27-01-P

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Withdrawal of proposed rule and withdrawal of proposed rescission of general statement of policy or guidance.

SUMMARY: The Federal Labor Relations Authority (FLRA or Authority) is withdrawing its Notice of Proposed Rule and Proposed Rescission of General Statement of Policy or Guidance (the proposal notice) published in the *Federal Register* on December 21, 2022. The Authority has determined not to revise or rescind its existing regulation concerning the intervals at which federal employees may revoke their written assignments of payroll deductions for the payment of regular and periodic dues allotted to their exclusive representative. In addition, the Authority has decided not to rescind its general statement of policy or guidance in *Office of Personnel Management* (*OPM*), 71 FLRA 571 (2020) (Member Abbott concurring; Member DuBester dissenting).

DATES: The proposal notice published at 87 FR 78014 on December 21, 2022, is withdrawn as of **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

FOR FURTHER INFORMATION CONTACT: Thomas Tso, Solicitor, at ttso@flra.gov or at (771) 444-5779.

SUPPLEMENTARY INFORMATION:

Section 2429.19 of the Authority's Regulations states that an employee may initiate the revocation of a dues assignment pursuant to 5 U.S.C. 7115(a) at any time after the expiration of an initial one-year period following the assignment.

In Case Number 0-MC-33, the Authority granted a petition from the National Treasury Employees Union (NTEU), filed under § 2429.28 of the Authority's Regulations, to amend § 2429.19. *Miscellaneous & General Requirements*, 87 FR 78014, 78014 (Dec. 21, 2022) (granting petition). The Authority proposed to: (1) rescind the policy statement that the Authority issued in *OPM*, 71 FLRA 571; and (2) amend § 2419.19 or, in the alternative, rescind § 2429.19 in its entirety. *Id.* The proposed amendments and rescissions would have made it more difficult for federal employees to revoke their dues assignments by limiting the time periods during which employees could initiate such revocations. The Authority requested, and received, comments on its proposals.

Apart from the comments received from federal unions, the vast majority of comments received from individuals, organizations, and agencies supported maintaining § 2429.19 without change and opposed the imposition of additional restrictions on the ability of employees to cancel their dues assignments.

In addition, the Authority finds that both the plain text of Section 7115(a) of the Federal Service Labor-Management Relations Statute (Statute), and the relevant legislative history, support the Authority's conclusion when adopting § 2429.19: "[S]ection 7115(a) of the Statute prohibits revocation only for the first year after an assignment is authorized." *Miscellaneous & General Requirements*, 85 FR 41169, 41171 (July 9, 2020).

Further, a majority of the Authority remains unpersuaded by the dissent's arguments in favor of rescinding § 2429.19 and *OPM*.

First, contrary to the dissent's assertion, there were not "many" comments in support of revising or rescinding the regulation and policy statement. The vast majority of comments received from individuals and agencies – 33 of 39 – supported maintaining § 2429.19 without change, and did not support rescinding *OPM*. And apart from federal unions, the nine organizations that submitted comments uniformly opposed changes to § 2429.19. Commenters' strong support for § 2429.19 shows the deep unpopularity of imposing time limits on employees' abilities to revoke their dues assignments.

Second, the dissent contends that rescinding § 2429.19 would not significantly upset reliance interests. But § 2429.19 has been in effect for almost six years. During that time, many collective-bargaining agreements that were negotiated under the prior assignment-revocation rule have expired, and as a result, subsequent dues assignments in those units have been subject to § 2429.19's rule. The dissent does not explain how it would treat the assignments executed over the last six years under § 2429.19's rule if revocation restrictions were reimposed. Further, the Office of Personnel Management has revised Standard Forms 1187 and 1188, with which federal employees may initiate or cancel payroll deductions for union dues, to include the rule set forth in § 2429.19. *See* https://www.opm.gov/forms/pdf_fill/sf1187.pdf (SF-1187, revised December 2025); https://www.opm.gov/forms/pdf_fill/sf1188.pdf (SF-1188, revised December 2025). Thus, the rule has been fully incorporated into the standard forms used across the federal government.

Third, the dissent offers a curious reading of the word "period" within the portion of Section 7115(a) that states that "a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit . . . may not be revoked for a period of 1

year." 5 U.S.C. 7115(a). Rather than reading the phrase "period of 1 year" to mean a length of time equal to one year, the dissent sees more.

Citing Black's Law Dictionary, the dissent notes that "period" may denote "[a] length of time characterized by regular recurrence or some cyclical process." *Period*, Black's Law Dictionary (12th ed. 2024). Consequently, the dissent says that Section 7115(a)'s use of the word "period" indicates that the one-year revocation prohibition in Section 7115(a) is a recurring prohibition. However, the example accompanying the dissent's chosen definition demonstrates the error in this reading. In the example for this usage of "period," Black's Law Dictionary includes *additional modifiers* that show the cyclical nature of the length of time being discussed: "*the daily* period of the circadian rhythm." *Id.* (emphasis added). For Section 7115(a) to be comparable, it would need to prescribe "*the yearly* period of irrevocability" for an assignment. Instead, Section 7115(a) refers to "*a*" single one-year period of irrevocability. 5 U.S.C. 7115(a) (emphasis added). Because the usage example for the dissent's definition of "period" undermines the dissent's interpretation, and because Section 7115(a) refers to "a" single period of irrevocability, "[S]ection 7115(a) of the Statute prohibits revocation only for the first year after an assignment is authorized." *Miscellaneous & General Requirements*, 85 FR 41169, 41171 (July 9, 2020).

