible for Federal employment.
7. Employee will receive a lump sum payment of accrued annual leave in accordance with 5 CFR part 550 upon separation from service, subject to availability of appropriations.
8. Nothing in this agreement prevents Employee from retiring from federal service at any time if Employee is eligible to do so under the applicable provisions of CSRS or FERS. If Employee is eligible and elects to retire before September 30, 2025, Employee's retirement election shall override any benefits that would be available to Employee under this agreement after the effective date of Employee's separation. Employee understands that Employee is responsible for submitting a CSRS or FERS application.
9. Nothing in this agreement prevents Employee from retiring from federal service on or before [INSERT VERA END DATE] if Employee is eligible to do so under the Voluntary Early Retirement Authority (VERA). If Employee is eligible and elects to retire under VERA, Employee's retirement election shall override any benefits that would be available to Employee under this agreement after the effective date of Employee's separation. Employee understands that Employee is responsible for submitting a VERA application.
10. Employee may accept non-federal employment during the deferred resignation period provided it does not violate the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, applicable federal laws, or any supplemental Standards of Ethical Conduct for Employees or regulations of the Agency.
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, except as provided in paragraph 15 applicable to Employees 40 years of age or older, Employee cannot rescind this agreement, except in the sole discretion of the Agency Head, which shall not be subject to review at the Merit Systems Protection Board (MSPB), Equal Employment Opportunity Commission (EEOC) or any other forum, and waives all rights to challenge the resignation before the MSPB, EEOC, or any other forum.

12. Employee acknowledges that Agency, in conjunction with other federal departments, agencies and units, will immediately rely on the terms of this agreement in consolidating and reassigning roles and otherwise taking steps to reform the agency workforce. Consequently, Employee understands that, as of the effective date of this agreement, this agreement is final and reflects Employee's decision to resign effective September 30, 2025, unless Employee resigns or retires earlier as set forth above. Agency shall comply with all terms of this agreement even if Employee's position is eliminated or reassigned prior to September 30, 2025. Employee shall not be subject to furlough, termination, reduction in force or layoff as a result of an agency-initiated reorganization or reduction in force. Employee agrees to cooperate with steps taken by Agency (such as reassignment to a different component) to exempt Employee from any reduction in force.
13. If there is a lapse in appropriations during the term of this agreement that requires Employee to be placed on furlough status, Employee shall be placed on furlough status during the lapse. Once the lapse is over, Employee shall be taken off furlough and shall receive back pay consistent with the Government Employee Fair Treatment Act of 2019.
14. Employee forever waives, and will not pursue through any judicial, administrative, or other process, any action against Agency or any other agency or instrumentality of the federal government that is based on, arising from, or related to Employee's employment at Agency or separation from employment, including any and all claims that were or could have been brought concerning said matters, including but not limited to all claims for reinstatement, back pay, front pay, costs, attorney's fees, expenses, and/or damages of any kind whatsoever. This waiver includes any claims concerning the Deferred Retirement Program that may have accrued as of the date the agreement is signed. Employee unconditionally releases Agency 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. Employee agrees to immediately withdraw any and all claims, complaints, charges, grievances, appeals, or civil actions of any kind whatsoever that he or she may have filed in any forum against the Agency, its officers, employees or agents, arising out of his or her employment with the Agency, as of the effective date of this Agreement. Notwithstanding the waivers above, claims which have or may be initiated under the Federal Employees Compensation Act (FECA) are exempted from this waiver by Agreement of the parties.
15. If 40 years of age or older, Employee additionally waives any claims, complaints, charges, or civil actions the employee has or could have raised under the Age Discrimination in

Employment Act against Agency as of the effective date of this agreement. Employee further acknowledges the following in connection with this waiver of rights under the ADEA:

- a. The Employee has reviewed the entire agreement and understands its provisions;
 - b. The Employee has not waived any rights or claims that may arise after the date this agreement is signed;
 - c. The Employee is advised to consult with an attorney prior to signing this Agreement;
 - d. The employee has received, by separate attachment, information concerning the job titles, ages, and DRP eligibility of all other employees in the same job classification or organizational unit as required by the Older Workers Benefit Protection Act.
 - e. The Employee had 45 days to consider the terms of this Agreement but could, at the Employee's sole discretion, sign the Agreement at any time prior to the expiration of the 45 days;
 - f. After returning a signed and dated copy of the agreement to [AGENCY], the employee retains the right to revoke the agreement for seven (7) days; and
 - g. The agreement will not become effective or enforceable until the revocation period has expired.
16. Consistent with law, Agency agrees to waive any debt owed by Employee to Agency pursuant to a recruitment incentive, student loan repayment, or other service agreement. Agency also agrees to waive any remaining service requirements from taking paid parental leave and stipulates that it will not seek reimbursement from the employee of any costs it may be entitled to recover under the Paid Parental Leave Act (5 U.S.C. 6382).
17. Should Employee become subject to military orders during the deferred resignation period, then any laws, rules, or other guidance applicable to the Employee as a servicemember that are inconsistent with provisions of this agreement shall supersede the inconsistent terms of this agreement.
18. This agreement shall constitute the entire agreement between the parties, and shall supersede all prior agreements, understandings and negotiations between the parties with respect to the terms of Employee's resignation.
19. In case any provision of this agreement shall be held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

ON BEHALF OF [AGENCY]:

[NAME, TITLE]

EMPLOYEE

[NAME, TITLE]