Fourth, because the text of Section 7115(a) is unambiguous, the Authority need not resort to legislative history to determine its meaning. As the Authority explained when adopting § 2429.19, "relying on legislative history to alter the meaning of unambiguous statutory text is improper." *Miscellaneous & General Requirements*, 85 FR at 41170. But even if the Authority had reason to resort to legislative history, a careful review of that history does not support changing § 2429.19.

Under E.O. 11,491, which governed federal labor relations before the Statute, an agency was not required to honor a bargaining-unit employee's request to withhold union dues from the employee's pay (or to remit those withheld dues to the employee's union), unless the union and agency first agreed in writing to authorize assignment allotments for that purpose. Further, E.O. 11,491 permitted agencies to recover the costs of making those deductions and remittances.

The House Committee Report for H.R. 11280 (the Report), which contained wording that eventually became Section 7115(a) of the Statute, explained that Section 7115 "reflects a compromise between two sharply contrasting positions which the committee considered: no guarantee of withholding for any unit employee and mandatory payment by all unit employees ('agency shop'). The committee believes [S]ection 7115 to be a fair resolution for agencies, labor organizations, and employees." H.R. REP. NO. 95-1403, at 48 (1978).

In the dissent's view, the *only* way to honor the compromise that the Report endorsed is to read Section 7115(a) to require repeating, annual revocation intervals for dues assignments. But the compromise referenced in the Report appears in the plain wording of Section 7115(a). Specifically, Section 7115(a) gives unions more security than they had under E.O. 11,491 because it: (1) requires agencies to honor dues-assignment allotments *even if the parties do not have a written agreement* authorizing such allotments; (2) requires the agency to cover the costs of making those deductions and remitting the funds to the union; and (3) makes assignments generally irrevocable for one year, which doubled the initial six-month period of irrevocability under E.O. 11,491. Superimposing additional intervals of assignment irrevocability onto Section 7115(a), as the dissent advocates, is unnecessary to honor the congressionally endorsed compromise on dues-withholding procedures.

Moreover, the Report reinforces what the plain wording of the Statute says. Without using the word "period" or "interval," the Report says unequivocally, "Assignments normally are to be irrevocable for *one* year." H.R. REP. NO. 95-1403, at 48 (emphasis added). This crucial sentence from the Report supports the plain reading of Section 7115(a) that underlies § 2429.19.

Fifth, the dissent relies on Section 7135 of the Statute, which pertinently states that "[p]olicies, regulations, and procedures established under and decisions issued under [E.O.] 11,491 . . . shall remain in full force and effect . . . unless superseded by specific provisions of [the Statute] . . . or decisions issued pursuant to [the Statute]." 5 U.S.C. 7135(b). But the dissent's rationale for invoking Section 7135 is unconvincing. The Statute thoroughly changed the system of dues-assignment allotments that existed under E.O. 11,491. As already mentioned, the Statute eliminated the requirement for written agreements to authorize assignment allotments, relieved unions of the burden of paying for deductions and remittances, and made assignments irrevocable for an entire year (rather than just six months). According to the dissent, Congress's complete reworking of this system shows that Congress wanted "the prior regime to continue" in a single, oddly specific way.

The dissent asserts that Congress wanted the interval-based revocation system from E.O. 11,491 to survive. But the Executive Order explicitly required an "employee to revoke [an] authorization at stated . . . intervals," Exec. Order No. 11,491, Sec. 21(a), *reprinted in* 5 U.S.C. 7101 note (2026), whereas Section 7115(a) does not refer to intervals. In essence, the dissent asserts that Congress *continued* the Executive Order's interval-based revocation system by *deleting* the word "intervals" from Section 7115(a) altogether. This approach would be a highly counterintuitive way to preserve an interval-based system under Section 7135(b). To the contrary, Congress's abandonment of the word "intervals"

supports a conclusion that Section 7115(a) prohibits revocation only for the first year after an assignment is authorized.

For the foregoing reasons, as well as the reasons set forth earlier in *OPM* and the final-rule notice adopting § 2429.19, the Authority withdraws the proposal notice.

By the Authority
Dated: March 3, 2026

Thomas Tso,
Solicitor.

Note: The following will not appear in the Code of Federal Regulations.

Appendix A—Opinion of the Authority's Dissent with respect to withdrawal of proposed rule and withdrawal of proposed rescission of general statement of policy or guidance

Dissenting View of Member Anne Wagner:

The majority's action today leaves in place both 5 CFR 2429.19 and the Authority's general statement of policy or guidance (policy statement) in *Office of Personnel Management*, 71 FLRA 571 (2020) (*OPM*) (Member Abbott concurring; Member DuBester dissenting). For the following reasons, I would rescind both.

Section 7115 of the Federal Service Labor-Management Relations Statute (the Statute), titled "Allotments to representatives," addresses how federal employees in appropriate bargaining units may, through written assignments, authorize federal agencies to deduct union dues from their pay – and how the employees may later withdraw those assignments. 5 U.S.C. 7115. Section 7115(a) pertinently provides that, with certain exceptions, those assignments "may not be revoked for a period of 1 year." *Id.* 7115(a).

In 1981 – early in the Authority's history – the Authority addressed the meaning of the above-quoted wording "in the context of relevant legislative history and [f]ederal labor[-]relations policy." *U.S. Army, U.S. Army Materiel Dev. & Readiness Command, Warren, Mich.*, 7 FLRA 194, 196 (1981) (*Army*). In *Army*, the Authority noted that, before the Statute's enactment, "procedures for payroll deduction for direct payment of employees' union dues were governed by section 21 of [E.O.] 11,491, as amended" (E.O. 11,491). *Id.* at 196. Section 21 of E.O. 11,491 – entitled "Allotment of dues" – pertinently provided: "When a labor organization holds formal or exclusive recognition [of employees], and the agency and the [labor] organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions." In addition, E.O. 11,491 stated: "Such an allotment is subject to the regulations of the Civil Service Commission [(CSC)], which shall include provision for the employee to revoke his authorization at stated six-month intervals." Under E.O. 11,491, "an agency could charge a union a service fee for making payroll dues deductions for the union's members." *Army*, 7 FLRA at 198 n.15 (citing *AFGE, Loc. 1749*, 6 FLRC 525, 535-37 (1978)).

In *Army*, the Authority stated that, under E.O. 11,491, "[a]lthough voluntary and dependent upon a written agreement between the parties, a dues[-]withholding provision operated as a union[-]security measure designed to foster stability in labor-management relations." *Id.* at 196. The Authority noted that, unlike E.O. 11,491, Section 7115(a) of the Statute "does not make dues assignments dependent upon a written agreement between the parties[,] but rather permits an employee in an appropriate unit to authorize dues allotments if he so desires." *Id.*

Looking to the Statute's legislative history, the Authority in *Army* found that Section 7115(a)'s wording "is identical to that contained in section 7115(a) of H.R. 11280 as passed by the House," which "was unchanged from that reported by the House Committee on Post Office and Civil Service." *Id.* at 197. The Authority noted that the House Committee Report stated that Section 7115 "reflects a compromise between two sharply contrasting positions which the committee considered: no guarantee of [dues] withholding for any unit employee and mandatory payment [of dues] by all unit employees ('agency shop'). The committee believes [S]ection 7115 to be a fair resolution for agencies, labor organizations, and employees." *Id.* (internal quotation marks omitted). The Authority noted that the House Committee Report stated the following with respect to Section 7115(a): "Subsection (a) provides that if an employee in an exclusively represented unit presents to the agency a written assignment authorizing the agency to deduct the labor organization's dues from the employee's pay each pay period, the agency must honor the assignment and must deduct the dues. The decision to pay, or not to pay is solely the employee's. If the employee decides to have dues withheld, the agency must honor that decision. The allotments are to be made at no cost to the employees or to the labor organization. Assignments normally are to be irrevocable for one year." *Id.*

The Authority noted that, by contrast, the Senate version of the bill: (1) provided that assignments of dues allotments "shall be revocable at stated intervals of not more than [six] months," *id.* (internal quotation marks omitted); (2) made agencies' obligations to deduct dues "dependent upon the agency's agreement to do so as part of a negotiated agreement," *id.* at 198; and (3) was silent with respect to who would bear the cost of making dues allotments. The Authority noted that the Conference Committee rejected the Senate version and adopted the House version unchanged. However, the Authority also

determined that, in its report, the Conference Committee "did not address the revocability of assignments of dues allotments." *Id.*

The Authority then stated: "In the Authority's view, the language of [S]ection 7115(a) of the Statute and the legislative history cited above support the conclusion that [S]ection 7115(a) is intended to provide a more effective form of union security than previously existed, without going so far as to authorize an 'agency shop.' This conclusion is evidenced by the legislated change from a dues[-]withholding provision under [E.O. 11,491] which was contingent upon a negotiated written agreement to a statutorily mandated procedure for dues allotments, as well as by the fact that under the Statute, unlike under [E.O. 11,491], dues allotments are required to be made at no cost to the union. In the Authority's view, consistent with this conclusion, Congress intended in [S]ection 7115(a) of the Statute to maintain the procedure for revocation of assignments set forth in [E.O. 11,491] (i.e., only upon stated intervals of time), and to expand that interval under the Statute to a period of one year. That is, the language in [S]ection 7115(a) that 'any such assignment may not be revoked for a period of [one] year' *must be interpreted to mean that authorized dues allotments may be revoked only at intervals of [one] year.* The Authority's conclusion in this regard is consistent with the statutory purpose of providing a greater measure of union security, thereby fostering stability in labor-management relations." *Id.* at 198-99 (emphasis added).

The Authority noted that this conclusion also was consistent with guidance that the CSC – the predecessor to the Office of Personnel Management (OPM) – provided to agencies near the time of the Statute's enactment. That guidance advised agencies to inform employees that, "after the next available six-month revocation date established by the applicable collective[-]bargaining agreement, any future revocation can only be at *one-*

year intervals from that date." CSC Bulletin 711-48, Special Bulletin #10, at 4 (Dec. 28, 1978) (emphasis added).

The Authority applied the *Army* interpretation of Section 7115(a) – allowing revocations only at one-year intervals – consistently for nearly four decades. *See United Power Trades Org.*, 62 FLRA 493, 495 (2008); *AFGE, AFL-CIO*, 51 FLRA 1427, 1433 n.5 (1996) (*AFGE*); *NAGE, SEIU, AFL-CIO*, 40 FLRA 657, 688-89 (1991); *AFGE, AFL-CIO, Dep't of Educ. Council of AFGE Locs.*, 34 FLRA 1078, 1080-82 (1990); *AFGE, AFL-CIO, Loc. 1931*, 32 FLRA 1023, 1029 (1988); *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 19 FLRA 586, 589 (1985) (*Portsmouth*); *Veterans Admin., Lakeside Med. Ctr., Chi., Ill.*, 12 FLRA 244, 246 (1983); *Dep't of HHS, SSA, Off. of Program Serv. Ctrs. & Ne. Program Serv. Ctr.*, 11 FLRA 618, 620 (1983); *Dep't of HHS, SSA, Bureau of Field Operations (N.Y.C., N.Y.)*, 11 FLRA 600, 602-03. The Authority also held that "parties may define through negotiations the procedures for implementing" Section 7115, as long as those negotiated procedures do not infringe on employees' rights, including the right under Section 7115 to revoke their dues assignments annually. *NTEU*, 64 FLRA 833, 838 (2010) (quoting *AFGE*, 51 FLRA at 1433) (internal quotation mark omitted).

Then, in 2019, OPM asked the Authority to issue a policy statement regarding "the applicability of the First Amendment principles that the U.S. Supreme Court clarified in *Janus v. AFSCME, Council 31* . . . , [585 U.S. 878 (2018) (*Janus*),] to the revocation of federal employees' union-dues assignments under [Section] 7115." *OPM*, 71 FLRA at 571. In 2020, a majority of the Authority's Members – with Member DuBester dissenting – responded to OPM's request by issuing the policy statement in *OPM*. The majority rejected *Army*'s analysis and found that Section 7115(a) "neither compels, nor even

supports, the existing policy on annual revocation windows." *Id.* at 573. Instead, the majority found that "[t]he most reasonable way to interpret the phrase 'any such assignment may not be revoked for a period of [one] year' is that the phrase governs only the first year of an assignment," and that, "[e]xcept for the limiting conditions in [Section] 7115(b), which [Section] 7115(a) explicitly acknowledges, nothing in the text of [Section] 7115(a) expressly addresses the revocation of dues assignments after the first year." *Id.* at 572. The Authority then stated: "In our view, it would assure employees the fullest freedom in the exercise of their rights under the Statute if, after the expiration of the initial one-year period during which an assignment may not be revoked under [Section] 7115(a), an employee had the right to initiate the revocation of a previously authorized dues assignment at any time that the employee chooses." *Id* at 573. However, the majority expressly declined to consider the legislative history that the unanimous Authority had discussed at length in *Army*, on the ground that Section 7115(a)'s pertinent wording "is not ambiguous." *Id.* at n.23. The Authority majority stated that it intended to commence related notice-and-comment rulemaking.

Subsequently, on March 19, 2020, a majority of the Authority – with Member DuBester dissenting – did just that, publishing in the *Federal Register* a proposed rule with request for comments, with a very short comment period. 85 FR 15742 (Mar. 19, 2020) (requiring that comments be received on or before April 9, 2020). Then, on July 9, 2020, a majority of the Authority – again, with Member DuBester dissenting, and a mere two months after the close of the comment period – published a final rule, 5 CFR 2429.19, in the *Federal Register*. 85 FR 41169 (July 9, 2020). As relevant here, § 2429.19 provides that, after the expiration of the one-year period following an employee's allotment, the employee "may initiate the revocation of a previously authorized assignment at any time that the employee chooses." 5 CFR 2429.19.

The rule had an effective date of August 10, 2020, but stated that it would apply only to "the revocation of assignments that were authorized" on or after August 10, 2020, and would "not apply to the revocation of assignments that were authorized prior to" that date. 85 FR at 41169. The rule also stated that, "[l]ike all governmentwide regulations, the rule will be subject to the constraints of [S]ection 7116(a)(7) of the Statute," so "currently effective agreements [would] not be destabilized if they contain negotiated provisions that conflict with the rule." *Id.* at 41170. In this regard, Section 7116(a)(7) of the Statute provides that it shall be an unfair labor practice "to enforce any rule or regulation (other than a rule implementing [5 U.S.C. 2302] which is in conflict with any applicable collective[-]bargaining agreement if the agreement was in effect before the rule or regulation was prescribed." 5 U.S.C. 7116(a)(7).

In 2022, in Case No. 0-MC-0033, the National Treasury Employees Union (NTEU) filed a petition, under § 2429.28 of the Authority's Regulations, 5 CFR 2429.28, to amend § 2429.19. On December 21, 2022, a majority of the Authority – with then-Member (and current Chairman) Kiko dissenting – issued a *Federal Register* notice (the Notice) that granted NTEU's petition. 87 FR 78014 (Dec. 21, 2022). In the Notice, the Authority majority proposed to: (1) rescind the policy statement in *OPM*; and (2) either revise § 2429.19 to provide that dues revocations may be processed only at one-year intervals or, in the alternative, rescind § 2429.19 in its entirety.

The Notice solicited comments on these proposals. In response, the Authority received fifty-five timely comments. Although many of the comments support keeping § 2429.19 intact, many others support either revising or rescinding that regulation, rescinding the

policy statement in *OPM*, and returning to the interpretation of Section 7115(a) established in *Army*.

According to some comments, Section 7115(a)'s legislative history – as discussed in *Army* and summarized above – supports a conclusion that Congress intended dues revocations to occur only at annual intervals. Some comments cite the fact that CSC guidance, issued shortly after the Statute's enactment, advised agencies that future revocations could only be made at one-year intervals. Further, some comments emphasize that the Authority followed *Army* for nearly forty years, with no intervening congressional action. Additionally, some comments note that union membership in the federal sector – and signing OPM's Standard Form (SF)-1187, to authorize dues deductions – is voluntary, as the terms of the SF-1187 and the SF-1188 (the form to withdraw dues-deduction authorizations) confirm. Consequently, some comments contend that *Janus* has no bearing on federal-sector dues allotments. In this connection, some comments assert that the proposed amendment would respect employee rights under Section 7102 of the Statute, 5 U.S.C. 7102, because employees would remain free to refrain from joining or assisting a union, as Section 7102 guarantees.

In addition, some comments support amending or rescinding § 2429.19 because doing so would allow parties to bargain over dues-revocation arrangements, rather than prohibiting any such arrangements that conflict with § 2429.19. Moreover, some comments assert that amending or rescinding § 2429.19 would not upset reliance interests, because the rule established by § 2429.19 has taken effect in only a limited number of bargaining units, given the Authority's statement that it applies only to bargaining units where collective-bargaining agreements with conflicting provisions have expired, and only to dues assignments authorized on or after the rule's effective date of August 10, 2020.

Further, some comments argue that either rescinding or amending § 2429.19 is necessary to restore unions' financial security and predictability, enhance unions' bargaining postures, and honor employee choice. Relatedly, some comments contend that strengthening unions' finances benefits employees by allowing unions to better serve the employees they represent. Additionally, one comment states that complaints about the dues-revocation process being too cumbersome or complicated are a "red herring," and that arrangements in parties' collective-bargaining agreements are workable if the parties understand the process and communicate it to employees.

Many of the comments arguing for amendment or rescission of § 2429.19 also make similar arguments in favor of rescinding *OPM*. Additionally, some comments assert that *OPM* is inconsistent with Section 7115(a)'s plain language, which contains no wording that either: (1) requires that dues assignments become revocable at will after an employee's first year of union membership; or (2) bars the negotiation of yearly dues revocation intervals. Further, some comments contend that *OPM* ignores that Section 7115(a)'s purpose is to effectuate unions' ability to collect dues through withholding arrangements.

Having considered all of the comments received, and after great deliberation, I believe that *Army* correctly held that Section 7115(a) must be interpreted as allowing employees to revoke their voluntary authorizations only at annual intervals (unless an exception in Section 7115(b) applies). As an initial matter, Section 7115(a) does not state that a dues assignment may not be revoked "for 1 year"; it says the assignment may not be revoked "for a *period* of 1 year." 5 U.S.C. 7115(a) (emphasis added). While a "period" of time may denote "a length or portion of time," it also may denote "[a] length of time

characterized by regular recurrence or some cyclical process." *See Period*, Black's Law Dictionary (12th ed. 2024). And "a period of 1 year" can mean "annual" or an interval. "Th[is] is a distinction without a difference, as the words 'annual' and 'a year' have the same meaning. *See Annual*, Black's Law Dictionary (11th ed. 2019) (defining 'annual' as '[o]ccurring once every year' or 'involving a period of one year')." *Boschan v. Steinmetz*, No. 19 CIV. 6481 (LAP), 2020 WL 2475848, at *3 (S.D.N.Y. May 13, 2020) (alteration in original). "Of course, 'Annual' is defined as, 'Of, relating to, or involving a period of one year.' *Annual*, Black's Law Dictionary (11th ed. 2019)." *Stover v. United States*, No. 5:22-CV-05074-CBK, 2023 WL 2763817, at *2 (D.S.D. Mar. 31, 2023).

In my view, the use of "period" in Section 7115(a) means "[a] length of time characterized by regular recurrence or some cyclical process," not a singular "length or portion of time." *See Period*, Black's Law Dictionary (12th ed. 2024). This is particularly true given Section 7115's legislative backdrop. As discussed above, *Army* carefully analyzed Section 7115(a)'s legislative history and found that history supported a conclusion that Congress intended Section 7115(a) "to provide a more effective form of union security" than existed under E.O. 11,491, "without going so far as to authorize an 'agency shop.'" 7 FLRA at 198. "[C]onsistent with this conclusion," the Authority found that "Congress intended in [S]ection 7115(a) of the Statute to maintain the procedure for revocation of assignments set forth in the [E.O.] (i.e., only upon stated intervals of time), and to expand that interval under the Statute to a period of one year. That is, the language in [S]ection 7115(a) that 'any such assignment may not be revoked for a period of 1 year' must be interpreted to mean that authorized dues allotments may be revoked only at intervals of 1 year." *Id.* at 198-99. As noted, the Authority also found this conclusion consistent with the guidance that the CSC gave federal agencies near the time of the Statute's enactment.

I find *Army*'s reasoning persuasive. The pre-Statute regime, governed by E.O. 11,491, had a framework similar to the one described in *Army*: revocation intervals. *Army* interpreted the Statute as superseding that regime only insofar as the Statute imposes 1-year, rather than 6-month, intervals. Although the House Committee Report for H.R. 11280 stated that "[a]ssignments normally are to be irrevocable for one year," it did not state that they are irrevocable for *only* one year. H.R. REP. NO. 95-1403, at 48. Further, that wording could simply reflect Congress's decision to increase the revocation *intervals* from six months to one year. Under Section 7135(b) of the Statute, "[p]olicies, regulations, and procedures established under and decisions issued under [E.O.] 11,491 . . . shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of [the Statute] . . . or decisions issued pursuant to [the Statute]." 5 U.S.C. 7135(b). In other words, Congress intended the prior regime to continue unless it was specifically superseded. Cf. *Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 659 n.10 (1974) ("But only if [Section] 1103(a) can be said by fair implication or expressly to conflict with [Section] 109 would there be reason to hold that [Section] 1103(a) superseded [Section] 109."). In effect, Section 7135(b) creates a presumption that practices under E.O. 11,491 should be preserved unless there is some clear statutory indication to the contrary. Thus, "'decisions issued under [E.O.] 11,491' supply critical guidance regarding the FLRA's jurisdiction today." *Ohio Adjutant General's Dep't v. FLRA*, 598 U.S. 449, 460 (2023). In that way, legislative history plays a significant role in interpreting the Statute. And, based on that legislative history and the Statute's wording, I would find that the Statute did not clearly supersede E.O. 11,491's interval framework, even though it extended the intervals from six months to one year.

Further, the Authority decided *Army* relatively shortly after the Statute's enactment, giving extra weight to the interpretation in that decision. *Libr. of Cong. v. FLRA*, 699 F.2d 1280, 1285 (D.C. Cir. 1983) ("[D]eference to an agency's interpretation of its enabling legislation . . . is especially appropriate when . . . the administrative practice at stake involves a contemporaneous construction of a statute by the persons charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." (citation modified)). Moreover – and significantly, in my view – the *Army* framework of annual revocation periods existed for nearly forty years without congressional action to change it. This is true despite the fact that Congress amended the Statute in other ways since 1981. *Jackson v. Modley*, 949 F.3d 763, 773 (D.C. Cir. 2020) ("recogniz[ing] the limited value of congressional acquiescence as an interpretive tool," but finding "Congress's inaction for over forty years particularly significant" in the circumstances of that case).

And, while no court has expressly held that Section 7115(a) requires annual intervals, no court has held to the contrary either – and courts have applied the *Army* framework without critique. *See NTEU v. FLRA*, 647 F.3d 514, 518 (4th Cir. 2011) ("While the union and an agency may bargain for the specific procedures for implementing [Section] 7115, the negotiated procedures may not infringe on the employees' right to 'remain free to revoke their dues authorizations at annual intervals.'" (quoting *AFGE*, 51 FLRA at 1433)); *AFGE, AFL-CIO, Loc. 1843 v. FLRA*, 843 F.2d 550, 553 n.3 (D.C. Cir. 1988) ("Except as provided in [Section] 7115(b), an employee may revoke his dues withholding allotment only annually, at the time of the year when the allotment was originally authorized." (citing 5 U.S.C. 7115(a).)).

I also believe that this interpretation of Section 7115(a) is consistent with Section 7101(a) of the Statute, which states that "labor organizations and collective bargaining in the civil service are in the public interest," 5 U.S.C. 7101(a), as well as with legislative history indicating that the Statute was "intended to serve a variety of purposes," including "strengthen[ing] the position of employee unions in the federal service." *DOD, Army-Air Force Exch. Serv. v. FLRA*, 659 F.2d 1140, 1145 (D.C. Cir. 1981); *see also Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89, 107 (1983) ("In passing the [Statute], Congress unquestionably intended to strengthen the position of federal unions and to make the collective-bargaining process a more effective instrument of the public interest than it had been under the [E.O.] regime.").

Moreover, if Congress' intent was to provide a greater measure of union security than what existed under E.O. 11,491, then it would be counterintuitive for Congress to move from a system where employees could revoke their allotments only at intervals – even six-month intervals – to a system where the employees could revoke them *any time* after a single year.

In addition, despite some comments to the contrary, the *Army* framework is wholly consistent with *AFGE, Council 214, AFL-CIO v. FLRA*, 835 F.2d 1458 (D.C. Cir. 1987) (*Council 214*). In discussing Section 7115(a) of the Statute, the U.S. Court of Appeals for the D.C. Circuit in *Council 214* stated, "The [S]tatute clearly was designed for the primary benefit and convenience of the employee." *Id.* at 1460. However, that statement must be read in context. In *Council 214*, an agency erroneously continued to deduct union dues from employees' paychecks for a short time following the employees' promotions to supervisory positions. When the error was discovered, management reimbursed those employees, and deducted the amounts from the remittance to the union of dues withheld

from employees in a subsequent period. The union challenged those deductions as an unfair labor practice. The Authority rejected that challenge, finding that an agency may reduce remittances to a union of dues withheld from employees in order to compensate for the agency's previous overpayments to the union.

The court reversed the Authority. The court interpreted Section 7115(a) "as imposing an absolute duty on the [agency] to turn over to the union all funds deducted." *Id.* The court found that "the withheld dues are [not] union property until they are actually delivered to the union." *Id.* In *that* context, the court stated: "The [S]tatute clearly was designed for the primary benefit and convenience of the employee. The employee has the right to decide whether to opt for withholding and to control the disposition of the funds so withheld. The [agency] acts as the agent of the employee with respect to the withheld funds. In the words of the [S]tatute, the [agency] 'shall honor the assignment.'" *Id.* (quoting 5 U.S.C. 7115(a)). The court then "agree[d] with the [U.S. Court of Appeals for the] Second Circuit that 'shall honor' indicates a 'mandatory intent'; the [agency's] obligation to honor the dues check-off is 'nondiscretionary.'" *Id.* (quoting *AFGE, AFL-CIO, Loc. 2612 v. FLRA*, 739 F.2d 87, 89 (2d Cir. 1984)).

Put simply, *Council 214* focused on employees' right to have the dues they have authorized delivered to the union, without agency interference. It did not involve dues revocations, and it provides no basis for finding that the *Army* framework of annual revocation intervals would conflict with employees' rights. In addition, although some comments supporting § 2429.19 and *OPM* cite private-sector precedent, *Council 214* noted that Section 7115 has no counterpart in the National Labor Relations Act or the Labor Management Relations Act. *Id.* at 1461. Therefore, precedent under those acts does not dictate how Section 7115 should apply.

Moreover – again, despite some comments to the contrary – the *Army* rule does not conflict with *Janus*, the First Amendment, or Section 7102 of the Statute. *Janus* involved the constitutionality of agency-fee payments required of state employees who chose not to join unions. In the federal sector, the decision to join, or provide financial support to, a union is voluntary. *Janus* itself acknowledged the voluntary nature of union membership in the federal sector, stating that state governments could "follow the model of the [f]ederal [g]overnment" by "keep[ing] their labor-relations systems exactly as they are," so long as they do not "force nonmembers to subsidize public-sector unions." *Janus*, 585 U.S. at 928 n.27. Courts have held that *Janus* does not apply to voluntary membership agreements; that dues assignments are voluntary, binding contracts; and that requiring employees to honor those assignments until the next annual revocation period does not force them to join or assist a union. *See, e.g.*, *Bennett v. Council of AFSCME, AFL-CIO*, 991 F.3d 724, 732 (7th Cir. 2021) (finding that union and employer did not violate employee's First Amendment rights by continuing to deduct union dues from her paycheck, where she "freely chose to join a union and voluntarily authorized the deduction of union dues"); *Belgau v. Inslee*, 975 F.3d 940, 950-51 (9th Cir. 2020) (finding that employees who willingly joined union and voluntarily authorized union dues to be deducted from their pay for one year could be held to their "contractual obligation" and did not have a First Amendment right to withdraw); *Int'l Ass'n of Machinists Dist. Ten & Loc. Lodge 873 v. Allen*, 904 F.3d 490, 506 (7th Cir. 2018) ("Dues-checkoff authorizations are optional payroll[-]deduction contracts between employers and individual employees, similar to health insurance premium payroll deductions or retirement savings arrangements."); *Kumpf v. N.Y. State United Tchrs.*, 642 F. Supp. 3d 294, 312 (N.D.N.Y. 2022) ("As every court to consider this issue has found, once Plaintiff consented to pay dues to the union, regardless of the status of her

membership, Plaintiff did not fall within the sweep of *Janus*'s waiver requirement.") (citation modified)). The SF-1187 clearly and expressly states that "[c]ompleting this form is voluntary." Further, there is no basis for finding annual revocation intervals conflict with Section 7102 of the Statute. I note, in this regard, that the unfair-labor-practice process remains available for employees to challenge any restrictions on dues revocation that unduly interfere with their Section 7102 rights. *See, e.g.*, *AFGE*, 51 FLRA at 1438 (finding union committed an unfair labor practice by interfering with employees' right to revoke their dues-withholding authorizations); *Portsmouth*, 19 FLRA at 589-90 (finding certain limitations on employees' ability to revoke dues-withholding authorizations were unlawful restrictions on employees' Section 7102 rights to refrain from joining or assisting a labor organization).

Additionally – despite some comments to the contrary – the *Army* framework does not conflict with the Fifth Amendment's Takings Clause. As noted above, employees voluntarily sign authorizations for dues deductions, and none of the authorities cited in the comments support a conclusion that holding employees to their voluntary actions to enter into a binding contract, at least for some period of time, would be an unconstitutional "taking." *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 162 (2021) (finding state regulation granting labor organizations a "right to take access" to an agricultural employer's property in order to solicit support for unionization was a "taking" requiring just compensation under the Fifth Amendment's Takings Clause); *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 240 (2003) (finding that a state law that required client funds that could not otherwise generate net earnings for the client to be deposited in an Interest on Lawyers Trust Account was not a "regulatory taking," but stating that "[a] law that requires that the interest on those funds be transferred to a different owner for a legitimate public use . . . could be a per se taking requiring the

payment of 'just compensation' to the client"); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164-65 (1980) (finding that, "under the narrow circumstances of th[e] case – where there [was] a separate and distinct state statute authorizing a clerk's fee 'for services rendered' based upon the amount of principal deposited; where the deposited fund itself concededly [was] private; and where the deposit in the court's registry [was] required by state statute in order for the depositor to avail itself of statutory protection from claims of creditors and others – [a c]ounty's taking unto itself, under [state laws], the interest earned on [an] interpleader fund while it was in the registry of the court was a taking violative of the Fifth and Fourteenth Amendments").

For these reasons, I believe that *Army* correctly held that Section 7115(a) must be interpreted as requiring that employees may not revoke their authorizations except at annual intervals (unless an exception in Section 7115(b) applies). I also believe that the Authority failed to adequately take these considerations into account when it issued *OPM* and promulgated § 2429.19 – and fails to do so again today. I note, in this regard, that if the majority's interpretation of Section 7115(a) is correct – a point that I do not concede – then Section 7115(a) does not address, in any way, what happens after the first year of dues withholding. As such, the majority cannot rely on Section 7115(a) as the statutory basis for § 2429.19 – a substantive rule that is entirely about what happens after the first year of a dues authorization, and that dictates what parties may or may not do, and may or may not bargain over and agree to, after that first year. If there is another statutory grounding for § 2429.19, the majority does not say what it is.

Separate from the proper interpretation of Section 7115(a), two additional considerations support returning to the *Army* framework.

First, doing so would not significantly upset any reliance interests. Because the *Army* framework was in place for nearly forty years, innumerable existing collective-bargaining agreements have dues-revocation provisions that were negotiated under that framework. Additionally, as noted above, § 2429.19 does not apply to assignments that were authorized before the regulation's effective date of August 10, 2020, or to collective-bargaining agreements that were in effect on that date. As a result, returning to the *Army* framework would not significantly disrupt the status quo.

Second, some of the policy arguments raised in the comments support returning to the *Army* framework. Specifically, as some comments state, prohibiting revocations except at annual intervals can allow unions to better estimate the dues revenue that they would receive over the course of a year, which can assist them in planning their budgets and give them the financial continuity that would encourage them to invest resources in representational activities that benefit unit employees, rather than holding off due to uncertainty regarding future funding. It also could assist unions in complying with legal requirements governing the election of local union officers. Some comments note that, under the Labor-Management Reporting and Disclosure Act, unions must finalize a list of members in good standing who are eligible to participate in union elections in advance of any election. 29 U.S.C. 481(b) ("Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing."). Allowing unions to rely on members' dues-withholding commitments could assist the unions in preparing and maintaining accurate lists.

Therefore, I would return to the *Army* regime and rescind the policy statement in *OPM*. The next question becomes whether to amend 5 CFR 2429.19 or rescind it in its entirety. After considering all of the comments, I believe that the better approach would be to

rescind it. While I acknowledge that amending § 2429.19 could foster more stability in the law, the comments have persuaded me that – given the wide range of individual workplace circumstances and dues-revocation arrangements – Section 7115 is particularly well-suited for clarification through case-by-case adjudication, rather than a "one-size-fits-all" regulatory approach. As some comments note, the Authority's adoption of § 2429.19 constituted a unique foray into substantive, rather than procedural, rulemaking by the Authority. I would not essentially repeat that mistake by keeping an amended version of § 2429.19 in place.

In sum, I would rescind 5 CFR 2429.19 and the policy statement in *OPM*, and I dissent from the majority's refusal to do so.

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